



## **Fitness to Practise Policy**

### **1. Introduction**

This Fitness to Practise Policy is adopted pursuant the following provisions of the Consolidated Statutes of Trinity College Dublin and of the University of Dublin 2010 (the 2010 Statutes).

Section 5 of the Chapter on Student Conduct in the 2010 Statutes provides:

1. Cases of students' fitness to practise trades or professions during their courses of study and after graduation raise complex academic issues.
2. A policy and procedures to deal with such cases shall be set out in, or pursuant to, Schedule 3.
3. Although such cases may also raise issues under Schedules 1 and 2<sup>1</sup>, they should normally be dealt with pursuant to Schedule 3.
4. Council shall maintain oversight of this matter, and Schedule 3 may be revised by Board only with the consent of Council.

Schedule 3 to that Chapter deals in detail with the procedures to be followed by Fitness to Practice Committees. Section 6(1) of that Schedule further provides that the Senior Lecturer shall draft, from time to time revise, and implement a Policy to give further effect to the provisions of the Schedule.

The full text of Schedule 3 is set out in the Appendix to this Policy, and all references in this Policy to Schedule 3 are to that Schedule. This Policy and that Schedule are, so far as possible, to be read together as one document. As a consequence, words in this Policy have same meaning as the same words in the Statutes and Schedules. However, because this Policy is made pursuant to powers provided in the Statutes and Schedules (and set out above), in cases of conflict or inconsistency between the Policy on the one hand, and the Statutes and Schedules on the other, the latter shall prevail.

### **2. Formulating a fitness to practise policy**

Schools/disciplines formulating fitness to practise requirements should address the following four questions

- What competency(ies) is/are being assessed in the specific course/placement?

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<sup>1</sup> These Schedules relate to student discipline and student mental ill-health, respectively

- Is the competency requirement justifiable in relation to each specific course/placement?
- How is the competency assessed?
- In the case of a student with a disability/specific learning difficulty, has the School/discipline actively engaged with the Disability Service, in accordance with the guidelines set out in Part 4 below, to determine how the student's needs might be reasonably accommodated?

The policy of each school/discipline should also refer to the statutory obligation to ensure that teaching and learning methods are accessible to students with disabilities and should give examples of how methods of teaching, learning and assessment can be made accessible to all students, while indicating that these examples are illustrative only and not comprehensive.

### **3. Procedures**

Where a member of College staff or work-based placement staff or other appropriate individual has a concern regarding a student's fitness to practice, s/he should refer the student's case, in the first instance, to the relevant head of discipline (or in the case of a single discipline school, Head of School). After consulting with the Junior Dean and, in the case of a student with a disability, with the Disability Officer, the head of School/discipline shall decide whether to refer the case to the Junior Dean to be dealt with under College's disciplinary code or to have the case dealt with under the procedures for dealing with fitness to practise cases that do not constitute disciplinary offences. These procedures are set out in Schedule 3.

Where an alleged disciplinary offence or a matter of student mental ill-health comes before the Junior Dean, the Junior Dean may decide to have the case dealt with under the procedures set out below for dealing with fitness to practise cases if s/he considers this to be a more appropriate way of dealing with the case.

#### **a) Disciplinary cases**

Fitness to practise matters should not normally be dealt with as matters of discipline, but there will be some exceptional cases where this will be necessary, either in whole or in part. Where it is decided that a case or a part thereof should be treated as a disciplinary matter, the case shall be dealt with in accordance with College's disciplinary procedures as set out in Schedule 1 to the Chapter on Student Conduct in the 2010 Statutes.

Refusing, without good cause, to engage with the procedures set out below for dealing with fitness to practise cases shall be regarded as misconduct for the purposes of that Schedule.

#### **b) Cases of student mental ill-health**

Fitness to practise matters should not normally be dealt with as cases of student mental ill-health, but there will be some exceptional cases where this will be necessary, either in whole or in part. Where it is decided that a case should be treated as a case of student mental ill-health, the case shall be dealt with in accordance with the procedures set out in Schedule 2 to the Chapter on Student Conduct in the 2010 Statutes.

### **c) Garda vetting cases**

Fitness to practise cases that arise as a result of Garda vetting of a student shall be dealt with in accordance with the Garda Vetting Policy and Procedures for Undergraduate and Postgraduate Students, 2009.

### **d) Other fitness to practise cases**

Fitness to practise cases that do not constitute disciplinary offences should be referred by the Head of School/discipline or the Junior Dean, as the case may be, to the School Fitness to Practise Committee (the "School Committee"), subject to the proviso that where it is known that the case involves a student with a disability (whether or not the student is registered with the Disability Service), the School/discipline must comply with the guidelines set out in Part 4 below before the case can be referred to the School Committee.

Where a fitness to practise issue arises in other contexts before other committees, such as in the course of an academic appeal being pursued by a student, Course Office based Courts of First Appeal, School based Courts of First Appeal, Faculty based Courts of First Appeal, the Academic Appeals Committee, the Graduate Studies Committee, and the like, then each such other committee shall have a discretion to refer that issue to the relevant School Fitness to Practise Committee if this is considered a more appropriate way of dealing with the matter.

The School Committee shall consist of three members of staff designated by the Faculty executive and one of the members shall be appointed by the Faculty executive to act as chair. Two such members shall be drawn from the School to which the student is attached and the third member from another School outside the Faculty with fitness to practise requirements. Where the Faculty executive deems it appropriate, one of the School members may be substituted by a staff member of the establishment where the student was on placement. For the avoidance of doubt, it should be noted that members of the School Committee do not act in any representative capacity but rather are required to bring their own individual judgment to bear on the question of whether the student complies with the School/discipline's fitness to practise requirements. A member of College's administrative staff may be in attendance at meetings of a School Committee for the purpose of recording decisions made by such Committee. In dealing with a concern regarding a student's fitness to practise, the School Committee shall follow the procedures set out in Schedule 3. Section 2(6) of that Schedule provides that the "School Committee shall determine its own procedures and shall perform its functions with due enquiry"; and

section 17(1) of the Introduction Chapter to the 2010 Statutes explains that "due enquiry means diligent, proper and impartial investigation or consideration as the case may be, subject to the principles of natural and constitutional justice and fair procedures".

In particular, the student should be notified beforehand in writing of the School/discipline's concerns in relation to his/her ability to comply with fitness to practise requirements. The student is entitled to be present at the hearing when those concerns are presented to the School Committee. The student's tutor (or, in the case of a student registered on a postgraduate course, a postgraduate student advisor) or any other person of the student's choice may represent the student; and the student and any such representative shall be given full opportunity to be heard on the matter before the School Committee. In particular, the student or his/her representative is entitled to question the representative of the School/discipline on the case made against the student. The representative of the party referring the case to the School Committee is equally entitled to be present at the hearing when the student's response to the concerns raised is presented and is entitled to question the student on this response. Where the School Committee decides that the concern is well founded, it may take any of the actions set out in section 3 of Schedule 3. The School Fitness to Practise Committee shall also notify the parties of the right of appeal to the College Fitness to Practise Committee (the "College Committee").

An appeal against the decision of a School Committee may be taken to the College Committee by either party to the original decision. The College Committee shall consist of a chairperson who is a practising lawyer, two members of staff drawn from disciplines that have fitness to practice requirements and two external (ie, non-staff) members, one of whom shall be drawn from the discipline of the student and the other of whom shall be a lay person. The secretary to the College Committee who shall be appointed by Board shall not be a member of the Committee.

According to section 5(3) of Schedule 3, a party wishing to appeal against a decision of a School Committee shall, "within fifteen days of the date on which the decision has been communicated to the parties", notify the secretary to the College Committee in writing of his/her intention to appeal, and section 17(1) of the Introduction Chapter to the 2010 Statutes explains that "day" in this context "includes any day of the Academic Year, and excludes Saturdays, Sundays and public holidays". When the secretary to the College Committee has been so notified of an intention to appeal, s/he shall request the chairperson of the School Committee to forward a note of that Committee's decision to the secretary of the College Committee. The party taking the appeal shall, within a further 15 days (as above defined) from serving notice of the intention to appeal, provide the secretary to the College Committee with a written statement of the grounds of appeal. The secretary to the Committee shall provide this statement to the other party to the appeal, requesting a written response for consideration by the College Committee. The Committee may consider any other documents submitted by either party to the original decision in advance of the hearing, provided such documents are also provided to the other party as soon as

practicable after their provision to the secretary of the College Committee. At the hearing, the College Committee may admit any evidence it deems relevant.

In dealing with an appeal, the College Committee shall follow the procedures set out in section 5 of Schedule 3. The student shall have the same rights and entitlements before the College Committee as s/he enjoyed before the School Committee.

Pursuant to section 5 of Schedule 3, certain recommendations of the College Committee must be approved by Council; and other decisions of the College Committee must be notified to Council. Once Council has approved such a recommendation or noted such a decision, it will inform Board thereof. An appeal against any decision of Board in a fitness to practise case lies to the Visitors pursuant to the Chapter of the 2010 Statutes relating to the Visitors.

#### **e) Powers to suspend**

Where student behaviour threatens the well-being of patients, students or staff, section 2(5) of Schedule 3 provides for a power to suspend the student from the placement with immediate effect. This is in addition to the powers of the School Committee and the College Committee pursuant to section 3 of the Schedule to recommend the suspension of a student. Moreover, these powers are without prejudice to other powers to suspend students in other circumstances, such as the power of the Junior Dean under Schedule 2 to the Chapter on Student Conduct to suspend a student with mental health difficulties where the student constitutes a clear and reasonably imminent danger to himself/herself or to others.

#### **4. Students with disabilities**

If a student has a disability, and there are concerns over fitness to practice, section 4 of Schedule 3 shall apply, and the guidelines outlined in this Part should be followed prior to any fitness to practice hearing.

'Disability' is defined for the purpose of this policy as

- (a) the total or partial absence of a person's bodily or mental functions, including the absence of a part of a person's body,
- (b) the presence in the body of organisms causing, or likely to cause, chronic disease or illness,
- (c) the malfunction, malformation or disfigurement of a part of a person's body,
- (d) a condition or malfunction which results in a person learning differently from a person without the condition or malfunction, or

(e) a condition, illness or disease which affects a person's thought processes, perception of reality, emotions or judgement or which results in disturbed behaviour.

A student with a disability undertaking a professional course may apply for, and be provided with, such reasonable accommodation as is necessary to enable the student to participate in all aspects of the course unless the provision of such reasonable accommodation entails more than nominal costs.

Assessment of the student's needs shall be carried out by the College Disability Service which, following consultation with the student, the relevant school/discipline and, where appropriate, work-based placement staff, shall produce a Learning and Educational Needs Summary document detailing the student's needs and the manner in which such needs should be reasonably accommodated.

Reasonable accommodation may include, but is not limited to, the provision of:

- Assistive technology
- Human / personal supports (such as note-takers, readers, Irish Sign Language interpreters, etc.) For health professions, personal assistance is considered appropriate provided that the individual's knowledge and skill are assessed, rather than that of the assistant.
- Additional time, e.g. in exams or additional time to learn specific skills.
- Information in alternate formats.
- Physical access to required areas and / or timetabling of course elements into accessible locations.
- Alternate forms of assessment.
- Alternate or specifically selected practice education experiences that enable the student to demonstrate core competences in an environment with fewer barriers.

If there are concerns that the reasonable accommodation provided by College is not appropriate or working well, the Disability Service, in conjunction with the student, the relevant school/discipline and, where appropriate, the clinical educator, shall review the provision of reasonable accommodation to see if it can be improved.

If the reasonable accommodation provided by College is such as to enable the student to participate fully in his/her course of action, s/he shall be assessed on the same basis as any other student on the course. In particular, if there are concerns about the student's ability to practice elements of the course, the case shall be dealt with in accordance with the procedures outlined in Part 3 above.

If a student with a disability does not engage with the process of making reasonable accommodation, and concerns about an aspect of professional practice remain, then in the first instance, the student will be invited again to participate. If this is unsuccessful, then the case shall be dealt with in accordance with the procedures outlined in Part 3 above.

## **5. Review of Fitness to Practice Policy**

The decisions of School Committees and the College Committee, and decisions of the Visitors relating to fitness to practise issues, shall be copied to the Senior Lecturer, who shall propose amendments to this Fitness to Practice Policy when appropriate.

**Approved by Council on 18 May 2011**

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## **Appendix**

### **Schedule 3 to the Chapter on Student Conduct in the Consolidated Statutes, 2010**

#### **Fitness to Practise**

##### **1. Application**

(1)

(a) This Schedule applies to matters relating to students' fitness to practise trades or professions during their courses of study and after graduation.

(b) In particular, it applies to matters relating to students' fitness to participate in clinical or other placements which are an essential component of their courses of study.

(c) In this Schedule, references to fitness to practise shall be interpreted having regard to the provisions of this sub-section; and concerns relating to fitness to practise shall include concerns relating to potential fitness to practise. (2) Fitness to practise matters should not normally be dealt with as matters of discipline pursuant to Schedule 1 or as matters of student mental ill-health pursuant to Schedule 2, but should – to the extent that it is possible - be dealt with pursuant to the provisions of this Schedule.

(3) Subsection (2) shall not be taken to prevent some aspects of any given case being dealt with pursuant to Schedule 1 or Schedule 2 or both and other aspects of the same case being dealt with pursuant to this Schedule.

(4) For the purposes of this Schedule, and for the avoidance of doubt, references to students' courses of study include participation in clinical or other placements.

##### **2. Schools' Fitness to Practise Committees**

(1) Each School in which fitness to practise matters can normally arise should

(a) formulate a policy relating to such matters, and

(b) constitute a Fitness to Practise Committee, and all references in this Schedule to "the Committee" shall be to the Fitness to Practise Committee of the relevant School.

(2) In each such School, the Committee shall be constituted in accordance with the provisions laid down from time to time by the School.

(3) Anyone who has concerns regarding a student's fitness to practise may raise such concerns with an appropriate person, who shall decide whether such concerns should be referred to the Committee; for the purposes of this Schedule, the appropriate person shall be the Junior Dean, or the Head of the relevant Discipline, or the Head of the relevant School.

(4) Where a case comes before the Junior Dean pursuant to Schedules 1 or 2 which in fact raises or includes fitness to practise matters, the Junior Dean shall decide whether and to what extent the case ought to be referred to the Committee.

(5) Where a student's behaviour threatens the well-being of others (including patients, students and staff), the Head of the relevant Discipline or School or other appropriate member of the work-based placement staff

(a) may suspend the student from a placement with immediate effect, and (b) shall immediately refer the matter either to the Committee, or to the Junior Dean who shall decide whether and to what extent the case ought to be dealt with pursuant to Schedule 1 or Schedule 2 or referred to the Committee.

(6) The Committee shall determine its own procedures and shall perform its functions with due enquiry.

### **3. Decisions of the Committee**

(1) Where the Committee decides that concerns relating to a student's fitness to practise are well founded, it may take any of the following actions: (a) caution the student in relation to the matter; (b) recommend that the student be required to undergo testing in respect of suspected drug or alcohol addiction; (c) recommend that the student be required to undergo a medical examination or assessment, which may include psychiatric assessment; (d) recommend that the student be suspended from College; (e) recommend that the student withdraw from College; (f) following consultation with the Senior Lecturer (in the case of undergraduate students) or the Dean of Graduate Studies (in the case of postgraduate students), require the student to complete such academic exercise, including a placement, as shall be prescribed by the Committee; or (g) where the matter was referred to the Committee other than by the Junior Dean, refer the matter or any aspect thereof to the Junior Dean to be dealt with pursuant to Schedule 1 or Schedule 2. (2) (a) In the case of undergraduate students, recommendations under sub-section (1)(b)-(e) shall be made to



the Senior Lecturer. (b) In the case of postgraduate students, recommendations under sub-section (1)(b)-(e) shall be made to the Dean of Graduate Studies. (c) Such recommendations shall not take effect until they are approved by the Senior Lecturer or the Dean of Graduate Studies, as the case may be.

### **(3) Students**

(a) who fail to comply with an approved recommendation made pursuant to subsection (1)(b) or (c), (b) whose tests pursuant to sub-section (1)(b) confirm continued drug or alcohol use, or

(c) who are assessed pursuant to sub-section (1)(c) to be unfit to continue with their studies or to be unable or unsuitable to participate in their courses of study to the standard required by College,

may be required by the Committee either to withdraw from their courses of study or to go off-books until such time as they are certified by an appropriately qualified person to be fit to proceed with their courses of study.

(4) Students who have been suspended pursuant to sub-section (1)(d) shall not be readmitted until such time as they are certified by an appropriately qualified person to be fit to proceed with their courses of studies.

(5) Where the a test or examination or assessment is required pursuant to the terms of this section, the Committee shall nominate the doctor or specialist or other appropriately qualified person to undertake it; and it shall be undertaken at the expense of the College.

### **4. Students with disabilities**

(1) Where concerns in relation to fitness to practise matters are raised in respect of a student who is known to have a disability, the appropriate person to whom such concerns have been raised shall in the first instance give consideration to the level and types of support put in place in conjunction with College's Disability Service to allow the student to participate as fully as possible in that student's chosen course of study.

(2) Where, notwithstanding any support which has been put in place for a student who is known to have a disability, the appropriate person has or continues to have concerns in relation to that student's fitness to practise, then the appropriate person may refer the matter to the Committee.

(3) Where a student has not engaged with the reasonable accommodations process to provide appropriate supports, and the appropriate person has or continues to have concerns in relation to that student's fitness to practise, then the appropriate person may refer the matter to the Committee.

## **5. College Fitness to Practise Committee**

(1) There shall be a College Fitness to Practise Committee, and all references in this Schedule to "the College Committee" shall be to the College Fitness to Practise Committee.

(2) The membership of the College Committee shall be determined by Council, subject to the approval of Board.

(3) All decisions of a School's Fitness to Practise Committee may be appealed to the College Committee within fifteen days of the date on which the decision has been communicated to the parties.

(4) If a fitness to practise issue arises in a School in which a Fitness to Practise Committee has not been constituted, then the appropriate person to whom such concerns have been raised shall decide whether such concerns should be referred to the College Committee.

(5) An appeal to the College Committee shall be a full rehearing; that Committee shall determine its own procedures; and it shall perform its functions with due enquiry.

(6) Section 3 shall apply to the decisions of the College Committee in like manner as it applies to decisions of a School's Fitness to Practice Committee; except that recommendations under sub-section (1)(b)-(e) shall be made to Council and shall not take effect until they are approved by Council; and all other decisions of the Committee shall be notified to Council.

## **6. Policy**

(1) Following appropriate consultation, the Senior Lecturer shall, if necessary, draft, from time to time revise, and implement a Policy to give further effect to the provisions of this of this Schedule.