

**IMPERIAL COLLEGE LONDON**

**ORDINANCE D15**

**DISMISSALS ON "OTHER GROUNDS"**

This Ordinance is made pursuant to Part V, Clause 18 of the Appendix to the College's Statutes

1. This Ordinance must be read in conjunction with the Appendix to the College's Statutes (hereinafter the "Appendix") and with Ordinance D7 and the other Ordinances dealing with staff matters. In the event of a conflict the Appendix takes precedence.

**GENERAL**

2. In taking any action under this Ordinance regard shall be had to the relevant Employment Legislation and/ or Code of Practice in force at the time.

**ACTION UNDER THIS ORDINANCE**

3. This Ordinance covers dismissals on any lawful ground other than those covered in the Ordinances made under Parts II (Ordinance D11: Redundancy), III (Ordinance D8: Disciplinary Procedure), IV (Ordinance D12: Incapacity on Health Grounds) (Ordinance D19: Capability Procedure) and by Clauses 16, 17 and 19 of Part V of the Appendix. Save where appropriate, this Ordinance is not intended to be used in relation to members of staff who have themselves raised concerns regarding their relationship(s) with other members of staff.

4. This Ordinance shall apply where the reason the College is contemplating dismissing a member of staff is substantial and shall cover, but shall not necessarily be limited to, the following potential fair reasons for dismissal:

a. Some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held; or

b. The member of staff not being able to continue to work in the position which he held without contravention (either on his part or on that of the College's) of a duty or restriction imposed by or under an enactment; or

c. The irretrievable breakdown in working relationships, subject always to such informal and formal attempts as may be reasonable in the circumstances having been made to resolve the issues affecting the relationship and to enable the individual(s) to remain in employment;

or

d. The member of staff being imprisoned; or

- e. A breakdown of trust and confidence.

### **ACTION PRIOR TO A HEARING**

5. Where the College is contemplating terminating a member of staff's employment under Paragraph 4 above, it will, where appropriate, either consult with the member of staff in relation to the proposals and/or investigate the matter.

6. Following that period of consultation or investigation (as applicable), the Head of Department or his or her nominee shall consider the matter and whether the suspension and/or formal procedure(s) set out below should be invoked.

### **SUSPENSION**

7. In some cases (for example, where there is on the face of it an irretrievable breakdown in a working relationship and there are no practicable means by which the parties' working environments can be separated), it may be appropriate for a member of staff involved in the matter to be suspended. In accordance with Paragraph 22 of Ordinance D7, a decision to suspend an academic member of staff from work should only be taken after careful consideration and reasons that may lead to that decision being taken include risks to others, damage to College equipment, etc. This is not an exhaustive list. Consideration will also be given to the well-being of the member of staff, and the impact on his or her work and of those researchers and students supported by the academic. Partial suspension will also be considered and implemented where appropriate. If suspended from work under Ordinances or other appropriate procedure made under Part III, Clause 10, or Part V, Clause 19 of the Appendix:

- a. The member of staff will be invited to a meeting to discuss the reason(s) for suspension, and any restrictions on workplace attendance, contact with students, colleagues (including witnesses) and funding bodies. A colleague or (where the member of staff is a member of that union) a trade union representative can be present at the meeting if desired.

- b. In addition, the member of staff should be provided with information about who to contact if necessary whilst on suspension and arrangements for providing access to evidence necessary to respond to any allegations or processes. Staff should also be informed of the need to be contactable during normal working hours and to make themselves available to attend meetings as necessary.

- c. If it is not possible to meet the member of staff in advance of suspension, written notification will be sent to the member of staff and a meeting date will be set up to discuss the reason(s) for the suspension and arrangements during the period of suspension. At the meeting, he or she may have a colleague or union representative present if desired. The arrangements will be confirmed in writing.

d. Suspension is not a formal sanction and is to be considered a neutral act to facilitate investigation. Regular contact should be maintained with the member of staff to advise him or her of the progress of the investigation. Unless otherwise provided in the terms of the suspension, the College will continue to pay the member of staff his or her normal salary and he/she will receive his or her normal benefits.

e. The period of suspension should normally be as short a period as possible dependant on how the investigation proceeds i.e. usually three weeks. Suspension for a period longer than this must be approved by the Director of Human Resources or his or her nominee and will, wherever possible, be reviewed at three-weekly intervals throughout.

### **DISMISSAL**

8. Any dismissal proceedings under this Ordinance should be conducted in accordance with the requirements set out in Ordinance D8 (The Disciplinary Procedure), as outlined below:

### **CONVENING FORMAL DISMISSAL OR APPEAL HEARINGS**

9. Once any action under paragraph 5 above is completed, if a decision is made to convene a dismissal hearing arrangements will be made by the Director of Human Resources or his or her nominee in accordance with those prescribed in Paragraph 28 of Ordinance D7 outlined below:

10. The Director of Human Resources or his or her nominee shall be responsible for the conduct of hearings under the Appendix as required and for taking charge of the proceedings. To include:

a. Arranging and notifying the parties of a date for the hearing, which shall be as soon as is reasonably practicable;

b. Notifying or reminding the member of staff of his or her right to be accompanied by another member of staff or (where they are a member of that trade union) a trade union representative;

c. Giving the member of staff no less than ten working days' notice to provide their written response to the allegations and availability to attend a formal hearing. Giving both parties, where possible, not less than five full working days' notice (running from the deadline for the member of staff to provide their written response to the allegations and availability) of the date for the planned hearing;

d. Any necessary administrative and accommodation arrangements to enable the hearing to take place;

e. Any necessary administrative and accommodation arrangements for the attendance of witnesses or persons entitled to make oral representations to the panel;

f. Upon receipt of relevant documentation, the production and distribution of documents in a timely manner (where possible, by no later than five working days before the hearing) and in accordance with the relevant Ordinance or appropriate procedure to allow for the proper presentation and consideration of the matters before the person or panel conducting the hearing. These documents may include:

- (1) Any statement of complaint, grievance or appeal;
- (2) The responses thereto;
- (3) Any witness statements relied upon by either party; and/or
- (4) Any other relevant documents.

g. Once documentation has been circulated in accordance with paragraph 10(f) above, no new documents will be accepted from the member of staff or the management side, save for where the documents are demonstrably relevant or constitute new material relevant to the case and subject always to the discretion of the Chair which shall not be unreasonably withheld.

11. The person(s) conducting the hearing will be convened in accordance with Paragraphs 24 to 27 of Ordinance D7 outlined below:

a. The Director of Human Resources or his or her nominee will be responsible for ensuring that an appropriate panel is chosen to conduct any hearing under the Appendix. The panel appointed will normally consist of a College Consul and an academic of equivalent seniority who have had no involvement in the matter previously or with the people concerned and, wherever possible, shall be senior to the management representative who conducted the initial investigation into the allegations against the member of staff.

b. Appeals against dismissal shall consist of a panel of three persons, none of whom shall previously have had any substantive involvement with the case or with any of the parties and who, wherever possible, shall be more senior than the person(s) who reached the decision being appealed. The three person panel shall include one lay member of the Council, one College Consul and one person drawn from a list agreed from time to time by the Council. If no College Consul is eligible, or if the panel is an appeal panel considering the position of a College Consul, two persons will be drawn from the list agreed by the Council. The Director of Human Resources or his or her nominee will determine at his or her discretion a member of the panel to act as Chair.

c. Panels may be enlarged by one additional person to allow representation by any relevant body (for example, the National Health Service in the case of clinical staff) where the allegation under consideration include allegations in relation to their performance and it is sensible to hear any allegations and the response to those allegations concurrently. The method for nominating such persons shall be in accordance with procedures laid down by the relevant body or agreed by the Director of

Human Resources or his or her nominee. Such provision is not intended to provide for a concurrent decision on the matter by the relevant body.

12. Where the relevant member of staff is an officer of a trade union, the relevant full-time regional officer of that trade union should be informed by Human Resources at the commencement of formal proceedings under this Ordinance.
13. In advance of the hearing, the member of staff should advise the Chair of the name of the person (if any) who will be accompanying him or her. Exceptionally, the Trade Union may request that two representatives (either regional or local) are present at a formal hearing. The Chair of the hearing will consider this request based on the complexity of the case and, if agreement is given, will specify that one representative will take the main role of spokesperson and the other representative will provide a supporting role assisting the main representative with paperwork and background information. The member of staff's representative(s) may not answer questions on behalf of the member of staff, but the member of staff's representative with the main role of spokesperson can address the hearing to present the member of staff's case, question witnesses, respond to views expressed and sum up the case. The member of staff may confer with the person accompanying him or her during the hearing.
14. If a member of staff is unable to arrange to be accompanied on the date proposed or fails to attend the meeting for reasons outside of his or her control, the formal hearing will be rearranged for a mutually suitable time, normally within five working days of the original date, or as soon as reasonably possible thereafter.
15. In the event that a member of staff repeatedly refuses to attend a formal hearing or cannot attend a rearranged hearing, then he or she may be given the opportunity to respond to the allegation(s) in writing. If a member of staff does not attend a rearranged hearing or does not submit a response to the allegation(s) in writing within the provided time scale, the Chair of the hearing may make a decision on appropriate dismissal action in the member of staff's absence. This decision will be made without the benefit of the member of staff's oral or written statement if he or she has not attended or provided written documentation. The member of staff will be notified in advance that this is a consequence if he or she is unable or unwilling to participate in the process.

#### **CONDUCTING FORMAL DIMISSAL OR APPEAL HEARINGS**

16. The conduct of the hearing shall be in accordance with that prescribed in Paragraphs 29 to 32 of Ordinance D7 outlined below:
  - a. The Chair (of the panel or the individual conducting a hearing) shall set the procedure to be followed as appropriate for the proper consideration of the matter, to include provision for adjournments during the hearing (if necessary) by request of either party (e.g. to allow for the finalisation of actions or proceedings by another body). The Chair shall be guided by the requirement that the evidence, written and oral, must be confined to the matter which is the subject of the hearing. An appeal hearing will not usually be a rehearing of the evidence presented at the original hearing. The Chair shall have complete discretion as to the admissibility of evidence.

- b. The procedure for a hearing shall generally include the following steps:
- (1) The Chair shall facilitate any introductions as are necessary and refer to any matters appropriate to the conduct of the hearing;
  - (2) The Chair may make provision for witnesses in appropriate cases to give evidence in a way which reduces the witness's distress or discomfort;
  - (3) The party bringing the case before the person or the panel conducting the hearing or his or her representative shall present his or her case and call his or her witnesses if appropriate. Each witness shall be present only to give evidence, to be examined on it and then leave. Exceptionally, if there is no alternative, the witness may also be a party to proceedings;
  - (4) The respondent or their representative may question the party bringing the case and their witnesses;
  - (5) The person or panel conducting the hearing may question the party bringing the case and their witnesses;
  - (6) The respondent or their representative shall present their case and call their witnesses if appropriate. Each witness shall be present only to give evidence, to be examined on it and exceptionally, if there is no alternative, the witness may also be a party to the proceedings;
  - (7) The party bringing the case or their representative may question the respondent and his or her witnesses;
  - (8) The person or panel conducting the hearing may ask questions of the respondent and their witnesses;
  - (9) The party bringing the case or their representative shall make any final representations they wish;
  - (10) The respondent or their representative shall make any final representations they wish;
  - (11) The Chair may, at their discretion, adjourn or postpone the hearing in order that further evidence may be produced by either party, or pending the outcome of proceedings or action by another body or employer, or to obtain advice; and
  - (12) The person or panel conducting the hearing shall consider its decision in private. The person providing support to the person or panel conducting the hearing shall be able to support the person or panel when making its decision but shall not participate in the decision itself.

**APPEALS**

17. In all cases of formal action under this Ordinance, the member of staff has the right of appeal against the decision to issue a formal written warning or to dismiss or against any other sanction. The member of staff must submit grounds for appeal within ten working days of receipt of the written notification of the sanction and in accordance with any further conditions set out in the written notification.

18. Appeal hearings will be conducted in accordance with the following terms of reference:

- a. To review whether the matter under consideration was adequately investigated and substantiated;
- b. To review whether the College's procedures were correctly and fairly implemented; and
- c. To consider whether the action was reasonable in the circumstances known to management at the time of the hearing.

19. If new evidence is introduced during an appeal hearing it may be referred by the person or panel hearing the appeal back to the original Chair, in order that he or she may review the dismissal sanction. The appeal hearing may be reconvened in the event that the member of staff does not accept the subsequent decision of the Chair.

20. The panel or person hearing the appeal may be assisted by a member of staff from the Human Resources Division, who will not have had previous substantive involvement in the case or with any of the parties. The member of staff has a right to be accompanied by another member of staff or (where they are a member of that trade union) a trade union representative at the appeal hearing. All appeal hearings will be convened as soon as practicable.

21. The outcome of the appeal hearing, with reasons for the decision, will be confirmed in writing, usually within ten working days of the hearing. The Human Resources representative will assist with the preparation and dissemination of the decision.

22. In the event that an appeal panel decides to reinstate a member of staff who has been dismissed, this will be done in a manner which maintains continuous service and without loss of pay or other benefits. The College reserves the right, in appropriate cases, to conduct and factor into its decision regarding such payments to a member of staff an assessment of any income received by the member of staff while not in College employment.

23. The College regards the appeal decision as final.

**GENERAL**

24. Notes will be taken of any formal meeting under this Ordinance. Notes usually will be taken by a member of HR. A copy of the notes will be sent to the member of staff as soon as

practicable after the meeting. If the member of staff does not agree with the contents of the notes of the meeting, they should make handwritten amendments (and initial each amendment). A copy of the amended notes should be attached to the original typed version and will be added to the hearing papers. If the individual makes substantive changes to the notes, the changes should be discussed with the individual and consideration should be given as to whether the changes should be referred to in any documents referencing the notes.

25. Notes and records of matters dealt with under this Ordinance should be handled on a confidential basis and stored securely. The outcome of all dismissal action will be monitored centrally by the College to comply with statutory requirements. Dismissal records may be retained by the Human Resources Division in a separate file for reference in the event of a dispute or legal proceedings. Retention of this information should be reviewed periodically in accordance with the requirements of the Data Protection Act.

Approved by the Council 23 March 2007

Effective from 8 July 2007

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