

**UNIVERSITY OF LEICESTER  
ORDINANCE**

**DISMISSAL FOR SOME OTHER  
SUBSTANTIAL REASON – SOSR  
(Ordinance Policy)**

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| For use in:  | All Divisions/Schools/Departments/Colleges of the University |
| For use by:  | All University employees                                     |
| Owner  | Staffing Policy Committee                                    |
| Dates of Trade Union Consultation and Negotiation            | Start: 8 January 2010<br>End: 2 March 2011                   |
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# **POLICY ON DISMISSAL FOR SOME OTHER SUBSTANTIAL REASON (SOSR)**

## **1. Introduction**

- 1.1. Occasionally dismissals do not fall easily into the usual procedures for dismissal. They are termed under the Employment Rights Act 1996 as dismissals for “Some Other Substantial Reason” (SOSR).
- 1.2. This Ordinance outlines the University’s approach to dismissals for some other substantial reason (SOSR) and provides a framework for dismissals that fall outside the context of other University Ordinances or Policies such as:
  - Redundancy;
  - Misconduct (Discipline);
  - Capability (Performance Management);
  - Ill-health capability;
  - Other specific dismissal ordinances.
- 1.3. The SOSR Ordinance Policy should be read in conjunction with the SOSR Ordinance Procedure.
- 1.4. The University will maintain the right of academic staff to exercise their Academic Freedom. The SOSR Ordinance (Procedure) includes appropriate procedural modifications to ensure the protection of Academic Freedom. Decisions about the definition of Academic Freedom will be made with reference to the “Ordinance Agreement on the definition of Academic Freedom”.
- 1.5. Staff will be consulted on changes via the established channels for consultation and negotiation with the recognised Trade Unions, where the University wishes to amend the SOSR Ordinance.

## **2. Aims of the Ordinance**

- 2.1. To clearly outline the University’s position regarding SOSR dismissals.
- 2.2. To provide a legally compliant framework for dealing with SOSR dismissals in a fair and equitable manner across the University.
- 2.3. To provide support and guidance to managers and members of staff regarding dismissals for some other substantial reason.
- 2.4. To enable the University to achieve its performance objectives.

## **3. Scope**

- 3.1. The SOSR Ordinance Policy and Procedure applies to all University employees.

## **4. Principles**

- 4.1. This Ordinance will only normally apply when it would not be appropriate to deal with the dismissal issue(s) under any other Ordinance, Policy or Procedure.
- 4.2. The University will operate the SOSR Ordinance according to prevailing legal precedent and legislative requirements.
- 4.3. The University will apply the SOSR Ordinance consistently and fairly for all members of staff.
- 4.4. In cases involving Academic Freedom, panel decisions will reflect the view of the majority.
- 4.5. A member of staff may, with good reason, object to the appointment of any individual involved in the hearing of their case. The objections will normally be considered by a manager of a higher grade than the chair of the hearing.
- 4.6. HR will support line managers in all cases where the Ordinance is applied in order to ensure consistency of approach. Advice given by HR to members of staff will be limited to explaining the Ordinance.
- 4.7. In cases where a member of staff has an inter-dependent contract of employment with the NHS and the University, representatives from the NHS may be included in formal proceedings (e.g. in an Investigation or Hearing).
- 4.8. The Dismissal for SOSR Ordinance will be operated in accordance with the principle of Natural justice. Natural justice includes the notion of procedural fairness, which includes the following:
  - A right to advance warning - the relevant member of staff should be given adequate notice about the proceedings including any allegations made against them and access to relevant documentation in a timely manner;
  - Proceedings should be conducted so they are fair to all the parties;
  - Each party to a proceeding is entitled to ask questions and challenge the view/ proposal of other parties;
  - A person who makes a decision should be unbiased and act in good faith;
  - A person (or panel) making a decision should declare any personal interest they may have in the proceedings;
  - Justice should be seen to be done.

## **5. Role of HR**

- 5.1. The role of HR is to ensure that formal proceedings comply with employment law and the University's policies and procedures. The primary role of HR is to advocate on the part of the institution, not for a manager or a member staff.
- 5.2. During formal proceedings, members of HR will act as independent, advisory guardians and regulators of the process. Members of HR will point out any issues in respect of employment law or the University's policies and procedures during formal meetings.

- 5.3. Members of HR are not permitted to undertake the role of decision maker on individual cases. Questions from members of HR must be asked through the chair of a formal meeting.
- 5.4. Once informed of a formal case, HR will issue the Dismissal for SOSR Ordinance (Policy and Procedure) to all parties involved.

## **6. Definitions**

- 6.1. Although not exhaustive, below is a list of examples where dismissal for some other substantial reason would be appropriate. Common scenarios include:
  - Where a member of staff has confirmed that they are not prepared to accept a change (or changes) in their working practices or contractual terms following a reorganisation or restructure;
  - Where the continued employment of a member of staff in their post would constitute a statutory impediment. For example, where working with children or vulnerable adults is an essential part of the post and a member of staff is disqualified from working with children in a regulated position as set out in the Criminal Justice and Court Services Act 2000.
  - Where a member of staff has a sentence of imprisonment imposed on them and the matter does not fall within any other University Ordinance;
  - Where there is a fundamental breakdown in trust and confidence between the employer and the member of staff which is not directly due to conduct and/or performance.
- 6.2. The SOSR Ordinance includes the provision to deal with dismissal on the grounds of illegality.

## **7. Right to be accompanied**

- 7.1. A member of staff has the right to be accompanied to formal meetings. The chosen companion may be a trade union representative, an official employed by a trade union or a fellow worker.
- 7.2. Where the right to be accompanied is exercised, the normal expectation is that a member of staff will be accompanied by a local Trade Union representative at formal meetings and, where required, by an official employed by the Trade Union at appeal.
- 7.3. Where the SOSR Ordinance (Policy and Procedure) refers to a “Trade Union representative”, this includes an official employed by the Trade Union.
- 7.4. In cases where the outcome is likely to end, prematurely, the staff member’s professional career, the Registrar or a Pro-Vice-Chancellor (with advice from the University’s Legal Adviser) may permit the member of staff to have legal representation at the individual’s own cost.

- 7.5. A member of staff who has an inter-dependent contract of employment with the NHS and the University may be accompanied to formal meetings by a representative of a medical defence union.
- 7.6. A member of staff is not normally permitted to be accompanied to informal meetings.

## **8. Stress/Illness and the Dismissal for SOSR Procedure**

- 8.1. The University has a duty of care to all of its members of staff. Therefore, where a member of staff is experiencing stress or illness during a dismissal for SOSR process and there is a possibility that the process could be delayed as a result of the absence, the University will request a medical report (from the staff member's GP, specialist or Occupational Health) to determine if and when a member of staff is fit to attend a hearing.
- 8.2. The role of Occupational Health is to meet, confidentially, with a member of staff and based on the medical evidence, to provide recommendations to the University about a staff member's health.
- 8.3. Where a member of staff is deemed fit enough to attend by a medical practitioner or Occupational Health, the hearing will be arranged in the normal way. Where the medical advice suggests that a hearing may go ahead with adjustments, the hearing will be arranged accordingly.
- 8.4. Where a member of staff is deemed to be too unwell to attend by a medical practitioner or Occupational Health, the hearing will normally be rescheduled. However, where the member of staff is persistently unable to attend, the chair (or panel) may take a decision to hold the dismissal for SOSR hearing in their absence or make arrangements for written statements to be submitted instead.

## **9. Witnesses**

- 9.1. The member of staff has the right to call witnesses. However, the staff member's witnesses are not obliged to attend if they do not wish to. Should a member of staff wish to call witnesses, the request must be made to the chair at least 72 hours in advance.
- 9.2. Witnesses and the relevant individual(s) involved in an SOSR case will normally be interviewed as part of the formal investigative process.
- 9.3. Interviews with witnesses will be documented. A note of the interview must be signed by each witness or relevant individual to confirm that the information is accurate and complete.
- 9.4. The member of staff under investigation will receive a copy of all appropriate paperwork relevant to the investigation that they are entitled to see (including witness statements).

- 9.5. Where requested, the note of an interview may be disclosed to other appropriate individuals involved in an SOSR case (e.g. a witness). However, in accordance with data protection regulations, these documents may be redacted to items relevant only to that individual.
- 9.6. Where the member of staff wishes to call witnesses, the request must be made to the chair at least 72 hours in advance of the hearing. Where the Investigating Officer wishes to call relevant witnesses, the member of staff will be informed at least 72 hours in advance of the hearing.
- 9.7. Any member of staff called to attend an SOSR hearing may request that alternative arrangements are made to reflect the sensitivity of the situation (i.e. submissions may be made in writing or HR may have the member of staff in a separate room). The Chair of the hearing will decide, after seeking advice from HR, if the request is appropriate.
- 9.8. Any relevant information including evidence from witnesses or relevant individuals must be made available to the member of staff under investigation at least 5 working days before a hearing.
- 9.9. Witnesses and the relevant individual(s) involved in a an SOSR case have the right to be accompanied to formal meetings, if they choose, by a Trade Union representative or work colleague.

## **10. Suspension**

- 10.1. Depending on the nature and severity of the alleged issues, the chair of an SOSR hearing (on the advice of HR) may deem it necessary to suspend a member of staff. Reasons for this could include *but are not limited to* the following: the manager has reasonable belief that the staff member's alleged action has presented or is likely to present a risk to the staff member's health and safety or that of others, or to systems, processes and relationships necessary for good management.
- 10.2. Suspension is not disciplinary action. It is a neutral act. A member of staff on suspension will continue to be paid.

## **11. A Grievance arising out of an SOSR Process**

- 11.1. Where a member of staff raises a grievance during a formal SOSR dismissal process the SOSR dismissal process may be temporarily suspended by the University in order to deal with the grievance. Where the grievance and SOSR dismissal cases are related it may be appropriate for the University to deal with both issues concurrently.
- 11.2. The decision to suspend or continue the SOSR dismissal process will normally be made by the PVC Resources (for academic staff) or the Registrar and Secretary (for all other staff).

## **12. Rearranging or Non-Attendance at Hearings**

- 12.1. A member of staff must make every effort to attend a hearing. Failure to attend without good reason may be treated as misconduct.
- 12.2. Where a member of staff is unable to attend for any reason then he/she must notify the chair of the hearing, as soon as possible, and fully explain the failure to attend.
- 12.3. Where the chair of a hearing/appeal hearing considers that a member of staff has failed to attend without good reason, the chair may take a decision (in consultation with HR) based on the available evidence, where appropriate.
- 12.4. Where the member of staff is persistently unable to attend (for example for health reasons), the chair of the hearing/appeal may take a decision on how to progress the case (in consultation with HR) based on the available evidence, where appropriate.

## **13. Documentation**

- 13.1. All documentation (informal and formal) relating to this Ordinance will be written sensitively by line managers, treated as confidential and forwarded to HR for filing on the staff member's personnel file. Informal documentation will be retained for data protection purposes, only.