

# UNIVERSITY OF LEICESTER ORDINANCE

## PROBATION (Ordinance Policy)

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 End: 2 March 2011
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## **PROBATION ORDINANCE POLICY**

### **1. Introduction**

- 1.1. The University is committed to recruiting and retaining staff with the skills and experience required to perform their roles to a high standard of competence. The vast majority of staff meet or exceed the demands of their respective roles, however problems can and do arise.
- 1.2. The Probation Ordinance (Policy and Procedure) provides a framework for line managers to handle performance issues during probation in a fair, supportive and consistent way.
- 1.3. The Probation Ordinance (Policy and Procedure) should be read together.
- 1.4. 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 Probation Ordinance.

### **2. Aims**

The aims of the Probation Ordinance are:

- 2.1. To provide line managers and Heads of Department with a framework to manage performance issues during probation by identifying the causes or contributory factors and, where possible, to ensure that staff are enabled to adequately fulfil the responsibilities of their role.
- 2.2. To ensure that performance issues during probation are handled in a supportive, fair, equitable, transparent and timely manner.

### **3. Scope**

- 3.1. The Probation Ordinance applies to all University employees. However, it is the normal expectation that staff employed on Grades 9 and 10/Professorial level will not be subject to probation.
- 3.2. Chairs of recruitment panels may also use their discretion to determine whether staff appointed at Grade 8 and below must complete a probationary period.
- 3.3. Where a new member of staff (of any grade/level) is not required to serve a probationary period, the reasons for the exemption from probation must be documented and kept on the staff member's personnel file.

## **4. Principles**

- 4.1. Staff will be clearly informed of their duties, responsibilities and the required level of performance. They can expect to receive regular feedback on their performance and will be informed if there are any causes for concern as soon as they come to light.
- 4.2. Staff can expect to receive an appropriate mix of formal and informal induction into their role as well as training and ongoing support to ensure that they are able to perform to a high standard of competence.
- 4.3. Staff are expected to cooperate fully and respond in a positive fashion to informal and formal feedback and targets relating to their performance.
- 4.4. Staff will normally be given the opportunity to improve their performance.
- 4.5. The probation process will be supportive, fair, equitable, transparent and expedited in a timely manner.
- 4.6. 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).
- 4.7. Staff may be required to assist in obtaining or providing medical reports.
- 4.8. A member of staff may, with good reason, object to the appointment of any individual involved in hearing their case. The objections will normally be considered by a manager of a higher grade than the chair of the hearing.
- 4.9. The Probation 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 - a person should be given adequate notice about the proceedings including the case 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 the 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.

- 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 an issue with a staff member's probation, HR will issue the Probation Ordinance (Policy and Procedure) to all parties involved.

## 6. Right to be accompanied

- 6.1. 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.
- 6.2. 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.
- 6.3. Where the Probation Ordinance refers to a "Trade Union representative", this includes an official employed by the Trade Union.
- 6.4. 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.
- 6.5. 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.
- 6.6. A member of staff is not normally permitted to be accompanied or represented at informal meetings.

## 7. Definitions

An Academic	A Lecturer, Senior Lecturer, Reader, Professor (including clinical equivalents) or the Vice-Chancellor).
Staff Management Group (SMG)	A subgroup of Staffing Policy Committee. Its membership is determined on an annual basis in line with its terms of reference (available from HR).

## 8. Probation Procedures

- 8.1. There are 2 types of Probation:
  - **Probation for Academics**
  - **Probation for All other staff (including HR)**

- 8.2. Staff Management Group (SMG) has responsibility for the strategic management of academic and HR probation across the University. The primary purpose of SMG's role is to ensure that academic and HR probation is managed appropriately and consistently, across the institution.
- 8.3. SMG has the authority to challenge line managers/Heads of Department in regard to their management of probation cases. Where SMG is concerned about the management of a case, the Chair of SMG will normally meet with the relevant Head of Department and Head of College to agree an appropriate way forward.
- 8.4. Line managers/Heads of Departments are responsible for actively monitoring and managing academic staff on probation.
- 8.5. Probation for all other staff is managed by the immediate line manager with direct supervisory responsibility for a member of staff, except for HR staff (where SMG also monitor probation). The procedural modifications for HR staff on probation are in Appendix 4.
- 8.6. Where under-performance is alleged and there is an issue of academic freedom, appropriate procedural modifications will be followed to ensure the protection of Academic Freedom as set out in the "Ordinance Agreement on the definition of Academic Freedom".

## **9. Length of Probation**

- 9.1. The probationary period for an academic member of staff who is required to serve probation is 3 years. For all other members of staff who are required to serve probation, the probationary period is 6 months. This will be confirmed, in writing, at the outset of employment.
- 9.2. The performance of all relevant staff will be reviewed at the appropriate point(s) during their initial year(s) of service with the University as follows:
  - *Year 1 of Service – All relevant staff on probation.*
  - *Year 2 of Service – Relevant academics on probation only.*
  - *Year 3 of Service – Relevant academics on probation only.*
- 9.3. A probationary period will not normally extend beyond 12 months of service for all staff, except academics. Where a member of staff is promoted, re-graded or transfers to another post within the University, he/she will not normally be subject to probation in respect of the new post once he/she has reached 12 months' service.

## **10. Purpose of the Probation period**

10.1. The purpose of a probationary period is threefold:

- to provide time during which a member of staff can demonstrate the required level of performance and suitability for the role to which they have been recruited;
- to provide support to the member of staff to reach and sustain the required standard of performance for the role to which they have been recruited;
- to enable the University to terminate employment during probation, where performance is deemed to be unsatisfactory.

## **11. Monitoring during the Probation period**

11.1. Staff Management Group (SMG) has overall responsibility for managing the probation of academics and members of HR (Grade 6 and above) at a strategic level. However, the line manager with direct supervisory responsibility for a member of staff will take primary responsibility for monitoring and supporting them on a day-to-day basis during their probation period.

11.2. Performance will normally be assessed against the requirements of the role, except where a line manager/Head of department or SMG is informed of a staff member's disability or circumstances which may have an impact on their performance, in which case, reasonable adjustments will be considered.

## **12. Reasonable Adjustments**

12.1. The University will consider making reasonable adjustments to a staff member's responsibilities where there are legitimate reasons which might be affecting their performance during probation.

12.2. It is the responsibility of the staff member to inform their line manager of any issues which may have an adverse or detrimental effect on performance, including (but not limited to) issues relating to the workplace, health or disability.

## **13. Poor Performance during the Probationary period**

13.1. In cases of poor performance, a line manager/Head of Department should seek advice from HR as early as possible during the probationary period. The line manager (having consulted with HR) should clearly and unambiguously communicate issues to the member of staff, discuss remedial actions including the support that can be offered and outline consequences if performance standards are not met (in line with the relevant University Ordinance).

13.2. Where poor performance is alleged during the probationary period, the University has the right to extend the probationary period or to instigate formal proceedings, where necessary.

## **14. Reasons for Poor Performance**

- 14.1. Where a member of staff does not meet the requirements of the role, the line manager/Head of Department must seek advice from HR. The reasons for under-performance must be fully explored to ensure that the case is appropriately managed.
- 14.2. Concerns about the under-performance of a member of staff may arise from a number of factors, including (but not limited to):
  - Lack of aptitude, skill or relevant experience (consideration should be given to induction and training);
  - Lack of proficiency or organisation skills;
  - Lack of facilities or resources essential for individual performance;
  - Changes in the nature and allocation of work, including workload;
  - Changes in technology;
  - Personal/domestic/family issues;
  - Short-term or persistent health problems;
  - Departmental restructuring or changes to the job description;
  - Lack of motivation.

## **15. Probation Outcome**

- 15.1. Staff will be informed, in writing, if they have successfully completed their probationary period, on or before the expected date of completion.
- 15.2. Employment may be terminated if the required standards of performance are not reached during the probationary period.

## **16. Witnesses**

- 16.1. The member of staff has the right to call witnesses to a hearing. However, the staff member's witnesses are not obliged to attend if they do not wish to.
- 16.2. Witnesses and the relevant individual(s) involved in a probation case will normally be interviewed as part of the formal investigative process.
- 16.3. 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.
- 16.4. 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).
- 16.5. Where requested, the note of an interview may be disclosed to other appropriate individuals involved in a probation case (e.g. a witness). However, in accordance with data protection regulations, these documents may be redacted to items relevant only to that individual.

- 16.6. 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.
- 16.7. Any member of staff called to attend a probation 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.
- 16.8. Any relevant information including evidence from witnesses or relevant individuals must be made available to the member of staff against whom misconduct is alleged of misconduct at least 5 working days before a hearing.
- 16.9. Witnesses and the relevant individual(s) involved in a probation case have the right to be accompanied to formal meetings, if they choose, by a Trade Union representative or work colleague.

## **17. Suspension**

- 17.1. Depending on the nature and severity of the alleged issues, the chair of a probation 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.
- 17.2. Suspension is not disciplinary action. It is a neutral act. A member of staff on suspension will continue to be paid.

## **18. Stress/Illness during Probation**

- 18.1. 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 probation 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 formal meetings/hearings.
- 18.2. Long term sickness issues arising during Probation will be considered under the relevant University Ordinance or policy on a case-by-case basis, in line with legal requirements.
- 18.3. 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.



- 18.4. Where a member of staff is deemed fit enough to attend by a medical practitioner or Occupational Health, a formal meeting/hearing will be arranged in the normal way. Where the medical advice suggests that a meeting/hearing may go ahead with adjustments, it will be arranged accordingly.
- 18.5. Where a member of staff is deemed to be too unwell to attend by a medical practitioner or Occupational Health, formal meetings/hearings will normally be rescheduled.
- 18.6. Where the member of staff is persistently unable to attend, the chair (or panel) may take a decision to hold a meeting/hearing in their absence or make arrangements for written statements to be submitted instead.

## **19. Rearranging or Non-Attendance at Formal Meetings/Hearings**

- 19.1. A member of staff must make every effort to attend formal meetings/hearings, and failure to attend without good reason may be treated as misconduct.
- 19.2. Where a member of staff is unable to attend for any reason then he/she must notify the chair of the formal meeting/hearing, as soon as possible, and fully explain the failure to attend.
- 19.3. Where the chair of a formal meeting/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.
- 19.4. Where the member of staff is persistently unable to attend (for example for health reasons), the chair of a formal meeting/hearing may take a decision on how to progress the case (in consultation with HR) based on the available evidence, where appropriate.

## **20. Exclusions**

- 20.1. The Probation Ordinance will not apply in cases covered by other University procedures, including misconduct or behavioural issues (where the Discipline Ordinance applies) or Ill health capability (where the Ill Health Capability Ordinance applies).

## **21. A Grievance arising during Probation**

- 21.1. Where a member of staff raises a grievance and there are issues regarding their probation, the relevant formal procedure may be temporarily suspended by the University in order to deal with the grievance. Where the grievance and probation cases are related it may be appropriate for the University to deal with both issues concurrently.
- 1.5. The decision to suspend or continue the relevant formal procedure will normally be made by the PVC Resources (for academic staff) or the Registrar and Secretary (for all other staff).

## **22. Documentation**

- 22.1. All documentation (informal and formal) will be written sensitively by Heads of Department and line managers, treated as confidential and forwarded to HR for filing on the staff member's personnel file.