

**UNIVERSITY OF LEICESTER
ORDINANCE**

**REMOVAL FROM OFFICE
(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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Contact – Comments	Alun Reynolds – Geraldine McAughtry

DRAFT REMOVAL FROM OFFICE ORDINANCE: POLICY

1. Introduction

- 1.1 This Ordinance provides a framework for “Removal from Office” i.e. the early termination of a “non-substantive” post. A non-substantive post is a remunerated post in the University which is undertaken by a member of staff in addition to their substantive post i.e. a role which is additional to the role specified in their contract of employment.
- 1.2 The Removal from Office Ordinance Policy and Procedure should be read together.
- 1.3 A list of non-substantive posts (to which this Ordinance applies) can be found in Appendix 1 of the Removal from Office Procedure.
- 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 Removal from Office Ordinance.

2. Aims

The aims of the Ordinance are:

- 2.1. To enable a member of staff who holds a non-substantive post, and their line manager, to understand the policy and procedure for Removal from Office.
- 2.2. To ensure that, as far as possible, the Removal from Office Ordinance Policy and Procedure is efficiently managed in a fair and equitable manner.
- 2.3. To facilitate the University in meeting its performance objectives.

3. Scope

- 3.1. The Removal from Office Ordinance applies to a University member of staff holding a non-substantive post as listed in Appendix 1 of the Removal from Office Ordinance Procedure.
- 3.2. This Ordinance will *not* apply:
 - where the issues relate to both a non-substantive and a substantive post (as the relevant University Ordinance will normally apply instead);
 - where the non-substantive post has been conferred by an external body.

4. Principles

- 4.1. The Removal from Office Ordinance will only be used to consider the early termination of a non-substantive post on the grounds of poor performance where it is considered that the issues do not impinge upon or relate to the staff member’s substantive post.

- 4.2. Where a member of staff is dismissed from their substantive post, any non-substantive post(s) will also terminate, without the need to follow the Removal from Office Ordinance (Procedure).
- 4.3. The University will apply this Ordinance in line with the statutory principle that a member of staff will suffer no detriment to their substantive post as a consequence of their being removed from a non-substantive post.
- 4.4. The University will operate the Ordinance according to prevailing legal requirements.
- 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 this Ordinance is applied to provide advice and 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 Removal from Office 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 Removal from Office Ordinance (Policy and Procedure) to all parties involved.

6. Formal Procedure

- 6.1. The formal procedure for Removal from Office may be invoked where a line manager (in consultation with HR) considers that:
 - Previous informal support or advice has been ineffective or disregarded;
 - Informal action is inappropriate;
 - The issues amount to more than minor areas of concern;
 - The issues only relate to the non-substantive post and do not relate to or impinge upon the post holder's substantive role.
- 6.2. The steps of the formal procedure for Removal from Office are normally formal investigation, hearing and, where requested, an appeal. For further details, please refer to the Removal from Office Ordinance Procedure.

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 Removal from Office Ordinance Policy and Procedure refers to a "Trade Union representative", this includes an official employed by the Trade Union.
- 7.4. Normally, no legal representation will be permitted as there will be no threat to the substantive post under this Ordinance. However, 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. Witnesses

- 8.1. 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.
- 8.2. Witnesses and the relevant individual(s) involved in a Removal from Office case will normally be interviewed as part of the formal investigative process.
- 8.3. 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.
- 8.4. 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).
- 8.5. Where requested, the note of an interview may be disclosed (as evidence) to other appropriate individuals involved in a Removal from Office case (e.g. a witness). However, in accordance with data protection regulations, these documents may be redacted to items relevant only to that individual.
- 8.6. 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.
- 8.7. Any member of staff called to attend a Removal from Office 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.
- 8.8. 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.
- 8.9. Witnesses and the relevant individual(s) involved in a Removal from Office case have the right to be accompanied to formal meetings, if they choose, by a Trade Union representative or work colleague.

9. Suspension

- 9.1. Depending on the nature and severity of the alleged issues, the chair of a removal from office 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.
- 9.2. Suspension is not disciplinary action. It is a neutral act. A member of staff on suspension will continue to be paid.

10. Stress/Illness and the Removal from Office process

- 10.1. 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 Removal from Office 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.
- 10.2. 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.
- 10.3. Where a medical practitioner or Occupational Health recommend that the member of staff is deemed fit enough to attend, 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.
- 10.4. 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 may make arrangements for written statements to be submitted instead or take a decision to hold the hearing in their absence.

11. A Grievance arising out of a Removal from Office Process

- 11.1. Where a member of staff raises a grievance during a Removal from Office process the Removal from Office process may be temporarily suspended by the University in order to deal with the grievance. Where the grievance and Removal from Office 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 Removal from Office 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 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 a 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.