

May 2022

FITNESS TO PRACTISE REGULATIONS

FP1 CONSIDERATION OF FITNESS TO PRACTISE

FP1.1 Fitness to Practise regulations apply to the following programmes:

- i) Nursing
- ii) Midwifery
- iii) Veterinary Nursing
- iv) Occupational Therapy
- v) Physiotherapy
- vi) Social Work
- vii) Professional Graduate Diploma in Education

Students on these programmes are required at all times to demonstrate that they are trustworthy, of good character and in good health, in order that the University can affirm that they are fit to practice.

The primary role of the Nursing and Midwifery Council, Health and Care Professions Council (regulatory body for Occupational Therapy and Physiotherapy), the Royal College of Veterinary Surgeons (for Veterinary Nursing), the Scottish Social Services Council (regulatory body for Social Work) and General Teaching Council for Scotland is to ensure that these registered professionals do not represent a risk to the safety of the public; this role is delegated to Approved Education Institutions.

FP1.2 The Fitness to Practise procedure provides a fair and effective process for considering cases where there is “cause for concern” about a student’s suitability for professional education and training, that is, their ‘fitness to practise’. What constitutes cause for concern is defined by the School with reference to the relevant Professional, Statutory and Regulatory Body (PSRB) code of practice.

FP1.3 The procedure will be invoked where students’ conduct gives cause for concern about their fitness to practise. Examples include conduct that:

- i) is deemed to be damaging or dangerous to service users, other students or course providers;
- ii) creates unacceptable personal risk for the student or for others;
- iii) brings the profession or the University into disrepute;
- iv) is deemed to be detrimental to the safety, dignity, and wellbeing and personal and/or professional reputation of others;
- v) causes serious concern for their own safety or that of others;
- vi) concerns misuse of social media;
- vii) is not commensurate with expectations of the student’s relevant Professional Code.

The procedure may also be invoked by referral from other University disciplinary procedures, such as where students are:

- i) found to be in breach of the University Disciplinary regulations with regard to Academic Misconduct at a level of 'Malpractice' or 'Misconduct'
- ii) found to be in breach of the University regulations with regard to non-Academic Misconduct.

FP1.4 The conduct in question may normally arise within course activity (i.e. at the University or on Placement) however other conduct not commensurate with the expectations of the student's relevant professional code, particularly conduct warranting intervention of police or other authorised body, or which may lead to criminal charges, may also be considered under Fitness to Practise Regulations.

If the conduct arises while the student is an employee of the NHS, Social Care or other agency or employer, the employing body must investigate under their own regulations and procedures. The student will thereafter be investigated under these Edinburgh Napier University Fitness to Practise Regulations.

FP1.5 Any member of academic staff involved with a student's programme who has concerns regarding their Fitness to Practise should inform the Authorised Officer (normally the Dean of School) or their nominee in writing as soon as is practicably possible.

FP1.6 Any member of staff in a placement area, external agency or any other person may raise concerns regarding a student's fitness to practise in writing to the Authorised Officer or their nominee as soon as practicably possible.

FP1.7 Where the initial referral indicates that the matter is of a serious nature and the student is on practice placement, the student may be temporarily withdrawn from the placement, with immediate effect, by the Authorised Officer or their nominee, pending further investigations in accordance with these regulations, the relevant professional body regulations or criminal proceedings.

FP1.8 Consideration must be given by the Authorised Officer or their nominee as to whether there may be grounds for the student to be suspended from the University immediately, pending any investigation or hearing, or the conclusion of criminal proceedings or receipt of a satisfactory medical assessment. Any such suspension will be undertaken in accordance with the provisions of Edinburgh Napier University's Student Conduct Regulations.

FP1.9 Referral to the Fitness to Practise procedure will result in an initial investigation of the circumstances by the Authorised Officer or their nominee. In the case of Social Work, where students must be registered with the SSSC, the regulatory body will be notified and guidance sought where so required.

In line with Edinburgh Napier University's Student Conduct Regulations, each case will be handled fairly and equitably, with due regard to the individual circumstances of each case.

On receipt of the referral, the Authorised Officer or their nominee will decide which stage of the Fitness to Practise (FtP) process the referral falls under, a 'pre-FtP'; 'Stage 1 FtP' or 'Stage 2 FtP'. The pre-FtP stage relates to initial concerns about a student which may not require formal Fitness to Practise investigation, e.g. where a student needs reasonable adjustments to be made. Stage 1 relates to issues where there are concerns about a student's conduct but there is no immediate question about the need to protect the public and the student can be given the opportunity to learn from the situation. Stage 2 relates to student conduct where there may be a question about the need to protect the public, or the student has repeated conduct previously of concern, and/ or previous attempts to remedy the situation seem to have failed, or the particular situation is of a complex and/ or sensitive nature.

One exception to the above is in relation to student Veterinary Nurses. Where Stage 2 concerns are being considered, the College of Animal Welfare (CAW) will normally investigate and hold hearings to address professional practice issues. In that instance, academic Veterinary Nurse staff will attend hearings hosted by CAW. All other allegations of misconduct will be considered at a Fitness to Practise Panel hosted by Edinburgh Napier University as described in these regulations.

FP1.10 Options available to the Authorised Officer or their nominee at the pre-FtP stage are as follows:

- Decide that there is no case for the student to answer. In this situation the Authorised Officer and/ or their nominee will inform the referrer and/ or the student and/ or the student's Personal Development Tutor, depending on the particular circumstances of the referral.
- Decide that there is insufficient information to base a decision on. In this situation the Authorised Officer or their nominee will notify the referrer of this and ask for further clarification.
- Decide that the referral information indicates that the student conduct in question is not a Fitness to Practise issue but action is needed to support the student, e.g. via referral to Occupational Health where the conduct may be related to the student's health, or via the student's Personal

Development Tutor, the Student Wellbeing team, the School Disability Advisors or any other relevant Edinburgh Napier University team. The Authorised Officer or their nominee will discuss and agree next steps for referring the student on with the relevant Personal Development Tutor and/or other Edinburgh Napier University staff.

FP1.11 Options available to the Authorised Officer and their nominee at Stage 1 FtP are:

- Arrange to meet the student along with their Personal Development Tutor or another relevant academic colleague, e.g. the Field or Programme Lead, to gain an understanding of the student's perspective of the circumstances surrounding the Fitness to Practise referral.
- Following the discussion noted above, decide there is no case for the student to answer or that the student conduct in question is not a Fitness to Practise issue. In the latter instance, action may be needed to support the student, as described in FP1.10.
- Agree an action plan to support the student to learn from the situation, e.g. for the student to write a written reflection to demonstrate their understanding. The action plan may also include steps needed to support the student with their health, well-being or learning needs more broadly, as described in FP 1.10. The action plan will also include an agreed timeline for completion of agreed tasks.
- The Authorised Officer and their nominee will then meet the student along with their Personal Development Tutor or another relevant academic colleague to review action plan progress and determine if the student has demonstrated sufficient learning for there to be no further case to answer or Fitness to Practise process required.
- The Authorised Officer and their nominee can agree more time for the action plan tasks to be completed if necessary.
- If the student is unable to demonstrate sufficient learning, or new allegations about the student's conduct emerge, or the student repeats the conduct which lead to the Fitness to Practise referral, the Authorised Officer and their nominee can then decide to proceed to Stage 2.

FP1.12 For Stage 1 and 2 cases, the student will be notified immediately in writing of an impending investigation into the alleged "cause for concern" and its nature.

FP2 STAGE 2 INVESTIGATION

FP2.1 On receipt of a report of an alleged offence, the Authorised Officer (normally the Dean of School or their nominee) will decide on one of the following:

- i) Where the primary concern relates to “good health”, a referral will be made to Occupational Health and their recommendations implemented, OR
- ii) Further investigation is required.

The student will be contacted within 10 working days.

FP2.2 When further investigation is required, the Authorised Officer will appoint an appropriate member of staff as the Investigating Officer who will carry out an initial investigation and compile a report.

- i) The nature of all causes for concern must be notified to the student before an investigatory meeting takes place.
- ii) Where alleged causes for concern are based on anecdotal evidence the Investigating Officer tests the anecdotal evidence, for example by obtaining corroborating documentary evidence or by interviewing relevant people.
- iii) Copies of contemporaneous evidence relevant to all causes for concern must be retained in the FtP file, including placement learning records.

FP2.3 The Investigating Officer’s report will be sent to the student by the Investigating Officer within 10 working days of the preliminary investigation. The student shall either confirm its accuracy or ask the Investigating Officer to consider any proposed amendments within five working days of its receipt.

FP 2.4 On receipt of the Investigating Officer’s approved report the Authorised Officer will decide on one or more of the following:

- i) There is no case to answer and no further action is required.
- ii) Further investigation is required.
- iii) It is required that specific conditions be met or remedial actions be undertaken for example a submission of a written apology. Failure to meet or carry out the specific action or condition may lead to a meeting of the Fitness to Practise Panel
- iv) A written warning should be issued.

v) A Fitness to Practise Panel should be convened

FP2.5 The Authorised Officer will communicate the outcome under FP2.4 to the student within 5 working days of receipt of the Investigating Officer's approved report. In cases where FP2.4 v) is invoked a referral for internal review will be required in accordance with FP2.6, and the outcome will be communicated within 10 working days.

FP2.6 Where FP2.4 v) is invoked, the Authorised Officer will refer the case to the member of staff from the University's Governance team responsible for the management of student misconduct who will review the case and confer with the Secretary to Court and the University's legal advisers as appropriate prior to a final decision being agreed on whether to convene a Fitness to Practise Panel. If agreed following this review, the Authorised Officer will organise a Fitness to Practise Panel hearing which will meet normally within 15 working days of the report being sent to the student. The letter of invitation will include a link to Fitness to Practise Regulations. The Panel will be convened by a Dean of School from a different School to that of the student whose case is being considered and will have no fewer than three and not normally more than four members, at least two of whom must be professionally qualified in the field and one of whom is normally appointed from outside the University e.g. the relevant professional or partner body. In cases concerning students studying on a Midwifery programme, the Panel must consist of the Lead Midwife for Education (LME) and a Clinical midwife as the relevant professional member. In cases concerning student Veterinary Nurses, the College of Animal Welfare (CAW) will hold hearings to address professional practice issues (as stated above in FP1.9.) All other allegations of misconduct will be considered at a Fitness to Practise Panel hosted by Edinburgh Napier University as described here and elsewhere in these regulations.

FP2.7 The student will be given at least 10 working days' notice of the date and time of the Fitness to Practise Panel meeting *unless* the student agrees to an earlier date.

FP2.8 The Authorised Officer has the option to invite the student to complete a written reflection related to the allegations, with regard to the student's relevant professional code. The purpose of this reflection is to support the student in demonstrating that they have learned from the particular incident and to help them manage the potentially stressful nature of Fitness to Practise Panels. Such reflections are optional, and the student will also have the choice to submit their reflection to the Panel rather than attend in person. If the Authorised Officer decides to invite the student to complete a written reflection, the student will be advised of this by letter and be given at least five working days to complete it.

FP2.9 If the matter giving rise to the alleged offence(s) involves consideration of any documentation, the student will have the opportunity to inspect all the

relevant documentation considered by an Investigating Officer and/or submitted by a student before the Panel Hearing takes place and shall be entitled to question the accuracy of such documentation up to five working days before the scheduled Panel Hearing.

FP2.10 A student shall be entitled to be accompanied and, where applicable represented, by a person who can provide support and, where applicable, guidance to the student concerned at investigation meetings or hearings. That person may not be present either as a legal or trade union representative and must be a member of the Edinburgh Napier University 'community', i.e. a member of University staff, an office bearer or member of staff of Napier Students' Association, a member of staff from Edinburgh Napier Student Advice (ENSA) or another student. Any 'accompanying' person or representative must not have been involved in the incident under investigation.

FP2.11 With regard to the Edinburgh Napier University 'community' as defined in FP2.9, only ENSA staff will be regarded as being permitted to represent the student. All other members of the 'community' will be regarded as accompanying the student.

FP2.12 The student will be advised that if they do not attend the meeting without good cause being provided in advance, the Panel meeting may proceed in their absence.

FP2.13 At the Panel meeting the Investigating Officer will be required to present their report and outline the concerns. The student will be given the opportunity to respond to the concerns raised, to ask questions or seek clarification. There will then be an opportunity for a fuller discussion, including questions from the Panel members, with particular emphasis being placed on any implications for the student's fitness for future professional practice.

FP2.14 The student will then be required to withdraw from the meeting and the Fitness to Practise Panel will decide on any of the prescribed outcomes in Section FP3 below.

FP3 STAGE 3 OUTCOMES

FP3.1 The Fitness to Practise Panel may decide on one or more of the following outcomes:

- i) There is no case to answer and no further action is required.
- ii) The Panel meeting should be adjourned because further investigation is necessary.
- iii) A written warning should be issued.

- iv) It is required that specific conditions be met or remedial actions be undertaken for example a submission of a written apology. Failure to meet or carry out the specific action or condition may lead to a further meeting of the Fitness to Practise Panel.
- v) It is required that the student undertakes a programme of observation, supervision, rehabilitation or treatment, subject to review by the Dean of School or their nominee after a given period.
- vi) A recommendation is made to the Programme Assessment Board that the student suspends their study in accordance with the Academic Regulations.
- vii) The student terminate professional education and training and it is recommended to the Programme Assessment Board that the student be given the option to transfer to an alternative non-professional practice course, (if available) or that the Programme Assessment Board consider conferment of an award in accordance with the Academic Regulations and where enough credits have been accrued. In addition, it may be necessary to seek a further amendment by Convenor's action regarding referral to Disclosure Scotland – Duty to Refer.

FP3.2 Where the offence is such that the student is considered unfit to undertake professional practice as in FP3.1 vii) above and the Panel is of the opinion that the relationship between the student and the University may be permanently untenable, the Panel may consult with the University officer responsible for the administration of student conduct matters on whether the matter should also be the subject of a hearing under the University's Student Conduct Regulations.

FP3.3 Wherever possible the student will be invited back into the meeting to be informed of the outcome.

FP3.4 Written notification of the outcome should be sent to the student within 5 working days of the Fitness to Practise Panel.

FP4 INDEPENDENT EXTERNAL REVIEW

FP4.1 If on receipt of the outcome outlined in FP3.4 above, should the student remain dissatisfied they are entitled to ask the Scottish Public Services Ombudsman (SPSO) to look at the matter. The SPSO considers matters from students who remain dissatisfied at the conclusion of the University's procedures. The SPSO looks at issues such as service failure and maladministration (administrative fault) as well as the way the University

has implemented its regulations. The SPSO will not consider matters that concern the exercise of academic judgment.

FP4.2 The Scottish Public Services Ombudsman (SPSO) is the final stage for complaints about public services in Scotland. This includes any dissatisfaction following the completion of a university's internal procedures. If you remain dissatisfied with a university or co-operative after fully engaging with an internal procedure, you can ask the SPSO to look into the matter. The SPSO cannot normally look at matters:

- where you have not gone all the way through the university's specific procedure to deal with the matter, or
- that have been or are being considered in court.

The SPSO's contact details are:

SPSO
Bridgeside House
99 McDonald Road
Edinburgh
EH7 4NS

Freepost SPSO

Freephone 0800 377 7330
Website www.spsso.org.uk

Online contact www.spsso.org.uk/contact-us
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