

**Procedure for dealing with complaints against a member of the Board of Governors**

**1 Introduction**

The Board of Governors' Statement of Primary Responsibilities includes observing 'The Seven Principles of Public Life' and the highest standards of corporate governance.

Edge Hill University takes seriously any complaint made against any member of the Edge Hill University community, including students, staff, the University's executive or members of the Board of Governors. This procedure has been developed to provide a transparent framework to be adopted in the event of a complaint made against a member of the Board of Governors.

Upon receipt of any such complaint, the Clerk will consider whether this procedure is the most applicable procedure or whether the matter raised should properly be considered under an alternative, more relevant, University procedure (for example, the grievance, whistleblowing or student complaints procedure) or at a more informal level.

**2 General Principles**

2.1 This procedure is an internal dispute resolution procedure and is not a legal process.

2.2 The procedure takes into consideration the principles of natural justice including:

- informing the parties of the details of the allegations made against them;
- ensuring all relevant information is shared with the parties on a timely basis;
- ensuring the parties receive equity of treatment at all times;
- providing an impartial procedure, with those taking part in and managing the process having no previous involvement in the matter where this is possible;
- allowing the parties to state their account of events; and
- allowing the Complainant a right of appeal.

2.3 When implementing this procedure, those involved in managing a complaint will have due regard to the need to ensure that the process is consistent with the University's commitments in respect of equality and diversity.

2.4 All those involved in the investigation and determination of a complaint must consider the extent to which their involvement may generate a conflict of interest, lack of impartiality, bias or perception of bias. Any such risk must be immediately reported to the Clerk so that steps can be taken to minimise or eliminate those risks.

2.5 The sharing of information about the complaint is limited to those who have to know because they are a party to the complaint, are involved in investigating the complaint or managing the procedure or are a witness. There may also be legal or regulatory reporting requirements.

- 2.6 Those involved in the procedure must respect the confidentiality of the Complainant and the Respondent as well as the nature of the complaint as far as this is consistent with the fair consideration of the complaint. This includes, but is not restricted to, all papers, deliberations and findings generated through the process.
- 2.7 The decision as to whether a complaint is established or not is made on the balance of probabilities.
- 2.8 All statements from the Complainant, Respondent and any witnesses provided as part of the formal procedure will be signed and dated to confirm their accuracy.
- 2.9 For complaints to be effectively managed either informally or formally, they should be raised at an early stage. Normally this should be within 28 calendar days of the date the matter arose.

### **3 Administration**

- 3.1 The Clerk will provide, or otherwise arrange, administrative and secretarial services to the Board and any Panels established under this procedure. Where the Board requires additional help, support or expertise in managing or investigating a complaint, the Clerk is authorised to seek independent, external support and advice on the Board's behalf.
- 3.2 The Clerk will provide, or otherwise arrange, information and liaison support to all parties throughout the process. Any other support will be agreed by the Chair of the Board, advised by the Clerk, on a case by case basis as is appropriate and reasonable having regard to the University's status as an exempt charity.

### **4 Parties to the complaint**

For the purposes of this procedure the person making the complaint is referred to as the **Complainant** and the person against whom the complaint is made is referred to as the **Respondent**.

### **5 Responsibilities for dealing with the complaint**

Where a complaint is made which concerns a governor of the University, principal responsibility for dealing with the complaint rests with the Chair of the Board (the Chair)<sup>1</sup>, supported by the Clerk to the Board (the Clerk)<sup>2</sup>.

### **6 The Informal Stage**

- 6.1 Wherever possible, the University encourages early and informal resolution of a complaint. Where it is not possible/appropriate for the Complainant to deal with the issue satisfactorily him/herself, the matter should be reported in writing to the Clerk.

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<sup>1</sup> Where the Chair of the Board is the subject of the complaint, or has a conflict of interests, the next most senior Governor will assume delegated responsibility on behalf of the Board.

<sup>2</sup> If there is a risk that the Clerk has a conflict of interest, the Chair will appoint a Temporary Clerk who will assume full responsibility for administering the complaint.

- 6.2 Upon receipt of the details of the complaint, the Clerk will notify the Chair and explore the possibility of instituting informal resolution procedures with the Complainant.
- 6.3 If the Complainant agrees to informal resolution, the Clerk will notify the Respondent, outlining the details of the complaint and, where both parties agree, establish an appropriate way forward which could include the use of mediation or other alternative dispute resolution.
- 6.4 If the matter is resolved at the informal stage, the Clerk will confirm the outcome of the complaint to both parties in writing and advise the Board of Governors appropriately of the outcome.
- 6.5 If either party refuses informal resolution, the Clerk will provide both parties with a copy of the Complaints Procedure indicating that the complaint will proceed under formal procedures and providing the Complainant with a deadline for the submission of documentation.
- 6.6 Where the substance of the complaint is admitted by the Respondent but the matter cannot be resolved informally, the matter will be referred to the formal process (see Section 10) to consider any action which may be appropriate in the circumstances.

### **The Formal Stage**

## **7 Making a formal complaint**

- 7.1 Formal complaints must be made in writing and must include full details of the complaint, any evidence in support of the complaint and the names and contact details of any witnesses. A written complaint may be submitted by email.
- 7.2 Complaints should be directed to the Clerk who will acknowledge receipt, notify the Chair and provide relevant details of the formal complaint to the Respondent.
- 7.3 Complaints not submitted in writing will not be considered.

## **8 Investigation of the complaint**

- 8.1 Where the substance of the complaint is disputed, an Investigation Panel will be appointed to carry out an investigation into the complaint and to determine any action which may be appropriate in the circumstances.
- 8.2 The Panel will be appointed by the Chair<sup>3</sup> and will be drawn from Independent members of the Board of Governors having regard to the particular circumstances of the complaint. The Chair will designate one member as Chair of the Panel.
- 8.3 At the discretion of the Chair, and in the light of the particular circumstances of the complaint, one member of the Panel may be appointed from outside the organisation. Such external members are full Panel members and may be appointed by the Chair of the Board as Chair of the Panel.
- 8.4 The size of the Panel will normally be **3** members but may be extended to **5**<sup>4</sup> at the Chair's discretion in the light of the particular circumstances of the complaint.

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<sup>3</sup> For the avoidance of doubt, the Chair of the Board is able to sit as a member or Chair of the Panel.

- 8.5 The Clerk will arrange a meeting of the Panel and provide copies of the written complaint to members at least **7 calendar days** before the meeting.
- 8.6 As necessary, the Panel may need to determine whether it is appropriate for the Respondent to be suspended or invited to step aside from the Board pending the outcome of the complaints procedure.
- 8.7 It is the responsibility of the Panel to determine the nature of the investigation to be carried out and what additional advice or support is needed, if any. The Panel may choose to conduct the investigation itself. Alternatively, if it is decided to appoint an external advisor and/or independent investigator, the Clerk will make the appropriate arrangements.
- 8.8 Prior to the appointment of any independent investigator, the Clerk will seek confirmation from him/her, and from the parties to the complaint, that no known conflict of interests will arise from the appointment that would jeopardise the impartiality of the investigation.
- 8.9 The Terms of Reference for the investigation, whether carried out by the Investigation Panel or an independent investigator, are to be determined by the Panel and would ordinarily include:
- 8.9.1 considering the written evidence presented by the Complainant and any written statements that may be provided by the Respondent and any witnesses;
  - 8.9.2 interviewing the Complainant, the Respondent and such witnesses as the Panel deems necessary;
  - 8.9.3 considering all the evidence and making a finding, on the balance of probabilities, on whether the substance of the complaint is established in full or in part; and
  - 8.9.4 writing an Investigation Report<sup>5</sup> which should be submitted to the Clerk, normally within **28 calendar days** of the start of the investigation.
- 8.10 All parties and witnesses have the right to be accompanied to any investigatory meetings. This complaints procedure is not a legal process and legal representation is not necessary or permitted.
- 8.11 Once the final Investigation Report is received, the Clerk will convene a meeting of the Investigation Panel to consider the findings of the investigation and to determine whether or not the complaint is upheld.

## **9 Consideration of the findings of the investigation**

- 9.1 All members of the Investigation Panel will consider the full findings of the investigation to determine whether or not the complaint is upheld.

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<sup>4</sup> Panel membership will always be an odd number.

<sup>5</sup> Where the Panel conducts its own investigation, the report will be compiled by the Clerk from meeting notes. Consideration under 8.9.3 will be referred to Section 9.

- 9.2 If an independent investigator has been appointed, the investigator will present their findings in person to the Panel and answer any points of clarification.
- 9.3 In the case of any remaining doubt on matters of fact, the Panel may seek further information from the Complainant, Respondent or any witnesses as necessary.
- 9.4 By simple majority, the Panel will decide, on the balance of probabilities, whether the complaint has been established or not. The Panel may decide the complaint has been established in full or in part and determine any appropriate action. It may also conclude that the complaint has no basis and is vexatious, frivolous or malicious.
- 9.5 The Clerk will provide a written outcome to the Complainant and Respondent within **10 working days** of the meeting. A copy of each letter will also be provided to the University's Vice-Chancellor and Pro Vice-Chancellor & University Secretary.
- 9.6 Each outcome letter will set out the reasons for the Panel's decision and provide information on the Appeals Procedure to the Complainant (see section 12).

## **10 Action when a complaint is upheld or admitted**

- 10.1. When a complaint is admitted or upheld, in full or in part, the Investigation Panel will determine such action against the Respondent as it considers reasonable in the circumstances save under 10.2 below.
- 10.2 If the Investigation Panel considers the matter is so serious that it is no longer appropriate for the Respondent to continue to serve, the matter will be referred to the Board of Governors who will determine whether the Respondent should be removed from office and any specific terms to be applied.
- 10.3 If the Board determines the matter is not so serious to require removal of the Respondent from office, the Board will remit the matter back to the Investigation Panel to determine what other sanctions may be applied.

## **11 Other Outcomes**

Where a complaint is found to be vexatious, frivolous or malicious, consideration will be given as to whether any action against the Complainant is appropriate.

## **12 Appeals Procedure**

- 12.1 The Complainant will be offered a right of appeal against the outcome as determined by the Investigation Panel.
- 12.2 An appeal must be made in writing, stating the grounds for appeal, and submitted to the Clerk within **14 calendar days** of the notification of the decision of the Panel.
- 12.3 An appeal may be submitted on the following grounds:
  - 12.3.1 procedural irregularity which may have materially impacted the decision made;

- 12.3.2 the emergence of new evidence which was, for good reason, not available at the time of the investigation;
- 12.3.3 the decision was unreasonable in all the circumstances.
- 12.4 Appeals will be considered by a Panel comprising 3 independent members of the Board of Governors who have had no prior involvement in the complaint made. The Chair of the Board will appoint Appeal Panel members and designate the Chair.
- 12.5 At the discretion of the Chair of the Board, and in the light of the particular circumstances of the complaint, one member of the Appeal Panel may be appointed from outside the organisation. Such an external member is a full Panel member and may be appointed by the Chair of the Board as Chair of the Panel.
- 12.6 Where the grounds for appeal are met, as determined by the Appeals Panel, the decision of the Investigation Panel will be reviewed and the appeal may be upheld or denied. The decision will be made by simple majority.
- 12.7 Any new evidence allowed by the Appeals Panel will be taken into consideration in reaching a decision. In such instances, the parties to the complaint will be offered an opportunity to respond to the new evidence and the Panel may undertake or authorise further investigations as it deems appropriate.
- 12.8 The decision of the Appeals Panel (ratified by the Board) is final.

### **13 Reporting outcomes to the Board of Governors**

- 13.1 These procedures provide delegated responsibility for nominated representatives of the Board to perform a critical function on behalf of the Board.
- 13.2 To retain the capacity for other Board members to remain impartial during the consideration of any appeal, the findings made by the Investigation Panel will not be reported to the Board until procedures are concluded.
- 13.3 When procedures are concluded, the Board of Governors will be apprised of the outcome by way of a confidential report submitted by the Clerk for ratification to a standing or specially convened meeting of the Board as deemed appropriate by the Chair of the Board. This report will be limited to the factual evidence required to ensure that the Board is apprised of relevant activity and will, in so far as is practicable, preserve the confidentiality of proceedings for both the Complainant and Respondent.

### **14 Review**

Following the conclusion of the complaints process, the Board may decide to instigate a case review in order to test the process's fitness for purpose and the appropriateness of the decisions made at various stages. Such a review may be carried out by an independent governor not involved with the initial investigation or any subsequent appeal or, at the discretion of the Board, may be undertaken by an independent third party.

## **15 Reporting to external regulators**

Consideration as to whether any elements of the complaint may trigger the reporting requirements of the Office for Students (OfS), or its successor bodies, will be undertaken by the Chair of the Board, the Vice-Chancellor and the Clerk at the point a complaint is formally lodged and as appropriate during the process of considering the complaint. If the Vice-Chancellor is satisfied that the reporting requirements are triggered, he/she will notify the OfS accordingly as the Accountable Officer. The reporting position may be reviewed at any point during the process.