

DUBLIN CITY UNIVERSITY

Statute No. 5 of 2010

SUSPENSION AND DISMISSAL OF EMPLOYEES

This Statute is made by the Governing Authority of Dublin City University pursuant to the powers conferred on it by Section 33 of the Universities Act 1997.

1. Scope

- 1.1 This Statute shall apply to all employees and officers of the University.
- 1.2 This Statute replaces and is in substitution for Statute Number 3 of 2001
- 1.3 Isolated faults or omissions of a minor nature may be dealt with informally where the University considers that it is unnecessary to invoke formal procedures.

2. Definitions

- 2.1 In this Statute the following expression shall (unless the context otherwise clearly requires) have the respective meanings set out opposite each of them as follows (and cognate words shall be construed accordingly):-

"the Act"	means the Universities Act, 1997;
"the Chancellor"	means the Chairman for the time being of the Governing Authority;
"the Director of Human Resources"	means the Director of Human Resources of the University for the time being or any person employed in the Human Resources Department of the University to whom all or any of the duties and functions of the Director of Human Resources are, with the approval of the President, delegated or assigned from time to time;
"disciplinary procedure"	means the procedure provided in this Statute for taking disciplinary action against employees and officers of the University;
"dismissal procedure"	means the procedure provided in this Statute for the dismissal of employees and officer of the University
"employee"	means any employee or officer of the University;

"the Governing Authority"	means the Governing Authority for the time being of the University;
"the President"	means the Chief Officer for the time being of the University or any employee or officer of the University to whom any of the functions of the Chief Officer of the University have been delegated in accordance with the provisions of the Act;
“representative”	means the recognised trade union official or other representative chosen by an employee for the purposes of the disciplinary procedure;
“redundancy procedure”	means the procedure provided in this Statute to implement redundancies affecting employees and officers of the University;
“Supervisor”	means the head of department or unit of the University in which an employee who is the subject of disciplinary action, suspension, or dismissal is employed;
"the University"	means Dublin City University.

2.2 A reference in this Statute to the Act shall be interpreted as a reference to the Universities Act 1997 as amended or re-enacted from time to time.

2.3 Paragraph headings in this Statute are for ease of reference only and shall not affect the construction or interpretation of this Statute.

3. **Delegation of Powers**

3.1 The Powers of the University relating to suspension and/or dismissal of employees or officers of the University are hereby delegated to the President of the University in his/her capacity as Chief Officer of the University and, in the event that he/she is absent from the University or otherwise unavailable to exercise such powers, to the Deputy President of the University.

3.2 The President may delegate any of the powers of suspension, which are delegated to him pursuant to paragraph 3.1 above, to the Director of Human Resources or any other officer of the University nominated by the President.

4. **Disciplinary Procedure**

4.1 The purpose of the disciplinary procedure set out in this Statute is to ensure that the University behaves reasonably and fairly towards all its employees in investigating and dealing with alleged instances of unacceptable conduct or performance. One of the principal aims of the disciplinary procedure is to help

the employee, whose performance falls below the University's requirements, to achieve necessary improvement. The University may in exceptional circumstances depart from the precise requirements of the disciplinary procedure specified below where it is expedient to do so and where the resulting treatment of the employee is not unreasonable or unfair.

4.2 All disciplinary action taken under the disciplinary procedure will be recorded and placed in the University's records. Warnings will be placed in the personnel files of the employee to whom they apply but will be removed after such a reasonable and appropriate period as shall be determined in advance by the University if the employee's services during the intervening period is satisfactory.

4.3 Penalties which may be imposed under the disciplinary procedure include:

Stage 1 Verbal warning

The Supervisor concerned will notify the employee of his/her intention to implement the first stage of the disciplinary procedure. The employee will be permitted to have his or her representative present for the discussion. The Supervisor will inform the employee of matters that are causing concern or the work or conduct which is allegedly below standard, ask for an explanation and, unless the circumstances are exceptional, allow the employee 24 hours to furnish an explanation. If the Supervisor determines that a verbal warning is warranted, this will be issued to the employee and he/she will also be advised of the improvements which must be made. In order to avoid any misunderstandings the Supervisor will make a note of the verbal warning and will forward this to the Director of Human Resources for filing on the employees confidential personnel file.

Stage 2 Written warning

This will be the same as for Stage 1 but the employee will be given notice in writing of the matters of concern and/or the alleged offence and afforded the opportunity to reply in writing. The staff member will also be given a copy of the file note together with the written warning.

Stage 3 Final written warning

This will be the same as for Stage 2 but the warning will be given in the presence of the Director of Human Resources. It will be made clear to the employee that if his or her conduct and/or performance does not improve appropriate disciplinary action will be taken, for example:-

- suspension (with or without pay)
- demotion/reduction in pay
- compulsory transfer or re-assignment
- dismissal

This warning will be confirmed in writing to the employee by the Director of Human Resources. A copy of any such correspondence will be sent to the employee's representative.

- 4.4 The following steps will be taken, as appropriate, in all cases of disciplinary action:

Investigations:

No disciplinary action will be taken before an appropriate investigation has been undertaken by the University relating to the circumstances of the matter complained of. If appropriate, the University may suspend an employee with pay for a specified period during which an investigation will be undertaken. During the period of suspension the employee will not normally be entitled to access to any of the University's premises except with the prior consent of the Director of Human Resources and subject to such conditions as the Director of Human Resources may impose. A decision to suspend an employee will be taken by the President or the Director of Human Resources (if the power to do so has been delegated to such person by the President) and will be confirmed in writing.

Decision Making:

The University will offer the employee the opportunity either to make written representations or to convene a disciplinary hearing, or both, save that the University reserves the right to convene a disciplinary hearing where this is deemed appropriate. The employee will be given details of the complaint against him/her before he/she will be expected to make any written representations or attend any such disciplinary hearing. At any disciplinary hearing the University shall have regard to the rules of natural justice and fair procedures. The employee will be given an opportunity to state his/her case and where appropriate to call witness. The employee may be accompanied by a representative. Warnings and other disciplinary sanctions may be issued or imposed by the Supervisor concerned or the Director of Human Resources as appropriate. A copy of any correspondence will be sent to the person who acted as the employee's representative during the disciplinary procedure.

A decision to dismiss an employee shall be taken only by the President after he/she is satisfied that the University has complied with the dismissal procedure.

Appeals:

An employee against whom disciplinary action has been taken has the right of appeal. He/she should inform the Director of Human Resources in writing of his/her wish to appeal within 10 working days of the date of the decision which forms the subject of the appeal. The decision will become final and binding if the employee fails to notify his/her intention to appeal within the time permitted. The appeal will be conducted as soon as possible thereafter and the employee will be given an opportunity to state his/her case and will be entitled to be assisted by a representative.

An appeal will be heard by such officers and/or employees of the University (not exceeding three) as shall be nominated from time to time by the Governing Authority for that purpose. If no meeting of the Governing Authority is scheduled within 21 days of the receipt of the appeal, the Chancellor shall have the power to nominate officers and/or employees of the University (not exceeding three) to hear the appeal. The decision on appeal will be notified to the employee in writing and will be final and binding, but this shall be without prejudice to any of the employee's statutory or other rights.

4.5 The disciplinary procedure encompasses the following:

- Poor performance
- Misconduct
- gross misconduct
- incapability
- repeated sick leave

4.6 The following specific procedure will apply in cases of alleged misconduct:-

Warning:

This may be verbal or written or a final written warning (as the Director of Human Resources may deem appropriate in the circumstances) and will be given by the employee's immediate supervisor in consultation with the Director of Human Resources and confirmed to the employee in writing. This warning will state that, if the employee commits a further offence of misconduct during the period specified in it, further disciplinary action may be taken against the employee up to and including dismissal.

Dismissal:

A decision to dismiss an employee will only be taken by the President after he/she is satisfied that the University has complied with the dismissal procedure. A decision to dismiss an employee for misconduct will be notified to the employee in writing.

Other Sanctions:

Other sanctions may be imposed in addition to or in substitution for warnings or dismissal.

Gross Misconduct:

Gross misconduct may result in immediate dismissal without notice or pay in lieu of notice. A decision to dismiss an employee will only be taken by the President after he/she is satisfied that the University has complied with the dismissal procedure. Dismissal will be notified to the employee in writing. Other sanctions may be imposed in substitution for dismissal if the President considers that a dismissal is not warranted having regard to the particular circumstances.

4.7 The following specific procedure will apply in cases of repeated sick absence and/or suspected incapability:

The University may require the employee to be:

- (a) examined by an independent medical practitioner of its choosing; in this event, the employee will be required to co-operate with such a request and to permit the medical practitioner to discuss with the Director of Human Resources the findings of his/her examination and his/her examination and the employee's prognosis and prospects for future recovery; and/or
- (b) interviewed by a member of the Human Resources Department of the University, either on campus or at another mutually acceptable location, if there is a possibility, in the opinion of the Director of Human Resources, that the employee's absence is wholly or partly due

to a personal or domestic difficulty or there are other circumstances with which the University might be able to assist the employee.

The findings of the medical practitioner and/or the member of the Human Resources Department of the University who has interviewed the employee will be taken into account when the President and/or Director of Human Resources considers the kind of action, if any, which the University will take against the employee in respect of his/her absence from work. Failure to cooperate may be regarded as Gross Misconduct and be dealt with under the Disciplinary Procedure. The President or Director of Human Resources (as appropriate) may then decide on one or other of the following:

- (a) the issuance of a final warning which will be confirmed to the employee in writing and will specify a further period over which the employee's attendance will be monitored and the level of improvement expected of the employee during such period; this warning will state that failure to show the necessary and a sustained improvement within the specified period will result in the employee's dismissal; or
- (b) dismissal on notice if the University concludes, following the employee's medical examination, that he/she is unlikely to be fit to return to work in the foreseeable future and/or that, in all the circumstances, the needs of the University render it impracticable to await further the employee's return to health or fitness.

During the process, the University will put in place such support mechanisms as appropriate to facilitate the employee's recovery.

A decision to dismiss an employee will only be taken by the President after he/she is satisfied that the University has complied with the dismissal procedure. A decision to dismiss an employee for unsatisfactory sick leave will be notified to the employee in writing.

5. Redundancy Procedures

5.1 Whereas the University recognises the principle that compulsory redundancy should be avoided, it nevertheless reserves the right to resort to same where it deems it to be necessary. However, wherever compulsory redundancies are deemed necessary, the University will endeavor, in so far as is reasonably practicable, to utilise redeployment arrangements as an alternative to redundancy, wherever staff become surplus to its requirements for whatever reason.

5.2 In the event that a redundancy situation arises (as defined by legislation) the University shall begin consultation with the recognised Trade Union, in good time, with a view to reaching agreement.

In case a collective redundancy is proposed the consultation should cover ways and means of avoiding collective redundancies or reducing the numbers of workers affected and of mitigating the consequences by recourse to accompanying social measures aimed, inter alia, at providing resources and support for re-training, re-skilling and or redeployment of employees affected by redundancy.

5.3 To enable employees' representatives to make constructive proposals, in the event of a collective redundancy being proposed, the University shall in good time during the course of the consultations, supply them with all the relevant information as required by national legislation including:

- (i) the reason for the proposed redundancies
- (ii) the number [and] categories of employees to be made redundant
- (iii) the number and categories of employees normally employed
- (iv) the period over which the proposed redundancies are to be effected
- (v) the criteria proposed (including as appropriate any established practices or agreements) for the selection of the employees to be made redundant
- (vi) the method for calculating any redundancy payments other than those arising out of national legislation.

5.4 A decision to terminate the contract of an employee by reason of redundancy shall be taken only by the President or, in the event that he/she is absent or otherwise unavailable to take such a decision, the Deputy President after he/she is satisfied that the University has complied with the redundancy/dismissal procedure contained in this Statute.

6. **Dismissal Procedure**

- 6.1 This dismissal procedure shall apply to all dismissals in the University including but not limited to the dismissal of any employee for disciplinary or non-disciplinary reasons.
- 6.2 If it is proposed that the University should dismiss any employee the Director of Human Resources shall in the first instance satisfy himself/herself that such procedures as are appropriate to the case have been complied with. The Director of Human Resources shall thereafter send written particulars to the employee concerned of the reasons for the proposed dismissal and shall invite the employee and his/her representative to attend a meeting with the Director of Human Resources or with such appropriate Supervisor as the Director of Human Resources shall nominate in such cases.
- 6.3 The employee shall be afforded an opportunity to make a written submission with regard to the proposed dismissal and/or the reasons for same, and to make verbal representations at the meeting arranged pursuant to paragraph 6.2 above regarding such written submission and other matters that the employee may wish to raise in relation to the proposed dismissal.
- 6.4 The Director of Human Resources shall thereafter make a recommendation to the President (or if he/she is absent or otherwise unavailable to exercise such power, the Deputy President of the University) as to whether the employee should or should not be dismissed, or if a lesser sanction should be imposed on the employee.
- 6.5 A decision to dismiss the employee shall only be take by the President (or if he/she is absent or otherwise unavailable to exercise such power, the Deputy President of the University) after he/she has considered the recommendation of the Director of Human Resources, consulted with him/her regarding the

recommendations and considered the submission and representations, if any, made by or on behalf of the employee.

- 6.6 The Director of Human Resources shall ensure that the termination provision of the employee's contract of employment are complied with in the event that the President decides that the employee should be dismissed.
- 6.7 Unless previously terminated earlier in accordance with any other procedure herein provided, or unless renewed by the University, every fixed-term and specified purpose contract shall automatically terminate by expiry of the fixed term/cessation of the specified purpose of the contract and such automatic termination shall be without recourse to the forgoing procedures contained in this Statute. The entry into such a contract will be deemed to be a procedure whereby the employee and the University mutually give each other notice terminating the contract at the expiry of its term or cessation of its purpose.
- 6.8 A probationary employee's employment may be terminated by the University with notice or pay in lieu of notice at any time during or at the conclusion of the probationary period provided for in the employee's contract of employment with the University and such termination shall be without recourse to the foregoing procedures contained in this Statute. The procedure for terminating an employee's contract of employment during or at the conclusion of any probationary period is as follows:-

(a) The Director of Human Resources (or any other appropriate Officer of the University to whom the relevant power is delegated for the purpose hereof) will write to the employee concerned and inform him/her of the University's intention to terminate his/her employment for stated conduct or capability reasons or by reason of the employee not performing his/her job duties at any time during the probationary period to the satisfaction of the University and will provide the employee concerned with the opportunity of making oral and/or written representations if he/she is of the view that his/her employment should not be terminated;

(b) The Director of Human Resources (or any other appropriate Officer of the University to whom the relevant power is delegated for the purpose hereof) will consider any representations made by the employee concerned and will then make a recommendation to the President (or if he/she is absent or otherwise unavailable to exercise such power, the Deputy President of the University) as to whether the employee should or should not be dismissed during or at the end of the employee's probationary period of employment, or if the employee's probationary period should be extended. If the President (or if he/she is absent or otherwise unavailable to exercise such power, the Deputy President of the University) agrees with such recommendation and the decision made by him/her is to terminate the employee's employment during or upon the expiry of the employee's probation, a letter of confirmation will be sent to the employee concerned, which shall specify the termination date, and in any such case the employee will not be entitled to a right of appeal.

- 6.9 If at any stage during any of the procedures specified above the employee concerned declines or fails to make representations or submissions (whether written or oral) having been given a reasonable opportunity to do so the President (or if he/she is absent or otherwise unavailable to exercise such power, the Deputy President of the University) may proceed to decide the

matter and then write to the employee concerned, as soon as practicable, stating the decision of the University in relation to the termination of the employee's employment.

7. Academic Freedom and Tenure

- 7.1 The University recognises academic freedom as provided for in Section 14 of the Universities Act 1997.
- 7.2 The University recognises the principle of tenure for permanent Officers of the University and the need to protect such Officers during their employment with the University through the provisions contained in this Statute. The tenure of officers of the University shall be such tenure as provided by their contract of employment or other instrument of appointment and further shall be governed by the provisions of this Statute, the Unfair Dismissals Acts 1977 – 2007 and the relevant provisions of the Universities Act, 1997.

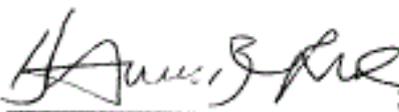
Tenure affords protection to a permanent academic staff member against termination of his/her academic appointment by the University except (i) in accordance with lawful decision and for valid reason (including dismissal on grounds of capability, conduct, competence, performance, redundancy or other substantial grounds that would justify dismissal), and (ii) in accordance with the appropriate procedures specified in this Statute.

For the avoidance of doubt permanent academic staff shall have tenure as provided by their contract of employment or other instrument of appointment and further such tenure shall be governed by the provisions of this Statute, the Unfair Dismissals Acts 1977 – 2007 and the relevant provisions of the Universities Act, 1997.

8 General

- 8.1 This Statute may be cited as Statute No. 5 of 2010, Dublin City University.
- 8.2 This Statute shall come into operation on the 8th day of December 2010.

Present when the Common Seal of the Dublin City University was affixed hereto:

Signed:  Signed: 

Chancellor

President