NOTES OF GUIDANCE

Student Disciplinary Procedures

CVCP

Final Report of the Task Force on Student Disciplinary Procedures

We are extremely grateful for all the comments on our interim report received from universities, organisations and individuals. They identified contradictions and lack of clarity in our interim report; they raised fresh questions; they forced us to think even harder about many of the issues; and they gave us a feel for the views of universities on the policy issues. We also circulated this final report in draft to universities in view of the changes which had been made since our interim report. We are, in fact, confident that the principal recommendations in our final report will command the broad support of universities. To the extent that this report is an improvement on the interim report, it is thanks to all those who took such pains over considering and commenting on the earlier version. We have also had informal discussions or exchanges with His Honour Judge Marcus Edwards, the Crown Prosecution Service, the Associations of Chief Police Officers, the Crown Office in Scotland and the NUS and we are indebted to them all.

Many respondents urged us to produce a Model Code. We have resisted this suggestion, not because of the difficulty or the extra work, but because we doubt whether a detailed code would in fact prove useful to universities. We accept that it would be helpful for any institution either without a proper code or wanting to start afresh, but we doubt whether that is likely to apply in many cases. What we offer instead, and hope will have some utility, is a set of principles and propositions which we would commend, together with a suggested definition of misconduct. Universities might like to test whether their codes incorporate these features and consider making modifications where they do not. But such is the legitimate variety of codes that a single framework seems neither necessary nor desirable. We have also drafted model clauses on the central issues with which we were asked to deal.

We have, at the request of our respondents, dealt with a number of points that are not specifically related to our main theme of how to deal with disciplinary offences which are also criminal offences.

As our report is fairly brief and closely argued, we have not produced a summary of conclusions and recommendations. We hope that the flow chart in Appendix III will, however, prove useful.

I am extremely grateful to my colleagues and to the CVCP officials listed in Appendix I.

Graham Zellick
December 1994

Contents

Introduction

1 A university derives its disciplinary authority from its contractual relationship with the individual student, and possibly also from the student's "membership" of the university where that is formally recognised in the instrument of government. In consequence, the student is expressly or by necessary implication required to subscribe to the rules of the institution for the time being in force. It is not uncommon for a form of undertaking to be sought of the student to this effect. It follows that the rules must be brought to the attention of the student at this time. Universities are no longer *in loco parentis* in any legal sense.

2 What, though, is the permissible scope of that disciplinary authority? We derived no assistance in answering this question from an examination of charters, statutes and the like, where the extent of the power is left undefined. It has, therefore, been for institutions themselves to determine the scope of their Codes of Student Discipline. Often even the codes are not as specific as they might be, which leaves those having to operate the codes with problems when dealing with particular cases.

3 We have identified three considerations or principles which justify or support the assertion of disciplinary jurisdiction (though they are not necessarily unique to universities):

(a) Universities are communities whose members* work, and often live, together. This requires certain standards of behaviour. It also places obligations on universities which owe a duty of care and responsibility to the members of that community.

(b) Universities are corporations or organisations committed to certain standards and values, inherent in their aims, objects and missions.

(c) Universities are as much entitled to protect and defend their good names and reputations as any other organisations or professions.

4 An alleged breach of discipline may or may not also involve a breach of the criminal law. Where it does not, any action will have to be pursued under the university's disciplinary provisions. What we have examined, on which we offer guidance, is how a university should proceed in those cases where a student's alleged misconduct would also constitute a criminal offence.

* We use this word here, and elsewhere, in its normal everyday sense and not in the technical sense in which it is used in para. 1.

5 We wish to emphasise that the principles and guidance developed in this report apply only to students and not to staff. There may be superficial similarities, but the relationships and the law are significantly different. We have given no consideration to how these issues apply to employees.

Concurrent jurisdiction: criminal and disciplinary

6 What are the circumstances which justify the university in investigating and deciding what action to take when a student is alleged to have engaged in criminal conduct? We distinguish four situations or contexts which call for separate comment.

6.1 *The conduct is closely related to the academic or other work of the university.*

In this situation, the university's interest is, in principle, triggered. Examples are stealing or damaging library books, computer hardware or laboratory equipment.

6.2 *The conduct, though not directly related to the university's work, occurred on the campus or other university property.*

Again, this establishes the university's interest. Examples are damage to university property; fighting; assault; theft from the university, staff or students; possessing, using or supplying drugs; incitement to racial hatred. We suggest a straightforward and commonsense view of what amounts to university property for this purpose.

6.3 *The conduct is neither related to the work of the university nor took place on university property, but involved other university members.*

We now enter more problematic areas where easy answers are not available, but we would argue that in principle the university's disciplinary jurisdiction is again well-founded, although care should be exercised before action is taken. We shall return to this point below. Examples in this category are assault on another student or member of staff (including sexual assault); supplying drugs to other students.

6.4 *The conduct is not related to the work of the university, did not take place on university property and did not impact upon any staff or students of the university.*

The only possible grounds for asserting a disciplinary jurisdiction in these circumstances are that the conduct (a) jeopardises or damages the good name or reputation of the university; or (b) raises questions about whether the student should remain a member of the university because he or she posed dangers to other members, or to the good order, of the university community. Examples of (b) would be supplying drugs; serious sexual assault; persistent theft.

7 In our view, the position in the situations covered by 6.1 and 6.2 is straightforward: the university is certainly entitled, and in at least some cases would

probably feel bound, to consider taking disciplinary action. The situation in 6.3 is slightly less straightforward, but we take the view that the involvement of other members of the university community is adequate grounds for the matter to be considered to fall within the jurisdiction of the university's disciplinary authority, although careful thought should be given to whether the interests of the university and its members call for action to be taken in any particular case.

The situation covered in 6.4 is more difficult, but the university's obligations to its members, particularly having regard to the age of many undergraduates, will demand that action is taken whenever necessary to protect them from risk or danger. The university cannot be indifferent in this situation, and could face severe and understandable censure - from the student body, parents of students, the press and others - if no action were taken in certain cases, particularly if there are later consequences, such as an assault or injury resulting from drugs.

We urge particular caution where the justification for the action is protection or vindication of the university's name and reputation and nothing more, but we cannot say that disciplinary action is then impermissible. Action by students that ruptured or put at risk the university's relationship with the local community is a proper matter for disciplinary action. Offensive or disruptive behaviour affecting people living next to a student residence could properly be dealt with on this basis; but the disciplinary process should not be used to enforce contractual obligations between students and others such as landlords. Or, to take another example, suppose a student has been convicted of the offence of inciting racial hatred. It would be understandable if the university wanted to express its condemnation of such behaviour through disciplinary action.

8 Where the university becomes aware of misconduct by a student under its disciplinary code which, if proved in a court of law, would be a criminal offence, or where a student has been charged with a criminal offence, the university must proceed with care.

Breach of discipline and criminal law: no internal action

9 As with any complaint of misconduct, we suggest that the Vice-Chancellor (or designated deputy) should be able to rule at an early stage that no internal disciplinary action should be taken. This might be because it was in the hands of the police, which would suffice, or disciplinary action was not called for even if not the subject of police investigation or prosecution. We do not think that disciplinary action should have to be taken merely because a complaint has been made and a prima facie case exists. The Vice-Chancellor should have discretion as to whether formal disciplinary action is necessary or appropriate.

Breach of discipline and criminal law: internal disciplinary action

Not serious offences

10 Where the offence under the criminal law would be considered not serious, we see no impediment to using internal procedures even though there has been neither police investigation nor prosecution. Theft of, or damage to, a library book, slight damage to university property, minor assault or a minor scuffle or fracas are, in our view, examples of offences which can be dealt with internally forthwith. In our experience of such cases, the police do not normally wish to be involved, and even if called in, usually decide to take no action†. Such cases, if they reached the courts, would result in a small or nominal penalty*.

If, however, in such a case the police or the courts have become involved, the university may prefer to await the outcome of any proceedings before deciding whether to take any further action internally (although this may involve considerable delay). A decision to proceed with internal action forthwith should be considered with great care.

11 This conclusion on not-serious offences in our interim report drew fierce criticism from some press commentators on the ground that it sought to shield "campus criminals" from the police and the courts. This attack is misconceived. First, so far from shielding students from anything, it purports to subject them to disciplinary proceedings and potential punishment within the institution instead of the more likely alternative of no action at all on the part of the police.

Second, some matters which the police and the courts would regard as trivial are in fact serious within the university context and deserve to be treated accordingly. Minor damage to a library book may not be regarded as a particularly grave offence, either by the police or by a court, but would be by the academic community. Third, it is quite wrong to suggest that universities are behaving strangely or unusually in proceeding in this way. It is common practice among all organisations: employers, including newspapers, deal with such matters regularly without troubling the police.

Finally, we do not believe it is in the public interest to burden the police and the courts with relatively minor matters of the kind covered here. This view reflects the approach of the Crown Prosecution Service, one of whose two tests in deciding whether to proceed to prosecute is whether or not it will be in the public interest to do so. "It has never been the rule in this country ... that suspected criminal offences must automatically be the subject of prosecution." These words of the Attorney General in 1951, described as "the classic statement on public interest", are quoted with approval in The Code for Crown Prosecutors (Crown Prosecution Service, June 1994, para. 6.1, p. 7). It is understood that the Procurator Fiscal Service in Scotland takes a similar approach.

† In Scotland, the police have a statutory duty to report all offences to the Procurator Fiscal, but the Procurator Fiscal may send a warning letter or invite the alleged offender to pay a Procurator Fiscal fine as alternatives to prosecution.

* "A prosecution is less likely to be needed if: (a) the court is likely to impose a very small or nominal penalty": The Code for Crown Prosecutors (Crown Prosecution Service, June 1994), para. 6.5, p. 10.

Serious offences

12 At the other end of the spectrum are offences of such seriousness that substantive internal action prior to police investigation is out of the question. Allegations of rape and other sexual assaults, other serious offences against the person, supplying controlled drugs, theft of more than trivial sums, are examples of cases that must be investigated by the police and considered by the prosecuting authorities before they can be handled internally, even if the student suspect or the victim/complainant or both express a strong preference for the matter to be dealt with internally. The disciplinary process may be instituted but should then be deferred, except for the possibility of suspension or exclusion (which we consider below: see paragraphs 26-30).

We do not think universities will experience difficulty in recognising a serious offence when it arises. We suggest (for guidance, and not as a definitive or comprehensive test) that any offence likely to attract a custodial sentence on conviction or (in England and Wales) that is triable only on indictment in the Crown Court is serious for this purpose.

13 It could be argued that where the student has said he or she would not contest the allegation, and all parties are content for the police not to be involved, it would be safe for the institution to proceed internally. We take the opposite view and strongly advise against it. There may be factual conflict relevant to penalty which the hearing is unable to resolve satisfactorily. There may be subsequent challenges caused by a change of mind of one of the parties. The dangers are inescapable and we conclude that in no such cases should the university take disciplinary action prior to police investigation and prosecution. We think it worth repeating that wholly different considerations arise in connection with employees and our advice has no application to or implications for that area.

14 If the victim will not report the matter to the police or will not co-operate in their inquiries, and whether or not a preference for internal disposal has been indicated, the university should not use its internal procedures. Codes should make it clear that, in such circumstances, the internal procedures cannot be invoked. In short, we believe it is not for the victim/complainant to determine that the matter should be handled internally rather than externally.

15 The police, Crown Prosecution Service or Procurator Fiscal Service may decide not to prosecute. Then the university may decide whether to proceed internally. However, it should do so only exceptionally and only where it is clear that the police or CPS decision is based on some special factor which has nothing to do with the quality of the evidence.

The points made in paragraph 13 argue against deciding these cases internally save in quite exceptional circumstances. The CPS decision will be based either on an insufficiency of evidence or on grounds of public interest and the relevant reason will be recorded in the statutory notice of discontinuance. Requests for information where a case

has been discontinued should be addressed to the officer in the case or the Branch Crown Prosecutor, who will supply such information as may be appropriate to the individual case. Similarly, it is usually possible to discover in broad outline the reasons why the police have decided not to proceed. This information will not be available in Scotland, however, where Procurators Fiscal may not disclose such information.

Intermediate offences

16 There lies between the not-serious criminal offences (paragraph 10) and the very serious (paragraph 12), a large range of criminal offences of an intermediate character. Our view is that there should be a presumption that offences falling into this intermediate category should, as with the very serious, not be dealt with internally before the police and courts have dealt with them.

Advice could be sought informally from the police or from the university's solicitors. If, however, on being reported to or raised with the police, a criminal prosecution is ruled out on grounds other than the absence of sufficient evidence, then careful consideration can be given to proceeding internally. Again, this decision should be taken at a senior level (see paragraphs 9 and 18).

Referral to Police

17 Where the university learns that a student may have committed a criminal offence, or a criminal offence is reported, a question arises about reporting the matter to the police. There are three basic propositions.

First, anyone may report such matters to the police. Moreover, anyone may launch a private prosecution†.

Second, as a corollary to this, no one may prevent anyone else from reporting or referring.

Third, there is generally no legal obligation or requirement to report alleged or suspected crimes to the police. This is not the case in Northern Ireland, where there are special legislative provisions* and therefore what we advise here has no application to the Province. There are also exceptions in Britain with regard to terrorist offences under the Prevention of Terrorism Act.

18 Where the victim or indeed anyone else wishes to bring the matter to the attention of the police, that is an end to the matter and there is no question to determine, but otherwise the university will have to consider whether to do so. We recommend that, as in paragraph 9, such a decision must fall to the Vice-Chancellor or designated deputy who should have regard to the seriousness or sensitivity of the matter, if necessary after appropriate consultation.

† This is not so in Scotland.

*Criminal Law Act (Northern Ireland) 1967, s. 5.

19 We recommend that all offences relating to controlled drugs which come to the attention of universities should be notified to the police. Not only will universities wish to do everything in their power to discourage drug misuse, but they must also be mindful of the criminal law which makes it an offence to "permit" various kinds of drug misuse to take place on their premises (Misuse of Drugs Act 1971, s. 8). The police are interested in the pattern of drug use and in sources of supply; they will know of any previous convictions or cautions; and they will be able to dispose of the seized drugs.

20 Where the offence is committed "against" the university and there is no other victim, the university should normally report a crime to the police, whether or not the culprit has been identified, unless it falls into our not-serious category (paragraph 10). Indeed, the university may wish to refer some not-serious matters if only to keep the police informed and aware.

21 Where there is another victim, it should normally be for that person to report the matter, although there can be no objection to the university's doing it on his or her behalf. A difficulty arises where the victim does not wish it to be reported. Some rape victims, for example, may be adamant that the police should not be told. We are aware from our consultation that there are some within the university sector who hold the view that the university should nevertheless make a report to the police in these circumstances. They argue that failure to do so may expose the university to possible criticism subsequently if there are further allegations against that individual. This was also the view of Judge Marcus Edwards in his report for King's College London.

22 We have considered this matter with great care. Along with the view of the overwhelming majority in the university sector, we have concluded and recommend that only in exceptional circumstances should the university report an alleged crime to the police contrary to the wishes of the victim. We have come to this conclusion because otherwise, if it were known that all such matters were referred to the police, there might be students who would not inform the university authorities of the allegation and would therefore forgo the support and care which they might need.

Notwithstanding our recommendation, we can envisage situations where the public interest, which includes the interest of the university community, make the circumstances of such an exceptional nature that the university may have to report the allegation to the police. For example, where it appears that significant violence has been used which exposes others to danger, or where there have been similar allegations in the past which likewise suggest a risk to other persons.

We think it important not to operate a policy which could suppress or inhibit the reporting of matters within the institution. While there is inevitably some risk of adverse criticism of a university in adopting such a policy, we have concluded that it is right to accept that risk. We do not see that the university exposes itself to any legal liability by failing to refer provided that the decision has been taken with all due diligence.

23 There should, however, be no doubt that the policy of universities should be to encourage students who are victims of serious crimes to report the incidents to the police. Possible damage to the reputation of the university from the publicity must not be a factor. But the decision normally rests with the victim.

24 In all these situations, we can see great merit in universities' developing informal liaisons with their local police - indeed, many already have such arrangements - and we endorse the recommendation to this effect in Judge Edwards's report. Advice can then be sought from the police about whether an offence has been committed and, if so, whether it is not-serious or serious and whether, if the latter, there are compelling grounds for reporting it formally where the victim is opposed to such action.

25 We do not consider it appropriate for these matters to be included in the Code of Discipline itself, but we invite universities to adopt a formal policy on these matters which should be attached to the Code and widely publicized.

Pending prosecution: suspension and exclusion

26 In a serious matter under investigation by the police or awaiting trial, consideration may have to be given as to whether any immediate action should be taken by the university itself.

27 If the student has been remanded in custody, there is no immediate need to consider any action. In other cases, a question may arise. Most universities' statutes, other instruments of government or disciplinary codes permit suspension of a student where disciplinary or criminal proceedings are pending. By suspension, we mean complete exclusion from the university and not merely exclusion from certain facilities or activities or the loss of certain privileges.

We recommend that all universities should have appropriate provisions and we append a model clause (see Appendix IV). In addition to the power to suspend, there should also be a power to impose conditions on a student's use of or access to the university, as an alternative to full suspension.

28 We have no doubt that there will be cases where suspension is necessary, to protect other students, the functioning of the university or the interests of the victim. But a decision to suspend, or even exclude from certain facilities, can have serious consequences and should not be taken lightly.

A student should be suspended only if it is thought essential to do so. Alternatives to suspension should always be considered. If, in the event of suspension, it is possible to

make arrangements to minimise the disruption to or interruption of the student's course of study, those arrangements should normally be made. Suspension should never be automatic: it should be imposed only after the fullest consideration of all the facts; it is a decision that should be taken only at a very senior level (Vice-Chancellor, Deputy or Pro Vice-Chancellor); it should be reviewable by some other body (for example, a committee chaired by a lay member of the governing body) if it is to run for more than a short time (although it should take effect immediately and not be deferred until after this review); and it should automatically be subject to periodic review.

We are aware that some universities are unhappy about a review of a decision by the Vice-Chancellor to suspend a student. But in our view suspension prior to a finding of misconduct is so serious a matter that, where it is likely to continue for some time, fairness demands a review procedure. We do not accept that it would undermine the Vice-Chancellor's authority.

29 Universities are not at risk of legal action, nor would they have to pay compensation, for suspending a student in accordance with their procedures even if the student is subsequently acquitted in the courts after a lengthy period of suspension.

30 The Education (Mandatory Awards) Regulations provide for a local education authority, after consultation with the academic authority, to terminate an award if it is satisfied that the student has either abandoned the course in respect of which the award is held or has shown himself or herself, by his or her conduct, to be unfitted to hold the award. This would not arise in the case of a suspension pending a hearing where the student was continuing his or her studies, but in the event of a longer period of suspension, the university might feel it prudent to inform the authority. A substantive suspension imposed as a penalty should be brought to the attention of the local authority where the circumstances or length are such that the student is unable to pursue the course.

After the trial

31 Following a court conviction, the university is free to continue with its own hearing. The court's verdict should be accepted in so far as it is relevant: the disciplinary hearing should not become a re-run of the trial.

32 There is no impediment to the imposition of a penalty by the university itself, following a court conviction. The principle of double jeopardy applies only to renewed attempts in the criminal courts to prosecute a defendant for conduct which has already been the subject of a trial and verdict.

There is nothing unusual in professional bodies' disciplining their members for conduct which has already been the subject of a successful criminal prosecution. Equally, employers discipline and sometimes dismiss employees convicted of criminal offences. The penalty imposed by the court should be taken into consideration by the university in deciding its own penalty; and the university should always consider whether it is appropriate or necessary to proceed with disciplinary proceedings in these circumstances.

33 Where the trial has resulted in an acquittal, the university must be particularly careful about proceeding. It must not, in Judge Edwards's words, "seek to look behind the verdict" or reach a decision which contradicts or is inconsistent with the verdict of the court; but it may pursue disciplinary aspects of the broader incident. For example, if a student has been acquitted of rape, the university should not proceed with a complaint of rape or even of indecent assault or sexual harassment closely related to the rape allegation; but following an acquittal on a charge of actual bodily harm, the university may wish to proceed with a complaint of damage to property where the damage was, for example, to the students' union bar during the process of the alleged assault, provided that to do so is not inconsistent with the acquittal (as it might be if the trial turned on identification evidence or an alibi, for example).

Some general and miscellaneous points

34 Character of codes of discipline

Codes of discipline are just that: they are disciplinary instruments and not replications in miniature of the criminal law. That is why they are not suitable for handling serious criminal offences, unless those have first been the subject of trial in the criminal courts. As disciplinary instruments, codes should provide straightforward, relatively simple, comprehensible and expeditious procedures. They should not seek to imitate the criminal law, procedurally or evidentially. Students, however, have the right to a fair hearing.

Universities may wish to examine their codes to ensure that they combine fairness with simplicity and efficiency.

35 Preliminary procedures: "plea bargaining"

We do not rule out - and indeed would encourage - sensible exploration and clarification of the issues in the early stages as part of the preliminary procedures, but we strongly discourage "plea bargaining", negotiation or discussion between the university and the accused during disciplinary proceedings.

36 Relationship with other codes

Universities are complex and often large organisations with a multiplicity of rules and regulations quite apart from their codes of discipline. Libraries, students' unions, halls of

residence, laboratories and other sections of the institution often have rules backed by sanctions such as loss of borrowing rights, small fines, suspension of membership, or total exclusion from the facility in question. But wherever more significant penalties are envisaged, action should be confined to the code of discipline, which should accordingly make serious breaches of other properly approved regulations or rules a punishable offence under the code.

37 Concurrent procedures or double punishment are not desirable and, once action has been taken under the code of discipline, it should automatically override action under any other particular rules or regulations. For example, it is often adequate to leave the students' union to deal with minor infractions under its own procedures; but if the university decides to activate its own code, that must automatically supersede the union's action and the university's rules should make this clear.

Codes of discipline should also make breaches of other codes, such as those on freedom of speech, or on racial or sexual harassment, an offence to be dealt with under the code of discipline if any sanctions are to be imposed. It is not desirable for codes such as these to contain sanctions or disciplinary procedures, although harassment codes may usefully contain provisions on conciliation or alternative resolution of the complaint.

38 Mental illness

Disciplinary procedures are not appropriate for dealing with misconduct arising from mental ill-health. Quite different considerations arise in these circumstances, requiring different remedies based on medical advice. Universities may wish to consider introducing such a procedure for students; it already exists for staff.

39 Confidentiality

There is obviously concern about confidentiality in relation to tutors, counsellors and codes of discipline. Universities usually say that the students may consult their tutors in confidence, which means that they are formally and officially reinforcing the general practice or understanding. With regard to counsellors, their professional rules make it quite clear that they operate on the basis of strict confidentiality. In both cases, however, there may be extreme situations where it will be necessary to override confidentiality, but that will inevitably be a matter for the individual to determine. Reports to or discussions with officers of the university are not normally on a confidential basis. These observations apply only internally and have no application in relation to the police or the courts where the relevant law comes into play.

40 Misconduct prior to becoming a student

We have been asked to give advice in connection with misconduct prior to enrolling as a student, which has only just come to light or is still in the process of being dealt with by other authorities.

We believe that the university should take no account of this unless the conduct is of such a serious kind and character that it raises questions about the fitness of the student to remain a member of the university community, for example, with regard to the safety of other students. This might be so where the student has been convicted of dealing in drugs on a significant scale, for example. Account could also properly be taken where, in a vocational course leading to a professional qualification, the conduct raises questions about the fitness of the student to be admitted to and practise that profession.

41 Geographical limits of disciplinary jurisdiction

The jurisdiction of disciplinary codes can legitimately extend beyond the university where the conduct arose, for example, on a field trip, in another institution to which the student had been granted access by virtue of his status as a student at the university, or on a work placement. We strongly recommend that universities should incorporate such provisions in their codes so as to cover such conduct, particularly where it occurs in another institution.

42 Removal from university residences

Removal from university residences under the disciplinary power may not automatically terminate the occupancy agreement unless this is specifically provided. In certain circumstances, students may enjoy security of tenure limited by the 'educational tenancies' provisions of the Housing Act 1988 in England and Wales and corresponding legislation elsewhere in the UK. Institutions should carefully examine the conditions on which residential accommodation is leased or licensed to students to ensure that serious indiscipline can be dealt with effectively.

43 Press statements

Care should be taken to ensure that no comments are made to the press on any case that may be the subject of criminal prosecution. The law of contempt of court, defamation and anonymity of witnesses calls for extreme caution in these circumstances.

Appendix I

Student Disciplinary Procedures

The Task Force was established by the Council of the CVCP in November 1993.

Membership:

Professor G J Zellick (Chairman), Principal, Queen Mary and Westfield College, University of London.

Dr A M Wright, Vice-Chancellor, University of Sunderland.

Dr D J Farrington, Deputy Secretary and Registrar, University of Stirling.

Mr D Anderson-Evans, CVCP Secretariat

Ms Z Davis, CVCP Secretariat

Terms of Reference

"- to consider whether there are matters which are, either because of their intrinsic nature or the surrounding circumstances, inappropriate for internal student disciplinary procedures or should be subject to special procedures;

- to consider whether there are aspects of internal student disciplinary procedures on which guidance or advice to institutions might be helpful."

Appendix II

Respondents to the interim report and persons and organisations consulted

(i) Respondents

University institutions of the UK.

The Association of University Teachers

The Association of University and College Lecturers

The Association of Heads of University Administration

Oxford University Student Union

The National Union of Students

Professor The Earl Russell FBA., King's College London

(ii) The following persons and Organisations were consulted by or had a meeting with members of the Task Force

His Honour Judge Marcus Edwards

The Association of Chief Police Officers

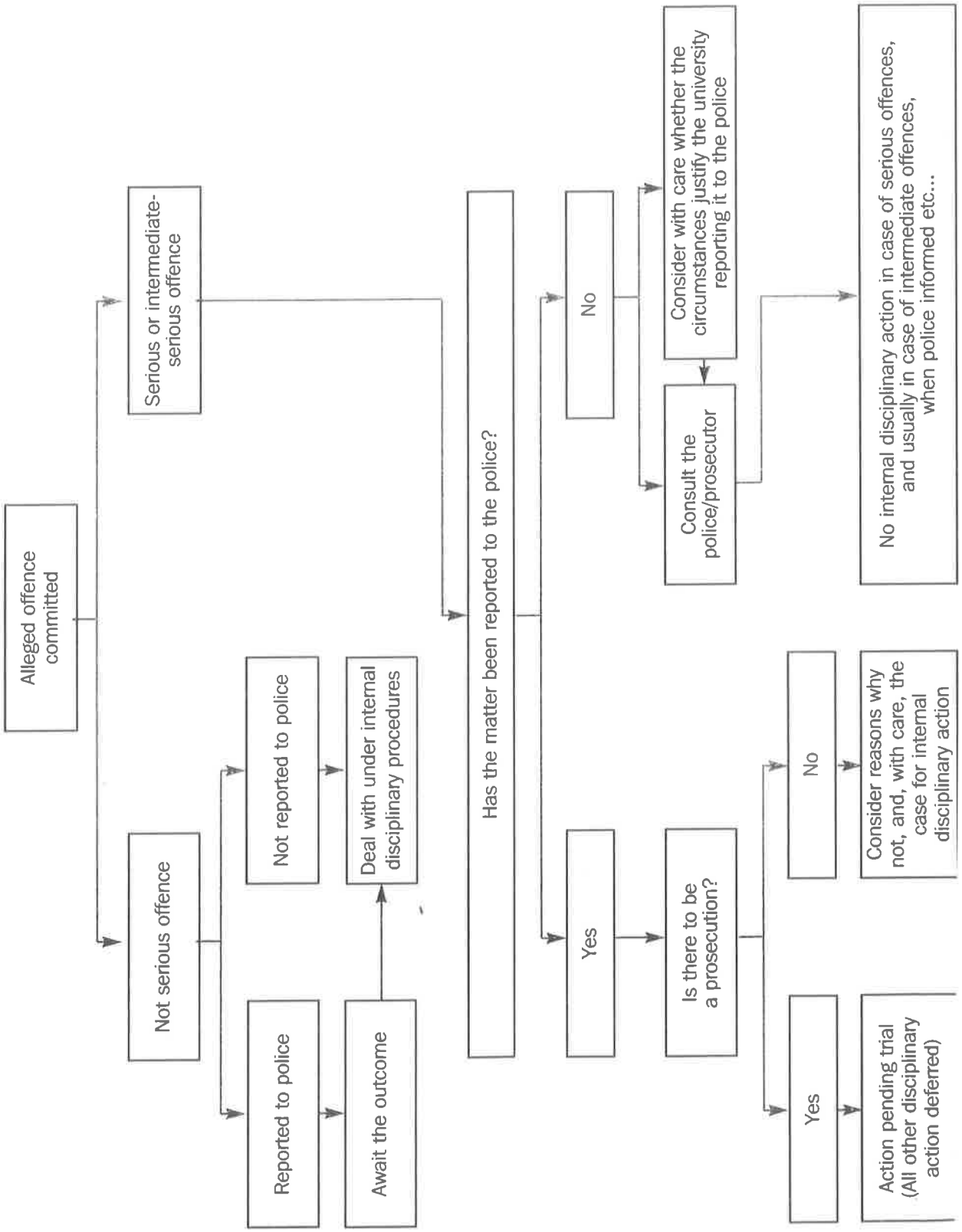
The Association of Chief Police Officers in Scotland

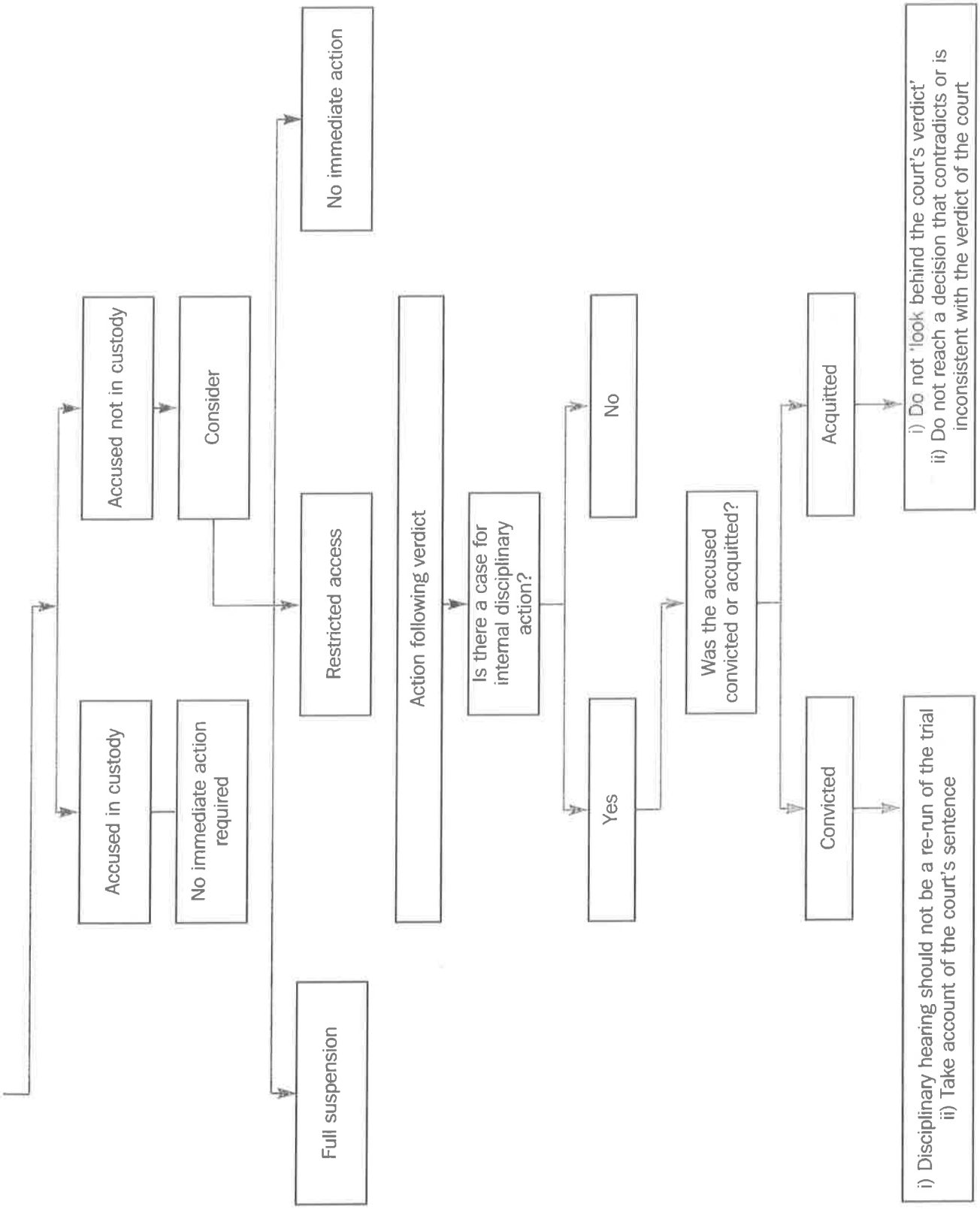
The Crown Office in Scotland

The Crown Prosecution Service

The National Union of Students

Appendix III




Accused not in custody
Consider
No immediate action
Accused in custody
No immediate action required
Restricted access
Full suspension
Action following verdict
Is there a case for internal disciplinary action?
No
Yes
Was the accused convicted or acquitted?
Acquitted
Convicted
i) Do not 'look behind the court's verdict'
ii) Do not reach a decision that contradicts or is inconsistent with the verdict of the court
i) Disciplinary hearing should not be a re-run of the trial
ii) Take account of the court's sentence

Appendix IV

Model Clauses

1. Vice-Chancellor's discretion to dismiss complaint [Para. 9]

Where a complaint of misconduct has been made, the Vice-Chancellor may rule that the complaint should not be the subject of further action under this Code, but such a ruling shall not preclude informal action by way of caution or otherwise if appropriate.

2. Misconduct that is also a criminal offence [Paras. 10-16 and 31-32]

The following procedures apply where the alleged misconduct would also constitute an offence under the criminal law if proved in a court of law:

(i) Where the offence under the criminal law is considered to be not serious, action under this Code may continue, but such action may be deferred pending any police investigation or prosecution.

(ii) In the case of all other offences under the criminal law, no action (other than suspension or exclusion pursuant to section xx) may be taken under his Code unless the matter has been reported to the police and either prosecuted or a decision not to prosecute has been taken, at which time the Vice-Chancellor may decide whether disciplinary action under this Code should continue or be taken.

(iii) Where a finding of misconduct is made and the student has also been sentenced by a criminal court in respect of the same facts, the court's penalty shall be taken into consideration in determining the penalty under this Code.

3. Suspension and exclusion pending a hearing [Paras. 26-30]

1. A student who is the subject of a complaint of misconduct or against whom a criminal charge is pending or who is the subject of police investigation may be suspended or excluded by the Vice-Chancellor pending the disciplinary hearing or the trial.

2. When the Vice-Chancellor has delegated the power under this section, a full report shall be made to the Vice-Chancellor of any suspension or exclusion under this section.

3. (a) Suspension involves a total prohibition on attendance at or access to the University and on any participation in University activities; but it may be subject to qualification, such as permission to attend for the purpose of an examination.

(b) Exclusion involves selective restriction on attendance at or access to the University or prohibition on exercising the functions or duties of any

office or committee membership in the University or the Students' Union, the exact details to be specified in writing.

4. Suspension should be used only where exclusion from specified activities or facilities would be inadequate.

5. An order of suspension or exclusion may include a requirement that the student should have no contact of any kind with a named person or persons.

6. Suspension or exclusion pending a hearing must not be used as a penalty. The power to suspend or exclude under this provision is to protect the members of the University community in general or a particular member or members and the power shall be used only where the Vice-Chancellor is of the opinion that it is urgent and necessary to take such action. Written reasons for the decision shall be recorded and made available to the student.

7. No student shall be suspended or excluded unless he or she has been given an opportunity to make representations in person to the Vice-Chancellor. Where for any reason it appears to the Vice-Chancellor that it is not possible for the student to attend in person, he or she shall be entitled to make written representations.

8. In cases of great urgency, the Vice-Chancellor shall be empowered to suspend a student with immediate effect, provided that the opportunities mentioned in para. 7 are given and the matter reviewed within five days.

9. A decision to suspend, or exclude from academic activities associated with the student's course of study (other than access to the Library), shall be subject to review, at the request of the student, where it has continued for four weeks. Such a review will not involve a hearing or submissions made in person, but the student shall be entitled to submit written representations. The review will be conducted by the Vice-Chancellor where the decision to suspend or exclude has been made by someone else, and by three members of the Council (including at least one academic member and one lay member) where the decision has been made by the Vice-Chancellor.

10. The Vice-Chancellor or other person who took the original decision shall review the suspension or exclusion every four weeks in the light of any developments and of any representations made by the student or anyone else on his or her behalf.

4. Delegation by the Vice-Chancellor

The Vice-Chancellor may delegate his or her powers under this Code to the Deputy Vice-Chancellor or to a Pro-Vice-Chancellor either generally or in respect of a particular case.

Appendix V

Principles and Features of a Code of Student Discipline

Introduction

What follow are no more than suggestions. Codes that do not incorporate these features, or even take a quite different line, are not necessarily defective and are not open to challenge or criticism merely because they are at variance with the contents of this Appendix. This Appendix should be read in conjunction with the main body of the report and particularly Appendix IV.

A. General principles

1. The Code should ensure fairness; it should be written in clear English; it should not be legalistic or seek to reproduce the elements of the criminal law or criminal justice system.
2. The rules of evidence in English or Scottish law do not need to apply. Those deciding issues should be satisfied on the evidence before them: proof does not have to be "beyond reasonable doubt".
3. The existence of the Code should be brought to the attention of every student on first registering as a student, including the definition of misconduct in the Code.
4. A University may punish a student in respect of misconduct covered by the Code even if it has already been the subject of criminal prosecution and penalty.
5. Alleged misconduct, which also appears to constitute a criminal offence, should not be the subject of proceedings under the Code unless there has already been a police investigation or prosecution, or the police have declined to act, but this does not apply to criminal offences which can be described as "not serious".
6. A University should not seek to discipline a student over conduct in respect of which the student has been acquitted in a criminal court.
7. Any action under the Code must automatically supersede any disciplinary action being taken under other rules or regulations of the University.

B. Substantive matters

1. The misconduct which is punishable should be clearly defined in the Code. Misconduct may include breaches of other codes but this has to be clearly stated in the Code itself.

2. Where conduct outside the University is to be covered, this should be made clear and the Code should define the circumstances in which such misconduct is to be punishable under the Code.
3. The maximum penalties available should be clearly prescribed.
4. Provision should be included for suspension and exclusion of a student pending a hearing but this power should be used only where it is essential.

C Procedural matters

[Reference to the Vice-Chancellor should be read also as reference to a designated deputy; and reference to the Council should be read as reference to the governing body of the institution.]

1. Students should be entitled to be accompanied, assisted or represented at a hearing or appeal.
2. The student should have the right to see all the evidence, to be present throughout the hearing and to cross-examine witnesses.
3. Disciplinary procedures should be concluded as speedily as possible, but provision should be included for internal procedures to be postponed pending any investigation by the police or prosecution in the courts.
4. Following a complaint of misconduct, the Vice-Chancellor should, unless the complaint is immediately dismissed, hold a preliminary interview with the student before deciding whether to proceed and, if so, how.
5. The Vice-Chancellor should be empowered to take no action on a complaint of misconduct.
6. There should be a two-tier system. The less serious offences should be dealt with by the Vice-Chancellor; the more serious by a small committee of no more than three, containing student and staff members, chaired by the Vice-Chancellor.
7. There should be provision for an appeal in the more serious cases against conviction and sentence, particularly if the student has been suspended or expelled, but the appeal should not take the form of a re-hearing of the case. The appeal committee need be no larger than the hearing committee; if the Vice-Chancellor has imposed the original penalty, the committee should be chaired by a lay member of Council, if possible with legal or judicial experience. This appeal should be final and there should be no further opportunity to make representations to the Council.

Appendix VI

Definition of Misconduct

1. The essence of misconduct under this Code is improper interference, in the broadest sense, with the proper functioning or activities of the institution, or those who work or study in the institution; or action which otherwise damages the institution.

2. The following paragraphs elaborate this general rubric, but not so as to derogate from its generality. This Code is not an Act of Parliament or part of the law of the land and it does not therefore seek to reflect or incorporate the approach of the criminal law in defining criminal offences with great precision. The purpose of the Code is to regulate students' behaviour as students of the University in order to secure the proper working of the University in the broadest sense.

3. Nevertheless, serious consequences may follow a finding of misconduct. It is therefore necessary in every case for it to be shown that the conduct in question does fall within the general rubric in paragraph 1 before it may be characterised as misconduct. It is also open to a student facing a complaint of misconduct to argue that the conduct in question, whether or not falling within one or more of the following paragraphs, should not be treated as misconduct because it does not interfere or damage in the manner contemplated by the rubric.

4. The following shall (subject to the above) constitute misconduct:

   (1) disruption of, or improper interference with, the academic, administrative, sporting, social or other activities of the University, whether on University premises or elsewhere;
   (2) obstruction of, or improper interference with, the functions, duties or activities of any student, member of staff or other employee of the University or any authorised visitor to the University;
   (3) violent, indecent, disorderly, threatening or offensive behaviour or language whilst on University premises or engaged in any University activity;
   (4) fraud, deceit, deception or dishonesty in relation to the University or its staff or in connection with holding any office in the University or in relation to being a student of the University;
   (5) action likely to cause injury or impair safety on University premises;
   (6) sexual or racial harassment of any student, member of staff or other employee of the University or any authorised visitor to the University;
   (7) breach of the provisions of the [University's Code of Practice on Freedom of Speech* or of] any [other] Code or University rule or regulation which provides for breaches to constitute misconduct under this Code;

* For those institutions to which s.43 of the Education (No.2) Act 1986 applies.

(8) examination offences;

(9) damage to, or defacement of, University property or the property of other members of the University community caused intentionally or recklessly, and misappropriation of such property;

(10) misuse or unauthorised use of University premises or items of property, including computer misuse;

(11) conduct which constitutes a criminal offence where that conduct -

(a) took place on University premises, or

(b) affected or concerned other members of the University community, or

(c) damages the good name of the University, or

(d) itself constitutes misconduct within the terms of this Code, or

(e) is an offence of dishonesty, where the student holds an office of responsibility in the University;

(12) behaviour which brings the University into disrepute;

(13) failure to disclose name and other relevant details to an officer or employee of the University in circumstances when it is reasonable to require that such information be given;

(14) failure to comply with a previously-imposed penalty under this Code.

Committee of Vice-Chancellors and Principals
of the Universities of the United Kingdom

29 Tavistock Square London WC1H 9EZ
Tel 0171-382 9251 Fax 0171-388 8649

ISBN 0 948890 41 X
ISSN 1356-9260
December 1994

£10.00