

UNIVERSITY STUDENT DISCIPLINE TRIBUNAL PROCEDURES AND GUIDELINES

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The definitions contained in the Rules on Disciplinary Jurisdiction and Procedures ("DJP") apply in respect of these rules.

Requirements for a notice of Hearing

- P 1.1 There must be at least two working days between the date of service of a notice of hearing and the date of the hearing.
- P 1.2 Service of a notice must be effected by -
- (a) personal service upon the student on condition that the person serving the notice records the fact of service in writing and signs an acknowledgement of receipt; or
 - (b) registered mail, addressed to the student at his or her term address; or
 - (c) service at the term address of the student provided that the person serving the notice records the steps taken to locate the student, and having failed to do so, has left the notice at the same address; or
 - (d) email to the student at his or her University address in the case of a notice to appear as a witness or to appear before a Tribunal constituted by a proctor, or a Student Housing Tribunal ; or
 - (e) such other manner that, to the satisfaction of the Tribunal, is reasonable in the circumstances.
- P 1.3 A notice to appear in the Student Housing Tribunal must contain_
- (a) an instruction to the student to be present at a specified date, time and place for the hearing of the matter; and
 - (b) a summary of the allegations against the student.
- P 1.4 A notice to appear before a University Tribunal must contain_
- (a) an instruction to the student to be present at a specified date, time and place for the hearing of the matter; and
 - (b) a copy of these procedural rules, the DJP rules, and the Rules on Conduct for Students; and

- (c) a list of the witnesses to be called by the University.

P 1.5 A notice to a student witness must contain an instruction to be present at a specified date, time and place for the hearing of the matter.

P 1.6 A notice to a non-student must contain an invitation to be present at a specified date, time and place for the hearing of a matter.

Representation and Assistance

P 2.1 Where a student is assisted, he or she may consult his or her assistant at any time during the hearing and the Tribunal may, should the request be reasonable, adjourn proceedings for the purpose of such consultation.

P 2.2 Where a student is represented –

- (a) he or she may consult his or her representative at any time during the hearing and the Tribunal may, should the request be reasonable, adjourn proceedings for the purpose of such consultation; and
- (b) the representative may conduct the proceedings on the student's behalf.

Procedure in a University Tribunal constituted by a proctor sitting with or without Assessors

P 3.1 The Proctor must determine the procedure which he or she considers fair and practical, which must meet the minimum requirements set out in rules P 3.2 to P 3.22.

P 3.2 The Proctor must satisfy himself/herself that notice has been given to the student in terms of rules P 1.1 to P 1.4.

P 3.3 The Tribunal may not hear a charge –

- (a) which is not within its jurisdiction; or
- (b) in respect of which the student has previously been acquitted or convicted in another University Tribunal, unless it is a charge referred to the University Tribunal by the Student Housing Tribunal.

P 3.4 The Tribunal may –

- (a) amend any charge prior to the student entering a plea;
- (b) hear cases against more than one student at the same time; and/or
- (c) separate the hearing of charges against one or more students upon request by a defendant or upon its own determination.

P 3.5 A student must be permitted to plead guilty or not guilty to each of the charges against him or her.

P 3.6 If the student pleads guilty, and in the absence of a written statement setting out the facts supporting the guilty plea, the Tribunal must ask the student to give his or her version of the events in order to establish whether the student is

in fact guilty. The Tribunal must convict a student upon a plea of guilty if it is satisfied that the student is guilty.

- P 3.7 The Proctor may question a student who has pleaded not guilty, in order to limit the issues in dispute.
- P 3.8 The Proctor must not consider as evidence any replies to questions put by him or her to the student and related to the student's plea.
- P 3.9 The Proctor must enter a plea of not guilty on behalf of a student who does not plead.
- P 3.10 No witness other than the student shall be present in the hearing prior to testifying.
- P 3.11 After the Tribunal accepts a plea of not guilty, the University may lead evidence to support the allegations against the student.
- P 3.12 The student -
- (a) may cross-examine any witness giving evidence for the University;
 - (b) may not be compelled to testify;
 - (c) must, if he or she wishes to testify, do so before his/her witnesses testify unless the Proctor allows otherwise for good reason; and
 - (d) must be permitted to lead evidence in his/her defence.
- P 3.13 The University may cross-examine any witness giving evidence for the student, if he or she testifies.
- P3.14 Evidence is inadmissible unless it is -
- (a) oral testimony;
 - (b) a document admitted by the Tribunal with the consent of the student and the University;
 - (c) an object, relevant to the matter, produced and proved or agreed by the student and the University in the Tribunal;
 - (d) a document (including a facsimile or an email) purporting to have been made, sent or received by the student;
 - (e) any other written document, the authenticity of which is agreed or proved in evidence by the student or the University; and
 - (f) a photograph or an audio or video recording, the authenticity of which is agreed or proved in evidence by the student or the University.
- P 3.15 Evidence of a hearsay nature is inadmissible unless it complies with S3 of the Law of Evidence Amendment Act 45 of 1988, as amended.
- P 3.16 Opinion evidence is inadmissible unless the Tribunal determines that the evidence is that of a witness better qualified to form such an opinion than itself, and unless reasons for the opinion are given to the Tribunal's satisfaction.

- P3.17 Before anyone gives evidence the Proctor must administer the oath or solemn affirmation in the event of the witness (upon inquiry by the Proctor) stating that he or she objects to the oath, in these terms -
- (a) Oath: "I swear that the evidence I shall give shall be the truth, the whole truth and nothing but the truth, so help me God"; or
 - (b) Solemn affirmation: "I solemnly affirm that the evidence I shall give shall be the truth, the whole truth and nothing but the truth".
- P 3.18 If the University presents no evidence on which the student can reasonably be convicted, the student may on application be discharged at the end of the University's case.
- P3.19 If the student has not been discharged, he or she must be given the choice either to testify or to remain silent and must be advised that -
- (a) if he or she testifies, he or she may be cross-examined on the content of his or her testimony and that anything he or she states in testimony or under cross-examination may be held against him or her; or
 - (b) if he or she remains silent, his or her version of the events will not be placed before the Tribunal, and that an adverse inference may be drawn from his or her silence.
- P 3.20 After hearing all evidence, the Tribunal must permit the student and the University to address it.
- P 3.21 After consideration of the evidence, the Tribunal must hand down a verdict in respect of each charge, which must be either guilty or not guilty.
- P 3.22 The Tribunal must, at the time of handing down the findings or as soon as is reasonably possible thereafter, give reason for the findings.

Trial procedure in the Student Housing Tribunal

- P 4.1 The Presiding Officer of a Student Housing Tribunal may in so far as he or she regards it necessary, follow the procedure set out in P 3.
- P 4.2 To the extent that the Presiding Officer does not follow this trial procedure he or she must follow a procedure that is fair and practical in the circumstances.

Pre-Hearing Conference

- P 5.1 A pre-hearing conference must be convened prior to any hearing in the University Student Discipline Tribunal and must be attended by the student, and where applicable his or her representative, and the University's representative.
- P 5.2 The parties present at the pre-hearing conference must attempt to reach consensus on the following -
- (a) the final charge sheet and further particulars;
 - (b) the plea of the student;
 - (c) the issues in dispute;
 - (d) formal admissions by the student;

- (e) any preliminary points that the Tribunal would be required to rule on;
 - (f) the number of witnesses to be called; and
 - (g) whether the student is to testify or not.
- P 5.3 A minute of any pre-hearing conference must be confirmed in writing by each party and must contain details of -
- (a) all agreements reached; and/or
 - (b) all attempts made to reach agreement.
- P 5.4 The parties present at a pre-hearing conference may enter into negotiations with a view to a settlement in terms of which the student enters a plea of guilty in respect of one or more charges, in return for the University's representative's support for a proposed sentence. No such agreement is binding upon the Tribunal.
- P 5.5 If no settlement is reached the parties may attempt to list facts, which are not in dispute, and to this end -
- (a) may draw up a statement of agreed facts; and
of DJP
 - (b) may settle an agreed statement by any witness.
- P 5.6 The Tribunal may inquire into the nature of any pre-hearing conference and may reject, in whole or in part, any agreement reached at the prehearing conference, if it has reason to believe that -
- (a) an unrepresented student did not fully appreciate the nature of the pre-hearing conference and by his or her participation therein, his or her case was prejudiced; or
 - (b) an agreement made at a pre-hearing conference was improper or made under threat, duress or without consent.
- P 5.7 The University may proceed to a hearing if the student fails to attend a pre-hearing conference.

Sentencing Procedure in all Tribunals

- P 6.1 The Presiding Officer must determine the appropriate sentence and must meet the following minimum requirements.
- P 6.2 The University and the student must be given an opportunity to -
- (a) call witnesses;
 - (b) produce sworn affidavits; and
 - (c) address the Tribunal, on the circumstances relevant to sentence in respect of each charge.
- P 6.3 The Presiding Officer must determine the severity of each infringement, using Table I as a guide.
- P 6.4 The Presiding Officer must then take into account -

- (a) any previous convictions in a University or Student Housing Tribunal; and
- (b) any previous relevant findings, and the sentences imposed, by a State court.

P 6.5 Should the student dispute any previous finding in a University or Student Housing Tribunal, the University must prove them by
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production of a certificate to this effect signed by the Registrar or his or her nominee.

P 6.6 The Presiding Officer may, where a student is convicted on more than one charge, take all the charges together for the purposes of sentence.

P 6.7 The Presiding Officer must then select a sentence, or combination of sentences, using table two, except where a student has been convicted of_

- (a) an offence where the use of violence is an element and resulted in, or could have resulted in, injury to others or destruction of property; or
- (b) serious academic dishonesty; or
- (c) possession or use of a dangerous weapon; or
- (d) an offence that resulted in or could have resulted in serious disruption of the work of the University,

in which case the Presiding Officer must consider, and where appropriate, impose a sentence of expulsion, or rustication if there are sufficient reasons in support of such a sentence.

P 6.8 The Tribunal must pronounce sentence and -

- (a) inform the student of any right to appeal; and
- (b) then, or as soon as is reasonably possible thereafter, give reasons for the sentence.

Admission of guilt sentence

P 7.1 The University may offer a student an admission of guilt sanction for an offence with an A or B severity rating in Table 1 .

P 7.2 The sentence must be determined having regard to Table 2, and may be -

- (a) a fine; or
- (b) community service; or
- (c) a fine with the option of converting this into community service.

P 7.3 Where a fine is converted into community service it must be done with reference to Table 3.

Procedure in the University Tribunal of Appeal

- P 8.1 The President must determine the procedure which he or she considers fair and practical and must meet the following minimum requirements (in rules P 8.2 to P 8.12).
- P 8.2 An appeal by a student against any finding and/or sentence must be noted within 7 days of the completion of the matter in the University Tribunal.
- P 8.3 An application by the University for leave to appeal against the sentence imposed by a University Tribunal must be made to the Senior Proctor within seven days of the completion of the matter in the University Tribunal.
- P 8.4 An appeal by the University against a sentence imposed by a University Tribunal must have been noted within 7 days after the Senior Proctor has granted leave to appeal.
- P 8.5 The party appealing (the appellant) must within 10 days of serving the notice of appeal, serve heads of argument upon the respondent (the Legal Counsellor or the convicted student, as the case may be).
- P 8.6 The respondent must serve replying heads of argument on the appellant within 7 days of receipt of the appellant's heads of argument.
- P 8.7 If an appellant wishes to reply to the respondent's heads of argument, he or she must do so by service upon the respondent within 7 days of receipt of the respondent's heads of argument.
- P 8.8 The respondent in any appeal is entitled to note a cross-appeal simultaneously and on the same papers as the respondent's replying heads of argument.
- P 8.9 In a cross-appeal the original appellant must serve replying heads of argument in respect of the cross-appeal on the original respondent within 7 days of receipt.
- P 8.10 If either party wishes to present new evidence it must apply for leave to do so in the notice of appeal or in the replying heads of arguments, and the other party must raise any objection in its replying notice
- P 8.11 The Tribunal must not allow new evidence unless —
- (a) there is a reasonable explanation for the failure to adduce the evidence at the original hearing; and
 - (b) the new evidence is material to the issues raised by the appeal.
- P 8.12 Oral submissions by parties to the appeal should be brief. They should not normally exceed 30 minutes in the first instance and 15 minutes in reply.
- P 8.13 The Tribunal must, at the time of handing down the findings or as soon as is reasonably possible thereafter, give reasons for the findings.
- P 8.14 Non-compliance with any prescribed procedure may be condoned by the President of the Tribunal of Appeal upon written application by one of the parties if good cause is shown. The Tribunal may dismiss any appeal prior to hearing the appeal if there has been substantial noncompliance with these rules by the appellant of a nature that ought not to be condoned.

Procedure in respect of the Vice-Chancellor's suspension powers

- P 9.1 The Vice-Chancellor or his or her nominee must determine the procedure to be employed in suspension hearings, provided that the following minimum requirements set out in rules P 9.2 to P 9.6 below are met.
- P 9.2 A student subject to a provisional suspension order is entitled to a hearing before the Vice-Chancellor or his or her nominee.
- P 9.3 The following persons may be present at a suspension hearing –
- (a) the Vice-Chancellor or his or her nominee and his or her aide;
 - (b) the provisionally suspended student, his or her guardian if a minor, and, if the student elects to be represented, his or her representative; and
 - (c) the University' s representative.
- P 9.4 The Vice-Chancellor or his or her nominee must explain to the student the reasons for initiating the suspension procedure and must inform him or her that he or she may make representations on the following -
- (a) the reasons for initiating the suspension procedure;
 - (b) any hardship which may be caused by a suspension;
 - (c) any proposed conditions of the suspension; and
 - (d) undertakings which he or she is willing to make regarding the conditions.
- P 9.5 The Vice-Chancellor or his or her nominee must consider any representation made by the student before making a suspension order.
- P 9.6 The Vice-Chancellor or his or her nominee must make a contemporaneous summarised record of the hearing.

Appeals against suspension orders

- P 10.1 The Presiding Officer must determine the procedure which he or she considers to be fair and practical, and must meet the following minimum requirements set out in rules P 10.2 to P 10.5 below.
- P 10.2 The appellant must submit to the Legal Counsellor heads of argument which may, inter alia, address the following issues -
- (a) a material irregularity in the process;
 - (b) undue severity of the suspension conditions; and/or
 - (c) undertakings by the suspended student regarding the conditions.

- P 10.3 The Legal Counsellor must supply the members of the Tribunal and the appellant with replying heads of argument within 7 days.
- P 10.4 The Tribunal must permit the suspended student and the University's representative to address it on the issues raised in their heads of arguments.
- P 10.5 The Tribunal must, at the time of handing down the findings or as soon as is reasonably possible thereafter, give reasons for the findings.

The Senior Proctor's powers in terms of DJP 4.4(c) and DJP 5.16

- P 11.1 The Senior Proctor must determine the procedure to be employed when exercising these powers, provided that he or she ensures that the minimum requirements set out below apply.
- P 11.2 A request to the Senior Proctor to review a sentence imposed by a Student Housing Tribunal together with a copy of the charge sheet, a summary of the evidence before it and the findings of the Tribunal must be delivered to him or her together with a motivation for the request to review, within 14 days of the being handed down.
- P 11.3 The Senior Proctor must invite the student to make written representations to him or her, within 7 days.
- P 11.4 When the Senior Proctor has considered the request and any representation made by the student, and has made a decision, he or she must notify the student and the Legal Counsellor of the decision in writing, stating his or her reasons.

Investigations

- P 12.1 The Chairperson of any Investigative Tribunal must determine the procedure to be employed in the investigation, provided that he or she ensures that the minimum requirements set out below apply.
- P 12.2 The Tribunal must convene within 5 days after the appointment of the Chairperson.
- P 12.3 The Tribunal may summon any student to appear before it.
- P 12.4 A student may not be compelled to testify before the Tribunal if he or she claims that his or her testimony may be self-incriminating.
- P 12.5 After hearing evidence, the Tribunal must report to the Vice Chancellor.

Procedures relating to Students who default after service of notice

- P 13.1 Upon proof of service of summons, the Tribunal may proceed with a summary hearing.

- Table 1: Severity rating of offences
Table 2: Recommended sentences
Table 3: Conversion table: fines and community service

P 13.2 If good cause exists, a summary hearing may take place in the absence of the defendant.

Rights of guardians and parents

P 14 A presiding officer of a Tribunal or of a hearing must not proceed with any matter in which the rights of a minor may be affected, unless he or she is satisfied that reasonable steps have been taken to inform the parents or guardians of the minor.

Records

P 15 The record in an appeal before the University Tribunal constituted by a Proctor sitting with assessors, or the Tribunal of Appeal must comprise-

- (a) a statement of what is in dispute as agreed by the appellant and respondent; or
- (b) where (a) is not possible, a transcription of the evidence dealing with such facts as are in dispute as agreed by the appellant and respondent; or
- (c) where (b) is not possible, a transcription of all the evidence advanced at the hearing.

TABLE 1

Severity rating of offences

| Severity rating | Examples of offences |
|-----------------|---|
| A | <ul style="list-style-type: none"> • Disturbing the peace in a residence • Failure to notify the University of a change of address • Refusal to comply with an instruction to comply with a safety rule • Failure to produce a registration card on request • Possession of cannabis • Crimen injuria • Plagiarism (first offence) by a first year student |
| B | <ul style="list-style-type: none"> • Plagiarism and other forms of academic dishonesty • Theft (R 1000 or less) • Defacing university property (damage less than R 1000) • Malicious damage to property (damage less than R 1000) • Sexual harassment or insult (first offence) Racial harassment or insult (first offence) |
| C | <ul style="list-style-type: none"> • Possession of drugs other than cannabis • Refusal to comply with a safety instruction • Forgery or fraud (to a value less than R 1000) • Disruption of disciplinary proceedings • Theft or malicious damage to property (over R 1000) • Disruption of teaching or research activities, including activities in libraries and computer labs • Unlawful and intentional use of licensed software on a UCT machine |
| D | <ul style="list-style-type: none"> • Rape or sexual assault • Racial assault • Plagiarism by a graduate student and other forms of serious academic dishonesty by any student Distribution of or sale of drugs • Possession or use of a dangerous weapon on campus, or use against any member of the University community on or off campus • Forgery or falsification of research results or academic qualifications • Any offence involving violence which results in a serious injury, or could have resulted in severe bodily harm • Computer hacking |

| | |
|--|---|
| | <ul style="list-style-type: none"> Any other offence which: (i) is not listed as being a category A, B, or C offence above; and (ii) is sufficiently serious in the view of the presiding proctor to be categorised as a category D offence. This residual category will include, but is not limited to, offences not already listed above which are crimes under South African law. |
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TABLE 2

Recommended sentences

These tables are guides and must be used with discretion.

(a) For admission of guilt

| Severity rating | Admission of Guilt Fine |
|-----------------|---|
| A | Reprimand/or fine R 100 to R 500 or corresponding community service or any combination of these sanctions |
| B | Compensation for damage (if applicable) and a fine of R 500 to R750 or corresponding community service |
| C | Admission of guilt is not possible |
| D | Admission of guilt is not possible |

(b) For a student housing tribunal

| Possible sanction | Severity rating | | | |
|---|------------------------|------------------------|-------------------------|---|
| | A | B | C | D |
| Reprimand | √ | √ | No | All D cases are to go to a higher Tribunal |
| Compensation for damages | √ | √ | √ | |
| Fine or community service or any combination of these sanctions | Up to R500 or 30 hours | Up to R750 or 65 hours | Up to R1000 or 80 hours | |
| Rustication from unit | No | √ | √ | |
| Expulsion from unit | No | No | √ | |
| Prohibition from holding office for up to 1 year | No | √ | √ | |

*** All sexual or racial related offences cases regardless of the severity rating to go to a higher tribunal**

(c) For a proctor sitting alone

| Possible sanction | Severity rating | | | |
|---|------------------------|------------------------|-------------------------|---|
| | A | B | C | D |
| Reprimand | √ | √ | √ | All D cases should go to a higher tribunal |
| Compensation for damages | √ | √ | √ | |
| Fine or community service or any combination of these sanctions | Up to R500 or 30 hours | Up to R750 or 65 hours | Up to R1000 or 80 hours | |
| Rustication from student housing | No | √ | √ | |
| Expulsion from student housing | No | No | √ | |
| Rustication | No | Up to 12 months | Up to 12 months | |
| Parking prohibition | √ | √ | √ | |
| Bar to use of specified facilities | √ | √ | √ | |
| Prohibition from holding office for up to 1 year | No | √ | √ | |

(d) For a proctor sitting with assessors

| Possible sanction | Severity rating | | | |
|--|------------------------|------------------|--------------------|--------------------|
| | A | B | C | D |
| Reprimand | √ | √ | √ | √ |
| Compensation for damage | √ | √ | √ | √ |
| Fine or community service or any combination of these sanctions | Up to R500 or 30 hours | R750 or 65 hours | R1 000 or 80 hours | R5000 or 300 hours |
| Rustication | No | √ | √ | √ |
| Rustication from UCT | No | Up to 12 months | Up to 12 months | Up to 2 years |
| Expulsion from Student Housing | No | No | √ | √ |
| Expulsion from UCT | No | No | √ | √ |
| Parking prohibition | √ | √ | √ | √ |
| Bar to holding office | No | √ | √ | √ |
| Withdrawal of a degree, diploma or certificate or cancellation of a result | No | No | √ | √ |

TABLE 3**Conversion table: fines and community service**

| Fine (Rands) | Community Service (Hours) |
|---------------------|----------------------------------|
| 100 | 5 |
| 200 | 10 |
| 300 | 15 |
| 400 | 20 |
| 500 | 30 |
| 750 | 65 |
| 1000 | 80 |
| 1500 | 100 |
| 2000 | 125 |
| 2500 | 135 |
| 3000 | 150 |
| 3500 | 180 |
| 4000 | 225 |
| 4500 | 250 |
| 5000 | 300 |