

Standard of proof of the University's disciplinary proceedings

This paper sets out information regarding:

1. The meaning of 'beyond reasonable doubt' – the criminal standard of proof;
2. The meaning of 'balance of probability'; - the civil standard of proof;
3. The use of standards of proof within the higher education sector;
4. The use of standards of proof within other disciplinary panels

1. 'Beyond reasonable doubt' – the criminal standard of proof

- 1.1 This is the current standard of proof that the University uses within its disciplinary procedures that apply to members of the University (established staff, formerly established staff, current matriculated students and former matriculated students).
- 1.2 'Beyond reasonable doubt' is the standard applied in criminal courts by the jury (or magistrates or judge). In practice the jury is asked **whether they are sure** if the defendant is guilty (not whether they find someone guilty beyond reasonable doubt).

2. 'Balance of probability' – the civil standard of proof

- 2.1 This is the standard of proof that the University uses in its fitness to study and fitness to practise procedures for students, as well as its disciplinary procedures for assistant staff.
- 2.2 The 'balance of probability' standard is normally used in the civil courts. The meaning of 'balance of probability' was defined by a judge as follows:

"The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not.

*When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury. A stepfather is usually less likely to have repeatedly raped and had non-consensual oral sex with his under age stepdaughter than on some occasion to have lost his temper and slapped her. Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation. Although the result is much the same, this does not mean that where a serious allegation is in issue the standard of proof required is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established."*¹

3. Standards of proof within the higher education sector

- 3.1 The vast majority of universities, including Oxford University, use the civil standard of proof in disciplinary proceedings involving students and staff. The Office of the

¹ [In re H \(Minors\) \[1996\] AC 563 at 586.](#)

Independent Adjudicator does not currently take a view on whether one standard of proof is preferable over another in relation to disciplinary matters, as long as the standard of proof being used is explicit within the procedure. This may change, however, following the publication of their future chapter of the good practice framework regarding discipline (consultation timeframe still to be released).

- 3.2 It is noted that in the Universities UK guidance authored by Pinsent Masons regarding the handling of misconduct that would otherwise constitute a criminal offence, it is assumed that all universities use the civil standard of proof within their disciplinary procedures.²
- 3.3 It is also noted that in recent guidance issued by the Quality Assurance Agency (QAA) when University disciplinary proceedings considered allegations of 'contract cheating' the balance of probability standard of proof was recommended, regardless of the fact that suspension or expulsion could be the outcome.³

4. Standards of proof within other disciplinary panels

- 4.1 In most disciplinary tribunals concerning allegations of misconduct relating to employment or a profession, the civil standard of proof is used. This includes health professions and teaching professions; it is a requirement of the General Medical Council and the Royal College of Veterinary Surgeons that the University's fitness to practise procedures use the 'balance of probability' standard of proof.
- 4.2 Most recently, the Bar Council has confirmed that it will be amending the standard of proof used for disciplinary tribunals considering the alleged misconduct of barristers.⁴ This decision means that the only UK professional body still using the criminal standard of proof is the Solicitors Disciplinary Tribunal (SDT) (and then only when acting in a fact-finding capacity); a decision in 1993 relating to the SDT's predecessor body held that "*at least in cases ... where what is alleged is tantamount to a criminal offence, the tribunal should apply the criminal standard of proof*".⁵ However, a more recent decision has found that the SDT was wrong to apply the criminal standard when reviewing decisions of the Solicitors Regulation Authority (which is under a statutory obligation to apply the civil standard) and observed that earlier case law supporting the higher standard when the SDT was undertaking its own fact-finding exercise was "ripe for reconsideration".⁶

² Universities UK, Pinsent Masons, 2016, *Guidance for Higher Education Institutions How to Handle Alleged Student Misconduct Which May Also Constitute A Criminal Offence*.

³ Quality Assurance Agency, 2017, *Contracting to Cheat in Higher Education*, p.26:

<http://www.qaa.ac.uk/en/Publications/Documents/Contracting-to-cheat-in-higher-education.pdf>.

⁴ Bar Council press release, 2017, <https://www.barstandardsboard.org.uk/media-centre/press-releases-and-news/civil-standard-of-proof-set-to-be-adopted-for-professional-misconduct-proceedings-for-barristers/>

⁵ *Re A Solicitor* [1993] QB 69

⁶ *The Solicitors Regulation Authority v Solicitors Disciplinary Tribunal* [2016] EWHC 2862 (Admin).