

Statute 7: Academic Staff: Dismissal, Discipline, Grievance Procedures and related matters

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Part 1: General

1. *Application*

1. This Statute applies to the following:
 - i. the members of the academic staff (subject to clause 1(2) below and to the proviso that the redundancy provisions contained in Part II shall not apply to those members of staff described in clause 5 (1) below);
 - ii. such other members of staff or categories of staff of the University as are brought within its scope by the Council in an Ordinance;and "member of staff" and "members of staff" in this Statute mean that member of staff or those members of the staff to whom this Statute applies.
2. Clause 2 (1) (i) (which relates to academic freedom) shall apply only to such members of staff and under such terms and conditions as the Council shall by Ordinance prescribe.
3. This Statute as amended from time to time will override any provision in any contract, term or condition of employment which is inconsistent with this Statute, whether dated before or after the commencement of this Statute, but –
 - i. it shall not affect the validity of any compromise agreement under section 203 of the Employment Rights Act 1996, or any similar waiver or agreement permitted by law; and
 - ii. it shall not preclude any member of staff deciding or agreeing to terminate employment with the University, whether by voluntary severance, early retirement or otherwise, on whatever terms have been agreed.
4. Parts II to V of this Statute shall not apply to removal from office as Pro Vice-Chancellor, Dean, Associate Dean or Head of School, or such other posts as have been designated by the Council, to which a member of staff has been elected or appointed and which is distinct from that individual's substantive post, where dismissal from the substantive post is not contemplated. The Council shall instead by Ordinance prescribe a procedure for handling such removals prior to the prescribed or normal termination date, which shall include a hearing and an appeal.
5. This Statute shall not apply to the President and Vice-Chancellor, even if he or she is also the holder of an academic post.

2. *General principles of construction and application*

1. This Statute and any Ordinances or Regulations made under it shall be construed in every case to give effect to the following guiding principles:
 - i. to ensure that those members of staff identified in the Ordinance prescribed by clause 1(2) above have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, with due regard for the need to respect others and promote the best interests of the University and academic learning, without placing themselves in jeopardy of losing their jobs or privileges;
 - ii. to enable the University to provide education, promote learning and engage in research efficiently and economically; and
 - iii. to apply the principles of justice and fairness.
2. Where there is any issue as to the meaning of “academic freedom” in any proceedings under Parts II, III, IV, V or VI of this Statute, regard shall be had to Sections VI and VII of the Recommendation concerning the Status of Higher-Education Teaching Personnel adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) in Paris on 11 November 1997.
3. Any reference in this Statute to a provision in an Act of Parliament shall be taken to be a reference to that provision as it may have been amended or superseded from time to time.
4. Any reference in this Statute to the “President and Vice-Chancellor or his or her nominated representative” shall be taken to mean the President and Vice-Chancellor or such person as he or she shall nominate in his or her stead.

3. *Dismissal*

1. For the purpose of this Statute, “dismissal” shall have such meaning as shall be ascribed to it by Ordinance.
2. A member of staff may be dismissed if that dismissal is, inter alia, for a reason set out in the Ordinance referred to in clause 3(1) above.
3.
 - i. A dismissal by reason of redundancy (other than one where any of clauses 16, 17 or 20 applies) shall be handled in accordance with Part II;
 - ii. a dismissal for disciplinary or capability reasons (other than one where any of clauses 16, 17 or 20 applies) shall be handled in accordance with Part III;
 - iii. a dismissal on health grounds (other than one where any of clauses 16, 17 or 20 applies) shall be handled in accordance with Part IV;
 - iv. a dismissal by reason of retirement at or over the normal retirement age shall be handled in accordance with Part V; and
 - v. a dismissal on any other grounds, including the non-renewal of a fixed-term contract, shall be handled in accordance with Part V.
4. If a dismissal may be handled in accordance with more than one Part, the President and Vice-Chancellor or his or her nominated representative shall determine under which Part the dismissal shall be handled.

4. *Hearing, appeal and grievance panels*

1. Any panel established pursuant to clauses 8(1), 10(ii)(e) and (j), 11(2)(iv)(d) and (g), 15(2), 19(2)(i), 20(4) and 21 (5) of this Statute shall consist of three persons, none of whom shall previously have had any involvement with the case, one of whom shall be a lay member of Council and one a member drawn from a list agreed from time to time by the Senate.

2. Ordinances may provide for any relevant National Health Service or other relevant body to be represented on any panel established under this Statute to deal with a member of staff falling within clause 20(1) below and for the panel to be enlarged for this purpose.
3. At any panel within sub-clause (1) above, the member of staff shall be entitled to be represented or assisted by a Trade Union or workplace representative.
4. Any panel within sub-clause (1) above shall give a reasoned decision in writing which shall be provided to the member of staff and reported to the Council.

Part II: Redundancy

5. *Application*

1. The procedures prescribed under this Part shall not apply to those staff defined in sub-sections (3) to (6) of section 204 of the Education Reform Act 1988 [staff appointed prior to, and not promoted after, 20 November 1987], who shall for this purpose continue to be subject to such procedures, if any, as applied to them prior to the introduction of the Statute made by the University Commissioners in the exercise of their powers under sections 203 and 204 of the Education Reform Act 1988.
2. This Part shall not apply to the non-renewal of a fixed-term contract, which shall be dealt with under clause 16 below.

6. *Definition of "redundancy"*

Subject to clause 5(2) above, dismissal by reason of redundancy for the purpose of this Part shall have such meaning as shall be ascribed to it by Ordinance.

7. *Procedure for dismissal by reason of redundancy*

1. The Council shall by Ordinance prescribe the procedures for dismissing members of staff on grounds of redundancy, which shall include the following:
 - i. a preliminary stage involving consultation with appropriate representatives and discussion with the staff concerned;
 - ii. a determination by the Council, after appropriate consultation and discussion, that the circumstances are such that the procedures should be instituted;
 - iii. a procedure which allows each staff member concerned, having been informed of the selection criteria to be employed, to make written and oral representations on his or her behalf;
 - iv. provision for a Redundancy Committee of the Council to be set up in the case of whole Faculty/School, academic discipline or department closure. The Redundancy Committee shall include at least one lay member of the Council and shall review any proposed dismissals on grounds of redundancy;
 - v. provision for informing any member of staff dismissed under this Part of the reasons for the dismissal and, where selection has taken place, why he or she was selected; and
 - vi. authorising the President and Vice-Chancellor or his or her nominated representative to dismiss any member of staff selected for dismissal under this Part and requiring reports of dismissals to be submitted to the Council.
2. The procedures set out in sub-clauses (iii) to (vi) of clause 7(1) above may be used only after the Council has made a determination under clause 7(1)(ii) above.

8. *Appeal against dismissal by reason of redundancy*

1. The Ordinance prescribed under clause 7(1) above shall include provision for an appeal to a panel by a member of staff who has been given notice of dismissal under this Part.
2. The panel shall be entitled to review all aspects of the matter other than the Council's determination under clause 7(1)(ii) above.
3. The panel shall have the power to reach a final decision on the matter or to remit the matter for further consideration by the body whose decision is being appealed.

Part III: Disciplinary and Capability Procedures

9. *Grounds for disciplinary action*

Disciplinary action under this Part may be taken, and where found to be appropriate a penalty imposed, in respect of the following:

- i. conduct amounting to a criminal offence, whether or not there has been a prosecution and conviction, of a kind that is judged in all the circumstances to be relevant to the member of staff's employment by the University;
- ii. failure, refusal or neglect to perform some or all of the duties or to comply with some or all of the conditions attaching to the post, or failure, refusal or neglect to perform those duties or to comply with those conditions in a satisfactory or adequate manner;
- iii. conduct of a kind judged to be inappropriate or unacceptable on the part of a holder of the post held by the member of staff. Examples of such conduct shall be defined by Ordinance, provided that such examples shall not be deemed to be an exhaustive list of all instances of such conduct.

10. *Disciplinary procedures*

The Council shall by Ordinance promulgate disciplinary procedures for members of staff, which shall provide:

- i. for less serious matters to be dealt with by warnings or other sanctions following an appropriate procedure and for a member of staff to be able to appeal against the imposition of a warning to a person designated by the President and Vice-Chancellor or his or her nominated representative; and
- ii. for dealing with more serious matters, which shall include provision for the following:
 - a) reasonable time limits for each stage;
 - b) investigating complaints and dismissing those found to be without substance;
 - c) suspension, at the normal rate of pay, by the President and Vice-Chancellor or his or her nominated representative pending an investigation or hearing where this is necessary;
 - d) informal resolution, if it appears to the President and Vice-Chancellor or his or her nominated representative appropriate to do so and if the member of staff agrees in writing that the matter should be dealt with in that way;
 - e) a hearing by a panel appointed by the President and Vice-Chancellor or his or her nominated representative, at which the member of staff against whom the complaint has been made shall have been informed of the complaint, shall be entitled to be present, to hear the evidence, to call relevant witnesses, and to examine and cross-examine witnesses;

- f) authority for the panel to regulate its process as appropriate to deal with each case;
- g) appropriate penalties in addition to warnings and dismissal;
- h) the award of compensation either to the University or to an individual in respect of any loss caused or damage done;
- i) designating a member of staff's conduct as constituting "gross misconduct" such as to merit summary dismissal without notice; and
- j) a right to appeal against the finding of, or penalty imposed by, the panel, including a finding under paragraph (i) above.

11. *Capability Procedures*

1. *Grounds for action*

Action under this clause may be taken in respect of inability to perform some or all of the duties or to comply with some or all of the conditions attaching to the post; or inability to perform those duties or to comply with those conditions in a satisfactory or adequate manner.

2. The Council shall by Ordinance promulgate capability procedures for members of staff, which shall provide:

- i. for additional support and training where appropriate;
- ii. for setting targets, timescales for improvement and reviews to assess progress;
- iii. in respect of less serious matters:-
 - a) for such matters to be dealt with by notifications of concern, warnings or other action following an appropriate procedure;
 - b) for a member of staff to be able to appeal against the imposition of a warning to a person designated by the President and Vice-Chancellor or his or her nominated representative;
- iv. for dealing with more serious matters, which shall include provision for the following:
 - a) reasonable time limits for each stage;
 - b) investigating allegations of lack of capability or poor performance and dismissing those found to be without substance;
 - c) suspension, at the normal rate of pay, by the President and Vice-Chancellor or his or her nominated representative pending an investigation or hearing where this is necessary;
 - d) in cases where dismissal is a possibility, a hearing by a panel appointed by the President and Vice-Chancellor or his or her nominated representative, at which the member of staff shall have been informed of the allegations of lack of capability or poor performance and shall be entitled to be present, to hear the evidence, to call relevant witnesses, and to examine and cross-examine witnesses;
 - e) authority for the panel to regulate its process as appropriate to deal with each case;
 - f) appropriate sanctions, which shall include, but need not be limited to, warnings and dismissal;
 - g) a right to appeal against the finding of, or sanction imposed by, the panel.

12. *Dismissal*

1. The President and Vice-Chancellor or his or her nominated representative shall give effect to a decision of a panel that a member of staff should be dismissed:
 - i. where the panel has designated the conduct as “gross misconduct” such as to merit summary dismissal pursuant to clause 10(ii)(i), the President and Vice-Chancellor or his or her nominated representative shall forthwith dismiss the member of staff;
 - ii. in all other cases:
 - a) where the panel has decided that the member of staff shall be dismissed with notice, the President and Vice-Chancellor or his or her nominated representative shall issue the notice of dismissal; or
 - b) where the panel has decided that the member of staff shall be dismissed with payment in lieu of notice, the President and Vice-Chancellor or his or her nominated representative shall dismiss together with payment in lieu of notice.
2. Any dismissal or notice of dismissal shall be cancelled, withdrawn or modified if an appeal panel decides that the member of staff should not be dismissed or should only be dismissed with notice.

13. *Relationship with Part IV*

The Ordinances shall make provision for dealing with a case in progress under this Part where it emerges that the member of staff’s conduct or performance may have been wholly or partly attributable to a medical condition, but any proceedings under this Part shall be valid even if they could have been brought under Part IV, and a member of staff may be subject to penalty, including dismissal, under this Part notwithstanding the fact that his or her conduct or performance may have been wholly or partly attributable to a medical condition.

14. *Clinical staff*

Action under this Part or under Part IV may be taken against a member of staff falling within clause 20(1) below in respect of conduct or incapacity arising in connection with that member of staff’s clinical work or activities as if the work or the activities were performed in and for the University.

Part IV: Incapacity on Health Grounds

15. *Dismissal on health grounds*

1. The Council shall by Ordinance prescribe a procedure for dealing with staff, including dismissal, because of incapacity on health grounds, whether physical or mental.
2. The procedure shall include a hearing by a panel, with a right of appeal to another panel, in situations where dismissal is being considered, and both panels shall consider such medical evidence as is available to them.

Part V: Other Dismissals

16. *Non-renewal of a fixed-term contract*

1. The President and Vice-Chancellor or his or her nominated representative shall, in every case where a fixed-term contract is due to terminate, consider whether that contract should be renewed or extended or a contract of indefinite duration should be offered, having given an opportunity to the member of staff to make representations.
2. A decision neither to renew nor to extend a fixed-term contract nor to offer a contract of indefinite duration under the preceding paragraph must be justified on the basis of transparent, necessary and objective reasons, as set out by Ordinance.

3. A member of staff whose fixed-term contract is not renewed or extended on termination or is not offered a contract of indefinite duration shall be given full reasons for the decision and shall be entitled to appeal to a panel in accordance with a procedure to be prescribed by Ordinance.
4. The panel, whose decision shall be final, shall consider whether the reasons advanced in support of the decision are reasonable and can be supported.

17. Probationary appointments

1. This clause shall apply to members of staff who have been appointed subject to review after a period of probationary service.
2. The Council shall by Ordinance prescribe a procedure under which staff on probation shall be reviewed and shall include provision for non-confirmation in post during or at the end of the probationary period if their performance is found to be deficient or for any other substantial reason or reasons they are judged unsuitable to be confirmed in post.
3. The review referred to in sub-clause (2) may encompass matters which, in other circumstances, would fall to be dealt with under Parts II, III or IV of this Statute: however, the procedure prescribed in accordance with clause 17(2) shall always apply in relation to those members of staff to whom clause 17(1) above applies.
4. A member of staff who is not confirmed in post during or at the end of his or her probationary period shall be given full reasons for the decision and shall be entitled to appeal the decision to a person designated by the President and Vice-Chancellor or his or her nominated representative in accordance with a procedure to be prescribed by Ordinance.

18. Dismissal by reason of retirement

1. This clause covers dismissals by reason of retirement at or over the normal retirement age.
2. Dismissals covered by sub-clause (1) above shall be handled in accordance with a procedure prescribed by Regulation.

19. Dismissal on other grounds

1. This clause covers dismissals on any ground falling within the Ordinance prescribed under clause 3 (2) other than those covered by Parts II, III, IV or clauses 16, 17, 18 or 20 of Part V of this Statute, namely:—
 - i. some other substantial reason of a kind such as to justify the dismissal of a member of staff holding the position which the member of staff held;
 - ii. that the member of staff could not continue to work in the position which he or she held without contravention (either on his or her part or on that of the University) of a duty or restriction imposed by or under an enactment.
2. Dismissals covered by sub-clause (1) above shall be handled in accordance with a procedure prescribed by Ordinance, which shall include:—
 - i. in respect of a dismissal for some other substantial reason of a kind such as to justify the dismissal of a member of staff holding the position which the member of staff held: the right to be heard by a panel and the right to appeal to a panel;
 - ii. in respect of a dismissal occasioned by the fact that the member of staff could not continue to work in the position which he or she held without contravention (either on his or her part or on that of the University) of a duty or restriction imposed by or under an enactment: the right to appeal to a person designated by the President and Vice-Chancellor or his or her nominated representative - provided, however, that any such process shall not fetter the University's ability to dismiss a member of staff promptly so as to comply with a statutory duty.

20. *Clinical staff*

1. This clause applies to a member of staff who is required to engage in clinical work or activities and for that purpose to be registered with the General Medical Council, Dental Council, Health Professions Council or similar body and/or to have an honorary or substantive contract or status with a National Health Service trust or similar body, and may by Ordinance be extended to other groups of staff in a similar situation.
2. Where the registration, contract or status referred to in sub-clause (1) above is terminated, withdrawn or revoked, the President and Vice-Chancellor or his or her nominated representative may, having first afforded an opportunity to the member of staff concerned to make representations, dismiss the member of staff concerned; and where the registration, contract or status is suspended, the President and Vice-Chancellor or his or her nominated representative may suspend the member of staff from employment for so long as the registration, contract or status is suspended. Suspension from employment shall be without pay where the registration, contract or status has been suspended as a substantive disciplinary measure.
3. The Council shall by Ordinance prescribe a procedure to be followed, which shall include the right of appeal with respect to actions taken under this clause.
4. Where the action taken is dismissal, the right of appeal shall be to a panel constituted under the provisions of Clause 4.

Part VI: Grievance Procedures

21. *Grievance Procedure*

1. The Council shall by Ordinance promulgate a Grievance Procedure for members of staff.
2. The Procedure shall apply to grievances by members of staff concerning their appointments or employment in relation to matters affecting themselves as individuals or their personal dealings or relationships with other staff of the University, other than those for which provision is made elsewhere in this Statute or in respect of the outcome of any matter dealt with under this Statute, or where the Council has prescribed other procedures.
3. The Procedure shall, subject to the statutory dispute resolution procedures, provide that any grievance which raises issues which are the subject of a disciplinary or other process shall not be considered under the Grievance Procedure, and must be raised through that disciplinary or other process.
4. The Procedure shall provide for the fair and speedy resolution of complaints, informally wherever possible, and for the complainant to be entitled to be assisted by any other member of staff or by a trade union representative at any hearings prior to that under sub-clause (5) below.
5. The Procedure shall make provision for a member of staff who is dissatisfied with the outcome of a complaint to be able to appeal to a Grievance Panel unless the complaint has been ruled frivolous, vexatious or invalid in accordance with the Procedure.