

SECTION 14 ACADEMIC STAFF

PART I: GENERAL

1. General principles of construction and application

1. This Section of the Statute and any Ordinances or Regulations made under it shall be construed in every case to give effect to the following guiding principles:
 - a. to ensure that members of Academic Staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their job or privileges;
 - b. to enable the University to provide education, promote learning and engage in research efficiently and economically; and
 - c. to apply the principles of justice and fairness.
2. Where there is any issue as to the meaning of academic freedom in this regard in any proceedings under Parts II, III, IV, V and VI of this Section of the Statute, regard shall be had to Sections VI and VII (and including paragraph 12 of Section IV) 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, details of which are set out in Ordinance.
3. Any reference in this Section of the 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a provision in an Act of Parliament shall be taken to be a reference to that provision as it may have been amended or superseded from time to time.

2. Application

1. This Section 14 applies to the following:
 - a. The members of the Academic Staff as defined in Section 1 of these Statutes (save that Part II shall not apply to those Academic Staff excluded from that Part by clause 5(1) below);
 - b. such other members of Staff or categories of Staff of the University as determined by Ordinance by the Council:

and "member(s) of staff" in this Section means those members of the staff to whom this Section applies.
2. This Section 14 will override any provision in any contract, term or condition of employment (whether that contract, term or condition pre-dates or post-dates the commencement of this Section) which is inconsistent with this Section, but
 - a. it shall not affect the validity of any compromise agreement under section 203 of the Employment Rights Act 1996, or any similar agreement permitted by law; and
 - b. 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; and
 - c. it shall not preclude any member of staff agreeing to vary or waive any provision of this Section or any Ordinance made under this Section, as appropriate in the circumstances of his or her individual case.
3. Nothing in any other Section or in any Ordinance or Regulation made thereunder shall compel any member of staff of the University who objects on grounds of conscience to sit as a member of any Panel or body appointed under this Section or to be present when any such Panel or body is meeting to arrive at its decision or for the purpose of discussing any point of procedure.
4. Parts II to V of this Section 14 shall not apply to removal from an office as Vice Principal, or Pro-Vice-Chancellor, or such other offices as have been designated by the Council as offices to which this sub-clause applies, 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, but the Council shall by Ordinance prescribe a procedure for handling

such removals prior to the prescribed or normal termination date, which shall include the right to be heard by a panel and the right to appeal to a different panel.

5. This Section 14 shall not apply to the Vice Chancellor, except for Parts III and IV, which shall, unless the Council, with the Vice Chancellor's concurrence, resolves otherwise apply to the Vice Chancellor in post at the time it comes into effect, with such modifications and adaptations as the Council, with the Vice-Chancellor's concurrence, shall prescribe but it shall not apply to any later Vice Chancellor, even if also the holder of an academic post.
6. For the purposes of this Section 14, the University's reasonable decision as to which provision of this Section should be invoked to deal with any specific matter concerning a member of staff shall be final. No action or decision taken under this Section or any Ordinances made under this Section shall, for the purposes of this Section, be invalid on the grounds that the matter could have been dealt with under some other Section, Part, Clause or Ordinance than that in fact invoked.

3. Dismissal

1. For the purpose of this Section 14 subject to Clause 3(3) "dismissal" shall have the same meaning as in section 95 (a) and (b) of the Employment Rights Act 1996, namely:
 - a. the termination by the University (whether with or without notice) of the contract under which the member of staff is employed; and
 - b. where the member of staff is employed under a fixed term contract, the termination of that contract, by virtue of the limiting event having occurred without being renewed under the same contract.
2. For the purpose of this Section 14:
 - a. contract of employment is a "fixed term contract" if:
 - i. the employment under the contract is not intended to be permanent; and
 - ii. provision is accordingly made in the contract for it to terminate by virtue of a limiting event; and
 - b. a "limiting event" means:-
 - i. in the case of a contract for fixed term, the expiry of the term; or
 - ii. in the case of a contract made in contemplation of the performance of the task, the performance of that task; or
 - iii. in the case of a contract which provides for its termination on the occurrence of an event or on the failure of an event to occur (other than the attainment by the member of staff of a contractual retiring age), the occurrence of the event or the failure of the event to occur.
3. Where it is expected or proposed that a member of staff employed under a fixed term contract on the occurrence of a limiting event will be employed under a new contract (whether a fixed term contract or a contract of indefinite duration):
 - a. there shall be no dismissal or anticipated dismissal for the purposes of this Section 14 and accordingly Parts II to V of this Section shall not apply; and
 - b. the member of staff, if dissatisfied with any new contract offered to him or her, shall be entitled to raise that issue under Part VI.
4. A change in duties of a post shall not be defined as a dismissal for the purposes of this Section 14 and in such a case Parts II to V of this Section shall not apply.
5. The proposed dismissal of a member of staff in circumstances other than those covered by Clause 3(3) and 3(4) shall be handled as set out below: -
 - a. a dismissal by reason of redundancy (other than the non-renewal of a fixed-term contract) shall be handled in accordance with Part II;
 - b. a dismissal for disciplinary reasons shall be handled in accordance with Part III;
 - c. a dismissal on health grounds shall be handled in accordance with Part IV; and

- d. a dismissal on any other grounds, including the non-renewal of a fixed-term contract, shall be handled in accordance with Part V.

4. Hearing, appeal and grievance Panels

1. The size of any Panel established pursuant to clauses 7(1), 8(1), 10(2)(e) and (g), 15(2), 16(3), 18(2), 19(2) and 20(5) of this Section 14 shall be specified by Ordinance. At least one member of the Panel shall be a Lay Member of Council, or an Emeritus Professor, and at least one a member drawn from a list agreed from time to time by the Senate. None of the Panel members shall previously have had any direct or active involvement in the case.
2. Any Panel as referred to in clause 4(1) above may take legal or other professional advice to help it in its deliberations and may, at its sole discretion, ensure that the adviser(s) are in attendance for any hearing or deliberations regarding the hearing.
3. Ordinances may provide for any relevant National Health Service or other relevant body to be represented on any Panel established under this Section 14 to deal with a member of staff falling within clause 19(1) below and for the panel to be enlarged by up to an additional two members, in these circumstances.
4. At any Panel or hearing under this Section 14, the member of staff shall be entitled to be represented or assisted as set out in the relevant Ordinance.
5. Any Panel within sub clause (1) above under this Section 14 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 power to dismiss, and 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 powers, 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 dismissal by reason of redundancy of a member of staff employed on a fixed term contract as a result of a limiting event.

6. Definition of “redundancy”

1. Subject to clause 5(2) above, dismissal by reason of redundancy for the purpose of this Part has the same meaning as in section 139 of the Employment Rights Act 1996.

7. Procedure for dismissal by reason of redundancy

1. The Council shall by Ordinance prescribe the procedures for dismissing members of staff on the grounds of redundancy, which shall include the following principles:
 - a. setting out the reasons for the possible redundancy;
 - b. informing the Senate as to the need to initiate the redundancy procedure;
 - c. consultation with appropriate representatives in accordance with and to the extent required by section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 and discussion with the staff concerned, including taking into account of legal requirements in relation to redundancy;
 - d. to establish a Panel to decide whether selection needs to take place against criteria, to determine such criteria and to assess staff against these criteria;
 - e. a procedure which is fair and which allows each staff member concerned, having been informed of any selection criteria to be employed, to make written and oral representation on his or her behalf to the Panel;
 - f. 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

- g. authorising the Vice-Chancellor or other person to dismiss any member of staff who has been selected by the Panel for dismissal under this Part; and
 - h. requiring reports of dismissals to be submitted to the Council and to the Senate.
2. The procedures following the start of consultation under clause 7(1)(iii) may be used at any particular time only after the Council has first determined that the circumstances are such that the procedures should be instituted. In circumstances to which s188 TULRCA 1992 applies, any failure of consultation with representatives to the extent required under TULRCA 1992 for reasons beyond the University's direct control shall not invalidate Council's determination that the procedures shall be instituted.
- 8. Appeal against dismissal by reason of redundancy**
- 1. The Ordinances 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(2) 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 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:

- 1. conduct (wherever occurring) resulting in the member of staff accepting a formal police caution, even if the member of staff is not subsequently charged with or convicted of an offence, where that conduct is of a kind that is judged in all the circumstances to be relevant to the member of staff's employment by the University;
- 2. conviction of a criminal offence by any court of competent jurisdiction, where that offence is judged in all the circumstances to be relevant to the member of staff's employment by the University;
- 3. 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 performing those duties or complying with those conditions in an unsatisfactory or inadequate manner;
- 4. 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, such as (but not confined to) the following:
 - a. breach of any obligation or duty arising under any of the University's regulations regarding financial matters, harassment, equal opportunities, public interest disclosure, health and safety, or data protection or any other rules, regulations or codes binding on the member of staff;
 - b. wilful damage to or improper use of facilities, premises, property or equipment including equipment owned by, leased or hired to the University or otherwise provided for the pursuance of University duties;
 - c. disruption of, or improper interference with, the activities of those engaged in the activities of the University or any person because of their real or perceived connection with the University (other than any lawful industrial action);
 - d. violent, indecent, disorderly, threatening, abusive, insulting or harassing behaviour or language (whether written, spoken or in any other form);
 - e. fraud, deceit, deception or dishonesty in relation to the University or any related activity, including research and examining;
 - f. action likely to cause injury or impair safety;
 - g. divulging information or material received in confidence (unless the disclosure is permitted under the Public Interest Disclosure Act 1998 or in accordance with the University's Public Interest Disclosure Procedure or required by law).

- h. failure to disclose a conflict of interest which has a material impact on the conduct of University business.

10. Disciplinary procedures

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

1. for less serious matters to be dealt with by warnings following a fair and 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 Vice-Chancellor; and
2. for dealing with more serious matters, which shall include provision for the following:
 - a. fair and reasonable time limits for each stage;
 - b. investigating complaints and dismissing those found to be without substance;
 - c. suspension, on full pay, by the Vice-Chancellor pending an investigation or hearing or the resolution of a police investigation or a criminal prosecution where this is appropriate;
 - d. the resolution of disciplinary cases by the Vice-Chancellor on an informal basis with the agreement of the member of staff which may, for the avoidance of doubt, include the administration by the Vice-Chancellor of an oral or written warning;
 - e. if the Vice-Chancellor so decides a hearing by a Panel, the constitution of which is defined in Ordinance, prior to which the member of staff against whom the complaint has been made shall have been informed of the complaint, and at which the member of staff shall be entitled to be present, to hear the evidence, to call relevant witnesses (if appropriate), and to examine and cross-examine witnesses if appropriate (but provision may be made for witnesses in appropriate cases to give their evidence behind a screen or from another room or place and for questions to be asked only by a representative);
 - f. appropriate penalties, which in addition to warnings and dismissal shall include withholding any forthcoming increment in salary, suspension without pay (for up to three months) and reduction in grade and/or loss of title;
 - g. designating a member of staff's conduct as constituting "gross misconduct" such as to merit summary dismissal without notice;
 - h. determining, in cases where the member of staff's conduct is found to merit dismissal but is not designated as "gross misconduct", whether the member of staff shall be dismissed with notice or payment in lieu of notice; and
 - i. a right of appeal against any finding or any penalty imposed, under this clause. An appeal shall not take the form of a re-hearing of the evidence or the calling of any or all of the witnesses, save at the absolute discretion of the Appeal Panel it is determined that this is necessary properly to dispose of the appeal.
3. In drawing up the procedures, and in any Regulations made thereunder, regard shall be had to Section 1 of the Code of Practice on Disciplinary and Grievance Procedures (as may be amended or replaced from time to time) issued in September 2000 by the Advisory Conciliation and Arbitration Service (ACAS) and brought into effect by order of the Secretary of State under section 199 of the Trade Union and Labour Relations (Consolidation) Act 1992.

11. Dismissal

1. The Registrar and Secretary or nominee shall give effect to a finding of a Panel that a member of staff should be dismissed:
 - a. where the panel has designated the conduct as "gross misconduct" such as to merit summary dismissal pursuant to clause 10(ii)(g), the Registrar and Secretary shall forthwith dismiss the member of staff;
 - b. in all other cases, the Registrar and Secretary or nominee shall issue the notice of dismissal or dismiss together with payment in lieu of notice in accordance with the determination of the panel.

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 have been or be dismissed or should only have been dismissed with notice or pay in lieu of notice.

12. Relationship with Part IV

1. The Ordinance under this Part III 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 in accordance with Clause 2(6).

13. Clinical Staff

1. Action under this Part or under Part IV may be taken against a member of staff falling within clause 19(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

14. Incapacity in this instance shall be defined as the inability to discharge the duties required of the post and under contract by reason of ill health or disability. By Ordinance, a procedure short of dismissal will be set out for dealing with staff who may be incapacitated by reason of ill health.

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 a different Panel, and both Panels shall contain an appropriately medically qualified person.

PART V: OTHER DISMISSALS

16. Non-renewal of a fixed term contract

1. The Council shall by Ordinance promulgate a procedure whereby the Vice-Chancellor, or other persons designated by the Vice-Chancellor, 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 consulted the appropriate representatives in accordance with and to the extent required by section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 and having given an opportunity to the member of staff to make representations.
2. A decision not to renew, extend or offer a contract of indefinite duration under the preceding paragraph must be justified on the basis that, in respect of one or more of the following considerations, it is not expedient or desirable to renew or extend the contract or offer a contract of indefinite duration,
 - a. the availability of funding for the post, or the financial situation;
 - b. the individual's performance (following appropriate warnings and counselling);
 - c. the need for the post or the duties attaching to the post;
 - d. the nature or character of the post;
 - e. the desirability of making the post permanent and appointing to it after open competition.
3. A member of staff whose fixed-term contract is not renewed or extended on termination and who 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 the procedure prescribed by Ordinance.
4. The appeal Panel, whose decision shall be final, shall consider whether the reasons advanced in support of the decision are reasonable and supportable.

17. Probationary appointments

1. This Part shall also 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 actions including but not limited to non-confirmation in post 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 and the right to appeal against the decision not to confirm a member of staff in post.
3. The appeal referred to in sub-clause (2) may encompass matters which, in other circumstances, would be dealt with under Parts II, III or IV of this Section 14.

18. Dismissal on other grounds

1. This clause covers dismissals on any ground falling within clause 3(5)(iv) other than those covered by Parts II, III and clauses 16 and 17 of Part V of this Section 14 (ie: "some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held" (Employment Rights Act 1996, s.98 (1)(b); " the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment" (s.98 (2)(d)).
2. Dismissals covered in sub-clause (1) above shall be handled in accordance with a procedure prescribed by Ordinance, which shall include the right to be heard by a Panel and the right to appeal to a different Panel.
3.
 - a. This sub-clause covers dismissal of members of staff on grounds of reaching their contractual retirement age, or on expiry of any extension to contractual retirement age which may have been granted to an individual member of staff by the University.
 - b. Dismissals covered in sub-clause (a) above shall be handled in accordance with the University's planned retirement policy.

19. Clinical staff

1. This clause applies to a member of the Academic Staff who is required to engage in clinical work or activities and for that purpose to be registered with the General Medical or Dental 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 or staff in a similar situation.
2. Where registration, contract or status referred to in sub-clause (1) above is terminated, withdrawn or revoked, the Council shall promulgate an Ordinance enabling the Vice-Chancellor, having first afforded an opportunity to the member of staff concerned to make representations, to dismiss the member of staff concerned; and where the registration, contract or status is suspended, the Vice-Chancellor may suspend the member of staff from employment for so long as the registration, contract or status is suspended, that suspension from employment to be without pay, where the registration, contract or status has been suspended as a substantive disciplinary measure.

PART VI: GRIEVANCE PROCEDURES

20. Grievance Procedure

1. The Council shall by Ordinance promulgate a Grievance Procedure for members of staff and in so doing shall have regard to Section 2 of the Code of Practice (as may be amended or replaced from time to time) referred to in clause 10(3) above.
2. The Procedure shall apply to grievances by members of staff concerning their appointment or employment in relation to matters affecting themselves as individuals or their personal dealings or relationships with other staff of the University, other than
 - a. those for which provision is made elsewhere in this Section 14 or in respect of the outcome of any matter dealt with under this Section; or
 - b. where Council has prescribed other procedures, provided those procedures are no less favourable to the individual than under the Grievance Procedure.

3. The Procedure shall provide that consideration of a complaint or grievance under the Procedure may be deferred if other proceedings under this Section concerning the individual and relevant to the application are pending or in progress.
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.
5. The Procedure shall make provision for a member of staff who is dissatisfied with the outcome of a complaint to be able to have the complaint heard by a Grievance Panel unless the complaint has been ruled frivolous, malicious, vexatious or invalid in accordance with the Procedure.