

## The Ordinances Part 3: Dismissal, Discipline, Grievance Procedures and related matters pursuant to Statute 7

### 3.10 Procedure for Dismissal on Other Grounds

#### *Part I : Introduction*

1. This Ordinance is promulgated in accordance with the provisions of Clause 19(2) of Statute 7 and sets out the procedures for handling dismissals of members of staff on other grounds as set out in Clause 19(1) of Statute 7.
2. In this Ordinance, unless the context indicates otherwise:-
  - i. 'The Statute' shall mean Statute 7;
  - ii. 'member of staff' shall mean any member of staff as defined by Clause 1(1) of The Statute;
  - iii. in relation to any decision or action that the University is required to make or to perform under this Ordinance, 'the University' shall mean: any member of staff who usually makes such decisions or performs such actions on behalf of the University, or who in the normal course of events may reasonably be expected to do so;
  - iv. a reference to 'clinical staff' shall be taken to mean a reference to any member of staff defined in Clause 20(1) of The Statute;
  - v. references to Deans shall be construed so as to include references to Heads of Professional Services or other equivalent units (and vice versa), and where there is no Dean, Head of Professional Service or equivalent unit, the President and Vice-Chancellor or his or her nominated representative may appoint a member of staff from such Faculty, Professional Service or equivalent unit to undertake the duties required of a Dean or Head of Professional Service by this Ordinance;
  - vi. references to University postholders (including those referred to in sub-paragraph (v) above) shall be construed to refer either to the postholder or to an appropriate member of staff nominated by the postholder to act with full authority on the postholder's behalf;
  - vii. where a post is held jointly by two or more postholders, a reference to the postholder shall be construed as a reference to any or all postholders holding that post, and any action authorised or required under this Ordinance may be taken by any such postholder.

#### *Part II : Application and Scope*

3. This Ordinance applies to members of staff as defined by Clause 1(1) of The Statute with the exception of the President and Vice-Chancellor, namely:-
  - i. members of the academic staff;
  - ii. members of staff with a grade of Level 4 or above in the University's grading structure, or an equivalent grade.
4. This Ordinance sets out the procedures to be followed where the University proposes to dismiss a member of staff on one of the grounds set out in Clause 19(1) of The Statute, where the circumstances fall outside redundancy, conduct, capability or qualifications, or incapacity due to ill health, 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 ('Some Other Substantial Reason'); or
  - 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 that of the University) of a duty or restriction imposed by or under an enactment ('Statutory Bar').
5. For the avoidance of doubt this Ordinance shall not apply to:-
  - i. removal from appointment as Pro Vice-Chancellor or Dean 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;
  - ii. the proposed dismissal of a member of staff where that dismissal would arise from the expiry without renewal of a fixed-term contract;
  - iii. the proposed non-confirmation in post of a member of staff during or at the end of his or her probationary period;
  - iv. the proposed dismissal by way of retirement of a member of staff;
  - v. the proposed dismissal of a member of staff for reasons of redundancy;
  - vi. members of staff who are considered medically unfit (a separate procedure will apply);
  - vii. the proposed dismissal of a member of clinical staff by the President and Vice-Chancellor or his or her nominated representative in the circumstances set out in Clause 20 of The Statute.
6. If after initiating procedures under this Ordinance the University considers that the relevant case might more properly be dealt with under a different Part of The Statute, the University may, in its absolute discretion, determine which Part of The Statute shall apply and transfer the case to the appropriate stage of the relevant Ordinance promulgated under that Part.

#### *Part III : General Principles*

#### **Academic Freedom and General Principles**

7. This Ordinance shall be construed to give effect to the guiding principles set out in Clause 2(1) of The Statute, namely:-
  - i. to ensure that those members of staff identified in the Ordinance prescribed by clause 1(2) of The Statute 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.

#### **Confidentiality**

8. Throughout any proceedings under this Ordinance, the University shall seek to ensure that confidentiality is maintained. However, this shall not preclude the University from disclosing information where necessary for the discharge of duties or as required by law, nor shall this preclude the University, where appropriate, from disclosing information about any outcome under this Ordinance.
9. There may be cases where it is appropriate to preserve confidentiality in relation to the identity of witnesses, where there is reasonably perceived to be a need to protect any member

of staff from the risk of intimidation or retribution. Likewise, it may be necessary to adapt these procedures where it is considered undesirable for any one person to give evidence in the presence of another.

#### **Right to be accompanied**

10. At any hearing convened under this Ordinance the member of staff may be represented or accompanied by a workplace colleague or trade union representative. If a member of clinical staff is called to a hearing under this Ordinance in relation to a proposal to terminate his or her employment and the hearing will involve consideration of issues related to the member of staff's clinical conduct or competence, the person conducting the hearing (or chair of the panel as appropriate) may permit the member of staff to be represented or accompanied by a member of his or her defence organisation. Such a representative may be legally qualified but he or she will not, however, be representing the member of clinical staff in any legal capacity.
11. If the member of staff's representative is not available at the time proposed for the hearing, the member of staff may request that the hearing be postponed to another reasonable time and must offer a date which is not later than five working days after the date first proposed for the hearing. The representative may attend the hearing with the member of staff and may speak on the member of staff's behalf, but that representative may not answer questions (relating to the issues in dispute) on the member of staff's behalf.

#### **Suspension**

12. The President and Vice-Chancellor or his or her nominated representative may, as a precautionary measure where this is considered appropriate and in the best interests of the University or of its students or staff, suspend a member of staff from duty at the normal rate of pay pending the outcome of an investigation or hearing. Any suspension and its terms shall be confirmed to the member of staff in writing by the Director of Human Resources or his or her nominee.
13. Where a dismissal is contemplated on grounds of a Statutory Bar, such suspension may be without pay.

#### *Part IV : Procedure for dismissal on the grounds of Some Other Substantial Reason*

14. The following procedure shall apply in the case of paragraph 4(i) above: that is, in relation to the proposed dismissal of a member of staff on the grounds of Some Other Substantial Reason.

#### **Institution of procedure**

15. The procedure referred to in paragraph 14 above shall normally be instituted:-
  - i. in the case of a Vice-President, a Pro Vice-Chancellor or the Chief Operating Officer: by the President and Vice-Chancellor;
  - ii. in the case of a Dean: by the President and Vice-Chancellor;
  - iii. in the case of a Head of Professional Service: by the Chief Operating Officer;
  - iv. in the case of any other member of staff: by the Dean (or his or her nominee) or Head of Professional Service.

#### **Preliminary Investigation**

16. Before making a decision whether to take action under this Part, the person instituting the procedure under paragraph 15 above (the 'Initiator') shall appoint an appropriate person (the 'Investigator') to conduct an investigation and shall inform the member of staff that an investigation is to take place. The Investigator shall gather such information as may be required and shall, normally within fifteen working days of his or her appointment, prepare a report detailing the findings of his or her investigation (the 'Investigation Report'). The

investigation may be extended if necessary and where this occurs the member of staff shall be advised accordingly.

#### **Preliminary determination**

17. The Investigation Report shall be submitted to the Initiator. The Initiator shall make a preliminary determination, normally within three working days, taking into account advice from Human Resources, as to whether action should be taken under this Part, under another Ordinance, or that no further action should be taken. The Initiator's preliminary determination is entirely at his or her discretion, but the Initiator shall have regard to the nature and seriousness of the matters under investigation and may seek such advice as he or she deems appropriate.
18. If the Initiator determines that the matter shall be dealt with under this Part, the Initiator shall write to the member of staff to inform him or her that the University proposes to dismiss him or her on the grounds of Some Other Substantial Reason and the reason(s) for this, and that the matter will proceed to a panel hearing under this Part.

#### **Panel Hearing**

19. The Panel shall be convened by the Director of Human Resources on a case-by-case basis in accordance with the following rules:-
  - i. subject to sub-paragraph (v) below, each panel shall consist of three persons;
  - ii. at least one member of the Panel shall be a lay member of the Council and one shall be a member drawn from a list agreed from time to time by the Senate. The third member may be another lay member of the Council or may be chosen from among the senior management of the University, such as a Vice-President, a Pro Vice-Chancellor, Dean, Chief Operating Officer or Head of Professional Service who shall chair the Panel unless the Panel resolves otherwise;
  - iii. no Panel member shall have had any previous involvement in the case;
  - iv. if the hearing will involve consideration of issues related to a member of clinical staff's clinical conduct or competence, the Chair of the Panel may permit the member of clinical staff to be represented or accompanied by a member of his or her defence organisation. Such a representative may be legally qualified but he or she will not, however, be representing the member of clinical staff in any legal capacity;
  - v. where the Panel is dealing with a member of clinical staff then a representative of a National Health Service or other relevant body may be appointed to the Panel: where this occurs the Panel may consist of more than three members, but shall not exceed five persons.
20. The Director of Human Resources or his or her nominee shall appoint a member of Human Resources to act as Secretary to the Panel.
21. Where it is decided that the matter shall be considered by a Panel under this Part, the member of staff shall be notified in writing of the reasons for the proposed dismissal on the grounds of Some Other Substantial Reason and given no less than ten working days' written notice of:-
  - i. the date, time and place of the Panel Hearing;
  - ii. so far as they are known at the time, the names of the persons to be present at the hearing including the members of the Panel, and the name of the person attending to present the case to the Panel on behalf of the University;
  - iii. so far as they are known at the time, the names of the persons to be present at the hearing including the members of the Panel, and the name of the person attending to present the case to the Panel on behalf of the University;
  - iv. his or her right to be represented or accompanied at the Panel Hearing;

- v. his or her right to call relevant witnesses at the Panel Hearing;
  - vi. the names of any witnesses who will be called to give evidence in relation to the issues being considered at the Panel Hearing;
  - vii. the potential outcome(s) of the Panel Hearing including a statement that dismissal is a possible outcome;
  - viii. a reference to this Ordinance.
22. The member of staff may be represented or accompanied at the Panel Hearing in accordance with the provisions of paragraph 10 above.
23. If the member of staff is or becomes unable to attend the Panel Hearing, he or she should notify the Secretary to the Panel as soon as possible, giving the reasons for the non-attendance. A member of staff who fails to attend a hearing without good cause shall be informed that if he or she fails to attend any rearranged hearing without good cause, the matter may be considered in his or her absence.
24. At least five working days in advance of the Panel Hearing, the member of staff shall:-
- i. provide details of proposed witnesses and of his or her representative;
  - ii. provide copies of any documents to which he or she wishes to refer at the hearing. Any documentary evidence not disclosed within this timeframe may only be considered at the Panel Hearing with the permission of the Panel.
25. The procedure to be followed in preparation for and at the Panel Hearing shall be at the discretion of the Panel, which may include without limitation:-
- i. which documents (if any) shall be provided for the Panel's consideration and at what stage;
  - ii. the reasons for the proposed dismissal being put to the member of staff including if relevant the calling of any witnesses;
  - iii. the member of staff having the opportunity to raise questions of any witnesses called. The manner in which such questions are to be raised is at the discretion of the Panel;
  - iv. the member of staff having the opportunity to set out his or her case in response to the case presented by the University and to call any relevant witnesses;
  - v. the questioning of any witnesses called by the member of staff;
  - vi. the power to postpone or adjourn the hearing;
  - vii. the power to continue the hearing in the absence of a party, witness or representative where, in the opinion of the person conducting the hearing, no good cause has been put forward for an adjournment.
26. The Panel may, at its discretion:-
- i. postpone or adjourn the hearing including (without limitation) where the member of staff, his or her representative, the person presenting the case, any witness or any member of the Panel is or becomes unable to attend;
  - ii. continue the hearing in the absence of a party, witness or representative where, in the opinion of the Panel, no good cause has been put forward for an adjournment;
  - iii. recall the parties or any witness to clarify any relevant issue. In the event that any person is recalled, the member of staff and his or her representative shall also (subject to paragraph 9 above) be entitled to be present.

### Notification of decision

27. The Panel shall decide whether or not the member of staff should be dismissed and shall produce a reasoned written decision, normally within ten working days of the Panel Hearing, which will be sent to the member of staff. A report of the decision will also be sent to the Council and to the Dean or Head of Professional Service. The Panel may also make any other recommendation that it deems appropriate.
28. Where the Panel decides that a member of staff should be dismissed, the Director of Human Resources shall give effect to the Panel's decision and the member of staff shall be advised of his or her right to appeal the decision under Part V below.

#### *Part V : Appeals against a decision to dismiss on the grounds of Some Other Substantial Reason*

29. A member of staff (in this Part referred to as the 'Appellant') who wishes to appeal the decision of the panel (the 'Panel') referred to in Part IV above should do so in writing to the Director of Human Resources within ten working days of the date of written notification of the Panel's decision. The Appellant should set out in full the grounds of his or her appeal.
30. The appeal shall be heard by a panel (the 'Appeal Panel') convened by the President and Vice-Chancellor or his or her nominated representative on a case-by-case basis in accordance with the following rules:-
  - i. subject to sub-paragraph (v) below, each Appeal Panel shall consist of three persons;
  - ii. at least one member of the Appeal Panel shall be a lay member of the Council and one shall be a member drawn from a list agreed from time to time by the Senate. The third member may be another lay member of the Council or may be chosen from among the senior management of the University, such as a Vice-President, a Pro Vice-Chancellor, Chief Operating Officer, Dean or Head of Professional Service who shall chair the Appeal Panel unless the Appeal Panel resolves otherwise;
  - iii. no panel member shall have had any previous involvement in the member of staff's case, and accordingly no person may sit on both the Hearing Panel and the Appeal Panel in a particular case;
  - iv. if the Appellant is a member of clinical staff and the appeal hearing will involve consideration of issues related to his or her clinical conduct or competence, the chair of the Appeal Panel may permit the Appellant to be represented or accompanied by a member of his or her defence organisation. Such a representative may be legally qualified but he or she will not, however, be representing the member of clinical staff in any legal capacity;
  - v. where the panel is dealing with a member of clinical staff then a representative of a National Health Service or other relevant body may be appointed to the panel and where this occurs the panel may consist of more than three members, but shall not exceed five persons.
31. The Director of Human Resources or his or her nominee shall appoint a member of Human Resources to act as Secretary to the Appeal Panel.
32. An appeal under this Part shall not normally take the form of a re-hearing of the evidence and witnesses may be called only with the Appeal Panel's permission. However, if there is evidence that could not reasonably have been presented at the hearing, and/or if new evidence has emerged since the hearing, this may be presented at the appeal.
33. No later than ten working days before the Appeal Panel Hearing the Appellant shall be notified by the Secretary to the Appeal Panel of:-
  - i. the date, time and place of the Appeal Hearing;
  - ii. his or her right to be represented or accompanied at the Appeal Hearing in accordance with the provisions of paragraph 10 above; and

- iii. so far as they are known at the time, the names of the persons to be present at the Appeal Hearing including the members of the Appeal Panel, and the name of any person attending to present the reason for the decision to dismiss on behalf of the University.
34. The Appellant may be represented or accompanied at the Appeal Hearing in accordance with the provisions of paragraph 10 above.
35. At least three working days before the Appeal Hearing the name and the address of the Appellant's representative must be notified in writing to the Secretary to the Appeal Panel.
36. The Appellant shall take all reasonable steps to attend the Appeal Hearing and/or any adjournment or postponement of the Appeal Hearing. Where the Appellant indicates to the Appeal Panel that he or she does not wish to exercise his or her right to be heard or fails to attend or leaves the Appeal Hearing or any postponement or adjournment of the Appeal Hearing without good cause, the Appeal Panel shall be entitled to proceed in the Appellant's absence.
37. The procedure to be followed in preparation for and at the Appeal Hearing shall be at the discretion of the Appeal Panel, which may include without limitation:-
  - i. determining which documents (if any) shall be provided for the Appeal Panel's consideration and at what stage;
  - ii. determining the extent (if any) to which witnesses may be called and questioned; and
  - iii. deciding whether it would be appropriate to adjourn or postpone the Appeal Hearing.
38. The Appeal Panel shall notify the Appellant in writing of the reasons for its decision, normally within ten working days of the Appeal Hearing. A report of the decision will also be sent to the Council and to the Dean or Head of Professional Service. The Appeal Panel may :-
  - i. uphold the decision reached by the Panel;
  - ii. overturn that decision and reinstate the Appellant.
39. The decision of the Appeal Panel shall be final.
40. Any dismissal under Part IV shall remain in force pending the outcome of an appeal. If the decision to dismiss is overturned, continuity of employment shall be restored.

*Part VI : Procedure for dismissal on the grounds of a Statutory Bar*

41. The following procedure shall apply in the case of paragraph 4(ii) above: that is, where the University proposes to dismiss a member of staff on the grounds of a Statutory Bar.
42. The Director of Human Resources shall write to the member of staff, advising that the University is terminating the employment of the member of staff on the grounds set out in paragraph 4(ii) above.
43. The letter shall include:-
  - i. the reasons for the proposed action;
  - ii. available supporting information or evidence including a copy of the rule or enactment contravention of which is alleged;
  - iii. a statement that the member of staff has the right of appeal against the decision to dismiss; and
  - iv. a copy of this Ordinance.

*Part VII : Appeals against a decisions to dismiss on the grounds of a Statutory Bar*

44. A member of staff (hereafter called the 'Appellant') who wishes to appeal a decision to dismiss on the grounds of a Statutory Bar should do so in writing to the Director of Human Resources

- within ten working days of the date of written notification of the decision concerned, setting out in full the grounds for his or her appeal.
45. The appeal shall be heard by a person drawn from a list of persons approved by the President and Vice-Chancellor to hear appeals. A member of Human Resources appointed by the Director of Human Resources or his or her nominee shall be present in an advisory capacity.
  46. The Appellant shall be given written notification of the date and time of the appeal hearing and shall be notified of his or her right to be represented or accompanied in accordance with paragraph 10 above.
  47. Where the Appellant fails to attend the appeal hearing without good cause, the appeal hearing may proceed in the Appellant's absence.
  48. The Appellant shall be advised in writing, normally within five working days of the appeal hearing, of the outcome of the appeal.
  49. The decision of the person hearing the appeal shall be final.
  50. Any dismissal under Part VI above shall remain in force pending the outcome of an appeal. If the decision to dismiss is overturned, continuity of employment shall be restored.