

Procedures for Dealing with the Inadequate Performance or Misconduct of Academic and Academic-Related Staff, and Removal for Incapacity on Medical Grounds

Please read the Statute (which is on the left-hand side of the page) alongside the Supplementary Guidance to the Statute (which is on the right-hand side of the page).

OU Staff based in Wales

For OU staff working in Wales, the University welcomes complaints submitted in Welsh or English, these staff may also choose to respond to complaints in Welsh or English.

**STATUTE 21
ACADEMIC STAFF**

(Note: part 1 is included in full. It includes references to redundancy which are not covered in this document)

PART I CONSTRUCTION, APPLICATION AND INTERPRETATION

Construction

1. This Statute and any Ordinance or Regulation made under this Statute shall be construed in every case to give effect to the following guiding principles, that is to say:

- (a) to ensure that 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 jobs 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.

Reasonableness of decisions

2. No provision in Part II or Part III shall enable the body or person having the duty to reach a decision under the relevant Part to dismiss any member of the academic staff unless the reason for his dismissal may in the circumstances (including the size and administrative resources of the University) reasonably be treated as a sufficient reason for dismissing him.

Application

3. (1) This Statute shall apply:
- (a) to the persons described or included as "academic staff" in Statute 1(1);

SUPPLEMENTARY GUIDANCE TO STATUTE

A. GENERAL PRINCIPLES

- (i) *The Application of Statute 21 is defined in Part 1 paragraph 3 of the Statute. The University and the OUAUT (OUBUCU) have agreed that the provisions of Statute 21 as set out in this document, Ordinance Xvii (attached) and the associated Supplementary Guidance, should also apply to academic-related staff.*
- (ii) This supplementary guidance does not form part of the employee's contract of employment, but has the status of good employment practice.
- (iii) If the person concerned is a representative accredited by OUBUCU formal disciplinary proceedings should not be initiated until the circumstances have been discussed with a full-time officer of OUBUCU.
- (iv) If the alleged offence is a serious one, but not so serious as to constitute good cause for removal from office, then the Head of Unit may initiate proceedings at Stage 2 without prior warnings. In such a case the Head of Unit will normally consult with the Group People Director prior to initiating action. The Group People Director will inform OUBUCU.
- (v) A member of staff awaiting a hearing at any stage of the procedures may be suspended, at the discretion of the Secretary during First and Second Stage proceedings and at the discretion of the Vice-Chancellor during Third Stage Proceedings, in each case on the basis of a report from the Head of Unit or appropriate officer, such suspension to be on full pay pending the outcome of the proceedings. Suspension will be notified in writing and the letter shall state:

- (b) to the Secretary; and
 - (c) to the Vice-Chancellor to the extent and in the manner set out in the Annex to this Statute.
- (2) In this Statute any reference to "academic staff" is a reference to persons to whom this Statute applies.

Interpretation

Meaning of "dismissal"

4. In this Statute "dismiss" and "dismissal" mean dismissal of a member of the academic staff and:
- (a) include remove or, as the case may be, removal from office; and
 - (b) in relation to employment under a contract, shall be construed in accordance with section 55 of the Employment Protection (Consolidation) Act 1978.

Meaning of "good cause"

5. (1) For the purposes of this Statute "good cause" in relation to the dismissal or removal from office or place of a member of the academic staff, being in any case a reason which is related to conduct or to capability or qualifications for performing work of the kind which the member of the academic staff concerned was appointed or employed to do, means:
- (a) conviction for an offence which may be deemed by a Tribunal appointed under Part III to be such as to render the person convicted unfit for the execution of the duties of the office or employment as a member of the academic staff; or
 - (b) conduct of an immoral, scandalous or disgraceful nature incompatible with the duties of the office or employment; or

- (i) the reason for suspension;
- (ii) the intention to proceed with the appropriate stage of these procedures at the earliest opportunity;
- (iii) that the person if a member of a trade union be advised to consult his/her appropriate representative.

B. DEFINITIONS

- (i) Head of Department or Head of Unit means the Dean or Director of Academic Unit or his/her nominee, *or the Head of Unit or his/her nominee.*
- (ii) Day means a day on which the University is open for work.

(c) conduct constituting failure or persistent refusal or neglect or inability to perform the duties or comply with the conditions of office; or

(d) physical or mental incapacity established under Part IV.

(2) In this paragraph:

(a) "capability", in relation to such a member, means capability assessed by reference to skill, aptitude, health or any other physical or mental quality; and

(b) "qualifications", in relation to such a member, means any degree, diploma or other academic, technical or professional qualification relevant to the office or position held by that member.

Meaning of "redundancy"

6. For the purposes of this Statute dismissal shall be taken to be a dismissal by reason of redundancy if it is attributable wholly or mainly to:

(a) the fact that the University has ceased, or intends to cease, to carry on the activity for the purposes of which the member of the academic staff concerned was appointed or employed by the University, or has ceased, or intends to cease, to carry on that activity in the place in which the member concerned worked; or

(b) the fact that the requirements of that activity for members of the academic staff to carry out work of a particular kind in that place, have ceased or diminished or are expected to cease or diminish.

Incidental, supplementary and transitional matters

7. (1) In any case of conflict, the provisions of this Statute shall prevail over those of any other Statute and over those of the Ordinances and Regulations and the provisions of any Ordinance made under

this Statute shall prevail over those of any other Ordinance:

Provided that Part III of and the Annex to this Statute shall not apply in relation to anything done or omitted to be done before the date on which the instrument making these modifications was approved under subsection (9) of section 204 of the Education Reform Act 1988.

- (2) Nothing in any appointment made, or contract entered into, shall be construed as over-riding or excluding any provision made by this Statute concerning the dismissal of a member of the academic staff by reason of redundancy or for good cause:

Provided that nothing in this sub-paragraph shall prevent waivers made under Section 142 of the Employment Protection (Consolidation) Act 1978 from having effect.

- (3) Nothing in any other Statute or in any Ordinance or Regulation made thereunder shall authorise or require any officer of the University to sit as a member of any Committee, Tribunal or body appointed under this Statute or to be present when any such Committee, Tribunal or body is meeting to arrive at its decision or for the purpose of discussing any point of procedure.
- (4) In this Statute references to numbered Parts, paragraphs and sub-paragraphs are references to Parts, paragraphs, and sub-paragraphs so numbered in this Statute.

PART III DISCIPLINE, DISMISSAL AND REMOVAL FROM OFFICE

Disciplinary Procedures

13. (1) Minor faults shall be dealt with informally.
- (2) Where the matter is more serious but falls short of constituting possible good cause for dismissal the following procedure shall be used.

C. EXCLUSIONS

This document does not apply to the following persons or situations:

- (i) associate lecturers;
- (ii) case of redundancy, on which this document has no bearing.

It is recognised by both the University and OUBUCU that although problems of significant ill-health may first come to light through inadequate performance or misconduct (and thus be encompassed within these procedures), it may in certain circumstances be more appropriate to deal with health problems in other ways.

Procedures for termination for incapacity on Medical Grounds are set out in Statute 21 part IV.

D. INFORMAL ACTION

All members of the University have a responsibility for staff who work to their direction. Where an individual is performing duties inadequately or where there is a complaint about his/her conduct which could be considered to be a minor fault the Head of Unit or his/her nominee is normally required to take all reasonable steps to discuss the shortcomings with the person concerned prior to any

Stage 1: Oral Warning

If conduct or performance does not meet acceptable standards the member of the academic staff will normally be given a formal ORAL WARNING. The member will be advised of the reason for the warning, that it is the first stage of the disciplinary procedure and of the right of appeal under this paragraph. A brief note of the oral warning will be kept but it will be spent after 12 months, subject to satisfactory conduct and performance.

formal action being initiated. Such discussions carried out in the normal course of supervisory duties are not to be regarded as a part of formal proceedings. Where informal action leads to an acknowledgement that problems exist, the parties shall agree on the steps to be taken to rectify the situation. The Head of Unit should make a note for the Unit file of any steps agreed upon, and copy this to the member of staff.

E. FIRST STAGE OF FORMAL PROCEEDINGS: ORAL WARNING

The member shall be informed in writing of the intention to proceed with the complaint, that it is the First Stage of the disciplinary procedures, and shall receive at least three working days notice of a time and place at which he/she shall attend for interview so that the complaint can be considered. By the same letter he/she shall also be informed of his/her rights to state his/her case, and to be accompanied and/or represented by a trade union representative or a nominated friend who is a member of the University staff and he/she shall receive copies of any documents that may be used to substantiate the complaint, together with a brief statement of the complaint which will be raised at the interview. The letter shall be copied to the People Hub. Unless the member objects, the same documents will be copied to his/her representative or nominated friend. At no stage shall any written evidence be considered which has not been made available to the member of staff; nor, once notice of intention to proceed has been given, shall prior issues not previously raised as a disciplinary matter be joined to the proceedings.

In any case where a member of the academic staff believes that the complaint concerns or arises from a difference of opinion on a matter of academic judgement he/she may write to the Vice-Chancellor before the date of the interview, stating the grounds for his/her belief. The Head of Unit will have the opportunity to comment in writing on any such submission to the Vice-Chancellor. The Vice-Chancellor shall then consider whether or not the employee has made out a prima facie case that the complaint can be described as above. If he/she thinks the case has been made and that the employee has

behaved reasonably in relation to that difference of opinion he/she shall instruct the Head of Unit not to hold an interview on the basis of the complaint. If

he/she thinks the case has not been made or that the employee has not behaved reasonably in relation to that difference of opinion he/she shall instruct the Head of Unit to conduct an interview within ten working days.

The First Stage interview shall be conducted by the Head of Unit or his/her nominee. In any case where the individual reasonably believes that the Head of Unit (or the nominee appointed to conduct the interview) has an interest in the complaint separate from his/her interest merely as a Head of Unit (or nominee), which may prejudice a fair hearing of his/her complaint, the Vice-Chancellor may on the individual's written request setting out the grounds for such belief nominate another person to conduct the interview. (In the rest of this document, the person who conducts the First Stage interview is called 'the interviewer'.) Other members of the University with a management responsibility for the individual concerned and a representative from the People Hub may be in attendance at this and any later stage of the proceedings.

F. COMPLAINT DISMISSED

If the interviewer decides that the complaint is not substantiated then the matter shall be dismissed and no record shall be kept other than the material papers, (including a statement of the dismissal of the complaint) which shall be placed on the member's personal file in the People Hub.

If the interviewer considers that the complaint is substantiated he/she shall issue a formal oral warning.

The member will be advised in writing of the reason for the warning it's effective date and that it is the first stage of the Disciplinary Procedures.

The oral warning will be spent after 12 months. Notice shall be

Stage 2: Written Warning

If the offence is a serious one, or if a further offence occurs, a WRITTEN WARNING will be given to the member of the academic staff by the Head of Department. This will give details of the complaint, the improvement required and the timescale. It will warn that a complaint may be made to the Secretary seeking the institution of charges to be heard by a Tribunal appointed under paragraph 16 if there is no satisfactory improvement and will advise of the right of appeal under this paragraph. A copy of this written warning will be kept by the Head of Department but it will be disregarded for disciplinary purposes after 2 years subject to satisfactory conduct and performance.

given of the right to appeal against this Stage 1 Warning. Where the necessary improvement in conduct or performance takes place, no further action will be required.

G. SECOND STAGE OF FORMAL PROCEEDINGS: WRITTEN WARNING

If the alleged offence is a serious one, or if the Stage 1 interviewer is subsequently not satisfied that the necessary improvement has occurred, the member of staff shall be called to an interview at which the interviewer shall consider the matter further. The member shall be given at least three

working days written notice of the interview and shall have the same rights as provided under the First Stage of formal proceedings. Where the interviewer considers that the complaint is substantiated he/she shall issue a written warning.

The written warning shall be called a Stage 2 Warning and shall include:

- (i) a specific description of the conduct or performance complained of;
- (ii) the term of the Warning which shall be 2 years from the date of the interview;
- (iii) in a case where an improvement in performance is necessary: the improvement required; how the individual is to achieve this, including mention of any training or other appropriate assistance that will be given; and the period during which the improvement is expected to take place;
- (iv) a statement that the Warning constitutes the second stage of a formal action and that if there is no satisfactory improvement a complaint may be made to the Secretary seeking the institution of charges under Stage 3 of these Procedures; and potentially leading to dismissal as a possible next step.

Stage 3: Appeals

A member of the academic staff who wishes to appeal against a disciplinary warning shall inform the Secretary within two weeks. A senior officer of the University nominated by the Vice-Chancellor shall hear all such appeals and his decision shall be final.

Preliminary examination of serious disciplinary matters

14. (1) If there has been no satisfactory improvement following a written warning given under Stage 2 of the procedure in paragraph 13, or in any other case where it is alleged that conduct or performance may constitute good cause for dismissal or removal from office, a complaint seeking the institution of charges to be heard by a Tribunal appointed under paragraph 16 may be made to the Secretary who shall bring it to the attention of the Vice-Chancellor.
- (2) To enable the Vice-Chancellor to deal fairly with any complaint brought to his attention under sub-paragraph (1) he shall institute such investigations or enquiries (if any) as appear to him to be necessary.
- (3) If it appears to the Vice-Chancellor that a complaint brought to his attention under sub-paragraph (1) relates to conduct or performance which does not meet acceptable standards but for which no written warning has been given under paragraph 13 or which relates to a particular alleged infringement of rules, regulations or by-laws for which a standard penalty is normally imposed in the University or within the faculty, school, department or other relevant area, or is trivial or invalid he may dismiss it summarily, or decide not to proceed further under this Part.
- (4) If the Vice-Chancellor does not dispose of a complaint under sub-paragraph (3) he shall treat the complaint as disclosing a sufficient reason for proceeding further under this Part and, if he sees fit, he may suspend the member on full pay pending a final

- (v) notice of the right to appeal against the decision to issue a Stage 2 Warning.

H. APPEALS

- (i) An appeal against the issue of a First or Second Stage Warning may be made to the Secretary;
- (ii) Appeals must be made in writing within ten working days of the confirmation of the relevant decision setting out the grounds of the appeal and will be considered within ten working days of receipt: (except by agreement with the member of staff);
- (iii) On receipt of a valid request, the Secretary shall inform the President of the OUBUCU and arrange for the appeal to be heard by a Senior Officer of the University nominated by the Vice-Chancellor;
- (iv) At any appeal hearing the Senior Officer sees fit, the member of academic staff shall have the right to state his/her case and to be accompanied and/or represented by a trade union representative or nominated friend who is a member of the University staff;
- (v) The member shall be informed of the result of the appeal within five working days of the conclusion of the appeal. The decision shall be final;
- (vi) If an Appeal against a First or Second Stage Warning is upheld, all records of oral or written warnings relevant to that appeal shall be expunged.

I. RECORDING WARNINGS

All documents relating to the complaint and interview shall be placed only on a separate file (hereafter called the Warning file) held by the Group People Director. A copy of the Warning shall be placed on

decision.

- (5) Where the Vice-Chancellor proceeds further under this Part he shall write to the member of the academic staff concerned inviting comment in writing.
- (6) As soon as may be following receipt of the comments (if any) the Vice-Chancellor shall consider the matter in the light of all the material then available and may:
 - (a) dismiss it himself; or
 - (b) refer it for consideration under paragraph 13; or
 - (c) deal with it informally himself if it appears to the Vice-Chancellor appropriate to do so and if the member of the academic staff agrees in writing that the matter should be dealt with in that way; or
 - (d) direct the Secretary to prefer a charge or charges to be considered by a Tribunal to be appointed under paragraph 16.
- (7) If no comment is received within 28 working days the Vice-Chancellor may proceed as aforesaid as if the member concerned had denied the substance and validity of the alleged case in its entirety.

Institution of Charges

15. (1) In any case where the Vice-Chancellor has directed that a charge or charges be preferred under paragraph 14(6)(d), he shall request the Council to appoint a Tribunal under paragraph 16 to hear the charge or charges and to determine whether the conduct or performance of the member of the academic staff concerned constitutes good cause for dismissal or otherwise constitutes a serious complaint relating to the member's appointment or employment.
- (2) Where the Council has been requested to appoint a Tribunal

the individual's Warnings file along with any signed statement which he/she may wish to make as to the circumstances. The copy of the Warning shall be signed by the member to acknowledge receipt. Unless the member objects, a copy of the Warning shall be sent to the person who accompanied him/her to the interview.

The individual's conduct or performance may be reviewed at the end of the period for improvement if this is shorter than the complete term of the Warning and in such a case he/she shall be informed of his/her progress. Failure to make the improvement could lead to the initiation of Third Stage proceedings.

If in the opinion of the interviewer the performance or conduct is satisfactory for the term of the Warning then a statement confirming the member of staff's satisfactory performance during the period of warning shall be placed on the individual's Warnings file.

J. ACCESS TO RECORDS

A member of staff shall have access to his/her warnings file on written application to the Group People Director. On the expiry date of 6 years from the end of a spent warning the disciplinary file will be destroyed. Only records which are pertinent to any ongoing dispute or litigation claim will be retained and these records will be destroyed as soon as any such dispute or claim is resolved. Records retained for this purpose may not be used in any other proceedings in the OU relating to inadequate performance or misconduct

K. THIRD STAGE OF FORMAL PROCEEDINGS

The Vice-Chancellor will inform the OUBUCU if the member so wishes.

under paragraph 16 the Secretary or, if he is unable to act, another officer appointed by the Vice-Chancellor shall take charge of the proceedings.

- (3) The officer in charge of the proceedings shall formulate, or arrange for the formulation of, the charge or charges and shall present, or arrange for the presentation of, the charge or charges before the Tribunal.
- (4) It shall be the duty of the officer in charge of the proceedings
 - (a) to forward the charge or charges to the Tribunal and to the member of the academic staff concerned together with the other documents therein specified, and
 - (b) to make any necessary administrative arrangements for the summoning of witnesses, the production of documents and generally for the proper presentation of the case before the Tribunal.

The Tribunal

16. A Tribunal appointed by the Council shall comprise:

- (a) a Chairman; and
- (b) one member of the Council, not being a person employed by the University; and
- (c) one member of the academic staff nominated by the Senate.

Provisions concerning Tribunal procedure

17. (1) The procedure to be followed in respect of the preparation, hearing and determination of charges by a Tribunal shall be that set out in Ordinances made under this paragraph. (Ordinance Xvii attached.)
- (2) Without prejudice to the generality of the foregoing such

L THE TRIBUNAL

Council has delegated to the Nominating Advisory Committee appointment to membership of the Tribunal. The Nominating Advisory Committee composed of the Chair of the Staff Policy Committee of the Council (Chair ex officio), the Vice-Chancellor's nominee, the President of OUBUCU (ex officio), and one of the members of the Council appointed by the Senate, will decide on appointments to the Tribunal from a panel of potential appointees for each of the three categories in 16(a), (b) and (c). *The panel for category (a) will have not less than three potential appointees. The panel for category (b) will be the members of Council who are not Open University employees. The panel for category (c) in respect of academic staff will consist of ten potential appointees elected by the Senate.*

In respect of academic-related staff, category (c) of the Tribunal membership shall consist of one member of the academic-related

Ordinances shall ensure:

- (a) that the member of the academic staff concerned is entitled to be represented by another person, whether such person be legally qualified or not, in connection with and at any hearing of charges by a Tribunal;
- (b) that a charge shall not be determined without an oral hearing at which the member of the academic staff concerned and any person appointed by him to represent him are entitled to be present;
- (c) that the member of the academic staff and any person representing the staff member may call witnesses and may question witnesses upon the evidence on which the case against him is based; and
- (d) that full and sufficient provision is made:
 - (i) for postponements, adjournments, dismissal of the charge or charges for want of prosecution, remission of the charge or charges to the Vice-Chancellor for further consideration and for the correction of accidental errors; and
 - (ii) for appropriate time limits for each stage (including the hearing) to the intent that any charge thereunder shall be heard and determined by a Tribunal as expeditiously as reasonably practicable.

Notification of Tribunal decisions

18. (1) A Tribunal shall send its decision on any charge referred to it (together with its findings of fact and the reasons for its decision regarding that charge and its recommendations, if any, as to the appropriate penalty) to the Vice-Chancellor and to each party to the proceedings.
- (2) A Tribunal shall draw attention to the period of time within which

staff nominated by the Nominating Advisory Committee from a panel of ten potential appointees elected by the academic-related staff.

The member of the Tribunal under category (c) will be from a Unit and category of staff different to that of the member of staff against whom charges have been preferred.

any appeal should be made by ensuring that a copy of Part V (Appeals) accompanies each copy of its decision sent to a party to the proceedings under this paragraph.

Powers of the appropriate officer where charges are upheld by Tribunal

19. (1) Where the charge or charges are upheld and the Tribunal finds good cause and recommends dismissal or removal from office, but in no other case, the appropriate officer shall decide whether or not to dismiss the member of the academic staff concerned.
- (2) In any case where the charge or charges are upheld, other than where the appropriate officer has decided under sub-paragraph (1) to dismiss the member of the academic staff are concerned, the action available to the appropriate officer (not comprising a greater penalty than that recommended by the Tribunal) may be:
- (a) to discuss the issues raised with the member concerned; or
 - (b) to advise the member concerned about his future conduct; or
 - (c) to warn the member concerned; or
 - (d) to suspend the member concerned for such period as the appropriate officer shall think fair and reasonable, not to exceed 3 months after the Tribunal's decision; or
 - (e) any combination of any of the above or such further or other action under the member's contract of employment or terms of appointment as appears fair and reasonable in all the circumstances of the case.

Appropriate Officers

20. (1) The Vice-Chancellor shall be the appropriate officer to exercise

M APPROPRIATE OFFICERS

the powers conferred by paragraph 19 and any reference to the appropriate officer includes a reference to a delegate of that officer.

- (2) Any action taken by the appropriate officer shall be confirmed in writing.

PART IV REMOVAL FOR INCAPACITY ON MEDICAL GROUNDS

21. (1) This Part makes separate provision for the assessment of incapacity on medical grounds as a good cause for dismissal or removal from office.

(2) In this Part references to medical grounds are references to capability assessed by reference to health or any other physical or mental quality.

(3) In this Part references to the appropriate officer are references to the Vice-Chancellor or an officer acting as his delegate to perform the relevant act.

(4) References to the member of the academic staff include, in cases where the nature of the alleged disability so requires, a responsible relative or friend in addition to (or instead of) that member.

22. (1) Where it appears that the removal of a member of the academic staff on medical grounds would be justified, the appropriate officer:

- (a) shall inform the member accordingly; and
- (b) shall notify the member in writing that it is proposed to make an application to the member's doctor for a medical report and shall seek the member's consent in writing in accordance with the requirements of the Access to Medical Reports Act 1988.

(2) If the member shares that view the University shall meet the

A report will also be made by the Vice-Chancellor to the Council of the decision which is reached, both on the charge(s) preferred and the penalty imposed.

reasonable costs of any medical opinion required.

- (3) If the member does not share that view the appropriate officer shall refer the case in confidence, with any supporting medical and other evidence (including any medical evidence submitted by the member), to a Board comprising one person nominated by the Council; one person nominated by the member concerned or, in default of the latter nomination, by the Senate; and a medically qualified chairman jointly agreed by the Council and the member or, in default of agreement, to be nominated by the President of the Royal College of Physicians.
- (4) The Board may require the member concerned to undergo medical examination at the University's expense.

Termination of Employment

- 23. If the Board determines that the member shall be required to retire on medical grounds, the appropriate officer shall direct the Secretary or his delegate to terminate the employment of the member concerned on those medical grounds.

PART V APPEALS

Purpose of Part V

- 24. This Part establishes procedures for hearing and determining appeals by members of the academic staff who are dismissed or under notice of dismissal or who are otherwise disciplined.

Application and interpretation of Part V

- 25. (1) This Part applies:
 - (a) to appeals against the decisions of the Council as the appropriate body (or of a delegate of that body) to dismiss in the exercise of its powers under Part II;
 - (b) to appeals arising in any proceedings, or out of any decision reached, under Part III other than appeals under paragraph 13

N NOMINATING ADVISORY COMMITTEE

Council has delegated to the Nominating Advisory Committee appointment to membership of the Board. The Nominating Advisory Committee (composition as set out in L of the Supplementary Guidance) will decide on its nomination to the Board from the members of Council who are not Open University employees for the first category and will nominate to the Second category (i.e. in default of the member concerned nominating one person) from a panel of 10 nominees elected by the Senate from time to time. *For members of the academic-related Staff Group the nominee for the second category (i.e. in default of the member concerned nominating one person) will be one member of the academic-related staff nominated by the Nominating Advisory Committee from a panel of 10 potential appointees elected by the Academic-Related staff. The member of the Tribunal under this category will be from a Unit and category of staff different to that of the member of staff subject to the procedure for incapacity on medical grounds.*

(Appeals against disciplinary warnings);

(c) to appeals against dismissal otherwise than in pursuance of Part II or Part III; and

(d) to appeals against discipline otherwise than in pursuance of Part III; and

(e) to appeals against decisions reached under Part IV

and "appeal" and "appellant" shall be construed accordingly.

(2) No appeal shall however lie against:

(a) a decision of the appropriate body under paragraph 10(2);

(b) the findings of fact of a Tribunal under paragraph 18(1) save where, with the consent of the person or persons hearing the appeal, fresh evidence is called on behalf of the appellant at that hearing;

(c) any finding by a Board set up under paragraph 22(3).

(3) In this part references to "the person appointed" are references to the person appointed by the Council under paragraph 28 to hear and determine the relevant appeal.

(4) The parties to an appeal shall be the appellant and the Secretary and any other person added as a party at the direction of the person appointed.

Institution of Appeals

26. A member of the academic staff shall institute an appeal by serving on the Secretary, within the time allowed under paragraph 27, notice in writing setting out the grounds of the appeal.

27. (1) A notice of appeal shall be served within 28 working days of the date on which the document recording the decision appealed from

was sent to the appellant or such longer period, if any, as the person appointed may determine under sub-paragraph (3).

- (2) The Secretary shall bring any notice of appeal received (and the date when it was served) to the attention of the Council and shall inform the appellant that he has done so.
- (3) Where the notice of appeal was served on the Secretary outside the 28 working day period the person appointed under paragraph 28 shall not permit the appeal to proceed unless he considers that justice and fairness so require in the circumstances of the case.

Persons appointed to hear and determine appeals

28. (1) Where an appeal is instituted under this Part the Council shall appoint a person described in sub-paragraph (2) to hear and determine that appeal.
- (2) The persons described in this sub-paragraph are persons not employed by the University holding, or having held, judicial office or being barristers or solicitors of at least ten years' standing.
- (3) The person appointed shall sit alone unless he considers that justice and fairness will best be served by sitting with two other persons.
- (4) The other persons who may sit with the person appointed shall be:
 - (a) one member of the Council not being a person employed by the University; and
 - (b) one member of the academic staff nominated by the Senate.

Provisions concerning appeal procedures and powers

29. (1) The procedure to be followed in respect of the preparation, consolidation, hearing and determination of appeals shall be that set out in Ordinances made under this paragraph (Ordinance XVII

- O. For the avoidance of doubt, this period shall begin in relation to a Part III dismissal when written notice is received by the employee under para 20(2) and not when he/she receives the decision of the Tribunal under para 18(1).

P PERSONS APPOINTED TO HEAR AND DETERMINE APPEALS

Council has delegated to the Nominating Advisory Committee appointment of a person to hear and determine appeals against dismissal.

attached).

- (2) Without prejudice to the generality of the foregoing such Ordinances shall ensure:
 - (a) that an appellant is entitled to be represented by another person, whether such person be legally qualified or not, in connection with and at any hearing of his appeal;
 - (b) that an appeal shall not be determined without an oral hearing at which the appellant, and any person appointed by him to represent him are entitled to be present and, with the consent of the person or persons hearing the appeal, to call witnesses;
 - (c) that full and sufficient provision is made for postponements, adjournments, dismissal of the appeal for want of prosecution and for the correction of accidental errors; and
 - (d) that the person appointed may set appropriate time limits for each stage (including the hearing itself) to the intent that any appeal shall be heard and determined as expeditiously as reasonably practicable.
- (3) The person or persons hearing the appeal may allow or dismiss an appeal in whole or in part and, without prejudice to the foregoing, may:
 - (a) remit an appeal from a decision under Part II to the Council as the appropriate body (or any issue arising in the course of such an appeal) for further consideration as the person or persons hearing the appeal may direct; or
 - (b) remit an appeal arising under Part III for re-hearing by a differently constituted Tribunal to be appointed under that Part; or
 - (c) remit an appeal from a decision of the appropriate officer under Part IV for further consideration as the person or

persons hearing the appeal may direct; or

- (d) substitute any lesser alternative penalty that would have been open to the appropriate officer following the finding by the Tribunal which heard and pronounced upon the original charge or charges.

Notification of decisions

30. The person appointed shall send the reasoned decision, including any decision reached in exercise of his powers under paragraph 29(3)(a), (b) or (c), on any appeal together with any findings of fact different from those come to by the Council as the appropriate body under Part II or by the Tribunal under Part III, as the case may be, to the Vice-Chancellor and to the parties to the appeal.

Ordinance XVII: Dismissal and Removal from Office of Academic Staff: Tribunal and Appeals Procedures

Preamble

Statute 21 requires that procedures be defined by Ordinance in relation to:

- A. Part III: Paragraphs 17(1) and (2) the procedure to be followed in respect of the preparation, hearing, and determination of charges by a Tribunal.
- B. Part V: Paragraph 29(1) and (2) the procedure to be followed in respect of the preparation, consolidation, hearing and determination of appeals.

This Ordinance sets out provisions designed to give effect to the above clauses; they are supplementary and subordinate to the relevant clauses of Statute 21. In any case of conflict, Statute 21 takes precedence over this Ordinance. Anyone making use of this Ordinance should do so with access to the relevant parts of the Statute and any other University guidelines from time to time in force. Each reference in this Ordinance to a Clause is to a Clause of Statute 21 unless otherwise specified.

A. PROVISION RELATING TO TRIBUNAL PROCEDURE AS REQUIRED BY PARAGRAPH 17 OF STATUTE 21.

The procedures to be followed in relation to the preparation, hearing and determination of charges by a Tribunal shall together with the provisions of Part III of the Statutes be as set out below. In any case of conflict the provisions of Part III of Statute 21 take precedence over this Ordinance. None of the persons appointed to the Tribunal to hear the charge or charges shall have been in any way directly connected with the case previously.

1. Preparation

- 1.1 The parties to any Tribunal Hearing shall be the member of staff against whom the charge is laid (the Respondent), and the Secretary, or other such officer as the Vice-Chancellor may appoint, in accordance with Clause 15(2) (the University Representative). Both parties may be represented by a colleague, legal adviser or other representative in connection with and at any hearing of charges by Tribunal.
- 1.2 The Respondent shall be notified in writing of the charge or charges by the University Representative within 10 working days of a direction by the Vice Chancellor under Clause 14(6)(d) that a charge or charges should be considered by the Tribunal.

The University representative will provide a written report of the charge(s) to the Council prior to its appointment of a Tribunal under paragraph 16, and the Respondent's written submission, if any.

- 1.3 A member of the University's administrative staff (the Tribunal Secretary) not previously connected with the case shall provide administrative assistance to the Tribunal.
- 1.4 As soon as possible after the date and venue of the Hearing have been determined, and in any event within 14 working days after the appointment of the Tribunal, the Tribunal Secretary shall inform the Respondent in writing of:
 - the appointment of the Tribunal and the members;
 - the Respondent's right to appoint a Representative (who may be legally qualified);

- 1.5 The University Representative will ensure that the charges, together with any documents, which will be relied on in support of the charges, are provided within the timetable specified by the Tribunal which shall allow at least 20 working days for the preparation of any response to the Tribunal, and to the member of staff, and notify who will present the case. The Respondent will be required to provide details of the name, and designation of the person, if any, who will act as his/her representative, including information on whether or not that person is qualified, or is practising in law. The Respondent will be required to give a written response to the charge to the University Representative, and the Tribunal, within the timescale specified by the Tribunal, which shall allow at least 20 working days for the preparation of any response, including whether he/she admits or denies the charges, and provide any documents which the Respondent wishes to put before the Tribunal. If the Respondent requires additional time to respond he/she shall be entitled to apply to the Chair of the Tribunal who may grant such extension as he/she may decide; such an application shall not be unreasonably rejected. The Respondent and the University Representative must inform the Tribunal Secretary, not later than 10 working days prior to the date set, of the name of any person(s) that they wish to call as a witness. Any witness unable to attend on the date set may supply a signed and witnessed written statement. (Members of staff of the University, employees and students, may be required to attend a Hearing as witnesses). Witness statements, if any, should be exchanged in advance of a Hearing.
- 1.6 The Tribunal shall rule on any case of dispute concerning witnesses or documentation and may fix time limits for any step which needs to be taken before the Hearing, and the consequences of not complying with such time limits.
- 1.7 Where any notice is required by the Ordinance, it must be delivered by hand or sent to the Respondent by registered or first class recorded delivery post to their home address. It will be presumed to have been received within two working days after being sent, unless there is evidence that through no fault of the Respondent's part the notice was not in fact received within the two days.
- 1.8 The University will not normally be responsible for any costs which are incurred by the Respondent, except for any travel and subsistence expenses associated with a Hearing, which may be claimed in accordance with the agreed scheme.
- 1.9 The Chair may, on the application of either party for any reason or upon his/her own volition, postpone any stage of the procedures up to and including the date of the Hearing, but no more than one postponement is allowed, save in exceptional circumstances. Such postponements may be for no longer than is reasonably necessary and in determining whether or not to allow a postponement the Chair shall have regard to the interests of natural justice.

2. Hearing

- 2.1 The quorum for any meeting of the Tribunal shall be all the members of the Tribunal. If a member of the Tribunal is unable to serve and withdraws before the commencement of proceedings, a substitute shall be appointed. If a member is unable to attend a particular meeting for medical or other reasons the Tribunal will be adjourned to as early a date as possible. If, however, a member becomes unable to continue to serve during the course of a Hearing the proceedings should be terminated and recommenced before a new Tribunal.
- 2.2 No charges shall be determined by the Tribunal without an oral hearing at which the Respondent, the University Representative, and any person appointed to represent either of them are entitled to be present. Notwithstanding the above, the Tribunal may proceed with the Hearing in the absence of a party who fails to attend, provided that the party (or appointed representative) has received in writing the date, time and place of a Hearing. The employee's right to an oral Hearing under 17(2)(b) of the Statute may be waived by the employee's written consent.

- 2.3 The parties to the Hearing shall have the right to be present throughout the Hearing but shall not be present when the Tribunal considers its decisions.
- 2.4 The parties shall have the right to assistance in the preparation and presentation of their cases by another person, whether such person is legally qualified or not. The parties shall have the right either personally or through any persons representing them to question any witnesses, inspect copies of any documentation submitted, and call witnesses or submit documents themselves.
- 2.5 The Tribunal Secretary shall take a record of all evidence and arguments presented by the parties, and any witnesses, not previously in written form, and all procedural or other interim decisions.
- 2.6 The Tribunal will normally adopt the subsequent following order of proceedings but may modify the arrangements should that be deemed appropriate:
 - (i) Presentation of the case against the member of staff;
 - (ii) Oral evidence of witnesses on behalf of the University;
 - (iii) Response to the case from the Respondent or representative;
 - (iv) Oral evidence of witnesses on behalf of the Respondent;
 - (v) Closing statement on behalf of the University;
 - (vi) Closing statement on behalf of the Respondent.
- 2.7 During the Hearing each party will have the opportunity to cross-examine witnesses allowed to give evidence on behalf of the other party, on the evidence on which the case is based. The Tribunal may question witnesses. After cross-examination the party calling a witness may re-examine that witness.
- 2.8 The Tribunal has the right to regulate its procedures in any way it sees fit which is consistent with the above and with the principles of natural justice, and may set limits on the duration of all or part of the Hearing, issue directions to witnesses to ensure the relevance of evidence, disallow questions or evidence considered vexatious or irrelevant to the issues. It has the right at any time to adjourn or postpone the Hearing, to correct accidental errors, remit the case to the Vice-Chancellor for further consideration, or to dismiss the charges for want of prosecution (i.e. in circumstances where the Tribunal decides that the University representative has not proceeded with such charge, or charges, as expeditiously as reasonably practicable).

3. Conclusion of the Hearing

The Tribunal is required to determine the case as expeditiously as reasonably practicable and shall send its decision (in accordance with paragraph 18(1) to the Vice-Chancellor and to each party to the proceedings within 30 working days of the Hearing, and in accordance with 18(2) will advise the period of time by which an Appeal Under Part V Appeals of Statute 21 may be made.

B Provisions Relating to Part V: Appeals

1. Preliminary

- 1.1 The procedure to be followed in respect of the preparation consolidation, and determination of an appeal under Part V of Statute 21 shall, together with the Provisions of Part V be as set out below.
- 1.2 In any case of conflict the provisions of Part V of Statute 21 take precedence over this Ordinance.

- 1.3 Any decision reached or action taken in relation to a member of staff shall remain in force pending the outcome of an appeal. However, no replacement appointment will be made pending the outcome of an appeal.

2. Person Appointed to Hear and Determine Appeals

- 2.1 The person(s) appointed to hear an appeal (the Chair) shall be as set out in Clause 28, of Part V of Statute 21. None of the persons appointed shall have been in any way directly connected with the case previously.
- 2.2 The parties to the appeal will be the appellants and the University Secretary, or the person taking charge of the proceedings for the University (the University Representative), and any other person added as a party at the discretion of the Chair.
- 2.3 A member of the University's administrative staff (the Appeal Body Secretary), not previously involved or connected with the case shall provide administrative assistance to the Appeal Body.
- 2.4 The parties shall be notified by the Appeal Body Secretary, in writing, of the name of the Chair, together with any other persons sitting on the Appeal Body, within 7 working days of such appointment(s) being made.

3. Appeal Procedures and Powers

- 3.1 The Chair shall be provided with any documentation relevant to the decision against which the appeal is lodged.
- 3.2 The parties may be represented by a colleague, legal adviser or other representative in connection with and at the hearing of any Appeal. Each party will send details of its representation, if any, to the person(s) hearing the Appeal, in advance of the Hearing.
- 3.3 Following consultation with the Chair, the Appeal Body Secretary shall write to the parties to advise of the date and venue for the Hearing, and request the name, address and designation of witnesses either party wishes to call, and to specify the substance of their evidence. The Chair shall decide whether or not such witnesses will be called.
- 3.4 No appeal in accordance with Clause 25.2(b) shall be against the findings of fact of a Tribunal, under Section 18.1, except where, with the consent of the Chair, fresh evidence is called on behalf of the applicant. In appeals based on these grounds, the appellant must show good reason why such new evidence was not made known to the Tribunal at its Hearing.
- 3.5 The Chair shall define the detailed procedure to be followed on the conduct of the Hearing so that it shall be heard and determined as expeditiously as reasonably practicable, and in accordance with the guiding principles of justice and fairness and shall ensure that:
- (i) the parties and their representatives, if any, are given the right to be present throughout the presentation of, and any response to, the appeal;
 - (ii) the Appeal Body may question any persons present at any time;
 - (iii) any witnesses may be questioned by either party or their representatives, if any;
 - (iv) either party may ask for a postponement but must specify the grounds for the request for consideration by the Chair. Requests for postponement should not be unreasonably refused.
- 3.6 Subject to meeting the requirements of fairness and justice the Chair may:

- (i) set time limits on each stage of the procedure including all or part of the Hearing;
- (ii) give directions to witnesses to ensure the relevance of the evidence;
- (iii) disallow questions considered vexatious or irrelevant to the issues.

The Chair shall, at his/her absolute discretion, decide on all matters of procedure and evidence, and shall give such rulings and directions as are necessary for the efficient and effective conduct of the Hearing; including the service of pleadings, postponements, adjournments, the correction of accidental errors, the seeking and modification of time limits, the admissibility of evidence, the preparation of written statements, and submissions from the parties, the exchange of evidence, the calling of witnesses, and the dismissal of the appeal for want of prosecution. (i.e. in circumstances where the appeal body deems that the appellant has not proceeded with such appeal as expeditiously as reasonably practicable.)

- 3.7 The Chair shall have the right to join and consolidate a number of similar appeals into a single Hearing, if in the interests of justice, fairness and the expeditious resolution of the Appeals, he/she considers it reasonable to do so.
- 3.8 The Appeal Hearing may be held in the absence of a party, who fails to attend, provided the party has received due notification of the date, time and place of a Hearing.
- 3.9 The University will not normally be responsible for any costs, which are incurred by the appellant, except for any travel and subsistence expenses associated with a hearing, which shall be claimed in accordance with the agreed Scheme.

4. Decision

- 4.1 At the conclusion of the Hearing, the Appeal Body will consider in private (with such legal advice, if any, the Chair considers appropriate) the findings and reach a decision which shall be final, and in accordance with 29(3) of Statute 21.
 - 4.2 The Chair shall send the reasoned decision, in accordance with paragraph 30, Part V of Statute 21 to the Vice-Chancellor, and to the parties to the appeal.
- 5.** Nothing in the foregoing provisions shall preclude resort by an individual to any proceedings to which he/she may be entitled under law.