

Gazette Supplement



Consultation on possible revisions to Statute XII

The Personnel Committee is consulting all divisional boards, the Continuing Education Board, Academic Services and University Collections¹, and all colleges and the Conference of Colleges, the Joint Consultative Committee with the Oxford UCU, individual members of Congregation and all University staff on matters of principle relating to possible revisions to Statute XII.

Statute XII can be seen online at www.admin.ox.ac.uk/statutes/353-051.shtml.

The text of the consultative paper is set out below, and the specific areas where comment is sought are listed in paragraph 5. This initial consultation, which will run until 4 June 2014, will seek views on the overarching principles for possible reform. The collected views and a summary will be published on the University website, and it is anticipated that they will serve to provide a focus for a discussion meeting of Congregation.

According to the views that emerge, and in particular if they show a wish to proceed with change, a draft revised Statute would then be prepared for a second consultation to address matters of detail. That will be the stage at which to consider whether the suggested revisions, if adopted, would strike the right balance between appropriate protections for employment on the one hand, and usability and fitness for purpose of the Statute on the other.

Only after that, would Council take a view on putting to Congregation any formal proposals for legislative change.

Responses in this initial consultation should be sent to Sarah Thonemann (sarah.thonemann@admin.ox.ac.uk) by **4 June 2014**.

Summary

1 Statute XII ('Academic Staff and the Visitation Board') governs major aspects of the employment by the University of 'academic staff', a term which, for the purposes of this Statute, is defined as all those eligible for membership of the Universities Superannuation Scheme. The Statute's coverage therefore includes not only academic staff in the sense of Statute XIV (professors, readers and associate professors), but also research staff, and a wide range of professional, technical and administrative staff, including those employed in grade 8 and above (who are eligible for membership of Congregation) as well as others down to and including everyone within grade 6. The Statute provides for dismissal on grounds of redundancy or 'good cause', for disciplinary action short of dismissal, for dismissal on medical grounds, for appeals, and for grievances raised by individuals against their managers or the University. The colleges have distinct provisions in their own statutes to deal with these matters in respect of college employment.

2 The Statute states as its three guiding principles: (i) 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; (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.

3 Statute XII has not been revised since it first came into effect over 21 years ago. It is not fully aligned with current employment law, and its procedures are exceptionally elaborate and not always clear. It not infrequently takes a year or more to resolve a disciplinary case or a grievance, so prolonging the stress for all parties involved. The Statute extends a special degree of protection to 75% of the staff in the University, arguably a broader range of staff than is appropriate for the Statute's declared first aim. In all these respects, Statute XII fails to provide an effective and proportionate framework for the governance of employment across the University.

4 The Personnel Committee is mindful of the sensitivity attaching to Statute XII and wishes to emphasise that its only aim through this consultation is to look for ways to improve the Statute's fitness for purpose while respecting all three of the Statute's guiding principles of ensuring academic freedom, enabling the efficient and economical operation of the University, and the application of justice and fairness. The Committee's interest in revising the Statute is not driven by any preconceived agenda for changes to employment within the University.

Consultation

5 The aspects of the Statute that the Personnel Committee is suggesting be addressed are described below in paragraphs 8–12. This paper seeks comments on the following matters in particular and on any other points that respondents consider pertinent:

(a) whether the existing coverage of Statute XII should be reduced (see paragraph 8);

¹ These bodies are asked to consult their constituent units (departments, faculties, etc) before responding.

(b) the desirability of simplifying procedures under the Statute (see paragraph 9);

(c) the desirability of revising the Statute to improve the clarity of its provisions (see paragraph 10);

(d) the desirability of revising the procedure under Statute XII for addressing grievances (see paragraph 11).

The present Statute

6 In brief outline, the parts of Statute XII are as follows:

Part A This sets out the three guiding principles according to which the Statute and all regulations made under it are to be construed. It specifies that the Statute applies widely to academics and, by cross-reference to Part C, to any others who are eligible to belong to the Universities Superannuation Scheme. This section also defines a number of different reasons for dismissal.

Part B This outlines the process for determining redundancy in certain circumstances.

Part C Outlines the membership of the Visitation Board, the role of which is to consider cases referred to it by the Vice-Chancellor where it is alleged there may be good cause for dismissal, good cause including reasons related to conduct, capability, or qualifications for performing the duties attaching to a post, such as mental or physical incapacity.

Part D This provides a three-stage disciplinary code, with provision for oral and written warnings. A Pro-Vice-Chancellor can hear appeals against such warnings. The Vice-Chancellor can refer a case to the Visitation Board for potential dismissal.

Part E This outlines a second process for dismissal on medical grounds, ie a process additional to that covered by Part D.

Part F This outlines the grievance procedures. Issues can be raised by an individual with their head of department and then with the Vice-Chancellor, who can refer the case to the Grievance Committee.

Part G This describes the process for removing the Vice-Chancellor from office via a tribunal appointed by Council.

Part H This describes the process for appeal against any decision to dismiss or discipline a member of staff taken

under Statute XII. An appeal is made to the Registrar, who refers the case to the Appeal Court, as determined in Statute XI.

7 Statute XII can be changed only with the assent of the Queen in Privy Council, a lengthy and elaborate process. This provides reassurance, both within the University and without, that so important a part of the University's governance can be changed only after the most deliberate and extensive consultation. It does, however, make it difficult to modify the Statute to keep it in line with the law and with changing needs within the University. By contrast, the Statute is underpinned by regulations which prescribe the relevant procedures at a detailed level, and these regulations can be amended by Council as and when the need arises.

One approach to implementing change to the Statute could be to undertake a radical rewriting that would move as much as possible into regulations, while reserving the 'Queen in Council Statute' itself for issues of principle. Whilst the Personnel Committee sees wisdom in moving more of the detail into regulations, it is currently inclined to pursue a relatively conservative approach to this. A working party set up by the Committee has looked into this matter and is confident that making a series of revisions to the existing Statute, with consequent changes to regulations, could be sufficient to achieve effective change where it is needed. Such an approach was thought to be more likely to retain confidence within the University.

Aspects of the Statute for consideration

8 The range of staff covered by Statute XII is extremely wide.

This aspect of the Statute is fundamental to any significant revision that might be pursued.

In providing for the just and fair consideration of disciplinary action, dismissals and appeals, the Statute goes far beyond the requirements of employment law. The special level of protection offered by Statute XII ensures, in the words of the Statute, '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'. It is clear that traditional academics (those holding posts requiring the delivery of teaching and research) and senior research staff should

be afforded special protection in order to safeguard academic freedom.

By contrast, it is arguable that the other staff currently covered by the Statute, those whose role is to provide specialist support such as administrative staff, librarians, computing staff and other professional and technical specialists, should be treated on a par with all other non-academic staff. For these staff, there is no special need relating to academic freedom and there are existing procedures offering the full and extensive protection required under employment law. These procedures have regularly been revised to improve protection in line with new legislation, so the principles of fairness and justice would be maintained. Reducing the coverage of the Statute would take particular account of the second of the guiding principles of the Statute by facilitating the management of the services that support the academic mission of the University so they could be more readily adaptable to suit changing needs.

The annexe summarises the numbers of staff within the Statute by type of post and grade.

Comment is sought on whether the existing coverage of Statute XII should be reduced and, if so, which staff groups should most appropriately be included.

9 The Statute specifies procedures that are disproportionate and overly complex.

Two obvious examples can be cited: the Visitation Board procedures and the Appeals procedure.

The Visitation Board is a panel consisting of a Chair and four members whose role is to hear cases involving potential dismissal for good cause and to make recommendations to the Vice-Chancellor. The Chair of the Board is appointed by the High Steward, is not a member of Congregation and is a barrister or solicitor of at least five years' standing or someone who has had judicial experience. The four members are drawn by ballot from a panel of twelve members of Congregation elected by Congregation. The composition of the Board, with its highly qualified Chair and its large size, five persons in all, is unusual for an internal disciplinary body. When the Board is used, the difficulties of convening it can contribute to significant delays with consequent detriment both to the individuals involved and to the work of the University.

The language of the Statute is inappropriately intimidating (referring to

'charges' as if in criminal proceedings), and the regulations for the Board are unusually elaborate, such that minor departures from them can give rise to challenges on technical rather than on substantive grounds.

Under Statute XII, appeals are heard by the University Appeal Court set up under Statute XI. This Appeal Court is chaired in each instance by one of a panel of five external persons, each of whom is a Lord or Lady of Appeal, a Lord or Lady Justice of Appeal, or a Justice of the High Court of Justice; or a person who has held such an appointment and is retired; or a Queen's Counsel of not less than six years' standing. This process typically takes many months to produce a ruling, even when the procedures are applied as expeditiously as possible, thus adding to the stress of all those involved. The decisions of this Appeal Court can then be challenged in an employment tribunal (often an employment judge sitting alone) and only at the second stage of appeal from that tribunal is the case likely to come before a lawyer of the standing of the one who took the decision in the University Appeal Court. This sequence of seniority of lawyers in the successive opportunities for appeal suggests that the provisions for the University's internal appeal are disproportionate.

The Personnel Committee considers that there would be benefit in simplifying these procedures, but how to strike the right balance between utility on the one hand, and appropriate safeguards on the other, will need careful consideration in the light of the range of staff who are to be covered.

Comment is sought on the desirability of simplifying procedures under the Statute.

10 Statute XII is not always sufficiently clear in specifying procedure.

An example of ambiguity in the Statute relates to its two routes for dealing with medical incapacity: whilst the Statute provides for a Medical Board to assess cases of medical incapacity, it also provides that cases of dismissal for good cause, which by definition includes physical or mental incapacity, can be remitted to the Visitation Board. This has the potential to cause confusion especially since it frequently emerges that disciplinary considerations relating to under-performance or to improper behaviour need to be taken alongside medical considerations, and the need for this combination of disciplinary and medical consideration may only become apparent partway through proceedings.

These issues could, for instance, be addressed by taking all appropriate cases to the Visitation Board, but with provision to ensure that, whenever necessary, the Visitation Board would have access to medical evidence and to expert guidance in the assessment of that evidence. The existence of a properly founded single route would avoid the possibility that a case might proceed partway in the Visitation Board and then need to be remitted for a new hearing in the Medical Board, with obvious adverse consequences - not least to the unwell member of staff.

Comment is sought on the desirability of revising the Statute to improve the clarity of its provisions.

11 Under Statute XII, relatively minor grievance cases can become escalated to the central University with inappropriate rapidity, and there is no formal provision for appeals.

Grievance policies are in place to enable cases to be addressed initially at a local level (usually departmentally), with the option of an appeal stage at divisional level, the intention being to provide for a resolution as soon as possible and so avoid a protracted process with the potential for causing continuing distress. However, Statute XII offers little to foster this approach: the Statute's grievance procedure encourages swift escalation, with an approach to the Head of Department being followed immediately by an application to the Vice-Chancellor who may refer the matter to a Grievance Committee appointed by Council. This central stage, although it operates in practice as an appeal, is not constituted as such in the Statute, and the absence of explicit provision for a formal appeal does not reflect employment law.

Comment is sought on the desirability of revising the procedure under Statute XII for addressing grievances with the aim of strengthening the routes for settlement at local level and providing a formal process for appeal.

12 Statute XII has not been amended during the last 21 years to reflect changes in employment law.

The Statute contains specific references to employment law which should ideally be updated and future-proofed (expressed so as to ensure that the Statute always refers clearly to the law in force). More significantly, the Statute no longer accurately reflects the legal position

regarding the range of circumstances in which a contract of employment may be brought to an end.

For example, the Statute is silent on dismissals on the ground of 'some other substantial reason' (SOSR), as set out in the Employment Rights Act 1996, and is therefore out of line with the general law of unfair dismissal as it now stands. A dismissal for SOSR can take place in a number of different circumstances. To give one example, a dismissal of an employee engaged to provide sickness absence cover would qualify as a dismissal for SOSR if it occurs because the sick employee has returned to work.

Similarly, the Statute is silent on dismissals in circumstances where there is statutory restriction on continued employment. This is a further potentially fair reason for dismissal provided for by the Employment Rights Act 1996. An example of where this may apply is a situation where continued employment would contravene immigration rules.

The Personnel Committee recommends updating the Statute to reflect current employment law.

Responses

13 The Personnel Committee now requests comments from the bodies and individuals addressed in this paper on the matters set out in paragraph 5. Responses should be sent electronically to sarah.thonemann@admin.ox.ac.uk no later than **4 June 2014**. Enquiries should be sent to the same address.

A summary of the responses will be published as soon as possible after the consultation closes. That summary will be accompanied by the text of the responses, attributed to their authors unless they make it clear when responding that they wish to remain anonymous, or that their response should be kept private.

Annexe

Coverage of Statute XII

Academic (1,722)	Researchers (4,087) <small>Including 1,358 of grade 8 and above</small>	Administrative staff (3,074) <small>Including 1,258 of grade 8 and above</small>
Statutory Professors	RSIVs	(includes Libraries, Museums and IT Services) Grades 6 - 10
Titular Professors	Permanent	
Readers	Open-ended contracts	
Associate Professors	Grades 6 - 10	
Other academic roles		

Research and administrative staff of grade 8 and above are eligible for membership of Congregation.
 The University employs 2,898 support staff (grades 1–5) who are not covered by Statute XII.

