

# Gazette Supplement



## Discussion in Congregation on possible changes to Statute XII

This paper has been written at the request of Personnel Committee to give an overview of the responses to the consultation undertaken in Hilary term and to set out some particular ideas on which the committee is interested in receiving feedback.

### Introduction

In Hilary term 2014, members of Congregation and all University staff were invited to respond to a consultation about possible changes to Statute XII, the statute that governs matters such as discipline, dismissal and grievance procedures for all University staff of grade 6 and above. The consultation document and the responses to it can be accessed from [www.ox.ac.uk/staff/consultations/statute-xii](http://www.ox.ac.uk/staff/consultations/statute-xii).

Those consulted were asked to comment on:

- (1) whether the existing coverage of Statute XII should be reduced;
- (2) the desirability of simplifying procedures under the statute;
- (3) the desirability of revising the statute to improve the clarity of its provisions; and
- (4) the desirability of revising the procedures under Statute XII for addressing grievances.

Respondents were also invited to make any other points they considered pertinent and to comment on the recommendation that the statute be updated to reflect current employment law.

The 76 responses received from divisions, departments, other groups and individuals show support for simplification of the procedures under Statute XII, improving the clarity of its provisions, and revising

the procedures under the statute for addressing grievances. There is also general support for aligning the statute with current employment law, as long as appropriate safeguards to protect academic freedom are kept in place.

Views on the reduction of the coverage of the statute are polarised. Some respondents were clear that the special level of protection offered by Statute XII 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' is not appropriate in the case of the wide range of academic-related staff currently covered by the provisions. Others argued that to remove this protection from some categories of staff is inequitable and inconsistent with the University's own values and strategic objectives.

Respondents also took the opportunity to raise issues that they considered pertinent to the debate. In particular, many respondents emphasised the prime importance of academic freedom within the University. Others were concerned that parity of terms and conditions be maintained between different staff groups, and especially among those eligible for membership of Congregation. Some respondents focused on the need to strike a judicious balance between protections for staff and the aim of promoting the effective management of the University.

The responses to the consultation have been discussed at Personnel Committee and at Council and have been instrumental in assisting those bodies to develop ideas for how the University might move forward. It is proposed that these ideas be explored in a Discussion in Congregation to be held

on Tuesday of week 6, 18 November 2014. Points made in that Discussion and arising from it will guide further work to develop detailed proposals to be put to Congregation in a second round of consultation in Hilary term 2015.

### Proposals to be pursued further in the second round of consultation

As a result of the feedback received that simplified procedures would be welcome, detailed proposals on how to achieve this will now be prepared for the second round of consultation.

Similarly, the changes required to clarify the provisions of the statute, most notably arranging for there to be only one route for the consideration of medical incapacity, will be developed for the purposes of further consultation. Also, for the purposes of clarity and for completeness, it will be proposed that the statute ought to make explicit reference to the existing procedures that apply to the expiry of fixed-term contracts and to the termination of employment during or at the end of a probationary period or, in the case of the associate professor grade, at the end of the initial period of office.

The most unanimous feedback concerned the desirability of encouraging local and timely resolution of grievances. To this end, amendments will be proposed to encourage further the use of local and informal means of resolution, such as mediation, and to ensure that the right to take a grievance to the Vice-Chancellor is formally identified as the final appeal stage available within the University.

In due course, when the final revisions to the Statute are drafted, attention will be given to the language of the Statute with a view

to making it less intimidating, and revised wording will be developed to ensure that, so far as possible, all references to the law are future-proofed, ie they will allow for future government legislation that is binding on the University.

### For discussion - coverage of the statute

It is hoped that the amendments outlined above will prove to be relatively straightforward and that, given the support so far expressed for the principles underlying them, it will be possible through the second consultation to develop detailed proposals that will be acceptable to Congregation. By contrast, the issue of coverage raises more complex questions of principle and practicality, and this is an area where discussion in Congregation on 18 November will be particularly welcome.

The balance of staff in the University has changed dramatically in the lifetime of the present statute, with a large increase in the proportion of research and administrative staff. Now the vast majority of posts in the University are covered by a statute requiring extended and complex procedures originally intended to protect the employment security and academic freedom of academic staff. This undermines one of the aims of the statute, enabling the efficient and economic working of the University, not least in that it acts as a strong disincentive to tackling difficult issues of performance and conduct.

In the consultation, the Committee raised the possibility of addressing this issue by reducing the range of staff covered by the statute, but many respondents expressed strong reservations about this approach, citing among other arguments the importance of parity of treatment. It might yet be that a limited reduction in coverage, such as removal from the statute of around 2,000 administrators in grades 6 and 7 who have neither teaching nor research responsibilities, will be deemed the best way forward. This would protect parity of terms and conditions within the membership of Congregation and within the academic and research staff groups. However, the Personnel Committee is mindful of the principled objections to this approach expressed in the consultation and also of the difficulties inherent in finding exactly the right place to 'draw the line'. Personnel Committee is therefore interested in whether an entirely different approach, suggested by the feedback about the paramount importance of academic freedom, might better serve the University's purposes.

The central issue is how most appropriately to deal with serious disciplinary allegations whilst safeguarding academic freedom. Could this be achieved without any change to the staff groups covered by the statute, but by instead introducing a less elaborate disciplinary procedure for use in disciplinary cases not involving academic freedom? The University has a record of supporting the academic freedom both of its own academics and of visiting academics. Not surprisingly, consideration of recent serious disciplinary cases confirms that they have not concerned academic freedom. Nevertheless, it is right for the avoidance of doubt that the statute ought to retain a special level of protection for use when, in the particular circumstances of a case, it can be argued there might be an underlying issue of academic freedom. The record suggests that such cases are likely to be rare.

On average, in the last six years, there have been two serious disciplinary cases per year that reached the Visitorial Board or that were in the latter stages of preparation for the board when the individual agreed to resign. Of the ten cases that were concluded during that period, four led to dismissal and four to resignation. None of these cases appears to have involved any aspect of academic freedom, and in only three is it conceivable that any argument relating to academic freedom could possibly have been made. Half the cases concerned the harassment of other staff or students or a serious breach of IT regulations, such as the viewing and storage of pornography on University computer equipment. Such cases do not call for complex procedures designed to protect academic freedom; any other employer would have addressed them through more straightforward procedures just like those used by the University to pursue equivalent allegations against support staff.

Cases that reach or almost reach the Visitorial Board represent only a fraction of all serious cases. Around five times as many other cases are concluded by means of the individual's resignation or a settlement agreement at an earlier stage in the procedures - though often at significant financial expense and following considerable work and stress for all parties involved. Furthermore, it is not known how many instances of poor conduct and performance are tolerated due to the disincentive to address issues provided by the complexities of the statute: feedback from current and former heads of department suggests that the number is considerable. Of course, the vast majority of University staff have no experience of

the distress and unpleasantness associated with the disciplinary procedures under the present statute, but that is no reason for us not to look to improving the situation.

If the statute were to be amended so that the Visitorial Board considered only those cases where there was a reasonable expectation or concern that issues of academic freedom would be relevant, then cases that concerned other matters could be considered in some other fair and robust, but simpler, way. This would result in a significant reduction in the number of cases heard by the board while demonstrating that the University has no intention to limit the academic freedom of its staff.

This alternative approach would, of course, necessitate new definitions, policies and procedures: we would have to define what we mean by academic freedom, agree the process by which cases that do not involve academic freedom would be considered, and develop a process for determining whether academic freedom is, or could be, at stake in each individual case. Work has been undertaken over the summer to explore these issues, and it is thought that, while challenging, it would not be impossible to develop processes that provide a balance of efficiency and robustness.

For example, the current process in the statute already requires the Vice-Chancellor to decide whether a case is sufficiently serious to warrant referral to the Visitorial Board, taking into account comments from the individual concerned as well as from the referring body. This stage could be modified simply to require the Vice-Chancellor at the same time to assess the correct route by which a case will be determined. There could be a route of appeal against that decision to a suitably independent panel drawn, for instance, from the academic members of Council elected by Congregation.

It can be expected that any definition of academic freedom might be expected to cause significant debate. We should want to take account of section 1(1) of Part A of the present statute, and of models such as article 27 of the UNESCO 1997 *Recommendation concerning the status of higher education teaching personnel*, and the definitions adopted by other British universities. Even if an explicit and all-embracing definition proved elusive, it should be possible to establish a series of tests sufficient in cases such as those referred to above to decide whether or not academic freedom was implicated; and where doubt remained, then the Visitorial Board route would still be used.

It is the view of the Personnel Committee that this approach might offer a better balance between protecting academic freedom and the need for more straightforward process. The three guiding principles of the statute (to ensure academic freedom, to enable the efficient and economic working of the University, and the application of principles of justice and fairness) would be preserved, and the effect would arguably be more in keeping with the original intentions of the statute, which was written when there was a different balance of academic and other staff in the University.

The Personnel Committee will be interested to hear the views of Congregation concerning this possibility, and its relative desirability compared with some circumscribed adjustment of the boundaries to the coverage of the statute, either that outlined in the first part of this section or an alternative.

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#### **For discussion - redundancy procedure for restructuring in the administration**

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Part B of Statute XII is concerned with redundancy, and it reserves to Congregation the right to determine when it is appropriate for there to be a reduction in staff covered by the statute either across the University as a whole or within a department or other defined unit. This provision concerning a matter as significant as the reduction in the size of the University or one of its constituent parts should rest with Congregation: only if Congregation is content is a redundancy committee set up.

There is just one circumstance involving a reduction in size of part of the University where Congregation has given standing permission for a redundancy committee to act: in May 2003, Congregation approved a resolution<sup>1</sup> applying when the employment of academic-related staff on externally funded open-ended contracts is at issue because, for instance, grant funding is withdrawn or otherwise discontinued. A procedure<sup>2</sup> approved by Council is then followed to ensure that the staff at risk are properly identified, given fair notice, and given every support in finding satisfactory redeployment within the University. Only if there is no viable alternative does the committee identify posts and recommend them to Council for redundancy.

It is the view of the Personnel Committee that the efficient and economic operation of the University would be promoted if Congregation were willing to give standing permission for a redundancy committee to enable restructuring amongst

administrative or professional staff. The point here is that, over time and in the context of changing external requirements, the processes needed to support the academic work of the University change. It may then be necessary to employ new administrative or professional staff with different skills, and existing posts can become redundant. Redeployment of staff to vacant posts elsewhere will always be pursued, but, if all such possibilities have been exhausted and unless the administration is steadily to grow, some redundancies are inevitable. A typical instance of such restructuring in the administration would result in small-scale redundancies, not necessarily involving a consequent reduction in size of part of the University. It would rarely be possible to put a request in these cases to Congregation because the specificity needed for a meaningful request would likely allow the public identification of the individuals at risk (the same consideration applies in respect of the arrangements in relation to open-ended contracts described in the preceding paragraph). This being so, the Personnel Committee considers that it would be appropriate for Congregation to give standing permission for a redundancy committee to deal with these matters.

Personnel Committee would welcome the views of Congregation on the desirability of revising Part B to allow for restructuring amongst administrative and professional staff without the need for prior case-by-case consultation with Congregation.

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#### **The Discussion**

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Though this paper has been written to give emphasis to two new proposals, the topic for the Discussion has been broadly cast so as to invite comment on a wide range matters concerned with possible revisions of Statute XII.

<sup>1</sup>See *Gazette* No 4657, 20 May 2003, p1153 ([www.ox.ac.uk/gazette/2002-3/weekly/010503/agen.htm#4Ref](http://www.ox.ac.uk/gazette/2002-3/weekly/010503/agen.htm#4Ref))

<sup>2</sup>[www.admin.ox.ac.uk/media/global/wwwadminoxacuk/localsites/personnel/documents/endingemployment/redundancyprocedure/PDF\\_4\\_-\\_Arrangements\\_for\\_redundancy\\_committee\\_for\\_open-ended\\_contracts.pdf](http://www.admin.ox.ac.uk/media/global/wwwadminoxacuk/localsites/personnel/documents/endingemployment/redundancyprocedure/PDF_4_-_Arrangements_for_redundancy_committee_for_open-ended_contracts.pdf)

