

Gazette Supplement



Second consultation on possible revision to Statute XII

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

The text of the consultative paper is set out below. The views expressed on the matters outlined in this paper will be published, along with a summary, on the Statute XII consultation website (www.ox.ac.uk/staff/consultations/statute-xii) and will inform the development of a draft revised Statute, which will be laid before Congregation.

Responses should be sent to Ms Ruth Kinahan (ruth.kinahan@admin.ox.ac.uk) by **5pm on Friday 27 March 2015**.

Background

In Trinity term 2014, the Personnel Committee consulted widely throughout the collegiate University on matters of principle relating to possible revisions to Statute XII (Vol 144; supplement (1) to *Gazette* No 5051).

Statute XII can be seen online at www.admin.ox.ac.uk/statutes/353-051.shtml. It governs major aspects of the employment by the University of 'academic staff'. In this Statute, 'academic staff' are defined as all those eligible for membership of the Universities Superannuation Scheme (ie all staff in academic posts and those in research and other academic-related roles of grade 6 and upwards, including their equivalents). 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. Colleges make provision in their own statutes to deal with these matters in the context of college employment.

The responses received in the consultation launched in Trinity term 2014 can be seen at www.ox.ac.uk/staff/consultations/statute-xii.

This consultation culminated in a Discussion in Congregation on 18 November 2014. The *Gazette* supplement of 22 October 2014, outlining areas on which views were sought in the Discussion (Vol 144; supplement (1) to *Gazette* No 5073), and the transcript of the Discussion, can be seen at the same web address.

When this consultation was launched, it was envisaged that, in the event that responses demonstrated a wish to proceed with change, a draft Statute would be prepared as the basis for a second consultation. The comments received show that there is appetite for change but new ideas emerged, and it is thought that there would be benefit in further consultation based on more detailed proposals before a new draft Statute is circulated.

This consultation paper draws on the comments made by respondents to the first consultation and by those who spoke at the Discussion in Congregation, and provides more detailed proposals for changes to the Statute.

Summary

Responses to the first consultation demonstrated support for the simplification of the Statute, the clarification of its

provisions, and for the revision of the procedures for addressing grievances. These ideas are therefore developed further in this consultation paper.

There was concern, however, about the prospect of reductions to the staff groups covered by the Statute. Instead, and in light of the clear view that the protection of academic freedom must be paramount, the idea was mooted that the Visitation Board might in future deal only with those cases in which academic freedom was at issue. A suitably senior board using more straightforward procedures might be more appropriate for those cases in which it is clear that academic freedom is not relevant. The committee considered that this idea had merit and it was outlined in the *Gazette* supplement of 22 October 2014 published prior to the Discussion in Congregation. This proposal is fleshed out in this consultation paper as the basis for comment.

The *Gazette* supplement of 22 October 2014 also raised the issue of redundancy, proposing that, if the coverage of the Statute were to remain unchanged, there might be benefit in revising Part B of the Statute to establish a redundancy committee which would deal with matters relating to restructuring amongst administrative and professional staff without the need for case-by-case consultation with Congregation. Some concerns were raised at the Discussion about the idea of a 'short-cut' to redundancy for some staff members, and this consultation paper attempts to outline a process which would provide rigour and fairness and retain oversight by Congregation.

Finally, some more detail is given in relation to other proposed changes that appeared broadly acceptable in the first consultation.

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

Consultation

Views are sought in three areas:

- (1) the provisions for disciplinary cases (Parts C and D of Statute XII) including
 - (a) a potential new body, the Staff Disciplinary Panel, and
 - (b) the freedoms protected under Statute XII;
- (2) redundancy provisions (Part B of Statute XII); and
- (3) other proposed changes.

(1) The provisions for disciplinary cases (Parts C and D of Statute XII)

In light of the concerns that have been expressed about the prospect of reducing the staff groups covered by the Statute, the Personnel Committee raised the possibility of an alternative way forward in the *Gazette* supplement of 22 October 2014 that preceded the Discussion in Congregation on 18 November 2014. That supplement described the small number of cases heard by the Visitation Board in the last few years, and highlighted the limited relevance of academic freedom to those cases. It also referred to the much larger number of cases that are concluded by means of a resignation or settlement agreement, and the unknown number of issues that are left unresolved because of the disincentive to address them provided by the complexities of procedure under the Statute.

The Personnel Committee suggested that the Statute might be amended so that the Visitation Board would consider only those cases where there was a reasonable expectation or concern that issues of academic freedom could be relevant. All other cases would be considered in some other fair but simpler way. The Personnel Committee is now considering the new definitions, policies and procedures that would be needed for this approach. This paper sets out for consultation how the Committee envisages that this approach could work.

Under the current procedures of Part D of Statute XII:

if it appears that the conduct or performance of a member of staff is of sufficient concern, a complaint is made in the first instance to the Registrar. The Registrar brings the matter to the attention of the Vice-Chancellor, at which point, any investigations that the Vice-Chancellor deems necessary are instituted. The Vice-Chancellor can refer the complaint to be dealt with under

other procedures, or he can dismiss it if he considers it trivial or invalid. If the Vice-Chancellor does not so dispose of the complaint, he writes to the member of staff asking for their comments in writing.

On receipt of comments from the member of staff, the Vice-Chancellor reviews whether to dismiss the complaint, to refer it back to be dealt with at a lower level, to deal with it informally (if the member of staff agrees), or to direct that charges be instituted for consideration by the Visitation Board. The Visitation Board hears cases according to Sections 20 and onwards of Part D of the Statute, and the Board reports its findings and any recommendations for action to the Vice-Chancellor.

It is now proposed:

this process could be modified simply to require that any disciplinary complaint made to the Registrar should identify any aspects of the case which might involve academic freedom. If the Vice-Chancellor were minded to proceed with the complaint, he could form an initial view as to whether academic freedom was involved and advise the member of staff of that when seeking his or her comments on the complaint. At that time, the Vice-Chancellor would also seek the individual's comments on whether issues of academic freedom were relevant.

On receipt of comments from the member of staff, if the Vice-Chancellor decided not to dismiss the complaint, refer it to another body, or deal with it informally, he would determine whether the appropriate body to hear the complaint would be the Visitation Board or, if in his view academic freedom was not at issue, the Staff Disciplinary Panel – a new body to be established (outline proposals are given at (i) below).

If, under this proposed process, the Vice-Chancellor's decision was that the appropriate route was referral to the Staff Disciplinary Panel, there should be a right of appeal to a suitably independent Review Panel on that choice of route. This Review Panel could consist of two elected academic members of Council² who would be appointed by the Registrar for the purposes of each case. Those appointed would have had no prior involvement with the case, would have no conflict of interest arising from their employment or personal or other relationships with any of the parties involved and would be chosen

²Eleven members of Council are elected from Congregation by Congregation, four from the Medical Sciences and MPLS Divisions, four from the Humanities and Social Sciences Divisions, and three who are not elected in a divisional capacity.

for their ability to reach an independent and informed judgment on the case.

The Review Panel would review the original complaint, the report of any investigations and the comments submitted to the Vice-Chancellor by the member of staff. The Panel would decide whether any reasonable claim had been made that issues of academic freedom could be pertinent.

In both stages of this proposed decision process (ie the Vice-Chancellor's decision on the appropriate route and the decision of the Review Panel) the nature of the case would be assessed in the context of an agreed *Statement on the freedoms protected under Statute XII* (a draft version is provided at (ii) below). The benefit of doubt should lie with the member of staff: if it was deemed at all possible that academic freedom might be at issue, or if the Review Panel could not reach a unanimous decision, the case should proceed to the Visitation Board.

This proposed means of distinguishing between cases that would be heard by the Visitation Board and those that would be considered by the Staff Disciplinary Panel is outlined in a process map at Annex A.

(a) The Staff Disciplinary Panel

The provisions for this new University body must reflect the three guiding principles in Part A of Statute XII: the freedoms it extends to all staff covered by the Statute, the efficient and economic operation of the University, and the principles of justice and fairness.

It is proposed that the Registrar would populate the Staff Disciplinary Panel on a case-by-case basis by appointing three members of Congregation chosen for their ability to reach an independent and informed judgment on the case: none would have had any prior involvement with the case and nor would any have any conflict of interests arising from their employment or personal or other relationships with any of the parties involved. None would be a member of Council or of the Personnel Committee. The Panel would include individuals with appropriate experience, at least two of the members should hold academic posts in the University, and, if appropriate, the Panel should include a member with technical expertise relevant to the case. One member would be asked to act as Chair, and the HR Director would ensure that the Panel was serviced by an appropriate officer and had the benefit of legal and/or medical advice as required.

The procedures for hearings would ensure that the member of staff subject to the complaint would receive:

- due notice of the hearing and full details of the complaints and evidence against them in good time before the hearing;
- the right to seek an adjournment, if they had reasonable grounds;
- the opportunity to state their case in full at the hearing;
- the right to call witnesses and to put questions to any witnesses called in support of the complaints against them; and
- the right to be accompanied or represented at the hearing by a trade union representative or colleague from the University.

The Panel would be responsible for deciding whether the complaint(s) should be upheld and, if so, what if any penalty should be imposed.

Any appeal against a decision of the Staff Disciplinary Panel would be heard by the University Appeal Panel, which would be constituted in accordance with Statute XIV, 16(1). This Panel currently hears appeals against dismissal from support staff, and it consists of

two members of the Personnel Committee of Council appointed by the chairman of that committee (or his or her deputy) and one member of Council, not being a member of the Personnel Committee, appointed by the Vice-Chancellor.

The provisions for the Appeal Panel should be revised to take account of its broadened jurisdiction, but the same principles should apply regardless of the grade of the appellant. The detailed procedures will be included in Council Regulations as part of the forthcoming drafting process: amongst other things, they should ensure that the Appeal Panel is appropriately serviced and has access to legal and/or medical advice as required. The Panel Chair would ensure that the Panel hearing is held in a timely and fair manner and that all parties have access to the material on which the Panel will base their decision. No decisions would be made without a hearing at which the appellant would have the opportunity to be present and to be represented by a trade union representative or a colleague from the University.

If the appeal concerned a dismissal without notice, the appellant would be suspended without pay pending the appeal hearing. The Appeal Panel would be required to consider the grounds for appeal raised by the individual, but not to conduct a

re-hearing of the case. The Panel would confirm or revoke the decision of the Staff Disciplinary Panel and the sanction imposed by it, or impose a different sanction. The decision of this Panel would be final within the University.

Views are sought on the above proposed provisions for disciplinary cases, including the new Staff Disciplinary Panel.

(b) The freedoms protected under Statute XII

Statute XII defines important freedoms for all those whom it covers. There is no intention to change the purpose of the Statute in protecting these freedoms. The considerations presented here aim to elaborate on these freedoms by defining academic freedoms, particular freedoms of independence of thought and action for those employed to undertake teaching or research. These are the freedoms that are seen as central to academic endeavour and which, it is proposed, should be under the special protection of the Visitorial Board.

As noted in the consultative notice published as the *Gazette* supplement dated 22 October 2014, in attempting to define academic freedom we should take account of section (1)1 of Part A of the present Statute, of Article 27 of the UNESCO 1997 *Recommendation concerning the status of higher education teaching personnel*, and of the definitions adopted by other British universities.

Several aspects of the UNESCO Recommendation are already enshrined in the existing Statute or elsewhere in University policy. For example, the right to express controversial or unpopular opinions is included in Part A of Statute XII, and applies to all staff covered by the Statute. Statute XII will continue to ensure, for instance, the freedom of academic and academic-related staff to express their views on University committees and in Congregation (if they are members), without placing their jobs or privileges in jeopardy. Likewise, the UNESCO recommendation on recognition and representation is honoured in respect of all University staff in that the University maintains recognition agreements with three trade unions for the purposes of consultation and representation.

The draft statement below sets out particular freedoms that we propose should now be explicitly recognised for all staff whose roles require them to undertake teaching and research. University contracts

for these staff typically refer to the area of academic work, teaching or research that the member of staff is to undertake, but generally that area is very loosely defined, and, even though a short-term research contract may be specific about the work to be done, the contract does not give a narrow definition of how to do it. It is the essence of academic work that challenging received wisdom is a major part of the job, and academics must have the freedom not only to direct their work but also to express their ideas within the law without restriction.

It will be useful to give a few examples of complaints that might arise where academic freedom could be implicated: it could be alleged, for example, that an academic is conducting and presenting research that is dishonest or unethical; or it could be alleged that someone's assessment of student work is unfairly biased. It could be alleged that an academic is engaging in public argument in a way that is unprofessional to the point of bringing the University into disrepute, or it could be argued that the academic work someone is doing does not approach the level of application that might reasonably be expected. These allegations are serious, but they go to the heart of academic freedom, and they are distinguished from other allegations that may be brought against staff in that addressing them in any disciplinary process requires the exercise of academic judgment. Such cases call for the most elaborate level of protection and appeal that can be provided by the University's internal processes, and this is the argument for directing these cases to the Visitorial Board. Other allegations involving, for instance, breaches of IT or financial regulations, or the Bribery and Fraud Policy, are not peculiar to academic employment and are highly unlikely to need the exercise of academic judgment.

Statement on the Freedoms protected by Statute XII

The provisions of Statute XII shall, in accordance with Part A(1) of the Statute, ensure that all staff subject to the Statute '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'. These staff shall also be free to participate in professional or representative bodies of their choosing.

Academic freedom

All employees of the University whose contracts require them to engage in academic teaching or research shall,

in accordance with the UNESCO 1997 *Recommendation concerning academic freedom* have the particular freedoms, without fear of any professional or personal reprisal or disadvantage, to:

- i. carry out research on subjects of their choosing, and publish and disseminate the results of that research as they wish and in whatever form they wish;
- ii. conduct teaching in a manner that they consider appropriate according to the standards and norms of the relevant department, faculty or college;
- iii. engage in public discourse according to standards of professionalism reasonably expected of the holder of an academic post in the University.

The University requires that, in all circumstances, members of staff will exercise their right to academic freedom only within the law and with due regard to their contract of employment and to agreements with research funding bodies.

Any serious disciplinary case where it is deemed at all possible that an issue of academic freedom is involved will be addressed under Statute XII through referral to the Visitation Board. Other serious disciplinary cases will be dealt with under Statute XII by referral to the Staff Disciplinary Panel.

All members of the University must observe University policy concerning behaviour at work and the conduct of their duties.

Views are sought on this Statement of Freedoms.

(2) Redundancy provisions (Part B)

Under the provisions of Part B of Statute XII, only Congregation can determine when it is appropriate for there to be a reduction in staff covered by the Statute within any constituent part of the University. Only if Congregation is content is a redundancy committee set up to oversee the process. The only circumstance in which Congregation has given standing permission for a redundancy committee to act relates to academic-related staff on open-ended, externally funded contracts, when external grant funding has been withdrawn or otherwise discontinued. The redundancy committee follows the procedure approved

by Council (www.admin.ox.ac.uk/personnel/end/red/redproc) to ensure that the staff affected are properly identified, given fair notice and supported to find alternative employment wherever possible. Only if no alternative can be found does the committee identify posts and recommend them to Council for redundancy.

The Personnel Committee acknowledges the importance of Congregation's role in approving any measures that will result in a reduction in the size of the University or of one of its constituent units. However, as outlined in the *Gazette* supplement of 22 October 2014, it is concerned to ensure that the University can respond to changing needs and to safeguard its continued efficient operation by restructuring administrative units when required. It is also conscious that, given the current arrangements, it is impossible to conduct a meaningful consultation with Congregation in the case of possible small-scale redundancies without breaching the confidentiality of the staff involved. It is the committee's view that the efficient administration of the University would be promoted if Congregation were to give standing permission for the establishment of a standing redundancy committee to act in these circumstances to oversee redundancy processes amongst administrative and professional staff, ie those whose contracts do not require them to undertake academic teaching or academic research.

Several speakers in the Discussion in Congregation in November 2014 expressed concern that redundancies among these staff groups might become too 'easy' if Congregation as a whole did not retain direct oversight. There is no intention that redundancies should ever be made lightly or without all reasonable efforts to find alternatives, such as redeployment or voluntary severance. Personnel Committee could propose arrangements to ensure that:

- the members of the redundancy committee would be drawn from Congregation;
- the agreement of Council would be secured before notice of redundancy was given;
- the recognised trade unions would continue to play an important role in the process, both in terms of collective consultation and individual representation; and

- a consolidated report on the activity of the redundancy committee would be provided to Congregation on a regular, eg annual, basis.

The redundancy committee approved by Congregation in 2003 for the purpose of overseeing redundancies among staff on open-ended contracts might serve as a model for the proposed committee for administrative and professional staff. It comprises a chair and four members appointed from Congregation by Council, with at least two members holding academic posts. The proposal to make redundancies has to be set out according to a detailed specification and supplied to the committee via the HR Director and the joint secretary of the Oxford branch of the UCU. Likewise, the responsibilities of the redundancy committee in identifying which posts, if any, should be made redundant are also closely specified. Emphasis is laid on the duty of the committee to explore every possibility that might enable the University to avoid redundancies, and to ensure that both the individuals concerned and the unions have been consulted effectively. The committee makes recommendations for consideration by Council and reports its conclusions to the joint secretary of the UCU.

It is proposed that this procedure would be augmented by a requirement for the committee to report on its activities not only to Council and to the joint secretary of the UCU, but, at regular intervals, to Congregation through the *Gazette*.

Views are sought on the above proposed revisions to the redundancy provisions.

(3) Other proposed changes

Broad support has been shown, throughout the consultation process so far, for the proposals to simplify and clarify the Statute and for adjustments to the grievance procedures to encourage the local and timely resolution of grievance whenever possible. The Personnel Committee intends to pursue the following changes, which were all proposed in the course of the first consultation. Comments are welcome on their relative desirability and on the detail of how they might best be achieved.

- a. The removal of Part E governing the process for 'Removal for Incapacity on Medical Grounds' by the Medical Board. The existence of the Medical Board alongside the Visitation Board is problematic because of the lack of clarity about which route should be used for some cases and, given that

medical issues can be addressed as part of Visitation Board proceedings, the Medical Board has not been used for many years.

In place of the Medical Board, it is proposed that the Visitation Board (and the Staff Disciplinary Panel, if this should be introduced) would be provided with access to expert medical advice relating to mitigation and to medical incapacity.

b. For clarity, the introduction into Statute XII of reference to the well-established procedures that apply to the end of fixed-term contracts at their anticipated end-date.

c. For clarity, the introduction into Statute XII of reference to the well-established procedures that apply to the termination of a member of staff's employment during or at the end of their probationary period or, in the case of academic staff, at the end of their initial period of office.

d. A reduction in the number of members of the Visitation Board from four to two, meaning that the Visitation Board will consist in future of one independent chair and two members selected as at present (by the drawing of lots) from the panel of twelve elected from Congregation. This will reduce the potential for delays in scheduling Visitation Board hearings, and the resulting stress for all those concerned. It will also render the hearings themselves less intimidating.

e. Additional encouragement in the grievance procedures in Part F for the pursuance of local and informal means of resolution, with the right to take a grievance to the Vice-Chancellor formally identified as the right of appeal required under employment law. This will be achieved by:

- i. the introduction of an intermediate step, so that, in cases where the individual's grievance lies against the Head of Department, it would be dealt with at divisional level, instead of being referred to the Vice-Chancellor. The right to an appeal to the Vice-Chancellor if the matter is not resolved at this stage would remain;
- ii. specifying an expectation that, at each level, careful consideration will be given to less formal alternatives, such as mediation, before the matter proceeds to a formal hearing;

- iii. the language concerning the right to refer a grievance to the Vice-Chancellor for consideration by the Grievance Committee will be recast to make clear that this stage is the final appeal stage: at present, there is in the Statute no stage formally identified as the individual's appeal.

When the revised Statute is drafted, care will be taken to ensure that unnecessarily legalistic or confrontational language is removed or replaced. In addition, all references to legislation will be 'future-proofed', by ensuring that all such references are phrased such as to include any updates or amendments, or 'future re-enactments'.

Views are sought on these other proposed revisions to Statute XII.

Responses

The Personnel Committee now invites comments from the bodies and individuals addressed in this paper on the proposals set out above. Responses should be sent electronically to ruth.kinahan@admin.ox.ac.uk no later than **5pm on Friday 27 March**. Enquiries should be sent to the same address.

As previously, a summary of responses will be published on the Statute XII consultation website (www.ox.ac.uk/staff/consultations/statute-xii). 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.

Summary of Process to Determine how Disciplinary Charges will be Heard

Annex A

