

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 decides; 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

1.0 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.

2.0 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.

3.0 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.

5.0 Nothing in the foregoing provisions shall preclude resort by an individual to any proceedings to which he/she may be entitled under law.