

# UUK and UCEA

## REVISED MODEL STATUTE

[Approved by the Privy Council Office: 31 March 2003]

### STATUTE XX

#### Academic Staff: Dismissal, Discipline, Grievance Procedures and related matters

##### PART I: GENERAL

#### 1. Application

- (1) This Statute applies to the following:
- (i) the members of the academic staff (except for those excluded from Part II by clause 5(1) below);
  - (ii) such other members of staff or categories of staff of the University as are brought within its scope by the Council;

and “member(s) of staff” in this Statute means those members of the staff to whom this Statute applies.

- (2) This Statute will override any provision in any contract, term or condition of employment which is inconsistent with this Statute, whether dated before or after the commencement of this Statute, but –
- (i) it shall not affect the validity of any waiver under section 197 of the Employment Rights Act 1996, any compromise agreement under section 203 of the Employment Rights Act 1996, or any similar waiver or agreement permitted by law; and
  - (ii) it shall not preclude any member of staff deciding or agreeing to terminate employment with the University, whether by voluntary severance, early retirement or otherwise, on whatever terms have been agreed.
- (3) Parts II to V of this Statute shall not apply to removal from an appointment as Pro-Vice-Chancellor, Dean or Head of Department, or such other posts as have been designated by the Council, to which a member of staff has been elected or appointed and which is distinct from that individual’s substantive post, where dismissal from the substantive post is not contemplated, but the Council shall by Ordinance prescribe a procedure for handling such removals prior to the prescribed or normal termination date, which shall include a hearing panel and an appeal panel.
- (4) This Statute shall not apply to the Vice-Chancellor, except for Part III, which shall, unless the Council, with the Vice-Chancellor’s concurrence, resolves otherwise, apply to the Vice-Chancellor in post at the time it comes into effect, with such modifications and adaptations as the Council, with the Vice-

Chancellor's concurrence, shall prescribe, but it shall not apply to any later Vice-Chancellor, even if also the holder of an academic post.

## **2. General principles of construction and application**

- (1) This Statute and any Ordinances or Regulations made under it shall be applied and construed in every case to give effect to the following guiding principles:
  - (i) to ensure that members of 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.
- (2) Where, in any proceedings under this Statute, a member of staff invokes sub-clause (1)(i) above, that claim shall be considered by the person or persons dealing with the matter, and, if it is found that any action has been taken against the member of staff because that member of staff questioned or tested received wisdom or put forward new ideas or controversial opinions, the person or persons dealing with the matter shall cancel that action and it shall be treated as invalid.
- (3) Where there is any issue as to the meaning of "academic freedom" in any proceedings under Parts II, III, IV, V and VI of this Statute, regard shall be had to Sections VI and VII of the Recommendation concerning the Status of Higher-Education Teaching Personnel adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) in Paris on 11 November 1997.
- (4) Any reference in this Statute to a provision in an Act of Parliament shall be taken to be a reference to that provision as it may have been amended or superseded from time to time.
- (5) In interpreting or construing any provision in this Statute, regard shall be had to the Notes on Clauses on the Draft Revised Model Statute issued by the Universities and Colleges Employers Association (xxxx 2002).

## **3. Dismissal**

- (1) For the purpose of this Statute, "dismissal" shall have the same meaning as in section 95 of the Employment Rights Act 1996.
- (2) A member of staff may be dismissed if that dismissal is for a reason set out in section 98 of the Employment Rights Act 1996.
- (3)
  - (i) A dismissal by reason of redundancy (other than the non-renewal of a fixed-term contract) shall be handled in accordance with Part II;

- (ii) a dismissal for disciplinary reasons shall be handled in accordance with Part III;
- (iii) a dismissal on health grounds shall be handled in accordance with Part IV; and
- (iv) a dismissal on any other grounds, including the non-renewal of a fixed-term contract, shall be handled in accordance with Part V.

#### **4. Hearing, appeal and grievance panels**

- (1) Any panel established pursuant to clauses 8(1), 10(ii)(d) and (h), 15(2), 18(2) and 20(5) of this Statute shall consist of three persons, none of whom shall previously have had any involvement with the case, at least one of whom shall be a lay member of Council and one a member drawn from a list agreed from time to time by the Senate.
- (2) Ordinances may provide for any relevant National Health Service or other relevant body to be represented on any panel established under this Statute to deal with a member of staff falling within clause 19(1) below and for the panel to be enlarged for this purpose.
- (3) At any panel within sub-clause (1) above, the member of staff shall be entitled to be represented or assisted by any person.
- (4) Any panel within sub-clause (1) above shall give a reasoned decision in writing which shall be provided to the member of staff and reported to the Council.

### **PART II: REDUNDANCY**

#### **5. Application**

- (1) The power to dismiss, and the procedures prescribed, under this Part shall not apply to those staff defined in sub-sections (3) to (6) of section 204 of the Education Reform Act 1988 [staff appointed prior to, and not promoted after, 20 November 1987], who shall for this purpose continue to be subject to such powers, if any, as applied to them prior to the introduction of the Statute made by the University Commissioners in the exercise of their powers under sections 203 and 204 of the Education Reform Act 1988.
- (2) This Part shall not apply to the non-renewal of a fixed-term contract, which shall be dealt with under clause 16 below.

#### **6. Definition of “redundancy”**

Subject to clause 5(2) above, dismissal by reason of redundancy for the purpose of this Part has the same meaning as in section 139 of the Employment Rights Act 1996.

## **7. Procedure for dismissal by reason of redundancy**

- (1) The Council shall by Ordinance prescribe the procedures for dismissing members of staff on grounds of redundancy, which shall include the following:
  - (i) a preliminary stage involving consultation with appropriate representatives in accordance with and to the extent required by section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 and discussion with the staff concerned;
  - (ii) a procedure which is fair and which allows each staff member concerned, having been informed of the selection criteria to be employed, to make written and oral representations on his or her behalf;
  - (iii) provision for informing any member of staff dismissed under this Part of the reasons for the dismissal and, where selection has taken place, why he or she was selected; and
  - (iv) authorising the Vice-Chancellor or other person to dismiss any member of staff selected for dismissal under this Part and requiring reports of dismissals to be submitted to the Council.
- (2) The procedures following the preliminary stage may be used at any particular time only after the Council has first determined that the circumstances are such that the procedures should be instituted.

## **8. Appeal against dismissal by reason of redundancy**

- (1) The Ordinances shall include provision for an appeal to a panel by a member of staff who has been given notice of dismissal under this Part.
- (2) The panel shall be entitled to review all aspects of the matter other than the Council's determination under clause 7(2) above.
- (3) The panel shall have the power to reach a final decision on the matter or to remit the matter for further consideration by the body whose decision is being appealed.

## **PART III: DISCIPLINARY PROCEDURES**

### **9. Grounds for disciplinary action**

Disciplinary action under this Part may be taken, and where found to be appropriate a penalty imposed, in respect of the following:

- (i) conduct amounting to a criminal offence, whether or not there has been a prosecution and conviction, of a kind that is judged in all the circumstances to be relevant to the member of staff's employment by the University;

- (ii) failure, refusal, neglect or inability to perform some or all of the duties or to comply with some or all of the conditions attaching to the post, or performing those duties or complying with those conditions in an unsatisfactory or inadequate manner;
- (iii) conduct of a kind judged to be inappropriate or unacceptable on the part of a holder of the post held by the member of staff, such as (but not confined to) the following:
  - (a) breach of any obligation or duty arising under any of the University's regulations regarding financial matters, harassment, equal opportunities, public interest disclosure, health and safety, or data protection or any other rules, regulations or codes binding on the member of staff;
  - (b) damage to or improper use of University facilities, premises, property or equipment;
  - (c) disruption of, or improper interference with, the activities of the University or of any employee, student, Council member or visitor (other than any lawful industrial action);
  - (d) violent, indecent, disorderly, threatening, abusive, insulting or harassing behaviour or language (whether written, spoken or in any other form);
  - (e) fraud, deceit, deception or dishonesty in relation to the University or any related activity, including research and examining;
  - (f) action likely to cause injury or impair safety;
  - (g) divulging information or material received in confidence (unless the disclosure is permitted under the Public Interest Disclosure Act 1998 or in accordance with the University's Public Interest Disclosure Procedure).

## **10. Disciplinary procedures**

The Council shall by Ordinance promulgate disciplinary procedures for members of staff, which shall provide:

- (i) for less serious matters to be dealt with by warnings following a fair and appropriate procedure and for a member of staff to be able to appeal against the imposition of a warning to a person designated by the Vice-Chancellor; and
- (ii) for dealing with more serious matters, which shall include provision for the following:
  - (a) fair and reasonable time limits for each stage;
  - (b) investigating complaints and dismissing those found to be without substance;
  - (c) suspension, on full pay, by the Vice-Chancellor pending an investigation or hearing where this is necessary;
  - (d) a hearing by a panel, authorised by the Vice-Chancellor, at which the member of staff against whom the complaint has

- been made shall have been informed of the complaint, shall be entitled to be present, to hear the evidence, to call relevant witnesses, and to examine and cross-examine witnesses (but provision may be made for witnesses in appropriate cases to give their evidence behind a screen or from another room or place and for questions to be asked only by a representative);
- (e) appropriate penalties, which in addition to warnings and dismissal shall, for staff appointed or promoted after the coming into effect of this Statute, include withholding any forthcoming increment in salary, suspension without pay (for up to three months), and reduction in grade and/or loss of title (and “promoted” for the purpose of this provision shall have the same meaning as in section 204 of the Education Reform Act 1988);
  - (f) the award of compensation either to the University or to an individual in respect of any loss caused or damage done;
  - (g) designating a member of staff’s conduct as constituting “gross misconduct” such as to merit summary dismissal without notice; and
  - (h) a right to appeal against the finding of, or penalty imposed by, the panel, including a finding under paragraph (g) above. An appeal shall not take the form of a re-hearing of the evidence and witnesses may be called only with the appeal panel’s permission.

## **11. Code of Practice**

In drawing up the procedures, and in any regulations made or action taken thereunder, regard shall be had to Section 1 of the Code of Practice on Disciplinary and Grievance Procedures (as may be amended or replaced from time to time) issued in September 2000 by the Advisory Conciliation and Arbitration Service (ACAS) and brought into effect by order of the Secretary of State under section 199 of the Trade Union and Labour Relations (Consultation) Act 1992.

## **12. Dismissal**

- (1) The Secretary/Registrar or other designated officer shall give effect to a decision of a panel that a member of staff should be dismissed:
  - (i) where the panel has designated the conduct as “gross misconduct” such as to merit summary dismissal pursuant to clause 10(ii)(g), the Secretary/Registrar shall forthwith dismiss the member of staff;
  - (ii) in all other cases, the Secretary/Registrar shall issue the notice of dismissal or dismiss together with payment in lieu of notice.
- (2) Any dismissal or notice of dismissal shall be cancelled, withdrawn or modified if an appeal panel decides that the member of staff should not be dismissed or should only be dismissed with notice.

## **13. Relationship with Part IV**

The Ordinances shall make provision for dealing with a case in progress under this Part where it emerges that the member of staff's conduct or performance may have been wholly or partly attributable to a medical condition, but any proceedings under this Part shall be valid even if they could have been brought under Part IV, and a member of staff may, subject to the Disability Discrimination Act 1995, be subject to penalty, including dismissal, under this Part notwithstanding the fact that his or her conduct may have been wholly or partly attributable to a medical condition.

#### **14. Clinical staff**

Action under this Part or under Part IV may be taken against a member of staff falling within clause 19(1) below in respect of conduct or incapacity arising in connection with that member of staff's clinical work or activities as if the work or the activities were performed in and for the University.

### **PART IV: INCAPACITY ON HEALTH GROUNDS**

#### **15. Dismissal on health grounds**

- (1) The Council shall by Ordinance prescribe a procedure for dealing with staff, including dismissal, because of incapacity on health grounds, whether physical or mental.
- (2) The procedure shall include a hearing by a panel, with a right of appeal to another panel, and both panels shall contain an appropriately medically qualified person.
- (3) No member of staff may be dismissed whether under this Part or Part III where that dismissal would contravene the Disability Discrimination Act 1995.

### **PART V: OTHER DISMISSALS**

#### **16. Non-renewal of a fixed-term contract**

- (1) The Vice-Chancellor, or other person or persons designated by the Vice-Chancellor, shall in every case where a fixed-term contract is due to terminate consider whether that contract should be renewed or extended or a contract of indefinite duration should be offered, having consulted the appropriate representatives in accordance with and to the extent required by section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 and having given an opportunity to the member of staff to make representations.
- (2) A decision not to renew or extend or offer a contract of indefinite duration under the preceding paragraph must be justified on the basis that, in respect of

one or more of the following considerations, it is not expedient or desirable to renew or extend the contract or offer a contract of indefinite duration:

- (i) the availability of funding for the post, or the financial situation;
  - (ii) the individual's performance (following appropriate warnings and counselling);
  - (iii) the need for the post or the duties attaching to the post;
  - (iv) the nature and character of the post;
  - (v) the desirability of making the post permanent and appointing to it after open competition.
- (3) A member of staff whose fixed-term contract is not renewed or extended on termination or is not offered a contract of indefinite duration shall be given full reasons for the decision and shall be entitled to have the decision reviewed by a panel in accordance with a procedure to be prescribed by Ordinance.
  - (4) The panel, whose decision shall be final, shall consider whether the reasons advanced in support of the decision are reasonable and supportable.

#### **17. Probationary appointments**

- (1) This Part shall also apply to members of staff who have been appointed subject to review after a period of probationary service.
- (2) The Council shall by Ordinance prescribe a procedure under which staff on probation shall be reviewed and shall include provision for non-confirmation in post at the end of the probationary period if their performance is found to be deficient or for any other substantial reason or reasons they are judged unsuitable to be confirmed in post.
- (3) The review referred to in sub-clause (2) may encompass matters which, in other circumstances, would fall to be dealt with under Parts II, III or IV of this Statute.
- (4) The substance of sub-clauses (3) and (4) of clause 16 shall apply to a member of staff who has not been confirmed in post under this clause.

#### **18. Dismissal on other grounds**

- (1) This clause covers dismissals on any ground falling within clause 3(2) other than those covered by Parts II, III, IV and clauses 16, 17 and 19 of Part V of this Statute (i.e. "some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held" (Employment Rights Act 1996, s. 98(1)(b); "the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment" (s. 98 (2)(d)).

- (2) Dismissals covered by sub-clause (1) above shall be handled in accordance with a procedure prescribed by Ordinance, which shall include the right to be heard by a panel and the right to appeal to a panel.

**19. Clinical staff**

- (1) This clause applies to a member of the clinical academic staff who is required to engage in clinical work or activities and for that purpose to be registered with the General Medical or Dental Council or similar body and/or to have an honorary or substantive contract or status with a National Health Service trust or similar body, and may by Ordinance be extended to other groups of staff in a similar situation.
- (2) Where the registration, contract or status referred to in sub-clause (1) above is terminated, withdrawn or revoked, the Vice-Chancellor may, having first afforded an opportunity to the member of staff concerned to make representations, dismiss the member of staff concerned; and where the registration, contract or status is suspended, the Vice-Chancellor may suspend the member of staff from employment for so long as the registration, contract or status is suspended, that suspension from employment to be without pay where the registration, contract or status has been suspended as a substantive disciplinary measure.

**PART VI: GRIEVANCE PROCEDURES**

**20. Grievance Procedure**

- (1) The Council shall by Ordinance promulgate a Grievance Procedure for members of staff and in doing so shall have regard to Section 2 of the Code of Practice (as may be amended or replaced from time to time) referred to in clause 11 above.
- (2) The Procedure shall apply to grievances by members of staff concerning their appointments or employment in relation to matters affecting themselves as individuals or their personal dealings or relationships with other staff of the University, other than those for which provision is made elsewhere in this Statute or in respect of the outcome of any matter dealt with under this Statute, or where the Council has prescribed other procedures, provided those other procedures are no less favourable to the individual than under the Grievance Procedure.
- (3) The Procedure shall provide that consideration of a complaint under the Procedure may be deferred if other proceedings under this Statute concerning the individual and relevant to the application are pending or in progress.
- (4) The Procedure shall provide for the fair and speedy resolution of complaints, informally wherever possible, and for the complainant to be entitled to be

assisted by any other member of staff or by a trade union representative at any hearings prior to that under sub-clause (5) below.

- (5) The Procedure shall make provision for a member of staff who is dissatisfied with the outcome of a complaint to be able to have the complaint heard by a Grievance Panel unless the complaint has been ruled frivolous, vexatious or invalid in accordance with the Procedure.