

APPENDIX TO THE STATUTES

DISCIPLINE, GRIEVANCE AND DISMISSAL PROCEDURES FOR ACADEMIC STAFF

PART 1: GENERAL

1. Application

- (1) This Appendix applies to the following:
 - (a) the members of the academic staff (except, in relation to the application of Part II, for those excluded from Part II by clause 5(1) below);
 - (b) 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 Appendix means those members of the staff to whom this Appendix applies.
- (2) This Appendix will override any provision in any contract, term or condition of employment which is inconsistent with this Appendix, whether dated before or after the commencement of this Appendix, but:
 - (a) it shall not affect the validity of any settlement agreement under section 203 of the Employment Rights Act 1996, or any similar waiver or agreement permitted by law; and
 - (b) 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 Appendix shall not apply to removal from an appointment as Vice-President, Vice-Provost, Associate Provost, Dean, Vice Dean, Deputy Dean, Consul, 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 right to make representations to the person exercising the power of removal and a right of appeal to an appeal panel constituted in accordance with clause 4(1) below.
- (4) This Appendix shall not apply to the President or the Provost, except for Part III, which shall, unless the Council, with the President’s concurrence, resolves otherwise, apply to the President or Provost in post at the time it comes into effect, with such modifications and adaptations as the Council, with the President’s concurrence, shall prescribe, but it shall not apply to any later President or Provost, even if also the holder of an academic post.

2. General principles of construction and application

- (1) This Appendix and any Ordinances or Regulations made under it shall be applied and construed in every case to give effect to the following guiding principles:
 - (a) that the University applies academic freedom as broadly defined in Sections VI and VII of *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. This freedom includes:

- (i) 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) freedom to carry out and publish research work without any interference, subject to accepted professional principles including professional responsibility and subject to national and international recognised professional principles of intellectual rigour, scientific inquiry and research ethics;
 - (iii) freedom to teach without any interference, subject to accepted professional principles including professional responsibility and intellectual rigour with regard to standards and methods of teaching.
- (b) to enable the University to provide education, promote learning and engage in research efficiently and economically; and
- (c) to apply the principles of justice and fairness.
- (2) Where, in any proceedings under this Appendix, a member of staff invokes sub-clause (1)(a) 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. In the event that a member of staff appeals a disciplinary warning on the grounds of sub-clause (1)(a) above then the appeal against the warning and the review of the academic

freedom complaint will be considered by the person dealing with the matter assisted by two senior members of academic staff, none of whom shall previously have had any involvement with the case.

- (3) Where there is any issue as to the meaning of “academic freedom” in any proceedings under Parts II, III, IV, V, VI and VII of this Appendix, 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 Appendix to a provision in an Act of Parliament or to a Code of Practice shall be taken to be a reference to that provision as it may have been amended, superseded or re-enacted from time to time.
- (5) In interpreting or construing any provision in this Appendix, regard shall be had to the *Notes on Clauses on the Draft Revised Model Statute* issued by the Universities and Colleges Employers Association (2002), so far as the provisions of the Draft Revised Model Statute have been adopted in this Appendix.
- (6) All procedures within the Ordinances will be conducted in line with the requirements of this Appendix.

3. Dismissal

- (1) For the purpose of this Appendix and, subject to clause 3(4) below, “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)
 - (a) a dismissal by reason of redundancy shall be handled in accordance with Part II;
 - (b) a dismissal for disciplinary reasons shall be handled in accordance with Part III;

- (c) a dismissal on health grounds shall be handled in accordance with Part IV;
 - (d) a dismissal on capability grounds shall be handled in accordance with Part V; and
 - (e) a dismissal on any other grounds shall be handled in accordance with Part VI.
- (4) Clause 3(3) above shall not apply to the termination of a limited term contract (within the meaning of section 235 of the Employment Rights Act 1996) by the passage of time, or otherwise in accordance with the terms under which that contract comes to an end, without an offer to renew the contract, but any decision by the University not to offer renewal of such a contract, whether on the ground of redundancy or otherwise, shall be handled in accordance with Part V.

4. Hearing, appeal and grievance panels

- (1) Any panel established pursuant to clauses 1(3), 8(1), 10(b)(vii), 15(2), 16(2) or 18(2) of this Appendix shall consist of three persons, none of whom shall previously have had any involvement with the case. The three person panel shall include one lay member of Council, one College Consul and one drawn from a list agreed from time to time by the Council. If no College Consul is eligible and willing to serve, or if the panel is an appeal panel within clause 1(3) above considering the position of a College Consul, then two persons will be drawn from the list agreed by Council.
- (2) An appeal against a disciplinary warning on the grounds of academic freedom as defined in clause 2(1)(a) will be considered by a panel of three persons, none of whom shall previously have had any involvement with the case.
- (3) Where a hearing is convened under Part II, Part III, Part IV or Part V, and dismissal is a potential outcome, the hearing shall include provision for the person considering the case to be

assisted in their deliberations by a senior member of the academic staff with no previous involvement in the case.

- (4) Ordinances may provide for any relevant National Health Service or other relevant body to be represented on any panel established under this Appendix to deal with a member of staff falling within clause 19(1) below and for the panel to be enlarged for this purpose. Such provision is not intended to provide for a concurrent decision on the matter by the relevant body.
- (5) At any hearing the member of staff shall be entitled to be represented or assisted by another member of staff or a trade union representative, or by such other person as may be permitted by Ordinance.
- (6) Any panel within clause 4(1) shall give its decision in writing, which shall be provided to the member of staff and reported to the Chairman of the Council. The Chairman will report decisions to Council.

PART II: REDUNDANCY

5. Application

- (1) The power to dismiss, and the procedures prescribed, under this Part shall apply to all staff to whom this Appendix applies, provided that in its application 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], the power to dismiss shall be subject to such limitations (if any) on the power to dismiss for redundancy as applied to the member of staff concerned 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) The provisions under this Part shall be subject to Council approval as set out in the Ordinance on the dismissal of members of staff by reason of redundancy.

- (3) This Part shall not apply to the non-renewal of a limited term contract (within the meaning of section 235 of the Employment Rights Act 1996), which shall be dealt with under clause 16 below.

6. Definition of “redundancy”

Subject to clause 5(2) above, dismissal by reason of redundancy has the same meaning, for the purpose of this Part and clause 16, 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:
- (a) a preliminary stage involving consultation with appropriate representatives in accordance with, and if and to the extent required by, section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 or, in those cases where such consultation is not so required, discussion with the staff concerned, or in appropriate cases both such consultation and individual discussions ;
 - (b) a procedure which is fair, and which allows each staff member whom the University proposes to dismiss for redundancy, having been informed of the selection criteria to be employed, to make written and oral representations on his or her behalf to the person or body authorised under the procedure to take a decision to dismiss, under a procedure which complies with any relevant and binding codes or guidance issued by ACAS;
 - (c) 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;

- (d) provision authorising the Provost or other person authorised by the Provost to dismiss any member of staff selected for dismissal under this Part and requiring reports of dismissals to be submitted to the Council; and

- (e) for the person responsible for the selection decision to be assisted in their deliberations by a senior member of the academic staff.

- (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. The Ordinance should make provision for the Council to review the redundancy proposal after or during the consultation period, if they wish to do so.

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, such appeal to be conducted in accordance with clause 4(1) and the requirements for appeals against dismissal prescribed by any relevant and binding codes or guidance issued by ACAS.
- (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 person or 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 such conduct as may be

designated as misconduct under, or found to constitute misconduct in accordance with, a Disciplinary Ordinance adopted by the Council.

academic staff, where dismissal is a potential outcome of the hearing;

10. Disciplinary procedures

The Council shall adopt a disciplinary procedure for members of staff in the form of a Disciplinary Ordinance, which shall provide:

- (a) for less serious matters to be dealt with either informally, or formally by warnings following a fair and appropriate procedure, and for a member of staff to be able to appeal against the imposition of a formal warning to a person designated by the Provost; or a panel if clause 2(1)(a) of Part I is invoked; and
- (b) for dealing with more serious matters, which shall include provisions for the following:
 - (i) fair and reasonable time limits for each stage;
 - (ii) investigating complaints and dismissing those found to be without substance;
 - (iii) suspension, on full pay, by the Provost or his or her authorised delegate pending an investigation or hearing where this is necessary;
 - (iv) a hearing by a person appointed for the purpose of such hearing, or for hearing disciplinary cases generally or within a particular category, by the Provost, who shall normally be a Faculty Dean or authorised nominee of such Faculty Dean, and the procedure for which shall be specified, and shall in any event comply with the requirements of any relevant and binding codes or guidance issued by ACAS;
 - (v) the person hearing the case may be assisted in their deliberations by a senior member of the

- (vi) designating an allegation against a member of staff as constituting “gross misconduct” such as, if established, to merit summary dismissal without notice; and
- (vii) a right to appeal against the finding of, or penalty imposed by, the person or persons conducting the hearing, including a finding under clause 10(b)(vi) above. An appeal shall comply with the requirements for an appeal prescribed by any relevant and binding codes or guidance issued by ACAS, but shall not take the form of a re-hearing of the evidence, and witnesses may be called where appropriate.

11. Code of Practice

In drawing up the procedures, and in any regulations made or action taken hereunder, the University shall have regard to any relevant and binding codes or guidance issued by the Advisory Conciliation and Arbitration Service (ACAS).

12. Dismissal

- (1) The Director of Human Resources or other designated officer shall give effect to a decision that a member of staff should be dismissed:
 - (a) where the person conducting the disciplinary hearing has designated the conduct as “gross misconduct” such as to merit summary dismissal pursuant to clause 10(b)(vi), the Director of Human Resources or designated officer shall forthwith dismiss the member of staff and issue the notice of dismissal;
 - (b) in all other cases, the Director of Human Resources or designated officer 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.
- (3) The Ordinance shall include provision for an appeal to a panel by a member of staff who has been given notice of dismissal under this Part, such appeal to be conducted in accordance with Clause 4(1) and the requirements for appeals against dismissal prescribed by any relevant and binding codes or guidance issued by ACAS.

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 Equality Act 2010, 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 dismissing staff because of incapacity on health grounds, whether physical or mental. The procedure shall be conducted

in accordance with the requirements within the Equality Act 2010.

- (2) The Ordinance may also apply where conduct is under formal review if the cause for concern is wholly or partly attributable to a medical condition. Any proceedings under Part III will still be valid even if they could have been brought under Part IV.
- (3) The procedure shall include a hearing conducted by a person appointed by the Provost, who shall normally be a Faculty Dean or authorised nominee of such Faculty Dean for the purpose of such hearing or for hearing such cases generally. The person hearing the case will be assisted by a senior member of academic staff.
- (4) The Ordinance shall include provision for an appeal to a panel by a member of staff who has been given notice of dismissal under this Part, such appeal to be conducted in accordance with clause 4(1) and the requirements for appeals against dismissal prescribed any relevant and binding codes or guidance issued by ACAS. The procedure shall include provision for the panel to appoint a medically qualified assessor, in any case in which it considers it appropriate to do so. The member of staff may request that a medically qualified assessor is appointed to advise the panel. The panel will consider the request and decide whether to appoint a medically qualified assessor at its discretion.

PART V: CAPABILITY

16. Grounds for capability action

Capability action under this Part may be taken, and where found to be appropriate a penalty imposed, in respect of such problems arising where a member of staff is not sustaining the acceptable level of performance needed to meet the requirements for their role in accordance with, a Capability Ordinance adopted by the Council.

academic staff, where dismissal is a potential outcome of the hearing; and

17. Capability procedures

- (1) The Council shall adopt a capability procedure for members of staff in the form of a Capability Ordinance, which shall provide:
 - (a) for less serious matters to be dealt with either informally, or formally by warnings following a fair and appropriate procedure, and for a member of staff to be able to appeal against the imposition of a formal warning to a person designated by the Provost; or a panel if clause 2(1)(a) of Part I is invoked; and
 - (b) for dealing with more serious matters, which shall include provisions for the following:
 - (i) fair and reasonable time limits for each stage;
 - (ii) investigating performance concerns and dismissing those found to be without substance;
 - (iii) suspension, on full pay, by the Provost or his or her authorised delegate pending an investigation or hearing where this is necessary;
 - (iv) a hearing by a person appointed for the purpose of such hearing, or for hearing capability cases generally or within a particular category, by the Provost, who shall normally be a Dean of Faculty or authorised nominee of such Dean of Faculty, and the procedure for which shall be specified, and shall in any event comply with the requirements of any relevant and binding codes or guidance issued by ACAS;
 - (v) the person hearing the case may be assisted in their deliberations by a senior member of the

- (vii) a right to appeal against the finding of, or penalty imposed by, the person or persons conducting the hearing, including a finding under clause 22(b)(vi) above. An appeal shall comply with the requirements for an appeal prescribed by any relevant and binding codes or guidance issued by ACAS, but shall not take the form of a re-hearing of the evidence, and witnesses may be called only where appropriate.

18. Dismissal

- (1) The Director of Human Resources or other designated officer shall give effect to a decision that a member of staff should be dismissed:
- (2) the Director of Human Resources or designated officer shall issue the notice of dismissal or dismiss together with payment in lieu of notice.
- (3) 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.
- (4) The Ordinance shall include provision for an appeal to a panel by a member of staff who has been given notice of dismissal under this Part, such appeal to be conducted in accordance with Clause 4(1) and the requirements for appeals against dismissal prescribed by any relevant and binding codes or guidance issued by ACAS.

PART VI: OTHER DISMISSALS

19. Non-renewal of a limited term contract

- (1) The Provost, or other person or persons designated by the Provost, shall in every case where a limited 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 if 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. In any case where the duty to consult appropriate representatives does not apply, and in such other cases as may be deemed appropriate by the Director of Human Resources, the member of staff shall have the right to make representations in person under a procedure prescribed by the Council, which shall not be less favourable than that required in the ACAS Code of Practice 2009.
- (2) The Ordinance shall include provision for an appeal to a panel by a member of staff who has been given notice of dismissal under this Part, such appeal to be conducted in accordance with clause 4(1) and the requirements for appeals against dismissal prescribed by any relevant and binding codes or guidance issued by ACAS.

20. 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 either during or 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. Such provision shall also include provision for a hearing in accordance with the

requirements of any relevant and binding codes or guidance issued by ACAS

- (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 Appendix.
- (4) The Ordinance shall include provision for an appeal to a panel by a member of staff who has been given notice of dismissal under this Part, such appeal to be conducted in accordance with clause 4(1) and the requirements for appeals against dismissal prescribed by Schedule 2 to the Employment Act 2002.

21. 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, V and clauses 19 and 20 of Part VI of this Appendix (*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, section 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” (section 98(2)(d) or dismissal on the ground of having reached the retirement age for the post held).
- (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, prior to a decision to dismiss being taken, by a person appointed by the Provost for the purpose of conducting that hearing. The person hearing the case may be assisted by a senior member of academic staff.
- (3) The Ordinance shall include provision for an appeal to a panel by a member of staff who has been given notice of dismissal under this Part, such appeal to be conducted in accordance with clause 4(1) and the requirements for appeals against dismissal prescribed by any relevant and binding codes or guidance issued by ACAS.

22. 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 Provost or his or her nominee may, having first afforded an opportunity to the member of staff concerned to make representations in writing, will then meet with the member of staff in accordance with the requirements of any relevant and binding codes or guidance issued by ACAS. The person hearing the case will be assisted by a senior member of academic staff.
- (3) Where the Provost or his or her nominee dismisses the member of staff concerned; and where the registration, contract or status is suspended, the Provost or a person authorised so to act by the Provost 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.
- (4) The Ordinance shall include provision for an appeal to a panel by a member of staff who has been given notice of dismissal under this Part, such appeal to be conducted in accordance with clause 4(1) and the requirements for appeals against dismissal prescribed by any relevant and binding codes or guidance issued by ACAS.

PART VII: GRIEVANCE PROCEDURES

23. Grievance Procedures

- (1) The Council shall issue a Grievance Procedure in the form of an Ordinance for members of staff, and in doing so shall have regard to the requirements of the Statutory Grievance Procedure as set out in any relevant and binding codes or guidance issued by ACAS.
- (2) The Grievance Ordinance shall apply to grievances by members of staff concerning their appointments or employment or the terms and conditions of their employment, or in relation to other matters affecting themselves as individuals or their personal dealings or relationships with other members of the University, other than those for which provision is made elsewhere in this Appendix or in respect of the outcome of any matter dealt with under this Appendix (including, for the avoidance of doubt, any grievance about the conduct of or outcome of any disciplinary process), or where the Council has prescribed other procedures, provided those other procedures are no less favourable to the individual than under the Grievance Ordinance. The Ordinance will not apply to grievances raised collectively by an appropriate representative on behalf of more than one member of staff, and for which an alternative procedure is available.
- (3) The Grievance Ordinance shall provide that consideration of a complaint under the Ordinance may be deferred if other proceedings under this Appendix concerning the individual and relevant to the application are pending or in progress.
- (4) The Grievance Ordinance 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 within the Ordinance.
- (5) The Grievance Ordinance shall make provision for a member of staff who is dissatisfied with the outcome of a complaint to be able to appeal to a more senior officer of the University

appointed for the purpose of hearing the appeal, or hearing grievance appeals generally, by the Provost, unless the complaint has been ruled frivolous, vexatious or invalid in accordance with the Ordinance.

- (6) Any grievance within the scope of the Ordinance made under this clause which comprises or includes a grievance against the President or Provost shall be dealt with in accordance with the Ordinance, but subject to such modifications of the Grievance Ordinance as may be provided for by the Ordinance to ensure that the person or persons considering the grievance are not appointed by the President or Provost.