

Reform of Statute 24 and Related Ordinances

Motion Passed by the Law School at their Staff Meeting on Wednesday 15 March 2017.

As a Law School we recognise that the proposed reform of Statute 24 and its related Ordinances infringes upon academic freedom and the intellectual independence of our profession, both in terms of substance and procedure.

We commit therefore to act as an example within the University in communicating the School's concerns to the Vice-Chancellor, and to support the ongoing negotiations and consultations by the trade unions and other colleagues, including supporting any proposed motion for debate of the reforms at a Staff Assembly.

Reform of Statute 24 and Related Ordinances and Implications for Academic Staff

Paper prepared for the Law School Staff Meeting, Wednesday 15 March 2017

Background

The University Management is currently undertaking a reform of the university's governing instruments, including its Charter, Statutes and Ordinances. Part of this reform includes reform of [Statute 24](#) and its related Ordinances ([Ordinance 19 – 22](#)) which govern the relationship between the University and Academic, Research Only and Teaching Only staff.

Content

The proposed reforms of Statute 24 and the four related Ordinances will significantly alter the terms of employment for Academic, Research Only and Teaching Only staff. The University Management is proposing to repeal all but one paragraph of Statute 24 and replace them with proposed University policies on that will apply to all academic and non-academic staff. The proposed reforms will remove current provisions governing redundancy; discipline, dismissal and removal from office; grievance hearings; and removal for incapacity on medical grounds provided for under Statute 24 and its related Ordinances and replace them primarily with University policies which can be varied, altered or amended with much greater ease than provisions under the University's Statutes and Ordinances.

The University argues that these changes are necessary to 'simplify, clarify and modernise' the content of the University's governing instruments and bring them in line with current national legislation (see [Letter from the Vice-Chancellor, Professor Stuart Croft published on 12 December 2016](#)). The University Management is also arguing that as the current provisions under Statute 24 and related Ordinances apply only to academic staff, they do not treat all staff equally and that all staff, academic and non-academic should be covered by the same employment policy (see above).

Process

The proposed reforms are very extensive but despite these wide-ranging changes to our terms of employment, there has not been much debate or consultation with academic staff. The University is currently consulting with trades unions, notably the UCU, but the majority of affected staff remain unaware of the breadth of these reforms and how they will affect our

relationship with the University Management and how these reforms will affect our day-to-day work as academics.

The plan is to table the proposed reforms to the University Council for agreement on 17 May 2017 with a submission to the Privy Council in the summer and, pending approval from the Privy Council, implemented from academic year 2017 – 18. The University has therefore established a very tight timeline for consultation and discussion of these major changes to its constitution, with the announcement of the review announced in December last year and detailed proposals for reform released in late February 2017 (see [Message from Provost Christine Ennew on 20 February 2017](#)). For much of the spring term, academic departments have been preoccupied with the Institutional Teaching and Learning Review (ITLR) and there is not much time between the release of these proposed changes and the Council meeting on 17 May, particularly with the Easter vacation in between. According to the UCU, regardless of whether there is agreement from the campus trades unions on the final proposals, the University Management is expected to proceed with these constitutional reforms.

Key Implications of Proposed Reforms

The proposed reforms to Statute 24 and related Ordinances will impact on our ***job security and academic freedom***. The UCU argues that these proposal amounts to ‘a radical reconfiguring of the relationship between academic/teaching staff and their employer’ ([UCU Newsletter, January 2017](#)). The proposed policies are inferior to the safeguards under Statute 24 and its related Ordinances, both procedurally and substantively (see detailed changes in Appendix 2).

The proposed reforms represent a significant downgrading of the employment safeguards necessary for academics to carry out our responsibilities as employees and as *scholars* and *teachers* in the wider academy:

1. The shifting of these policies and procedures from Statute and Ordinances to University policies will make it easier for the University Management to unilaterally change them. At present, Statutes can only be added to, amended or repealed with the approval of the Privy Council and changes to Ordinances must be made by University Council. The proposed reforms will eliminate most of these processes when varying or amending fundamental terms of our employment as academic staff. The University Management will reserve the right to change these policies with little oversight and input from the broader University community, including the trades unions.
2. The reforms will remove Council oversight over redundancy proceedings, making it quicker and easier for the Management to make redundancies in staff, including mass redundancies in a particular discipline or sub-discipline for the purposes of financial expediency regardless of the *academic* value of scholarly contributions (see proposed [Policy and Procedure on Redundancy](#) and Appendix).
3. The proposed reforms will also make it easier to dismiss academic staff on disciplinary grounds, again by removing Council and, in this case, Senate oversight over the disciplinary process, with Heads of Departments primarily responsible to convening and chairing disciplinary hearings (see [section 12 of the proposed Disciplinary Policy and Procedure](#)).
4. The definitions of misconduct for the purposes of disciplinary action are also much broader and more extensive than those provided for under Statute 24, particularly what is defined as

‘gross misconduct’ which the University terms as conduct sufficiently serious to constitute a breach of employment contract and therefore can lead to a summary dismissal by the University (see [section 5 of the proposed Disciplinary Policy and Procedure](#)). Definitions of ‘gross misconduct’ include ‘repeated wilful disobedience or refusal to obey the reasonable and lawful instructions of the manager’ as well as ‘conduct which could damage the reputation of the University’ (section 5.3.1 of the above). These definitions provide wide-ranging grounds on which the University Management can institute disciplinary proceedings leading to dismissal, potentially including refusal to comply with requirements to publish in selected academic journals or apply for a set number of research grants, or speaking out against issues of contemporary public concern which may be unpopular with the University Management.

These proposed reforms will have *significant impact on academic freedom*. The combination of the removal of Council (and Senate where applicable) oversight over the redundancy and disciplinary and dismissal processes and the extensive definitions of what can be construed as misconduct liable for summary dismissal proposed under proposed new disciplinary policy and procedure will not only constrain and undermine the ability of academics to carry out our contractual duties to the University but also our responsibilities as members of the wider academy to, among other things, extend knowledge and understanding of new and existing areas, foster critical thinking and challenge ideas, policy, practice and law in the public interest.

The Local and Broader Context

The University has argued that academic freedom will be preserved under the reformed statutory provisions by retaining a modified version of the first paragraph of the current Statute which includes a statement that the University will be guided in the construction of its policies and procedures, by the principle ‘to ensure that Academic Staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs and privileges’ (see [proposed Statute and Ordinance](#)). The University Management also maintains that it has made provisions within the revised redundancy and disciplinary and dismissal policies for the hearing of and determining of appeals by academic staff in the specific circumstance that they invoke the principle of academic freedom enshrined in Statute (see above).

These concessions do not provide the same level of safeguards for academic freedom and job security as enshrined in the current Statute 24 and related Ordinances for the reasons outlined above. The retention of the principle of academic freedom in one paragraph of the reformed Statutes do not provide the same guarantees as the current safeguards provided for under Statute 24. It also places the onus on the affected party to demonstrate that the grounds for redundancy or discipline and dismissal impinge upon their academic freedom as protected under Statute.

The distinction between academic staff and non-academic staff is also being utilised expediently by the University Management to justify revising the safeguards downwards rather than revising them upwards to confer greater employment protection for non-academic staff.

Importantly, the University does not recognise the distinctiveness of the academic role and the role of the academy in wider society which requires additional employment safeguards. It also does not recognise the differing impact common policies on redundancy and disciplinary and dismissal policies and procedures can have when implemented for employees in different roles.

It can be argued that the proposals to harmonise employment terms between academic and non-academic staff can actually lead to the effective lowering of protections for academic staff compared to non-academic staff because academic staff will be more adversely affected than non-academic staff by the same policies and procedures, given their very different roles within the University.

For example, academic staff are not as easily redeployed as non-academic staff in a redundancy situation. While an Admissions Officer can be easily redeployed from Law to Economics, the same cannot be said of an Associate Professor of Law or a Teaching Fellow in Law. There is also greater clarity with regards to the performance criteria used to assess non-academic staff (eg more specific job descriptors, greater clarity over performance expectations) than academic staff. The manner in which academic staff carry out their duties and their 'performance' indicators are also highly dependent on the external environment and how the University Management decide to respond to the external environment, including requirements related to the Research Assessment Framework (REF) and the soon-to-be-implemented Teaching Excellence Framework (TEF).

The revision of Statute and its related Ordinances is also taking place in the context of greater threats to academic freedom posed by the aforementioned REF and TEF and other government laws and policies, both those relating directly to research and academia as well as those relating to other areas of national life, including national security and immigration legislation. If implemented in conjunction with the current proposals of the Stern Review on the portability of research publications, these reforms can seriously undermine not only an academic's freedom to forward unpopular or unfashionable views and their ability to act in the public or University community's interest due to the threat of dismissal or redundancy and the inability to relocate or seek employment elsewhere.

Ways Forward

The UCU is currently in discussions with Management to ensure that as many of the current safeguards of Statute 24 are maintained in the reform process in recognition of the overriding principle of academic freedom, particularly those in relation to independent oversight of redundancy and disciplinary and dismissal policies and procedures and protections against unilateral variation of such protections as envisaged under the plans. Other universities have undertaken similar exercises and have developed revised governing instruments which offer much greater safeguards for academic freedom and job security than currently proposed by Warwick. It is also calling for greater and more extensive consultation with academic staff prior to the implementation of these changes and for greater transparency and discussion.

We believe that the Law School has a particularly important role to perform in ensuring the protection of both substantive academic freedom within our institution and the procedural integrity and rigour in any decision-making process in connection with these proposed reforms.

We invite colleagues to engage in a discussion on how we support and monitor the ongoing reforms to Statute 24 and to debate the motion attached in Appendix 1 and, if necessary, the convening of an Extraordinary Staff Meeting to discuss these issues in greater detail.

10 March 2017