

Report to Personnel Committee on Staff Employment Review Panels (SERPs) and University Appeal Panels (UAPs)

November 2020

Background

Since February 2017, where a Department considers that there is a good cause for dismissal of a member of staff to whom Statute XII applies, and the Vice-Chancellor or their delegate considers that the matter shall proceed further, and that there is no reasonable prospect that the determination of the complaint will or may involve an issue of academic freedom, the case is referred to a SERP rather than the Visitation Board. The SERP comprises five members of the Pool, whose names are drawn by lot, the first drawn being Chair of the Panel. The Pool is elected by and from Congregation. The Panel conducts an oral hearing to decide whether the complaint should be upheld and, if so, what sanction, if any, should be imposed.

If the member of staff wishes to appeal against the referral to a SERP, on the grounds that there is a reasonable prospect that the determination of the complaint will or may involve an issue of academic freedom, they may appeal to a Review Panel, comprised of two elected academic members of Council who are drawn by lot. Where either the Vice-Chancellor or the Review Panel decides that there is or may be an issue of academic freedom, the case is referred to a Visitation Board. The Visitation Board has not been convened since February 2017. There have been two appeals to a Review Panel against the referral to a SERP, of which one was not upheld and the other is ongoing.

The outcome of a SERP may be appealed to a UAP, which is constituted in the same way as a SERP. A UAP will also hear appeals against the decision of the EJRA Committee on the extension of retirement age, and against the ending of a fixed term contract.

Members of the Pool will also be drawn where Congregation approves a resolution¹ to establish a Redundancy Panel to consider whether compulsory redundancies should be recommended, where no alternative solution has been identified; no Redundancy Panels has yet been established, either as a result of a Congregation resolution or to consider staff on open-ended externally funded contracts.

¹ Congregation is not required to approve the referral to a Redundancy Panel in cases involving employees on open-ended contracts where the need for redundancy arises through the withdrawal of funding.

Cases referred

The table below shows the number of referrals to SERPs and UAPs between 15 February 2017 and 31 October 2020.

	SERPs	UAP (EJRA decision)	UAP (end of Fixed Term Contract)	UAP (SERP recommendation to dismiss)	Total
Commenced	7	6	10	1	24
Withdrawn	2	1	4	0	7
Ongoing	2	0	0	0	2
Upheld/partially upheld	3*	1	0	1	4
Not upheld	0	4	6	0	10

*None of these cases resulted in dismissal, two because warnings were imposed, and one because the dismissal was overturned on appeal.

Since the Covid 19 pandemic began, 2 UAP hearings have taken place via Microsoft Teams, with papers distributed electronically only. In common with other disciplinary and grievance hearings, it has been possible to run fair hearings at which where all parties are able to contribute fully. Further online hearings are scheduled in the coming months.

The Pool and Panels

Pool numbers and elections

The Pool from which Panels are drawn initially comprised 24 members of Congregation (four from each academic division, GLAM and UAS), but this was increased to 32 (i.e. with eight further members of Congregation, not representing any Division) in MT 2017 to increase the proportion of men and staff who conduct teaching and/or research. The current panel composition is set out below:

Role/gender	Women	Men	Vacancies
Teaching /research	0	9	
Not teaching/research	17	4	
Total	32	13	2

When lots are drawn account is taken of the balance of gender and role, to ensure that the Panel is appropriately balanced; if a Panel does not include at least one of each gender and one of each role further lots are drawn until the criteria are satisfied.

Elections for 25 places in the Pool will be conducted this term and 10 existing members have been nominated for a further term. Efforts have been made to solicit interest in nomination to the Pool to increase diversity of the panel, and two women with teaching/research roles have been nominated. Sufficient interest in the work of the Pool has been shown that it should be possible to fill any lapsed vacancies (subject to the Vice-Chancellor and Proctors being willing to appoint to any such vacancies). A number of those contacted have expressed an interest in being nominated in the future, and work will continue to broaden the diversity of the Pool in the next round of elections (TT 2021), including racial diversity, which is not an area which has yet been worked upon

Panels and the time commitment for Panels

Panel members are drawn by lot from the Pool. Members' ability to serve can be affected by conflict of interest, illness, non-availability including whether they are on sabbatical or engaged in a particularly busy period of work, and whether they have had the required training. Panel members have also served for varying lengths of time. The number of cases for which a Pool member has been drawn therefore differs across the Pool, with a range from 0 to 7. Pool members have been drawn for a mean of 3.28 cases and a median of 3 cases. Some cases will subsequently have been withdrawn.

Feedback from Pool members indicates that they find service on Panels interesting and rewarding, and that they consider that it is possible to fit two to three cases per year into their normal workload. The majority of cases can be heard within one working day, and panel members need to read a significant bundle of papers in advance of the hearing, and work on an outcome letter following the hearing. In some cases the Chair or another member of the Panel may be required to give evidence in Employment Tribunal proceedings. The Chair may also need to consider pre-hearing matters on behalf of the Panel, relating to requests for extensions of deadlines, adjournments or questions relating to evidence or witnesses. The Panel is supported by the Secretary to the Panel and by an HR Advisor, who has not had any previous involvement in the case, and whose role is to advise the Panel. The Panel has access to legal advice if required.

Hearings

The aim of the Secretariat is to schedule hearings within 8-12 weeks of an appeal being submitted or a case being referred to a SERP, which takes account of the availability of all concerned and gives sufficient time for the member of staff and the Department to prepare written submissions (for which the time required may differ from case to case) and for the bundle to be prepared and read in advance of the hearing by all those attending. In a significant number of cases it is not possible to achieve this aim, due to delays caused by other University processes which the Chair has decided need to be completed first, legal arguments, adjournments for personal reasons, non-availability of the member of staff, or holiday periods. Of the 13 cases referred to a SERP or UAP since the beginning of 2019, 5 have been withdrawn, 2 (referred in spring and autumn 2020) are ongoing, and of the 6 which have proceeded to a hearing, only one has been heard within 8-12 weeks (although two of the withdrawn cases would have been heard within this time). In every case the Secretariat endeavours to schedule hearings as soon as reasonably practicable after the case is referred to a SERP or UAP, and these efforts will continue.

Training

All Pool members must have had training on the requirements of the SERP and UAP processes and on Equality and Diversity before they can serve. Legal Services and HR have run six training courses for Pool members on the processes, regulations and employment law context for the University's processes; on equality and diversity; or covering both these topics. Further training will be arranged next term for newly elected members of the Pool. Where possible previously trained members are invited to attend training courses to refresh their knowledge and understanding of the process. Two courses on the responsibilities of the Redundancy Panel have taken place this term, training over two thirds of the Pool, so that a suitably trained Panel can be drawn in the event that Congregation agrees to the establishment of a Redundancy Panel in the coming year.

Regulations

SERPs and UAP operate under Regulations 1 and 3 of 2017 (Regulations for the SERP and UAP and Regulations for constituting Panels convened under Statute XII Parts B, D and H respectively).

In March 2020, following consultation with the UCU and discussions at the Joint Consultative Committee with the UCU, a number of amendments, proposed in the light of experience since 2017, were approved. The main aims of the amendments were to:

- i. Reflect the practice that a presenter as well as a member of staff may be accompanied, and that there should be equality of right between the parties to make representations and to have legally qualified expertise at the hearing (subject to the right of the member of staff to be accompanied by a trade union representative);
- ii. Subject to the requirements of Statute XII and the regulations themselves in relation to justice, fairness and reasonableness, give the panel the ability to determine which witnesses may be asked to give evidence, limit the evidence given to that which is material or relevant, and control the manner in which witness give evidence and are questioned;
- iii. Speed up the appeal process and correct discrepancies between the SERP and UAP regulations on what is required to be submitted.
- iv. Clarify the regulations to ensure balance between the sexes and between those who are involved in teaching and research and those who are not; and
- v. Enable the panel chair, if the member of staff agrees, to decide to continue with a hearing with a panel of 4 where a panel member has to withdraw shortly before the hearing and cannot be replaced, either because no Pool member is available or because it is too close to the hearing date for a new panel member to be able to read and consider the papers.

Publication

During the Congregation debates about Statute XII in 2016-17, commitments were made to transparency. It is therefore proposed that this paper be published on the HR Support section of the University website, with a link to the paper published in the Gazette. This will enable members of Congregation, whose members are subject to Statute XII and elect the Pool, to read this update.

Public Sector Equality Duty

As a public body, the University has an active duty to consider the impact on equality in all decision making.

Equality impact

This paper provides a report on activity so far and does not seek any decisions; therefore, it has no impact on equality. Nevertheless, we are aware of the need to ensure that the operation of the Pool and the Panels are not such as to inadvertently introduce bias.

The number of individuals that have been subject to SERPs or who have raised appeals is too small to allow any analysis by equality characteristic.

We are aware of the potential for unconscious bias by Panels. In order to mitigate any potential adverse impacts on equality, all Panel members undergo diversity training, and Panels have access to expert advice on equality and diversity where it is relevant.

The Pool is gender diverse, and the regulations require that additional lots are drawn where necessary to ensure Panels are gender diverse.

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