

## **Council Regulations 36 of 2002**

### **REGULATIONS FOR THE VISITATORIAL BOARD MADE UNDER SECTION 33 OF STATUTE XII**

This version incorporates changes to be made by Council if the statutes approved by Congregation on 31 May 2016 are approved by Her Majesty in Council, as set out in the *University Gazette*, Supplement (1) to No 5149, 16 November 2016. (<http://www.ox.ac.uk/gazette/2016-2017/17november2016-no5150/supplements/#245211>)

#### *The Visitorial Board*

1. In these regulations:
  - (1) references to sections are to sections of Statute XII unless otherwise stated;
  - (2) where notice has to be given a specified number of ‘clear days’ before a hearing, the day of receipt of the notice and the day of the hearing shall be excluded from the calculation;
  - (3) any notice sent by the secretary of the Visitorial Board shall be deemed to arrive on the day after dispatch, unless the contrary is proved.
2.
  - (1) The Visitorial Board (‘the board’) shall be constituted in accordance with Part C of Statute XII.
  - (2) Members of the panel of twelve persons elected by Congregation shall:
    - (a) hold office for four years;
    - (b) be capable of re-election;
    - (c) be elected under the provisions of regulations for elections made under Statute IV, save that candidates may be nominated by Council as well as by members of Congregation.
3. The board shall consider any reference made to it under the provisions of section 19.
4. When a case is referred to the board by the Vice-Chancellor, the Registrar (or a person appointed by the Registrar to act on his or her behalf) shall select by lot four persons from all such members of the panel as are not ineligible to serve under the provisions of section 9 (3).
5. The four persons so selected shall serve as members of the board for the duration of its consideration of that case; save that if the selection by lot of the first three of such members results in all three of those members being persons of the same sex as the chair, and if the eligible members of the panel then remaining include a person or persons of the other sex, that person or a person selected by lot from amongst those persons (whichever shall be applicable) shall serve as the fourth member of the board.
6. If any of the four members of the board so selected for the consideration of a case is unable to serve, a further person shall be selected by the same procedure to replace the member who is unable to serve.

7. Once the board has begun to consider a case, the members of the board selected for the consideration of that case shall remain members of the board for the duration of the consideration whether or not their period of office as a member of the panel has expired in the interim.

8. The proceedings of the board in respect of any case referred to it shall be valid only if the chair and at least three other members have each attended all of the meetings at which that case was considered, and any member who has been unable to attend any such meeting shall cease to be member for the further consideration of the same case.

9. (1) If, through the unavailability of the chair or other members, the board is unable to comply with the provisions of regulation 8 above, the board shall thereupon be dissolved and a new board shall be constituted under the provisions of regulations 4-6 above for the purpose of considering the case afresh.

(2) No person, other than the chair, who has served on a board previously constituted to consider that case shall be eligible to serve on any further board constituted to consider that case.

*Proceedings referred to the Board*

10. In these regulations, all references to the Vice-Chancellor include any person appointed to exercise his or her functions under the provisions of section 40.

11. When the Vice-Chancellor has directed under section 29 (1) (d) that a complaint or complaints be referred to the board, he or she shall appoint under section 31 a suitable person to formulate the complaint or complaints and to present the complaint or complaints before the board ('the presenter').

12. The Registrar shall act as secretary of the board or shall appoint a person to act on his or her behalf.

13. The board may direct that the complaints against more than one person shall be heard together, due regard being given to the principles of justice and fairness.

14. No complaint shall be determined without an oral hearing at which the person who is the subject of the complaint is entitled to be present.

15. The parties to a hearing by the board shall be:

(1) the person or persons who is the subject of the complaint ('the person who is the subject of the complaint');

(2) the presenter;

(3) such other person, if any, as the board may add, either on application or otherwise; reference to the person who is the subject of the complaint shall include, where the context so permits, reference to any such other person.

16. (1) Any person who is the subject of the complaint shall be entitled, at his or her own expense, to be represented by another person, who need not be legally qualified.

- (2) When a person who is the subject of the complaint is so represented, references in these regulations to the person who is the subject of the complaint shall include, where the context so permits, that person's representative.

### *Preparation*

17. The presenter (which expression may include a firm of solicitors or any person instructed to act on that person's behalf) shall:

- (1) notify the person who is the subject of the complaint in writing that the referral has been made and shall send to him or her a statement of the complaint or complaints together with any documents specified in the complaint or complaints; and
- (2) notify the person who is the subject of the complaint of the date and time set for the hearing of the complaint or complaints.

18. The chair may make any interlocutory direction he or she considers necessary for the fair conduct of the hearing, including but not limited to any directions as to the hearing date, whether at the request of a party to the proceedings or otherwise.

19. The chair shall set the date, time, and place for the hearing, and may also set appropriate time limits for each stage (including a hearing), to the intent that any matters be heard and determined expeditiously.

20. If the chair considers it appropriate in all the circumstances of the case he or she may request the Vice-Chancellor to consider the suspension of the person who is the subject of the complaint under section 29 (1) (d).

21. At least twenty-one clear days before the date set for the hearing, the presenter shall send the following to the secretary of the board and the person who is the subject of the complaint and to any other parties to the hearing:

- (1) the complaint or complaints;
- (2) copies of any documents specified or referred to in the complaint or complaints;
- (3) a list of witnesses to be called by the presenter;
- (4) copies of statements contained in the witnesses' evidence.

22. (1) At least ten clear days before the date set for the hearing, the person who is the subject of the complaint shall forward to the presenter, in a conveniently organised form with a referenced list of contents, copies of any documents on which he or she wishes to rely, a list of his or her witnesses, and copies of their statements of evidence.

- (2) The presenter shall ensure that copies of all these are prepared and forwarded to the secretary to the board as soon as practicable.

### *Hearing*

23. (1) Where the case for dismissal, or the member of staff's case in response, involves any issue of physical or mental incapacity or capability, the secretary may arrange for

the board to be provided with access to expert medical advice in relation to such incapacity or capability or to any steps which may be taken in mitigation of the same.

(2) Where the secretary has arranged for the board to be provided with access to expert medical advice, the member of staff may be required to make himself or herself available for examination by such medical expert as may be appointed for this purpose and at the University's expense.

24. (1) The jurisdiction and powers of the board shall not be restricted by the fact that the person who is the subject of the complaint has been, or is liable to be, prosecuted in a court of law in respect of any act or conduct which is the subject of proceedings before the board.

(2) The board may postpone or adjourn a hearing, if it considers that appropriate, pending the outcome of any such proceedings.

25. (1) Subject to the consent of the board, both the presenter and the person who is the subject of the complaint may introduce new evidence at the hearing, save that in the case of the presenter such new evidence shall not be admitted except for good reason.

(2) If new evidence is admitted, the hearing may be adjourned at the request of either party to enable the other party to consider the proposed testimony or further evidence in support of its response.

26. All hearings of or in connection with the proceedings before the board shall take place in private.

27. The board may proceed with a hearing in the absence of any of the persons entitled to be present, except where, in the case of a person who is the subject of the complaint, the board is of the opinion that the person's absence was due to circumstances beyond his or her control.

28. The chair may exclude any person from a hearing if in the opinion of the chair such exclusion is necessary for the maintenance of order.

29. (1) The parties to the proceedings shall be entitled to give evidence at the hearing, to make an opening statement, to call witnesses, and to question any person (including a party) who gives evidence.

(2) Closing statements may be made by the presenter first and then any other parties, with the person who is the subject of the complaint being given the opportunity to speak last.

30. Without prejudice to the board's general power to regulate its own conduct, it shall specifically have the power to set limits on the evidence to be called for each side consistent with providing a fair opportunity for each party to present its relevant evidence whilst ensuring that the complaints are heard and determined as expeditiously as is reasonably practicable.

31. The board shall have power to adjourn the proceedings from time to time as it sees fit.

32. The board may dismiss a complaint for want of prosecution.

33. The board may remit any complaint to the Vice-Chancellor for further consideration.
34. The board shall ensure that its secretary or some other appropriate person is present throughout the hearing so that a full and accurate record of the evidence may be taken.
35. (1) It is for the presenter to prove the complaint or complaints.  
(2) In determining whether the complaint or complaints or any of them are proved the board shall consider the evidence and decide whether on the balance of probabilities it considers that good cause for dismissal within the meaning of section 6 has been proved in respect of each complaint before it.
36. If the board decides that a complaint has been proved, it shall give each party an opportunity, either orally or in writing at the option of the board, to address it on the question of penalty and/or mitigation prior to determining any recommendations that it may make to the Vice-Chancellor.
37. Evidence that a person has been convicted of any offence by or before any court of law, or that any court of law has found proved an offence with which a person was charged, shall, for the purpose of proving that the person committed the offence or was guilty of any act or conduct in respect of which he or she was so convicted or charged, be admissible in any proceedings before the board.
38. The board's decision shall be recorded in a document signed by the chair including:
  - (1) the board's findings of fact regarding the complaint or complaints;
  - (2) the reasons for the board's decisions;
  - (3) the board's recommendations, if any, as to the appropriate penalty or penalties.
39. The secretary of the board shall ensure that a copy of the document is sent to the Vice-Chancellor, to the presenter, and to the person who is the subject of the complaint, and also that a copy of Statute XII and of the associated procedural regulations accompany the document sent to the person who is the subject of the complaint.
40. The chair may, by an appropriate certificate in writing, correct any accidental errors in documents recording the decisions of the board.
41. The person who is the subject of the complaint shall be notified of his or her right of appeal under Part H of Statute XII.
42. (1) Where any complaint has been upheld and the board has recommended dismissal, the Vice-Chancellor may dismiss forthwith or upon such terms as he or she considers fit.  
(2) If the Vice-Chancellor decides not to dismiss, the actions he or she may take are as set out in section 39 (2).  
(3) Any warning given under section 39 (2) (c) shall be recorded in writing and shall remain live for two years.

(4) In all cases the Vice-Chancellor's decision shall be communicated to the person who is the subject of the complaint in writing and to Council.

43. No recommendation of the board shall be implemented until after any appeal has been determined.