



Wellington Square Watch

holding Oxford's bureaucracy to account:
*„für gemäßigten Fortschritt in den Schranken der
Gesetze und Universitätsatzungen bzw. -ordnungen.“*

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Draft evidence to the Statute XI Working Group.
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The present draft is not yet final. Please contact the author before circulating or citing it. The latest version is available at this [link].

Contents

I	Preliminaries.	1
1	<i>In brief.</i>	1
2	<i>Response to Annex A.</i>	2
II	Our comments.	3
3	<i>Intention or recklessness.</i>	3
4	<i>Dishonesty.</i>	5
5	<i>Procedural fairness and the Student Disciplinary Procedures.</i>	7
6	<i>Arbitrary withdrawal of access to IT systems.</i>	10
7	<i>Comments on the functioning of the working group.</i>	12
III	Conclusion.	13
8	<i>Recapitulation of questions for Council and the working group.</i>	13
9	<i>Recapitulation of recommendations.</i>	14

I Preliminaries.

Note: section and paragraph numbers (after § and ¶) are clickable and link to the relevant location.

1 In brief.

We welcome the consultative approach of the working group, and its willingness to openly discuss the central issue: the proper interpretation of the proposed amendments, and whether changes are therefore necessary. We also welcome the amendments made so far.

The text proposed by the working group nevertheless remains significantly flawed. By way of illustration, it could still

- ¶ 3.3 prohibit singing in a college-organised concert if it would disrupt a nearby tutorial;
- ¶ 4.3 prohibit a gay student from claiming to be straight to avoid outing themselves in a college bar;
- ¶ 5.2 allow Council to improperly interfere in disciplinary bodies' proceedings in individual cases or to improperly seek to procure a certain outcome by the inducing of their members by changing the rules of procedure; and
- ¶ 6.2 allow seemingly arbitrary withdrawals of access to IT facilities even before disciplinary cases are properly heard.

In light of these concerns, we make a number of recommendations to improve the text, including

- ¶ 3.6 the reinsertion of a proviso that some conduct should be reckless or intentional to be prohibited;
- ¶ 4.5 the removal of a general prohibition on dishonesty and its replacement by more specific prohibitions on individual forms thereof;
- ¶ 5.5 steps to ensure that important rules to be made by Council separately from the statute do not lead to unfairness; and
- ¶ 6.4 steps to ensure that the circumstances in which access to IT facilities may be withdrawn are restricted, and that these withdrawals should clearly be subject to appeal).

We are concerned that the working group's and university student union's consultation papers do not properly address these concerns or the underlying difficulties with the text. We therefore recommend that the working group should extend its consultations and take oral evidence if necessary.

2 *Preliminaries.*

2 Response to Annex A.

Our response to each row of the table in Annex A of the working group's consultation paper is as below.¹

1 *Section 3(1).*

We have no comment at present on the working group's revisions to section 3(1).

2 *Section 3(2)(a).*

We do not consider the working group's proposals adequate. See § 3.

3 *Section 3(2)(b).*

We have no comment at present on the working group's revisions to section 3(2(b).)

4 *Section 3(2)(c).*

We are wholly satisfied by and commend the working group's revisions to section 3(2).

5 *Section 3(2)(e).*

We do not consider the working group's proposals adequate. See § 4.

6 *Section 4.*

We have have no comment at present on the working group's revisions to section 4.

7 *Section 23(3).*

We do not consider the working group's proposals adequate. See § 5.

1. *Statute XI (Student Discipline) Working Group: Consultation*, 28th Nov. 2024, URL: [HTTPS:// ACADEMIC .](https://academic.ox.ac.uk/sitefiles/statute-xi-consultation-paper-final-with-annex.pdf)

II Our comments.

3 Intention or recklessness.

3.1 *In summary.*

The proposed text would prohibit accidental and minor disruptions of university activities, e.g. by chanting at a lawful and orderly protest, or singing at a college concert.

3.2 *The relevant proposals.*

The prohibitions included in statute XI are listed under the following provision.

2. (1) No member of the university shall in a university context *intentionally or recklessly...*

The equivalent provision under the amendments is

3. (2) No member of the University or student member shall (or shall attempt to)...

The removal of the qualification that prohibited behaviour must be intentional or reckless dramatically changes the scope of the prohibition.

The proposed text includes under section 3(2)

disrupt[ion] or obstruct[ion of] any of the teaching or study or research or the administrative, sporting, social, cultural, or other activities of the University[; and]

action which is likely to cause injury or to impair safety[.]

These are subject to university discipline either when in a ‘university context’, which is to say ‘on university or college premises; [or] in the course of university activity within or outside Oxford whether academic, sporting, social, cultural, or other.’

3.3 *Conduct prohibited.*

We agree that some disruption or obstruction should be a matter of university discipline, but not all. As we pointed out in our previous analysis, all sorts of seemingly legitimate activity could disrupt or obstruct university activities, e.g. through noise or the impediment of pedestrian and vehicular traffic:

- eucharistic processions marking the Feast of Corpus Christi involve the singing of hymns;

- lawful and orderly political processions often involve chanting; and
- when Oxford United was promoted to the premiership, a victory procession was organised.

Indeed, some activities organised by the university or colleges could also disrupt other university activities: college concerts could lead to noise pollution. Sometimes, simply walking about can inadvertently cause disruption!

We think it is very obvious that participation in these sorts of activity should not be prohibited. We hope that the working group does not intend to prohibit them, and that the proctors would not be so obtuse as to pursue disciplinary proceedings in such cases. But the plain meaning of the text imposes such a prohibition, even after the working group's amendments. The central reason is that the catch-all section omits the proviso that conduct should be intentional or reckless.

Section 2 does restrict these prohibitions, except in exceptional cases provided for by the Student Disciplinary Procedures, to university contexts. (The latter proviso, we think, makes all the more pressing the difficulties we point out in § 5.) But much of the unobjectionable activity mentioned above could happen on college or university land, given the scope of university and college holdings in Oxford. Consider e.g. the plaza outside the Weston Library.

A similar problem applies to section 3(2)(c). Not all action likely to cause injury is wrong, let alone legitimately a matter of university discipline. Many sports are 'likely to cause injury' or 'impair safety'. Some first aid is too. The difference is that proper participation in them is not *intentionally or recklessly* action likely to cause injury, if the proper precautions are observed and so on.

3.4 *The working group's comments on section 3(2)(a).*

The working group addresses the concern that 'related activities' is

too broad and gives the University scope to impose discipline over an unknowable range of activities.

This is a separate concern from ours, which is that the proviso 'intentionally or recklessly' is removed. Unsurprisingly, the response of the working group therefore does not properly address our concern.

The working group further observes that

disciplinary action can only be instigated in relation to conduct occurring in a University context (see section 2 of the Statute).

We first observe that it may also be taken otherwise, 'exceptionally, as otherwise indicated in the Student Disciplinary Procedures'. Given

that the working group appears to view the restriction to a university context as an essential reason to retain section 3(2)(a) in similar form, our recommendations in respect of the Student Disciplinary Procedures are all the more important (in particular §§ 5.5.1 and 5.5.5).

Second, as we observed above, we do not think that the restriction to a university context is sufficient; much conduct that should not be prohibited and is perfectly reasonable indeed happens on university or college premisses, or in the course of university activities.

3.5 *Questions for Council and the working group.*

3.5.1 Is the omission of ‘intentionally or recklessly’ intentional?

3.5.2 Is Council or the working group of the view that its omission would have significant interpretative effects? If so, why has neither remarked on it?

3.6 *Recommendation.*

The working group should include the proviso ‘intentionally or recklessly’ in section 3(2), or, at the very least, section 3(2)(a) and (c).

4 **Dishonesty.**

4.1 *In summary.*

The proposed text would prohibit all dishonesty on college and university premisses, which would prohibit some perfectly reasonable conduct (e.g. not outing oneself as gay) and some conduct that, although unreasonable, should not be a matter of university discipline (e.g. cheating at cards in a college bar).

4.2 *The relevant proposals.*

Section 3(2)(e), as proposed, prohibits

engage[ment] in any dishonest behaviour, including by forging or falsifying any document (a) which causes any person loss or harm or (b), in relation to the University, the holding of any university office, or any application for any university membership, office or position or any student place at the university (in which case such dishonesty shall be understood to be continuing throughout the period in which he or she holds that membership, office, position or student place).

4.3 *Conduct prohibited*

We have no objection to the text after ‘including’. However, we consider that ‘dishonest behaviour’ is far too wide.

Prima facie, dishonest behaviour includes—

- cheating at cards, or on one’s partner; and
- lying of any kind, including about one’s sexuality when not out, and white lies.

Suppose, for example, that a gay student is worried (whether rightly or wrongly) that a certain social group is homophobic; one of their number asks whether they are gay, in response to which they issue a denial. This is clearly dishonest; but it is also clearly reasonable. There is no good argument that this should be a matter of university discipline.

We do not wish to take any particularly adventurous view on sexual morality, but it is also hard to see why infidelity should be a matter of university discipline. And cheating at cards, especially if it is not for money, is surely wrong—but hardly something with which to trouble the proctors.

The difficulty is that the plain meaning of section 3(2)(e) prohibits all of these.

It is true that section 2 provides that, except in exceptional circumstances, the relevant conduct must occur in a ‘university context’. But, as drafted, that would include conduct—

- on a social trip organised by a university society;
- in a college bar or room; and
- in a common room in university departments.

We do not think that cheating at cards should be a matter of university discipline simply because it happens in a university department, or that cheating should become a matter of university discipline simply because it happens in a college rather than privately rented room. But it is difficult to see any other construction of section 3(2)(e).

4.4 *Questions for Council and the working group.*

4.4.1 What specific forms of dishonesty, if any, did Council have in mind in drafting section 3(2)(e)?

4.4.2 What evidence is there that these forms of dishonesty are or could become sufficiently prevalent to merit explicit mention in the code of discipline?

4.5 *Recommendation.*

Section 3(2)(e) before ‘including’ should be struck, to instead prohibit only the forgery and falsification of documents, rather than dishonesty generally. If Council or the working group consider that other forms of dishonesty should be matters of university discipline, they should more explicitly be listed.

5 **Procedural fairness and the Student Disciplinary Procedures.**5.1 *In summary.*

Amendments to Statute XI must be considered in light of proposed amendments to other Regulations, and the provisions of the proposed Student Disciplinary Procedures. The consultation paper has not commented on these issues.

5.2 *The relevant proposals: the Student Disciplinary Procedures.*

The working group’s proposed text retains section 8, which provides that Council shall elaborate ‘Student Disciplinary Procedures’ that

(1)...specify the procedure under which a Proctor, the Student Disciplinary Panel and/or the Student Appeal Panel shall hear and determine referrals of student members who are alleged to have breached section 3 or 4 of this statute... [or] (2)...committed Academic Misconduct.

Under the working group’s proposed texts, the procedures provide for, in practice, nearly the entirety of the disciplinary process, including—

s 2 disciplinary action in respect of conduct not in a university context, ‘exceptionally’;

s 10 powers and penalties following breaches of the Code of Discipline;

s 11 the procedures and appointment and removal of members of the Student Disciplinary and Appeal Panels;

s 12 the hearing of evidence;

s 17 ‘[f]urther rules relating to the constitution, powers, duties, and procedures relating to the Proctors (including at a Proctor’s Disciplinary Hearing), the Student Disciplinary Panel, the Student Appeal Panel, and the Appeal Court, and the powers, duties, and procedures of the Proctors in relation to matters covered by [Statute XI.]’;

s 19 'the procedure to be followed in the imposition of immediate fines, the amount of the fine, and a student member's right of appeal';

s 23(1) 'precautionary measures... where there are reasonable grounds for the[ir] imposition'.

The working group has not issued a proposed text of the Student Disciplinary Procedures. It is therefore impossible to anticipate how any of the matters enumerated will be provided for.

The proposed text therefore removes a number of safeguards in the present text of Statute XI.

s 8(1) Members of the Student Disciplinary Panel serve for at least three years. This prevents their arbitrary removal during that period.

s 8(2) The chair and vice chairs of the Student Disciplinary Panel must be 'barristers or solicitors of at least five years' or 'have experience which makes them suitable for appointment'.

s 9(2) Delays in the Student Disciplinary Panel's proceedings are somewhat restricted: no complaint may be heard 'more than six months after the date of the first interview' except in the discretion of the Chair or Vice-Chair.

s 13 If the Student Disciplinary Panel hears a case in the first instance, a student has the right of appeal (to the Student Appeal Panel).

s 14(1) The High Steward appoints the Student Appeal Panel from 'individuals who hold a legal qualification *and* have experience which makes them suitable for appointment *and* shall not be members of Congregation'.

s 14(2) The Student Appeal Panel may appoint assessors 'in the interest of justice and fairness'.

s 33 Any 'student member who is the subject of the disciplinary action' may appeal a decision of the Proctors to the Student Disciplinary Panel.

There are some provisions that partially provide similar reassurances, but we do not think them adequate.

s 14 Provisions for the Appeal Court are maintained.

But this is not satisfactory in respect of the Student Disciplinary and Appeal Panels.

s 17 ‘Further rules’ elaborated in the procedures under this section must ‘comply with the principles of natural justice’.

But there is no requirement that the procedures *as a whole* should comply with the principles of natural justice. This includes all the other matters provided for by other sections, including appointment and removal of members, the hearing of evidence, powers and punishments, and so on.

s 24 Precautionary measures imposed by the Proctors are subject to appeal.

But there is no general provision for the appeal of other proctorial decisions. And even where there is a right of appeal, there is no time limit, which could lead to unfair outcomes (e.g. in cases where funding is time-limited).

5.3 *The relevant proposals: changes to Regulations.*

Council announced certain amendments to the Regulations ancillary to its proposed changes to Statute XI.¹ These are not mentioned in the consultation paper.

Most of the changes are mechanical, and do not in our view require separate comment. However, one does; we are concerned it may allow arbitrary withdrawal of access from IT systems. This is explained in § 6.

5.4 *Questions for Council and the working group.*

5.4.1 Is Council or the working group proceeding on the basis of any particular proposed text of the procedures?

5.4.2 If not, is there at least some understanding in the working group of its likely content?

5.5 *Recommendations.*

5.5.1 Section 8 should mirror section 17(2) in respect of the procedures as a whole; it could, for example, include a new subsection.

(5) The Student Disciplinary Procedures shall comply with the principles of natural justice.

5.5.2 Decision-makers should expressly be required to construe the procedures in conformity with the principles of natural justice and to disapply provisions that do not. The Hong Kong Bill of Rights (before its amendment by the Standing Committee of the National People’s

1. *Gazette*, 24 May 2024, p 460 [link], s 15(2).

Congress) provides a useful template, from which we may derive the following:

Any provision of the Student Disciplinary Procedures that admits of a construction consistent with the principles of natural justice shall be given such a construction. Any provision of the Student Disciplinary Procedures that does not admit of a construction consistent with the principles of natural justice shall, to the extent of the inconsistency, be disregarded.

5.5.3 In order to maintain or improve provisions for procedural fairness in the existing Statutes and Regulations, the working group should draft amendments to Statute XI in light of—

- Council's proposals for the Student Disciplinary Procedures if available; or principles it proposes binding the eventual text of the Procedures, if no draft text is suitable; and
- any consequential amendments Council intends to make to the Regulations.

5.5.4 Before the passage of Statute XI, Council or the working group should either an assurance that the safeguards noted in 5.2 in Statute XI shall be maintained until and unless Congregation and student members are consulted on their modification, whether by means of further elaboration of the statute or the procedures.

5.5.5 Some restriction more effective than the adverb 'exceptionally'² should be applied to disciplinary action concerning conduct outside a university context. This should, first, concern the circumstances in which it is begun: it could, for example, require the approval of a specially constituted independent panel. It should, second, provide for additional procedural safeguards in the event that such disciplinary proceedings are undertaken, so that they are not unfairly or unnecessarily prejudicial to the accused.

6 Arbitrary withdrawal of access to IT systems.

6.1 In summary.

Council proposed certain regulatory changes tied to the changes to statute XI. One of them appears to allow arbitrary withdrawals of access to IT systems by any 'decision-maker'. The working group does not appear to be aware of this concern or to have addressed it.

6.2 The relevant proposals.

University regulations at present provide that access to IT facilities

may be withdrawn *under section 48 or 49 of Statute XI* pending a determination, or may be made subject to such conditions as the Proctors or the Registrar or other decision-maker (as the case may be) shall think proper in the circumstances.³

Sections 48 and 49 provide for punishment of disorderly behaviour during hearings before disciplinary panels, orders suspending or postponing penalties, and suspensions of students who do not comply with disciplinary orders. It is only pending *these specific decisions* that the relevant decision-makers that access to IT systems may be withdrawn; at present, withdrawals are not permitted in other disciplinary proceedings.

But item (b) proposes to strike ‘under section 48 and 49 of Statute XI’, so that the section simply reads that access

may be withdrawn pending a determination, or may be made subject to such conditions as the Proctors or the Registrar or other decision-maker (as the case may be) shall think proper in the circumstances.⁴

Even more confusingly, the working group’s draft of Statute XI appears to include a similar power:⁵

23. (1) The Proctors shall have power to impose ‘precautionary measures’ on any student member or members where there are reasonable grounds for the imposition of such measures, in accordance with the Student Disciplinary Procedures.

But there is a crucial difference; section 24 of Statute XI at least provides for appeals following precautionary measures. Section 15(2) of the IT Regulations does not *per se*. Under the current text the statute, decisions under section 15(2) are partially subject to appeal—if made by the proctors; but as amended, there is no explicit provision that orders under section 15(2) are to be regarded as precautionary measures for the purposes of appeals.

6.3 Questions for Council and the working group.

6.3.1 What purpose does the proposed text of section 15(2) of the IT Regulations serve that is not provided for by section 23(1) of the proposed text of Statute XI?

6.3.2 Under the proposed amendments, what does ‘determination’ mean? Does it include any determination by any decision-maker in the university whatsoever? If not, why don’t the proposals specify *which* determinations?

3. s 15(2), IT Regulations 1 of 2002 unamended [link].

4. *Ibid.*

5. s 23(1), Annex B; this is retained from Council’s proposals.

6.3.3 Is it the intention of Council to amend the Regulations as proposed? The Regulations must be amended simply because sections 48 and 49 are no longer included in the proposed text of Statute XI; presumably Council must propose some amendment to them. If Council intends to amend them differently, how?

6.3.4 Does the working group intend to comment on Council's proposed amendment to the IT Regulations? Has it any preliminary view, and, if so, what is it?

6.3.5 On the current proposals, are withdrawals under section 15(2) subject to appeal? Is it intended that they should be?

6.4 *Recommendations.*

The text of section 15(2) should be amended to refer to the precise analogues of determinations under sections 48 and 49 of the present text of Statute XI, and, if necessary, relocated. Withdrawals of access should clearly be subject to a right of appeal.

7 **Comments on the functioning of the working group.**

We are pleased that the working group

- is deliberately consulting members of the university;
- has shown willingness to amend some of Council's proposals;
- appears to be willing to make further amendments if necessary; and
- most importantly, is willing to openly discuss the proper construction of the text of the amendments.

This is a welcome contrast to Council's earlier approach. In its earlier statement in defence of its original proposals, Council failed to explicitly discuss the text of its proposals, and, therefore, evaded the central questions that must be addressed in assessing the amendments.⁶

Nevertheless, we regret that the text the working group has circulated for discussion remains significantly flawed, and that the consultation paper does not address or fully address many remaining difficulties.

We therefore hope that the working group will, if necessary, consult further in light of its initial responses.

6. *Response to 'Public Statement on Proposed Amendments to University Statutes'*, University of Oxford, 6th June 2024, URL: [HTTPS://WWW.OX.AC.UK](https://www.ox.ac.uk).

UK/NEWS/2024-06-06-RESPONSE-PUBLIC-STATEMENT-PROPOSED-AMENDMENTS-UNIVERSITY-STATUTES.

We also note that although the working group is taking written evidence, there does not appear to be any provision for oral evidence, which could significantly clarify matters. We hope that the working group will consider the taking of oral evidence.

III Conclusion.

8 Recapitulation of questions for Council and the working group.

¶ 3.5 *Omission of the proviso ‘intentionally or recklessly’.*

- Is the omission of ‘intentionally or recklessly’ intentional?
- Is Council or the working group of the view that its omission would have significant interpretative effects? If so, why has neither remarked on it?

¶ 4.4 *Prohibition of dishonesty.*

- What specific forms of dishonesty, if any, did Council have in mind in drafting section 3(2)(e)?
- What evidence is there that these forms of dishonesty are or could become sufficiently prevalent to merit explicit mention in the code of discipline?

¶ 5.4 *Procedural fairness and the Student Disciplinary Procedures.*

- Is Council or the working group proceeding on the basis of any particular proposed text of the procedures?
- If not, is there at least some understanding in the working group of its likely content?

¶ 6.3 *Withdrawal of access to IT facilities.*

- What purpose does the proposed text of section 15(2) of the IT Regulations serve that is not provided for by section 23(1) of the proposed text of Statute XI?
- Under the proposed amendments, what does ‘determination’ mean? Does it include any determination by any decision-maker in the university whatsoever? If not, why don’t the proposals specify *which* determinations?
- Is it the intention of Council to amend the Regulations as proposed? The Regulations must be amended simply because sections 48 and 49 are no longer included in the proposed text of Statute

xI; presumably Council must propose some amendment to them. If Council intends to amend them differently, how?

- Does the working group intend to comment on Council's proposed amendment to the IT Regulations? Has it any preliminary view, and, if so, what is it?
- On the current proposals, are withdrawals under section 15(2) subject to appeal? Is it intended that they should be?

9 **Recapitulation of recommendations.**

¶ 3.6 The working group should include the proviso 'intentionally or recklessly' in section 3(2), or, at the very least, section 3(2)(a) and (c).

¶ 4.5 Section 3(2)(e) before 'including' should be struck, to instead prohibit only the forgery and falsification of documents, rather than dishonesty generally. If Council or the working group consider that other forms of dishonesty should be matters of university discipline, they should more explicitly be listed.

¶ 5.5 In order to maintain or improve provisions for procedural fairness in the existing Statutes and Regulations, the working group should draft amendments to Statute xI in light of—

- Council's proposals for the Student Disciplinary Procedures, if available; or principles it proposes binding the eventual text of the Procedures, if no draft text is suitable; and
- any consequential amendments Council intends to make to the Regulations.

¶ 3.6 The working group should amend section 3(2) of the proposed text of statute xI to read

No member of the University or student member shall (or shall attempt to) *intentionally or recklessly*...

¶ 5.5 *Procedural fairness and the student disciplinary procedures*

¶ 5.5.1 Section 8 should mirror section 17(2) in respect of the procedures as a whole; it could, for example, include a new subsection.

(5) The Student Disciplinary Procedures shall comply with the principles of natural justice.

¶ 5.5.2 Decision-makers should expressly be required to construe the procedures in conformity with the principles of natural justice and to disapply provisions that do not. The Hong Kong Bill of Rights (in the Patten era, before its amendment by the Standing Com-

mittee of the National People's Congress) provides a useful template, from which we may derive the following:

Any provision of the Student Disciplinary Procedures that admits of a construction consistent with the principles of natural justice shall be given such a construction. Any provision of the Student Disciplinary Procedures that does not admit of a construction consistent with the principles of natural justice shall, to the extent of the inconsistency, be disregarded.

¶ 5.5.3 In order to maintain or improve provisions for procedural fairness in the existing Statutes and Regulations, the working group should draft amendments to Statute XI in light of—

- Council's proposals for the Student Disciplinary Procedures if available; or principles it proposes binding the eventual text of the Procedures, if no draft text is suitable; and
- any consequential amendments Council intends to make to the Regulations.

¶ 5.5.4 Before the passage of Statute XI, Council or the working group should either an assurance that the safeguards noted in 5.2 in Statute XI shall be maintained until and unless Congregation and student members are consulted on their modification, whether by means of further elaboration of the statute or the procedures.

¶ 5.5.5 Some restriction more effective than the adverb 'exceptionally'¹ should be applied to disciplinary action concerning conduct outside a university context. This should, first, concern the circumstances in which it is begun: it could, for example, require the approval of a specially constituted independent panel. It should, second, provide for additional procedural safeguards in the event that such disciplinary proceedings are undertaken, so that they are not unfairly or unnecessarily prejudicial to the accused.

¶ 6.4 The text of section 15(2) should be amended to refer to the precise analogues of determinations under sections 48 and 49 of the present text of Statute XI, and, if necessary, relocated. Withdrawals of access should clearly be subject to a right of appeal.

1. § 2.