

**Submissions of Federation of Hong Kong Higher Education Staff Associations (represented by Mr. Derry Wong, Honorary Legal Adviser, Barrister-at-Law)**

**Date: 2.4.2002**

**No Terms of Reference**

- 1) The reasoned Decision of City University Appeal Authority ("Decision") contained no Terms of Reference.
- 2) If the terms of reference of the Appeal Committee dealt only with matters of procedure, the proper recommendations would be purely procedural. However, the Decision apparently dealt with; substantive matters of merits of individual appellants' appeal, thereby entailing the question of the appropriateness of the composition of the Appeal Committee.

**Was Composition of Appeal Committee Appropriate?**

- 3) The Appeal Committee was consisted of 5 members, only 2 of whom were legally qualified. While accepting the eminence of their position and reputation in society, it remains a fact that none was particularly suited, having regard to their lack of background as renowned legal academics, to evaluate academic works in some specialized legal areas (eg. PRC Land Law). This is particularly so in the case of members who had no legal expertise at all in any area under investigation, which has sharply reduced the credibility of the Decision.

**Legal Significance of Procedural Errors.**

- 4) Had the terms of reference been purely procedural, a finding of conflict of interest and/or racial prejudice by the Staffing Committee could well be as a matter of law, here resulted in the entire process leading the decision of non-renewal being void, with the result that the entire process had to be started all over again. Unfortunately, without any terms of reference, there is no way to discover whether the Appeal Committee, in making its findings

and recommendations to the Appeal Authority, had exceeded and/or not fulfilled its functions in accordance therewith.

## **Serious Errors of Decision**

### **Conflict of Interests**

- 5) The Appeal Committee found (P.4, Decision) there was no conflict of interest in respect of a Staffing Committee's member who had also applied for renewal and was recommended for substantiation, on account of the alleged fact that her position and main area of work was different from those of the Appellants. The Appeal Committee articulated no definition or criteria of conflict of interests, but failed to consider the "Guidelines on Conflict of Interest" in City University's Handbook for Academic and Equivalent Staff (see Appendix A hereof). In essence, the guideline is that all staff members should *avoid situations* which may lead to conflict of interest between their *official duties* and their *private interests*. In respect of the Appellants' allegation of conflict of interest, it could at least be argued that the Staffing Committee's member concurred could well here felt obliged to concur in all essential aspects of the other member's decision on non-renewal in the hope of promoting or for fear of jeopardizing the prospects of his or her own application for substantiation. The Decision had totally failed to consider this possibility.

### **Racial Discrimination**

- 5) The Decision pointed out there was no evidence of racial prejudice (P.4), without formulating any criteria therefore and clarifying the burden and standard of proof. It went on to say that as long as there was any vacancy, individual decisions on renewal would not prejudice the opportunities of renewal of other staff members (P.4, Decision). The Committee had confused racial prejudice with conflict of interests. (However, it is in any event wrong to reason their sufficiency of vacancies for all appellants would, as a matter of principle, rule out conflict of interest, as discussed above. The question, is not whether a desired vacancy would be grasped by a competing colleague, but whether, in attempting to secure the desired vacancy, the Staff Committee member against whom allegations of conflict of interest had been made had the hope to secure or fear of not securing his or her desired vacancy and

thereby had or could be seen to have acted with such hope and/or fear in mind). Racial prejudice, as alleged by the Appellants, could well here been supported by asking the following relevant question, which the Appeal Committee had completely failed to ask: why were the Appellants' Chinese publications not considered ? The answer could only be either that the Staffing Committee in so omitting was (a) negligent or (b) deliberate. If it was a negligence (if proved), it would have reflected on the overall quality or competence. Alternatively, if it was deliberate, then unless the Staffing Committee could rightly argued that the Chinese publication were irrelevant, then such exclusion of relevant publications strongly and clearly pointed to racial discrimination via the medium of language discrimination. The suspicion is enhanced further by (a) none of the Staffing Committee's member reads Chinese (thereby reflecting on their ability to directly assess the Chinese publication) and (b) failure to explain such exclusion.

### **Conclusion**

- 7) By reason of the aforesaid, the Federation takes the view that the decision's reasoning was in essential respects seriously flawed and could not adequately support the ultimate decisions made.

**PART I – SECTION I.13**

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**I13 Guidelines on Conflict of Interest**

- I13.1 As far as possible you should ensure that you and the University are invulnerable to any criticism with regard to favouritism, nepotism, jobbery and the like.
- I13.2 To avoid situations which may lead to a conflict of interest between your official duties and your private interests, you should observe the following guidelines:
- (a) Refrain from participating in or acquiring any investment or any financial or other interest which could be construed to a conflict of interest with your official duties.
  - (b) Avoid putting yourself in a position of obligation to anyone who has, or may have, official dealings with your department, including your own subordinate staff.
  - (c) Decline to provide assistance, advice or information to relatives, friends, etc. in connection with your work, and refer all legitimate requests to the appropriate officer for handling where this would give the recipient an unfair advantage over other people.
  - (d) Report to your Head of Department any private interest which might influence, or could be seen to influence, your judgement in the performance of your duties.
- I13.3 You have the duty to promote the best interest of the University and therefore should ensure that the University is kept fully informed of any situation where a conflict of interest might develop. In case of doubt, you should report all cases of possible conflicts of interest and seek clarification/advice from the Human Resources Office.

**References**

**Administrative Notes:**

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|---------------------|--|
| <i>I1/03/JAN96</i>  | <i>Declaration of Interest by Members of University Committees</i> |
| <i>I13/01/MAR85</i> | <i>Conflict of Interest</i>  |
| <i>I1/01/NOV83</i>  | <i>Declaration of Interest</i>                                     |

## PART I – SECTION I.16

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### **I16 Policy Statement on Equal Opportunities**

- I16.1 The University is committed to the principle and practice of non-discrimination in the fulfilment of its dual responsibilities as an employer and a provider of higher education. It considers that talents, skills, intelligence, ambition and potential required by the University of its staff and students are spread across the community and can be found in people irrespective of their race and national origin, sex and gender identity, sexual orientation, abilities and disabilities, age, religion and family status.
- I16.2 With the aim of securing the best qualified persons for the study programmes and jobs it offers, the University undertakes to provide equal access, consideration, encouragement and support in all areas of its student and staff recruitment and management. Decisions are made on the basis of merits measured against criteria which are directly related to the work/study place; these criteria are objective and can be readily assessed, including qualifications, knowledge and skills, experience and personal qualities.
- I16.3 All members of the University are expected to observe the principle and practice of non-discrimination when working in or studying at the University. Disciplinary procedures are in place to deal with complaints of discriminatory behaviour.

#### **Reference**

Administrative Note:

X1/02/MAY99 *Policy Statement on Equal Opportunities*

## Procedural Manual: Staffing Procedures for Academic Staff

### II. Procedures for Appointment of Academic Staff

#### 1. Appointment of Regular Full-time Academic Staff

1.1 Full-time academic staff refer to those appointed on regular terms of appointment either on gratuity-bearing contract terms or superannuable terms as specified in the Letter of Appointment. This category includes the grade of Instructor. The general guidelines for appointment of academic staff are detailed in Appendix B2.

#### 1.2 Procedures

1.2.1 All appointment decisions are made by Approving Committees with recommendations from Departmental Staffing Committees (DSC) and Faculty Staffing Committees (FSC)/Line Managers. Composition of respective Approving Committees for different grades is listed in Appendix A2.

1.2.2 The Chairman of the Approving Committee will decide on the membership of the Committee in accordance with the stipulated constitution.

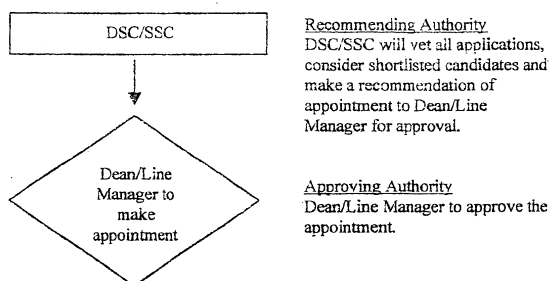
1.2.3 The Chairman of the Approving Committee will approve the shortlist for consideration by the Approving Committee.

1.2.4 Academic staff involved as members of the Approving Committee must be at Associate Professor (Scale B)/Senior Lecturer level or above.

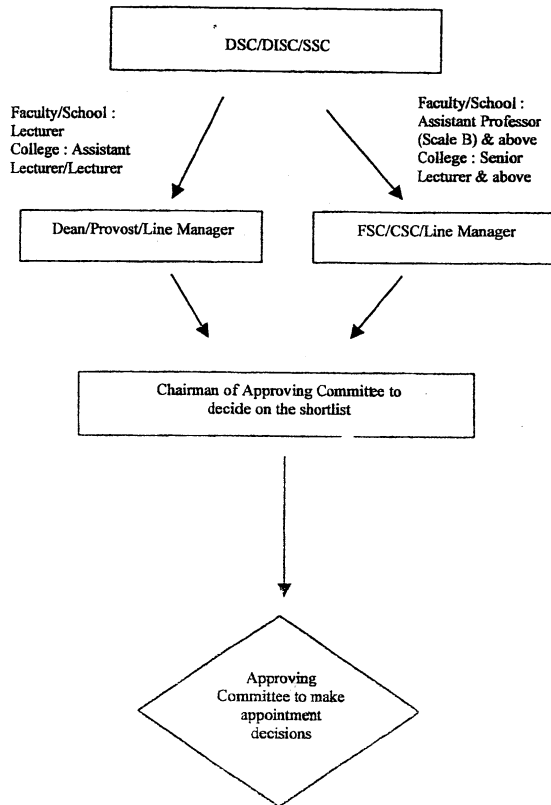
1.2.5 The President is the approval authority for all appointments, and has delegated his authority to Chairman of Approving Committee as and when appropriate. The President may join and chair any Approving Committee, and is the final approving authority for controversial cases.

1.2.6 Detailed appointment procedures for different grades are illustrated below :

a) **Faculty/School : Instructor**



- b) Faculty/School : Lecturer & above  
College : Assistant Lecturer & above



Recommending Authority

DSC/DISC/SSC will vet all applications and make a recommendation on the shortlist

FSC/CSC/Line Manager will vet all applications, review and endorse the recommendations made by DSC/DISC/SSC.

External assessments will be solicited after positive review by DSC/DISC/SSC and FSC/CSC/Line Manager. They should arrive before deliberation by the Approving Committee.

In case of appointment of Professor [Chair/Scale A], the Chairman of Approving Committee may call for a preliminary review. A shortlisting panel consisting of the Chairman, the VP appointed to the Approving Committee, the Dean/Line Manager and the Head of Dept/School may consider the candidates on the preliminary shortlist and decide on the final shortlist.

Approving Authority

Approving Committee will consider the shortlisted candidates and make appointment decisions. In case of appointment of Professor (Chair/Scale A), the candidates on the final shortlist may be invited to attend an orientation programme to acquaint themselves with CityU. Written external assessments should arrive before deliberation by the Approving Committee.

NOTES

1. The same procedures will be applicable to appointment of academic staff of equivalent grades in English Language Centre, Chinese Civilisation Centre and Chinese Language Unit in SCOPE.
2. Abbreviations :  

|                                       |                                  |
|---------------------------------------|----------------------------------|
| DSC - Departmental Staffing Committee | FSC - Faculty Staffing Committee |
| DISC - Divisional Staffing Committee  | CSC - College Staffing Committee |
| SSC - School Staffing Committee       |                                  |
3. Key :  - recommending authority     - approving authority

1.3 Salary Determination

- 1.3.1 Professor (Chair) - approved by the President in consultation with Dean/Line Manager, and the Head of Department, as appropriate.
- 1.3.2 Professor (Scale A) - approved by a Vice-President (nominated by the President as Chairman of Approving Committee) in consultation with Dean/Line Manager, and the Head of Department.
- 1.3.3 Associate Professor (Scale A)/Principal Lecturer and below - approved by Dean/Line Manager in consultation with Head of Department.

1.4 Solicitation of Written External Assessments

- 1.4.1 Dean/Line Manager will approve the external experts nominated by Head for providing assessments on the shortlisted candidates. The minimum number of written external assessments required is as below :
  - Professor (Chair/Scale A) - 3
  - Associate Professor (Scale A)/Principal Lecturer - 2
  - Associate Professor (Scale B)/Assistant Professor/Senior Lecturer - 1
- 1.4.2 Shortlisted candidates providing suggestions of external assessors to the Head will be asked to declare that they have no personal association with the nominees.
- 1.4.3 The Chairman of the Approving Committee may exercise his/her discretion to waive the requirement of interview or solicitation of external assessment on individual case basis.
- 1.4.4 Under normal circumstances, the external assessment(s) should arrive before deliberation by the Approving Committee. It will be up to the individual Departments/Faculties to decide if external assessment(s) will be solicited for consideration by the DSC/FSC :
  - a) After positive preliminary review by DSC and FSC, the Dean, in consultation with DSC and FSC, will proceed to solicit external assessments.
  - b) After negative preliminary review by DSC and FSC, external assessments will not be solicited.
  - c) In case of differing views of DSC and FSC in the preliminary review, the Dean will decide whether to process the case further.

1.5 Period of Employment/Evaluation

- 1.5.1 The duration of appointment on gratuity-bearing contract terms is normally 3 years with no automatic renewal.
- 1.5.2 The normal period of evaluation for superannuable terms is 6 years for Assistant Professors and 5 years for other Academic Staff. Staff members will be evaluated of their performance during the initial period of employment of approximately 36 months in the third year of their service for the purpose of continual employment. They will be informed towards the end of the initial assessment period whether or not their appointments will be continued.



1.5.3 Guidelines in granting waiver/shortening of evaluation period :

- a) Exceptional consideration for a shorter or waiver of evaluation period for new appointees should only be exercised sparingly, as the evaluation process serves as a vigorous and important exercise for assessment of staff's performance and contribution for substantiation purpose. The following guidelines were approved by the Council in 1995 :
  - i) Candidates who have already secured a tenured position by having gone through a similar and rigorous evaluation process for substantiation in their own academic institutions in the past three years;
  - ii) Renowned candidates of distinguished status and who enjoy acknowledged excellence and achievements in their areas of expertise;
  - iii) Eminent academic who hold important positions in the immediate past five years at internationally prestigious academic institutions; and
  - iv) Eminent visiting staff who have served in City University at a comparable level for not less than one year and whose appointment to a full-time position is processed according to regular recruitment requirements.
- b) The Approving Committee, guided by expert opinion in terms of external assessment reports, should reach a unanimous decision on whether a candidate merits a waiver or shortening of the evaluation period. Any differing views on the suitability of the candidates for a waiver or shortening of the evaluation period for substantiation purpose should follow regular requirements instead.

1.6 Process for Considering Former/Serving Staff for Re-engagement in the University

- 1.6.1 Depending on the availability of sufficient and current information on the staff members' in-service performance, the appointment procedures will apply if :
  - previous appointment was to a different post or grade, or
  - previous appointment was not on superannuable or gratuity-bearing terms, or
  - previous service was of one year or less, or
  - the break in service at the time of consideration of re-engagement has been for one year or more.
- 1.6.2 Re-appointment/initial assessment/substantiation of appointment will be processed in accordance with the procedures stipulated in Section III of the Procedural Manual.

2. Appointment of Academic Staff NOT on Regular Terms of Service

2.1 This category refers to staff appointed either on part-time basis or on temporary terms of appointment. The following grades are included in the classification :

- Temporary Appointee at Lecturer level & below, with the duration of appointment not exceeding one year.
- Visiting Appointee
- Adjunct Professor
- Demonstrator/Graduate Assistant/Teaching Assistant
- Fieldwork Instructor
- Senior Tutor/Tutor
- Research Support Staff
- Part-time Lecturer/Staff

2.2 Procedures

2.2.1 Except for the appointment of Tutor/Senior Tutor and research support staff, the approval authority is vested with the Dean or Line Manager based on the recommendation from the Head.

2.2.2 For the appointment of Tutor/Senior Tutor, the approval authority is vested with the Line Manager based on the recommendation from the Centre/SCOPE Staffing Committee.

2.2.3 For the appointment of research support staff, the Head or Line Manager as appropriate shall be the approval authority based on the recommendation from the Principal Investigator (PI) of the project or Director of Research Centre (DRC). In the case where the PI or DRC is concurrently a Dean or a Vice-President, his/her Line Manager will be the Head of his/her home department unless otherwise stated.

2.2.4 Formal interviews are not mandatory. HRO will ensure that the relevant guidelines for appointment are observed and that doubtful cases are referred to respective Dean or Line Manager for advice.

2.2.5 Re-appointment of staff will follow the same procedures for first appointment.

2.3 Special Points to note

2.3.1 Posts of the following categories will be processed in accordance with the procedures for appointment of regular full-time academic staff as stipulated in Section II.1 of the Procedural Manual :

- a) Fractional appointment held against Instructor(Faculty)/ Assistant Lecturer (College) and above. The appointee should not be involved for more than 2 days of work per week and will not be entitled to fringe benefits except a pro-rated salary.
- b) Temporary appointment at Assistant Professor/Senior Lecturer level and above.

- c) Visiting appointment/temporary appointment (at Lecturer level or below) of more than one year, the need of interview and external assessment will be determined by the Chairman of the Approving Committee.
- 2.3.2 For visiting appointments, in case where a candidate is not holding a Reader/Professor equivalent or above appointment in his/her parent institution but recommended for appointment as Visiting Professor, the conferment of Visiting Professor title will be considered by the Committee for the Appointment of Professors by circulation, and be approved by a majority vote.
- 2.3.3 In the case of Visiting Professors appointed with central funding support, in addition to the procedures mentioned under Point 2.2.1 above, a small committee chaired by VP(RS) and comprising at least two other senior academics appointed by the VP(RS), including the respective Dean of Faculty or Line Manager, will approve the appointment with reference to written assessments from at least two external experts.
- 2.3.4 Appointment of Adjunct Professors should only be raised by academic departments, not research centres. The appointments may be for one to three years. By its very nature, adjunct appointment will not be made on regular full-time basis and should not carry an honorarium on an annual basis. A nominal honorarium may be payable for certain assignments undertaken, where necessary.

## Procedural Manual: Staffing Procedures for Academic Staff

### **III. Procedures for Initial Assessment/Substantiation/Re-appointment of Academic Staff (also applicable for Crossing of Salary Bar/Conferment of Associate Professor title to Assistant Professor)**

#### 1. Re-appointment of Instructor Grade

- 1.1 The appointment to Instructor grade is on general grade gratuity -bearing contract terms for about two years ending on 30 June. Cases due for contract renewal will not be automatically processed for re -appointment. The Departmental Staffing Committee (DSC) will be involved to decide which cases are recommended for re -appointment consideration.
- 1.2 If the Department is already running a deficit staffing budget, the recommendation for re -appointment consideration needs to be endorsed by the respective Dean/Line Manager before HRO takes any action.  
  
Staff will then be requested to provide updated curriculum vitae and relevant information for consideration by the DSC. Dean/Line Manager will approve the re-appointment based on the DSC 's recommendation.
- 1.3 Cases which are not recommended for re -appointment consideration by DSC will be endorsed by the Dean/Line Manager before HRO proceeds to inform the staff members concerned that their service with the University will end on expiry of the contract period.

#### 2. Initial Assessment/Substantiation/Re -appointment for the grades of Lecturer(Faculty)/ Assistant Lecturer(College) and above

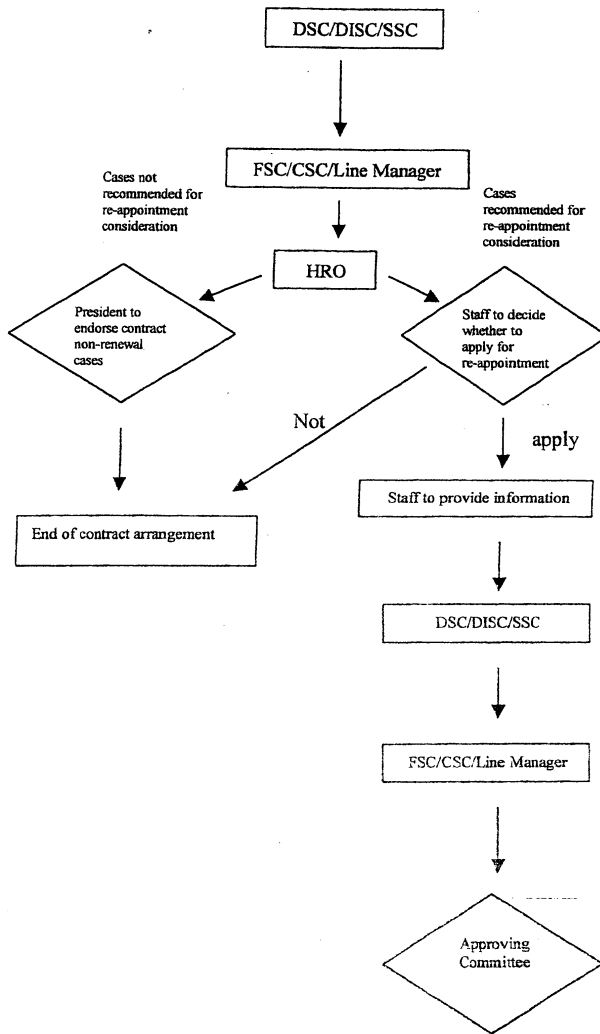
##### 2.1 Introduction

- 2.1.1 The normal period of evaluation for substantiation is 6 years for Assistant Professors and 5 years for other Academic Staff. Earlier consideration for substantiation will only be possible for exceptionally outstanding staff.
- 2.1.2 For Assistant Professors appointed from 1 October 2000, they are required to have their appointment substantiated within 6 years of service. The Approving Committee for Initial Assessment/Substantiation/Re -appointment has the authority to grant one-year terminal grace period when considered appropriate.
- 2.1.3 For staff re-appointed on gratuity-bearing contract terms, the duration of contract can be for a fixed term of 2 or 3 years.

2.2 Procedures

- 2.2.1 Cases due to be considered for initial assessment/substantiation/re-appointment will be brought up for processing normally on a bi-annual basis in October and April.
- 2.2.2
- a) Staff on fixed term gratuity-bearing contracts will not be automatically processed for re-appointment. DSC will make initial consideration as to whether to recommend staff due for contract renewal to apply for re- appointment.
  - b) If the Department is already running a deficit staffing budget, the recommendation to notify staff members to apply for re -appointment must first be endorsed by the respective Dean/Line Manager before HRO takes any action.
  - c) The recommendation to apply for re -appointment does not necessarily imply that re-appointment will eventually be offered. The HRO will then approach the staff members concerned for a formal indication of their intention to apply for re -appointment. Cases applying for re -appointment will then be reviewed by the appropriate Approving Committees.
  - d) Cases which not recommended by DSC for re -appointment consideration need to be endorsed by the President via the Faculty Staffing Committee/Line Manager before HRO proceeds to inform the staff members concerned with sufficient prior notice that their service with the University will end on expiry of the contract period. The President has the discretion to seek advice from the Approving Committee by circulation on whether a particular staff member not recommended should instead be requested to apply for re- appointment, irrespective of whether the case is endorsed by the FSC/Line Manager.
- 2.2.3 Staff members recommended and apply for re -appointment consideration and those due for review for continual appointment/substantiation of appointment will be requested to submit information as listed in Appendix B3. Cases will be reviewed by DSC and FSC/Line Manager before consideration by the Approving Committee. Composition of respective Approving Committees is at Appendix A3. Detailed procedures are illustrated hereunder :

a) Re-appointment Procedures



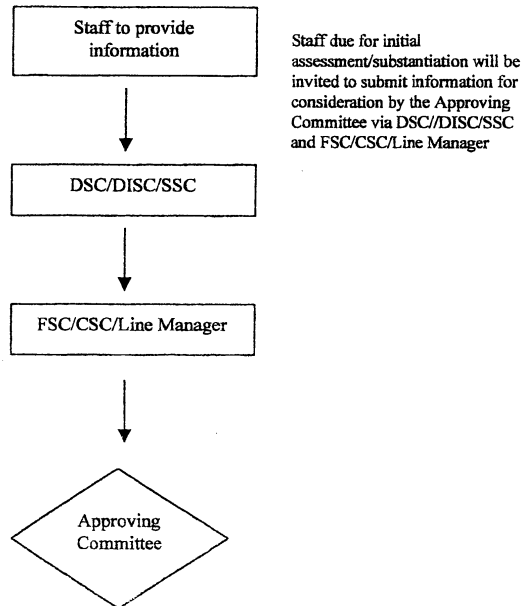
DSC/DISC/SSC will make initial consideration as to whether to recommend staff concerned to apply for re-appointment.

FSC/CSC/Line Manager will review the recommendations and decide cases recommended/not recommended for re-appointment consideration



HRO will approach staff recommended for re-appointment consideration for a formal indication of their intention to apply for the review.

Cases reviewed by DSC/DISC/SSC and FSC/CSC/Line Manager before consideration by the Approving Committee.

b) **Initial Assessment/Substantiation Procedures**



NOTES

1. The same procedures will be applicable to re- appointment/initial assessment/substantiation of appointment for academic staff of equivalent grades in English Language Centre, Chinese Civilisation Centre and Chinese Language Unit in SCOPE.
2. Abbreviations :  
DSC - Departmental Staffing Committee      FSC - Faculty Staffing Committee  
DISC - Divisional Staffing Committee      CSC - College Staffing Committee  
SSC - School Staffing Committee
3. Key :  - recommending authority       - approving authority

- f) In cases where superannuable terms is offered, a further period of evaluation may be included taken into consideration of the following : the normal period of evaluation is 6 years for Assistant Professors and 5 years for other Academic Staff on first appointment on superannuable terms; the length of service including those appointed on contract terms; the performance under assessment, etc. The period of evaluation can range from 1 to 5 or 6 years for substantiation purposes.
- g) For staff whose performance had been assessed to have reached the standard required by the University for re -appointment on superannuable terms, but were only offered re -appointment on contract terms due to the ratio constraint, when there is a ratio change in the department, they may be allowed a change to superannuable terms with or without evaluation period before completion of their re -appointment contract. The change needs to be approved by the Line Manager based on Head's recommendation.
- h) Lecturers (Faculty) and Assistant Lecturers (College) are appointed on gratuity -bearing contract terms. They are expected to qualify for promotion to Assistant Professors (Faculty)/Lecturers (College) during the contract period. Should continuation of employment at Lecturer (Faculty)/Assistant Lecturer (College) level be considered necessary for a further period, they may be recommended for an extension of the current contract period or for a new contract period.

3. Crossing of Salary Bar

- 3.1 The review on crossing of salary bar will be conducted on a bi- annual basis in October and April in accordance with the Merit -Based Reward Scheme (MBRS) schedule for the following staff :
  - 3.1.1 For staff appointed on superannuable terms who are still progressing along a fixed-point salary scale, the review will be held every three years.
  - 3.1.2 For staff appointed on gratuity -bearing contract terms or on superannuable terms whose appointment has not been substantiated, the review will be conducted as part of the evaluation process when they are considered for re -appointment, continual appointment or substantiation of appointment.
- 3.2 Detailed arrangements are listed in the MBRS Procedural Manual available at HRO homepage.

4. Conferment of Associate Professor Title to Assistant Professors

- 4.1 The Academic Review will be conducted on an annual basis in October of the year when the exercise for initial assessment/substantiation/re -appointment is conducted.
- 4.2 Eligibility
  - 4.2.1 Assistant Professors listed below will be notified, at the recommendation of the DSC, to apply for conferment of the Associate Professor title through an academic review :



- a) Assistant Professors reaching University Scale B point 11 or above as at 31 August of the following year
- b) Assistant Professors recruited after 1 October 2000 at University Scale B point 5 fulfilling the following conditions :
  - i) in the fifth year of service reaching Scale B point 10 as at 31 August of the following year and
  - ii) reaching Scale B point 11 in the subsequent months between September and January of the following year

4.2.2 The effective date for conferment of Associate Professor title will be the date of approval by the Approval Committee or the date reaching Scale B point 11, whichever is the latter.

4.2.3 The following criteria will be adopted for academic review :

- a) Formal academic and professional qualifications
 

Applicants must fulfill the basic requirements for university level appointment, i.e. normally a doctorate, (or in exceptional circumstances, a higher degree) plus a record of teaching, professional, and research experience.
- b) Creditable in-service performance achieved in the following areas:
 

|     |  |     |
|-----|--|-----|
| i)  | education and research                                       | 70% |
| ii) | professional activities and campus and community citizenship | 30% |

Staff members who are weak in one area must achieve excellent performance in other areas in order to be awarded the title of Associate Professor, subject to their achieving a minimum of 60% in the overall weighting in the performance assessment as well as a minimum of 35% in (i) and 15% in (ii).

The relative proportion of each criterion would be determined at the Faculty level with input from academic departments as appropriate.

Individual Faculties/Schools should announce the criteria to staff and approving authority should adhere to the criteria announced when making decisions.

4.3 Staff members reaching Scale B point 11 and from the "carried forward" cases (cases assessed as not suitable for the award of Associate Professor title by the Special Academic Review Committee in May 1995 and subsequently by the Ad-hoc Advisory Group in June 1995) will not be notified automatically to apply for conferment of the Associate Professor title. DSC will recommend deserving cases for academic review.

4.4 For reasons of exceptionally good performance, Head of Department or Dean may nominate staff members at Salary Scale B10 or below for consideration of conferment of Associate Professor title. Apart from fulfilling the basic criteria listed in paragraph 4.2.3 of Section III, staff members concerned must show strong performance in all areas of education, research, professional activities and campus and community citizenship, with excellent performance in some of these areas to merit exceptional consideration.