

Amendments to Council Resolution Establishing an Investigative Panel

Recalling that, on 21 February 2023, Council adopted a resolution accepting and approving the Memorandum of Agreement between the University and the former Vice-Chancellor, Professor Mamokgethi Phakeng, and agreed to review the current constitution and mandate of the Investigative Panel in order to determine an appropriate form for the Panel that would enable it to consider and investigate issues of governance that have affected and are affecting the University without specifically investigating the conduct of the former Vice-Chancellor; and

Considering the legal advice Council has received;

Council hereby reviews the constitution and mandate of the Investigating Panel as set out in Council Resolution dated 15 October 2022 as follows:

1. The Panel retains the current four members (including the current Chair), with three members constituting the quorum as stated in the original terms of reference (dated 24 October 2022).
2. The Panel shall not conduct its inquiry in an adversarial fashion. Rather, it shall adopt an inquisitorial approach with the assistance of an evidence leader.
3. The purpose of the inquiry shall be primarily forward looking although, based on its findings, the Panel is authorised to recommend redress where warranted. The Panel is thus authorised to make recommendations that could help Council and the University to prevent and better address any of the failures of governance the Panel finds.
4. The scope of the inquiry shall exclude any consideration of whether the former Vice-Chancellor committed any disciplinary offence. Rather, it shall focus on the following:
 - a. The circumstances surrounding the resignation or retirement of members of the executive including DVCs, deans, directors and other employees linked to the

senior leadership, with the specific purpose of finding out whether executive relations and the failures of governance within Council, its officers and structures contributed to this;

- b. In relation to 4(a) above, the Panel is empowered to advise whether any unfairness, breaches of labour law or UCT Statutes, regulations and policies took place, whether any remedy is possible and practicable, and whether there are policy gaps that need rectifying; and
 - c. The role of Council in handling the Ombud report and subsequent reports, and whether there were any failures of governance in this regard that still need to be addressed.
5. The Panel shall not make any specific findings touching on the personal responsibility of the former Vice-Chancellor with regard to 4 above.
 6. Due to Council Resolution dated 21 February 2023 referred to in the preamble and clauses 4 and 5 above, the former Vice-Chancellor shall not be required to appear before the Panel, or to submit evidence to it.
 7. However, the Panel shall not disregard any relevant evidence submitted by any person touching on the conduct of the former Vice-Chancellor which is imputable to the University provided that the Panel shall treat such evidence with appropriate caution to avoid undue prejudice to the University. In order to avoid breaching the Memorandum of Agreement referred to in the preamble, the Panel shall not make specific findings concerning the personal responsibility of the former Vice-Chancellor for any wrong possibly constituting misconduct. The Panel may however make conclusions or findings pertaining to her acts and omissions taken and made in the ordinary course of employment and therefore attributable to the University.
 8. In admitting and considering evidence touching on the conduct of the Vice-Chancellor as referred to in 6 and 7 above, the Panel shall be directed by the need to ensure that the University accounts and takes full responsibility for all actions and omissions attributable

to it that may have had an adverse impact on the rights and interests of its employees and other members of the university community.

9. With regard to clauses 6, 7 and 8 above, the Panel shall retain the authority to decide what fairness demands under the specific circumstances presented before it.
10. The Panel shall only consider evidence and reports that are relevant to matters defined in 4 above. It shall not consider submissions of a general nature from any group or individuals unless those submissions constitute admissible evidence.
11. This Resolution takes precedence over all prior Council Resolutions pertaining to the Investigative Panel and its Terms of Reference. Prior Resolutions and Terms of Reference shall apply to the extent that they do not conflict with any term of this Resolution.

Approved by Council 11 March 2023