

IMPERIAL COLLEGE UNION COURT

OPINION

Re: Amendment to Staff-Student Protocol

Panel consisting of:
Mark Flower

10th May 2008

1. A paper proposing amendments to the student staff protocol is due to be read by the Imperial College Union (ICU) Trustee Board on the 13th May 2008.
2. Under paragraph 16.2 of the ICU Constitution the ownership of the Staff-Student Protocol (SSP) rests with the ICU Council:
“The Council shall establish by Regulation a Staff-Student Protocol setting out the divisions of responsibilities between the staff and elected officers, to promote the democratic structure of the Union and its integrity as an employer. It shall be the responsibility of the President to clarify and enforce this protocol, unless the Court or Trustee Board is meeting, in which case it is the responsibility of its Chair to do so”.
3. Additionally it must be noted that, under paragraph 9.5 of the ICU Constitution:
“The Court’s jurisdiction shall not be restricted, except over the Trustee Board and staff matters to the extent set out in the regulations”
The relevant regulation in this case is regulation 2, paragraph G.36
“The Court shall interpret the meaning of the student staff protocol...”.
Thus it appears that ownership of SSP is split between ICU Council and the ICU Trustee Board, with the Union Court having the ability to interpret the SSP when the ICU Trustee Board is not sitting.
4. Under paragraph A 1. of regulation 2 of the ICU Constitution;
*“The Court has jurisdiction over and in the following areas of the union:
6. Reports and commentary upon proposed changes to rules”*.
A request has been received from the ICU President to comment on a proposed change to SSP. I have been appointed as a panel of one to provide an opinion, in the form of commentary upon this rule change.
5. The motion is in the form of a modification to paragraph 12 of the SSP. This additional text has been underlined:
“12. The maintenance of the integrity of the Union as an employer precludes any staff matters, either related to work or personal matters, from being discussed in any open forum of the Union. This does not include the discussion of departments or the performance of a department as a whole save where a department has only one staff member”.
This change took place on the 17th March 2008, as part of the 7th meeting of ICU Council.

6. It must be noted that whilst the SSP appears to be owned by ICU Council the ICU Trustee Board are (under regulation 1, paragraph A 4.4) “*responsible in particular for... personnel*”. Thus it is foreseeable that the ICU Trustee Board chair may wish to comment upon the changes to the SSP.
7. It appears unclear whether or not the ICU Trustee Board can make changes to SSP, since, (under paragraph 1 of regulation 1), whilst they have the ability to “*exercise all the powers of the union*” they remain “*subject to the provisions of the constitution and regulations*”. This clearly states that SSP shall be established (and hence by extension owned) by ICU Council.
8. Staff-Student Protocol is, in fact, laid out in (and by extension owned by) the Memorandum of Understanding (MoU) between Imperial College, and Imperial College Union. Thus, whilst changes to the MoU would normally require agreement from both sides it must be recalled that the possibility for making changes to SSP has been laid down in the ICU Constitution (which is approved by Imperial College London Council) to be the reserve of, specifically, ICU Council – suggesting that it would not be appropriate for the ICU Trustee Board to make changes to SSP.
9. The MoU specifically states that changes to the Annexes (where the SSP is defined) may be made by agreement between the Imperial College Secretary and the ICU Trustee Board. This, therefore, suggests that the ICU Trustee Board should act only upon the recommendation of the ICU Council.
10. Thus the ownership of SSP is complicated, and it is recommended that consideration is made to tidying the process somewhat.
11. The Union Court is entitled to report and comment upon proposed changes to rules. Whilst the ICU Council have made changes the ICU Trustee Board has not. As such it can be considered that the changes have merely been proposed, and that the Union Court is in a position where it can comment.
12. The recommendation for a change in SSP was brought about by Union media who felt that they could not fully report all Union issues.
13. The role of the SSP, as described by paragraph 58 of the MoU, is to formalise the arrangement between staff and students, thereby ensuring integrity of democracy (by preventing staff from having an active role), and of ICU as an employer. This latter condition is enforced via the requirement that no staff matters – either work or personal – are discussed in any open forum of ICU.
14. The requirements that the “*integrity*” of ICU is protected “*as an employer*” could be seen to have two conditions:
 - a. That individual staff members are protected from criticism from students
 - b. That the reputation of Imperial College Union (and by extension Imperial College) as a corporate entity is also protected. The relevance of this to the position of the union “*as an employer*” is questionable – although it is quite arguable that the morale of staff is of importance (the recruitment and retention of staff may otherwise become difficult). The discussion of staff

activities, which this amendment would permit, may have a profound impact upon this condition.

This latter condition could be viewed as suppression of the press (since it is, in effect, a blanket ban on bad news), and it is this suppression which the amendment to SSP is seeking to remove.

15. Notwithstanding the above, the freedom of speech is protected, again by the MoU (paragraph 38a) for all members of Imperial College “*every individual and body of persons concerned in the government of [Imperial College] shall take steps as are reasonably practical to ensure that freedom of speech within the law is secured for members, students and employees of [Imperial College] and for visiting speakers*”.
16. It is thus unlikely that condition ‘b’ is of importance, since this paragraph, drawn from the Education (no. 2 act) 1986 would most probably supersede the rest of the MoU, including SSP in paragraph 12.
17. This interpretation of paragraph 12 of the MoU (as defined by paragraph 80 of the MoU) can be made only by Union Court – without prejudice to the role of the Rector. The role of the Rector is to resolve disputes, presumably between the College and the Union, on the “*interpretation or application*” of the Code of Practice (MoU).
It is beyond the remit of this opinion to consider this option.
18. Whilst unlikely, it could be viewed by the Union Court that the change to SSP made by ICU Council is in breach of the above condition ‘b’ (in paragraph 14 of this document), since it allows any errors made by staff to be made public, thereby damaging the reputation of Imperial College Union – something which could be interpreted to be expressly prohibited under SSP agreed with Imperial College Council.
19. This definition of the requirements of the SSP is drawn from the main body of the MoU, not the Annexes. As such the ICU Council does not have jurisdiction to make unilateral changes. The only method of making changes is by re-negotiation with Imperial College Council.
20. Should it be decided that condition ‘b’ is not of relevance to the Union “*as an employer*” the ICU Trustee Board may wish to consider other issues.
21. The requirement to be able to discuss departments means that it must be possible to define a department within the Union. The staffing structure of the Union could be regarded as being opaque, and as such it may not be clear what constitutes a department. This could easily lead to the modified SSP becoming un-enforceable. Subject to the above condition ‘b’ not holding true it may be appropriate to firm up the definition of a department – either in the staffing structure or in the amendment.
22. The clause that departments with one staff member are not discussed is also of concern. It is not thought to be normal for casual staff to be responsible for more than the hour-by-hour running of union facilities, and as such unjustifiably large

expectations may be made of them. Hence, again subject to the above condition 'b' not holding true, it may be appropriate to modify the wording of the amendment such that discussion of a department with only one *permanent* staff member may not take place.

23. Disciplinary policy within ICU always permits for a right to reply. Whilst this modification to the SSP does not permit disciplinary action to take place it may be unwise to form a route, permitting the possible criticism of staff actions, without such right to reply. It is suggested that the most appropriate staff member for such a right to reply would be the General Manager or Deputy General Manager in his or her absence. As above this is subject to condition 'b' not holding true.

Conclusion

24. This is an opinion piece, and as such the conclusions are non-binding.
25. It is not immediately clear who owns SSP, as described by Annex H of the MoU between Imperial College Union and Imperial College London.
26. It is thought that the detail, rather than the spirit, is owned by the ICU Council, although changes can only be made by agreement of the ICU Trustee Board with the College Secretary. It is also thought that Union Court is permitted to make comment upon any proposed changes and when the ICU Trustee Board is not sitting, interpret the SSP.
27. The main text of the MoU, which can only be altered with the agreement of the Council of Imperial College, may not be unilaterally altered by any body within Imperial College Union – although the Union Court may make interpretations. It is here that the spirit of SSP is defined.
28. One possible interpretation of the spirit of the SSP is that the SSP is designed to protect the corporate reputation of Imperial College Union.
29. Freedom of speech is expressly protected by paragraph 38a of the MoU, thus making the above interpretation unlikely.
30. The amendment approved by Imperial College Union Council could be in breach of this interpretation, and as such it is possible that no change would be permitted.
31. This interpretation can be made by the Union Court and, in a preliminary capacity, the Union President.
32. Should this interpretation not be found to be relevant changes in the wording may wish to be considered to provide additional safeguards to the operation of the SSP. These have been described in paragraphs 21 to 23.