

## IMPERIAL COLLEGE UNION COURT

### OPINION

#### Constitutional and Regulatory amendments (No. 12/01)

11<sup>th</sup> June 2012

Panel:

Stephen Brown (Court Chair)

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Dr Andrew Heeps

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1. This opinion represents the settled view of the whole Court.

#### **Preliminaries**

2. The role of the Union Court under section 22.4 of the Union Constitution is to provide a report on the “constitutional propriety, efficacy and fairness of a proposed constitutional or regulatory amendment” and it is with this in mind that this report is written.
3. It is recognised that the governance structure of the Union should not remain fixed but should remain under continuous review to ensure the best needs of the students are maintained. This is something which tends to be driven by the sabbatical team and senior non- sabbatical officers, with appropriate advice from permanent staff.
4. Nevertheless, we have grave concerns about many of these proposals, encompassing first the policy reasons behind them, second the manner in which they have come to the Council, and third the quality of drafting.
5. The constitutional proposals include some references to the role of staff. This paper comments upon them. Since the comments relate to the proper constitutional role of staff and certain post-holders and not performance of individual staff members it does not breach the SSP and Council is perfectly entitled to discuss these issues. It is our opinion that Council should do so openly and clearly.
6. This paper is not intended to restrict or direct the discussions of Council or the Trustee Board who we encourage to raise any other concerns that individual members may have. Both committees are free to accept or reject the proposed changes in whole or in part and can take a similar approach to this opinion.

#### **Executive Summary**

7. This is a short summary of our key concerns as the Court respects that members of Council are likely to be sitting exams at present. These points are expanded upon in the rest of this document.
  - i. Overall, we are of the opinion that the proposed changes will lead to an unbalanced governance structure due to the significant shift of powers and responsibilities from volunteer officers to the sabbatical team.

- ii. We also note that these changes have been presented very late to members of Council and in general the quality of drafting is poor. Historically, major revisions to the Constitution have been put out to consultation over a period of several months to ensure they benefit from a high level of scrutiny from both members of Council and the student population.
- iii. We reject the notion that putting all the sabbatical officers on the Trustee Board will improve the level of oversight in the current governance structures. Having the sabbaticals on the Trustee Board in such numbers weakens the rest of the governance structure and makes for less effective oversight of how ICU is managed and on what basis resources are prioritised. A Council policy which they disapprove of can be more easily overturned at Trustee Board. A Court decision they dislike can be reversed more easily. A successful no confidence motion at Council could be overturned at Trustee Board. It would change the whole dynamic of power away from the elected student committees.
- iv. It is assumed in the rationale behind these changes that non-sabbatical members have nothing useful to add to the policy-making and budget process at a Union wide level: this is an assumption which fills us with deep dismay and appears to be plainly undemocratic. The proposed “Management Board” will retain most of the existing powers of the Executive Committee meaning that no part-time officers will have any input into the Union wide budgeting process and allocation of financial resources.
- v. Aside from budgeting, a further consequence is that the proposed “Management Board” will have free reign to take key decisions about the future of all Union commercial services those on other sites (for example the Reynolds Bar). Currently the ICSMSU sabbatical President sits on the Executive Committee and we note that this office holder is excluded from the Management Board. The Court makes this observation without further comment.
- vi. It is of great concern that a distinction is being drawn between “democracy” and “governance and management”. Democracy does not happen once a year at election time but should be an ongoing process. Removing or diluting the powers of existing committees either explicitly or implicitly will lead to less effective oversight of ICU’s activities by both elected part-time officers and the Trustee Board.
- vii. In general, a lot of the proposed changes to the Staff-Student Protocol are an improvement on the existing document. However, we are dismayed that almost every single amendment to this draft SSP since its initial draft at the beginning of the year has been either to weaken the position of elected officers and committees with respect to staff, or to weaken the position of non-sabbaticals versus the sabbaticals, particularly the President. The Court recommends that this draft is amended by either Council or the Trustee Board to reflect the concerns expressed below.
- viii. Regarding the proposed restructuring of the sabbatical’s job descriptions. We are astonished that the summary document makes no reference to finance or commercial services as something which any of the sabbatical officers would concern themselves with. There is a great deal of commentary about putting sabbaticals in a strong management position for the benefit of the Union, so it is difficult to understand why

this proposal comes alongside the removal of the student responsible for democratic supervision of commercial services and the Finance Office. The Union has a substantial and generally successful commercial operation run by experienced managers with a complex financial machinery behind it. Supervising this on behalf of the student body, as a self-respecting student democracy ought to, is at least one sabbatical's full time job. It is our view that these changes reduce student oversight of a large swathe of Union activity.

- ix. The proposed changes to the Election Regulations are intended to simplify the election process but it is our view that they will complicate things and lead to drawn out election complaints and appeals. The introduction of Union staff into electoral administration will have a negative affect on candidate's ability to complain about decisions taken by the Returning Officer and Deputy Returning Officer due to the SSP. The Court has every confidence that the student body can continue to find students of Imperial College to run elections in a fair, transparent and efficient manner whilst protecting the right of election candidates to receive a fair hearing regarding any perceived unfair practice by other candidates or those administering the election.

#### **Summary and themes behind review**

8. The summary paper which went to the inquorate EGM is open about the intent to move a significant amount of power to the sabbatical officers. The precise balance of power between sabbaticals, non-sabbaticals and various committees is always a matter for discussion, and it is recognised that sabbaticals have their own mandate for office.
9. However the size of the power shift in the sabbatical team's favour is very significant indeed, and unprecedented in recent Union history: we are of the view this risks leaving an unbalanced governance structure.
10. We do not agree with the summary paper's analysis of the current governance structure, most notably the placing of "democracy" as a separate and distinct 'area' from "governance" and "management". Governance is supposed to be democratic. Union management is supposed to be accountable to democratic structures. Democracy does and should continue to underpin everything within ICU.

#### **Manner of arrival at Council**

11. We are of the view that these very significant proposals have come in drafted form too late for the proper level of consultation. Many of the concerns we have here could, and should, have been dealt with over a longer period of time than has been made available to everyone.

#### **Faculty Unions, postgraduates and RSM**

12. We have no particular comment on these changes. Obviously that does not preclude others from having their own views upon them.

#### **Trustee Board**

13. The proposed reforms enact the addition of all Sabbatical Officers on to the Union's sovereign body, the Trustee Board; and the removal of all non-sabbaticals from Executive Committee (re-named Management Board).

14. The Trustee Board is currently split three ways among elected student Trustees, Council-appointed lay Trustees and Union post-holders (President, Council Chair and Court Chair). It is explicitly designed to ensure no one lobby group or part of the Union controls it and that it acts in everyone's interests. The idea of having all sabbaticals on Trustee Board was considered in 2007 (when it was founded) and rejected partly because it gave sabbaticals too much power.
15. The Trustee Board is currently majority occupied by people directly elected to their posts: the President, Council Chair and 4 student Trustees are all elected by College-wide vote and represent 6 of the 11 members. The others (lay Trustees and Court Chair) are appointed by Council. This was deliberate and intended to provide a democratically constituted body at the top of the Union. This is also in our view thus a "student-led" body.
16. Putting the sabbaticals on the Trustee Board would add 4 more student officers on it, increasing its number to 15. It means they would need only 3 out of the other 10 members in order to have a controlling majority of the Board.
17. This proposal does not, as the summary paper suggests in "Proposition A", "provide the oversight necessary", since the point of "oversight" is that a person is overseen by someone else. Adding all the sabbaticals on to the body whose job it is to oversee them does the opposite.
18. In more general terms, having the sabbaticals on the Trustee Board in such numbers weakens the rest of the governance structure. A Council policy which they disapprove of can be more easily overturned at Trustee Board. A Court decision they dislike can be reversed more easily. A successful no confidence motion at Council could be overturned at Trustee Board. It would change the whole dynamic of power away from the elected student committees.

#### **Executive Committee / Management Board**

19. It is proposed that all non- sabbatical officers are removed from the Executive Committee and that it is renamed the "Management Board". Its powers remain mostly unchanged, which include full policy powers across the Union subject only to Council / Trustee Board and full budget-setting powers. The duty of sabbaticals to report to it (such reports being public documents available to all Union members) is to be abolished.
20. The summary paper includes "issues such as Room and Minibus Usage, Health and Safety, Staff Recruitment, Resource Allocation, the Operational Plan" as appropriate subjects for this committee, a statement with which we would broadly agree – through several of these ought also to be reviewed by the Council.
21. This is a clear and very substantial shift of power towards the sabbatical team. Leaving the Executive Committee / Management Board without non-sabbaticals gives powers to the sabbaticals themselves alone to overrule every committee in the Union except the Council, Court and Trustee Board. The sabbaticals will have almost complete budgetary powers over all activities, clubs, societies and commercial services, without review except by the Trustee Board.
22. We do have concerns about such wide powers being exercised by such a small group of people. A Faculty Union, club or part of the Union which had a falling out with the sabbatical team could find its budget damaged or policy against its interests implemented without easy recourse

- to appeal. A small sabbatical team is likely to develop a strong bond and joint views on policy – which is generally a positive thing – but if that body is given this committee’s substantial powers it may lead to narrow attitudes and unchallenged thinking.
23. The advantage of non sabbatical members, apart from broadening the democratic mandate for its decisions, is that the sabbatical are exposed to viewpoints from outside their day-to-day environment and forced objectively to argue for their proposed policy or budget. However it seems to be assumed in the summary paper that non-sabbatical members have nothing useful to add to the policy-making and budget process at a Union wide level: this is an assumption which fills us with deep dismay and appears to be plainly undemocratic.
  24. It is stated in the summary paper that “*this committee would be held during the day, to enable all senior managers to attend. This is to reflect the need for input from the Senior Managers who are tasked with delivering all Operational Policy of the Union.*” We disagree with the prioritisation given to staff here. Evening meetings are necessary for student attendance; senior Union staff should expect to attend occasional evening meetings as part of their duties. They are employed and paid by the Union to serve the student interest. It is fundamentally inappropriate that major policy and budget meetings affecting the whole Union take place at times for senior managers’ convenience when ordinary students cannot attend. The more senior the body the more important this principle is.
  25. The senior management committee in the Union has a close connection with senior staff which is proper and correct. One advantage of the presence of non-sabbaticals is that they can ask questions or challenge proposals being advanced by staff, without worrying about their day-to-day relationships with them. (They may not even realise it’s a staff-advanced proposal.) It is proper and expected for staff to make proposals and advice, but such advice or proposals should be subject to the same challenge as any other proposal. It should not be dependent upon any concerns by sabbaticals as to how it would affect their close working relationships with staff in the office.
  26. Finally, regarding the name change. One mild advantage of the title “Executive Committee” is that it is the same is mostly used by the rest of the Union for its clubs, societies, Faculty Unions and so on. Its name is a reminder that the whole Union, like its sub-parts is democratic and student led.

## **Democracy**

27. The discussion of the Trustee Board and Executive Committee / Management Board raises a few points about Union democracy in general.
28. First, the summary paper’s “Preamble” section describes, with a diagram, an understanding of the Union’s structure which we do not agree with, in particular the placing of “democracy” in a separate category from “governance” and “management”. It is not separate: it underpins the whole Union’s governance and management. This is also a matter of law under section 22 of the Education Act 1994. Democracy does not only occur once per year at election time, but on a continuing basis. One small example of the tone: paragraph 1 of the preamble states that “*Democracy*” is “*The structures that enable our members to set policy that guide what services we deliver and the issues we campaign on*”. In the current constitution these structures explicitly do not “guide” services and campaigns. They state them.

29. Second, some other student unions have a system of an ‘advisory’ student Council which has no real powers, or some powers which can easily be reversed on appeal. It then mostly discusses political campaigns and rudimentary reports. The only element of democracy is the annual sabbatical elections. This is not model proposed here, but the current proposals take ICU several steps towards it. Other student unions are often more interested in politics and less interested in their own activities and commercial services. They have tended to surrender control of the latter to staff or powerful sabbaticals and discuss campaigns and politics instead. That has until now been a model which ICU has explicitly rejected.
30. Third, the summary paper states that the sabbaticals “*have the highest mandate of all...*” and “*understand how the Union operates day-to-day*” as justifying wholesale addition to the Trustee Board and sole membership of the Management Board. We have reason to doubt the mandate part: though the voting numbers are lower, many Union Officer posts are elected on a College-wide basis by all students. In any event, it doesn’t follow that election to sabbatical office means one should have a completely free hand in management. For example, the UK government is still accountable to Parliament, select committees and courts between General Election dates. So should the sabbaticals within ICU. The point is that democracy in a student union is a continuing concept: democratic review of policy and budgets, democratic accountability of senior officers. These proposals damage the student membership’s ability to exercise its conventional democratic role.

#### **Staff student protocol**

31. This has undergone a significant re-draft. We are in general agreement that the current SSP is in need of an overhaul. An early version of a new SSP was circulated among Court members earlier this year, from which the current version has been adapted.
32. In general the proposed new SSP is an improvement upon the current version, but there are a number of revisions from the initial draft which it is appropriate to highlight to the Council / Trustee Board:
  - i. The first core principle initially included: “*The core principle is: the elected officers of the Union are responsible to the membership for the government and actions of the Union; thus staff may not participate in the government of the Union, including setting policy or expressing public views contrary to the Union’s. [different paragraph] Staff may give advice upon policy or any other appropriate matter to the elected officers and committees of the Union.*”  
  
It now reads “*Staff are expected to provide professional advice to the elected officers in their areas of expertise. However they may not seek to influence political policy discussions or the political policy positions of others*”
  - ii. The original draft section, borrowed and adapted from paragraph 11 of the Civil Service Code: “*It is the duty of all staff to uphold the aims, objective and policy of the Union under the direction of the President. They must not seek to frustrate the policies, decisions or actions of elected officers and committees by declining to take, or abstaining from, action consequent upon their decisions.*”  
  
This has been entirely removed.

- iii. The original draft section *“This Protocol does not apply to any private conversation or communication which relates to staff matters.”*  
This has been entirely removed.
  - iv. The original draft section *“The Trustee Board, Executive Committee and Court may require staff to attend and answer questions.”*  
This has been maintained, but with the addition of *“in consultations [sic] with the General Manager”*.
  - v. The original draft section *“No policy or mandate of wider application than staff matters may be passed by a committee while in closed session due to discussion of staff matters.”*  
This has been entirely removed.
  - vi. A new section has been added, dealing with the proposed role of staff in the elections process: *“The Officers and Trustees of the Union will delegate their responsibility for ensuring a fair election to the returning officer and deputy returning officers nominated by the Union, and all associated administrative functions to appropriate staff members, so as not to undermine their right to take an active role in the political aspect of any election process.”*
  - vii. The original draft section: *“Those holding sabbatical office or part-time paid elected office are responsible to the President in respect of their performance and conduct as employees, **but not in respect of any matter for which they have an independent duty of representation or editorial independence under the Constitution.**”*  
This section in bold has been removed.
  - viii. The current and original draft section *“The President, or if absent the senior officer present should clarify and explain the Protocol where appropriate. **When the Trustee Board or Court are sitting, its chair shall do so.** The Court shall interpret this Protocol when required as with other Union rules.”*  
This section in bold has been removed.
33. There were various other elements of the original draft which have been amended which we have left out of this summary.
  34. Section 11 of the proposed protocol includes a section about complaints about Union Officers. We do not see that it is appropriate to include this given this protocol is supposed to deal with staff and officer disciplinary matters are already dealt with in detail elsewhere.
  35. It is a matter of considerable dismay to us that almost every single amendment to this draft SSP since its initial draft at the beginning of the year has been either to weaken the position of elected officers and committees with respect to staff, or to weaken the position of non-sabbaticals versus the sabbaticals, particularly the President.
  36. As explained later in the section dealing with staff role in elections, the section delegating powers automatically to staff for elections is unconstitutional.
  37. The current SSP and initial proposed SSP explicitly allows staff to influence policy by advising officers and committees. This is normal, welcome and expected in a student democracy. The

proposed protocol refers to staff advice only to officers but not committees. This exclusion seems odd: staff advice to committees is an important part of their function.

38. The proposed SSP caters, for the first time, for “political policy” (a matter not further defined) and bans staff from seeking to influence it. We are concerned about this prohibition. Political policy may include committing the Union to certain positions inconsistent with its charitable status, or funding things which may not be lawful. We would have hoped that Union staff would be careful to point such things out to officers and committees, quite possibly in vigorous terms. This should not be prohibited. If (as we suspect) the drafting was intended to mean that staff should remain politically neutral, then this should be stated as such. We had assumed this was would have been obvious without it having to be declared, but if the time has come for it to be so then it should.
39. The amended section acknowledging the power of the Trustee Board, Executive Committee and Court (constitution 6.1, regulations 5.B.4 and 2.4) to call in staff members to attend and answer questions now requires this to be in consultation with the General Manager. The General Manager is already an observer of the Trustee Board and Executive Committee so this section realistically is focused upon the Court. This provision, among other things, deals with a situation when information is confidential and staff only regard it as appropriate to divulge if instructed specifically to do so. We have some doubts as to how this new consultation provision would work in practice for the Court. Normally one would expect the General Manager to be informed if this unusual step were taken. But there may be occasions when it not appropriate to give advance notice of a requirement to attend and answer questions to anyone else. It may be better if it were amended to “*in consultation, where appropriate, with the General Manager*”.
40. It is particularly concerning that the rule has been silently removed stating that at Trustee Board and Court it is its Chair who clarifies the SSP, not the President. The point of this rule was to stop – as happened in previous years – autocratically minded Presidents from simply declaring that topics were no-go areas due to the SSP. This was all the more important at Trustee Board and Court which are major governance committees and deal regularly with staff matters, or topics on the borderline of staff matters.
41. We would suggest that the appropriate sections be put back. They are stated in full here so it should not be difficult to do so if Council or Trustee Board wishes to do so.

### **Restructuring the sabbatical officers’ portfolios**

42. It is proposed to merge the roles of DP (F&S) and DP (C&S) into a DP (Activities), create a new DP (Student Development) and create a new sabbatical postgraduate officer.
43. The summary document states that “*students spoke of wanting a greater focus on alternative careers, skills development, outreach and volunteering. Students also desire a more visible Union, communicating the changes it makes and campaigning actively on topics they are concerned about. In order to deliver on these demands, we realised we had to take an holistic approach to the Sabbatical roles*”.
44. It is to our astonishment that the summary document makes no reference to finance or commercial services as something which any of the sabbatical officers would concern themselves with. There is a great deal of commentary about putting sabbaticals in a strong management position for the benefit of the Union, so it is difficult to understand why this



proposal comes alongside the removal of the student responsible for democratic supervision of commercial services and the Finance Office. The Union has a substantial and generally successful commercial operation run by experienced managers with a complex financial machinery behind it. Supervising this on behalf of the student body, as a self-respecting student democracy ought to, is at least one sabbatical's full time job. It is certainly not something the President could do in combination with his or her many other duties.

45. None of the proposed Deputy President job descriptions involve responsibility for either finance or commercial services.
46. The President-elect will at least be required to name someone under section 15.2 of the constitution, which states that "*The day to day administration of the Union's finances shall be delegated by the President to a Deputy President with responsibility for finance.*" This is something the Regulations would no longer do.
47. We also have some concern about the removal of the DP (Clubs and Societies) title. Deputy President titles are 'brand names' in their own right. Students understand them, and senior College staff know them. The word "activities" is pretty meaningless outside ICU: it means anything at all that is active. Having a job title simply marked "Activities" is likely to meet with either confusion or derision.
48. As to the DP (Student Development) role, this covers "volunteering", "fundraising" and "citizenship". Encouraging volunteering is something which the whole Union does. All officers are volunteers. The other activities are partly covered by RAG and CAG. At the moment it is not clear what a student officer would add in the way of value to these positive aims. Some elements, such as fundraising and any guidance role, might be better undertaken by professional staff.
49. We imagine that no-one would be opposed to a successful postgraduate sabbatical. However this was attempted in 2006 – 2008 with a Deputy President (Graduate Students) and was then widely regarded as a failure, with the post abolished. We think there needs to be a much more careful justification and explanation of how the mistakes made then would not be repeated again.
50. In summary, we are of the opinion that the much of the restructuring of portfolios is difficult to understand or justify. It is more democratic and sensible that the DP (Finance & Services) role is done by an elected student, and the DP (Student Development) role by a staff member (not with that title of course): not the other way around as is proposed.

#### **Sabbatical posts-elect, transitional provisions and drafting intent**

51. Section 24.1 and 24.2 of the proposed constitution revokes the current one and establishes the new: which is the conventional position. There are no transitional provisions for the current sabbaticals-elect, elected under the current system. What is intended for them?
52. The conventional interpretation is that when new rules come into force they do so immediately and in full. One could put a very strong argument forward that the Deputy President (Finance and Services)-elect may soon be out of a job. On a plain reading of the new text, that is the position.

53. If a very generous interpretation of these rules are provided and the Deputy President (Finance and Services) still exists in limbo for next year, what are his duties and powers? The post is not listed anywhere – the previous constitution is to be revoked. Is he on the Council or Executive Committee / Management Board? Can he authorise expenditure? These are basic questions of the transition which are important part of the Union’s financial accountability which are not answered anywhere.
54. Will there be an election for a Deputy President (Student Development) and Deputy President (Postgraduates) in October? According to the rules as they may come into force, there should be.
55. What is the job description, powers and duties of the current Deputy President (Clubs & Societies) going to be? The current version, or the one for the new Deputy President (Activities)? And what is the job title to be next year?
56. This position and the significant number of fundamental open questions about the status of the Union’s major elected officers is simply not acceptable. Verbal promises, if given (we don’t know if they have), are no substitute and cannot in any event alter the text of the constitution and regulations. The matter ought at least to go to the Trustee Board to determine whether and to what extent these new rules would affect sabbaticals-elect.

#### **General Manager / Managing Director name change**

57. It is proposed that the title of the General Manager be amended to “Managing Director”. This is a common synonym for “Chief Executive” – for example Wikipedia automatically redirects it on a search. Section 5.4 of the constitution states that “*The President shall be the chief executive officer and representative of the Union.*” This contradicts the new proposed job title.
58. Also, the closest thing the Union has to a Board of Directors is the Trustee Board. Much of the Trustee Board’s own rules are similar to a board of directors, much like the College Council is for the College. The General Manager is not and cannot currently be a Trustee – nor can any staff member. It follows that that he/she is not a “director” of the Union.
59. We are concerned about the intention to give a job title to a permanent staff member that precisely overlaps that of the Union President. There can only be one chief executive or managing director of the Union and that person should be elected by the student membership and not have that position diluted, even by another’s job title.
60. There is a reason that the title of “General Manager” is adopted in the constitution, as distinct from and junior to the Union President’s chief executive title, and this distinction should be maintained.

#### **Union Advocate**

61. This is proposed to be abolished in the review. Unhappily, a paper was sent to Council on the 1<sup>st</sup> May 2012 cancelling elections for Union Advocate on the basis of a future paper which would abolish it. This is completely unconstitutional. The only way of abolishing a post in Regulations (which this is: regulation 2.43) is to change the regulation, i.e. Council and Trustee Board approves it. That did not happen here.

62. Sadly, the title of the post has again been misquoted. It is “Union Advocate”, not “Court Advocate”. The point of the title is that it is a Union representative to the Court and a Union-wide post: not just an adjunct of the Court.
63. The reasons given for the proposed abolition on the 1<sup>st</sup> May (nothing is stated about it in the summary paper) were:
  1. The position of Court Advocate was created two years ago to provide a ‘human face’ for the Court.
  2. I believe that the role provides little benefit to the Court or the Student Body and therefore recommend its removal. As such, we would not elect a new Court Advocate in the Summer Elections.
64. The Union Court disagrees with this analysis. Last year’s Court Chair has stated that the then Union Advocate was extremely useful and made a positive contribution to a number of hearings. The current occupant has not been particularly active but that is no reason at all to abolish the post.
65. The Council on the 1<sup>st</sup> May 2012 resolved to move the Union Advocate’s duties to the Council Chair. Yet the amended job description for the Council Chair includes only one such reference and limits the advice role to “matters relating to the Union President”. It is not at all clear why this limitation has been put in, which does not currently exist for the Union Advocate post. The Union Court, and students, may wish to have advice on any number of matters which may relate directly to the Union President or not.
66. The Union Advocate also has an important role in highlighting to the Union Court any potential area of concern or unconstitutional practice. This is an important element of Union governance (the Court can only act on requests, not of its own motion), designed to ensure Union Officers stay within the rules. There is no justification for its abolition.

### **Elections Regulation**

67. Proposition D of the summary document entitled “*making elections run smoothly and efficiently*” proposes a compulsory external returning officer and abolition of the Court’s appeal jurisdiction for sabbatical elections (maintaining it for others). It is also proposed that seconders are abolished, proposers having been abolished last year.
68. Unfortunately the tracked changes involves a complete replacement of the election regulation so it is sometime difficult to see what exactly has been changed.
69. We have serious concerns about the quality of drafting of the proposed new Election Regulation. It is in areas inconsistent and unconstitutional and would create a host of interpretative challenges. Some changes have consequences which may or may not be intended. A selection of these are highlighted below.
70. It is stated to be a matter of concern that “*candidates who are ‘constitutionally-savvy’ frequently try to gain an advantage by exploiting the rules to attempt to punish their opponents*”. We would suggest that such rules as are being exploited should be changed. No examples are given so we cannot comment any further.

71. It is already possible to have an external returning officer who is a member of an external student representative or electoral organisation. It is proposed that for sabbatical elections, this becomes compulsory. The proposed constitution still restricts external returning officers to being members of those two groups (section 5.2.d and 5.3.b) which means he or she would still have to be appointed from them. This is probably not the intent of the proposed regulations, but would be constitutional position if this was passed in its current form.
72. There appears to be implicit criticism about the role of the elections committee in sabbatical elections. The sabbatical elections committee comprises only members of the Executive Committee or Council. It is stated that "*A large majority of candidates are involved with the Union before running. This makes supervision without prejudice remarkably hard*". It is perhaps a matter of opinion, but this makes for a depressing assumption about students' abilities to be mature, neutral and fair. It may be that the pool of sabbatical elections committee members should be widened beyond Council, but we do not see a reason for it to be abolished.
73. The summary paper states "*Sabbatical Officers understand how the Union works and what makes a good candidate. They are not constitutionally barred from having an opinion about the candidates but with one of the team supervising the election voicing such opinions is difficult*". We are surprised to hear that sabbatical officers would consider voicing such opinions at all. Senior officers ought to be neutral in elections, particularly to their own posts.
74. Proposition D2 of the summary document removes seconders. We disagree that their presence – which is very long-standing in Union history – is automatically undemocratic. Their purpose is to stop candidates signing up for personal amusement without intending seriously to run and wasting people's time. This is all the more important in electronic elections where it's very easy to sign up at no cost to the 'candidate'. This may create a number of joke candidates for high profile elections. This would clog up Felix coverage and the online voting system and distract electors from considering the serious candidates. 4 seconders are normally required for non-sabbatical elections which we think is pretty modest. The higher bar of 20 seconders for sabbatical elections allows for a filter for serious candidates. It seems inconceivable that a candidate could win a sabbatical election and not get 20 supporters initially whether they are undergraduate or postgraduate.
75. The role of College scrutineer in the current election regulation 4.75 has been removed. The College Council is required to satisfy itself that our elections are properly conducted, and part of the deal with the Union was the creation of this post. We are doubtful that the College would acquiesce to this change; also it provides some insurance for the Union against suggestions by College staff that we are not running elections properly.
76. Proposed regulation 4.41 ("*A 'Sabbatical Election' is described as the election for the any officer which sits on the Trustee Board.*") would include the election of Council Chair as one of the 'sabbatical' election posts, since it fits in both categories. It is not clear if this was intended, and if so, why.
77. Proposed regulation 4.45 ("*The rules surrounding the Campaigning, Publicity, Hustings and Timetable of the Sabbatical Election shall be decided by the Returning Officer. This will be done in consultation with the President and may use elements of this Regulation as guidance*") is constitutionally dubious. Are the rest of the election regulations "guidance" or binding? This provision throws into doubt whether the rest of it is supposed to apply. This would create fertile

ground for Union Court appeals and review. If this sort of rule is intended to simplify election administration it is likely to do the opposite.

78. Proposed regulation 4.54 (Deputy Returning Officer to be a member of staff) is unconstitutional and is likely to be quashed by the Union Court if passed. Staff are not constitutionally permitted to play any part in Union governance, which includes elections. This rule is absolute and permits of no exceptions. The policy intent behind this change is unclear in any event. It also creates problems with the staff student protocol since it is highly likely that a Deputy Returning Officer would be criticised from time to time. In addition, elected student officers should not owe their candidacy or office to decisions made by staff in running elections.
79. Proposed regulation 4.82.3 states that a returning officer is a supervisory authority for himself. The role of election supervisory authorities is to supervise and appoint returning officers. Its role is not to run elections or referenda. It was set up to allow senior Union officers / committees to replace returning officers where there was a problem running an election. It makes no logical sense for a returning officer himself or herself to be a supervisory authority and gives the impression that the drafter does not understand what the role of a supervisory authority is. Some guidance is given in *Re Sabbatical elections' returning officer (No. 07/04)* paragraph 18 and *Graduate Students' Association election (No. 07/06)*. This misunderstanding seems confirmed in proposed regulation 4.34 with a referendum committee as a "supervisory authority" which again is not logical. As to other drafting matters, the numbering of regulation 4.82.3 is probably supposed to read 4.82.1. In proposed regulation 4.82.4, there is presumably a missing possessive apostrophe. (One will need to have the draft regulation to hand to understand these comments.)
80. The constitution still provides for a general review and interpretation power for the Union Court as the final arbiter (subject to Trustee Board) as to what the rules mean. If there is an external returning officer without appeal this still leaves a residual review power for the Union Court to review his / her decision for constitutionality. The Court's additional paramountcy in election appeals further complicates the matter, but even if, has been informally proposed, this was removed, it would not end the Court's interpretative role.
81. For more details on this complex topic see previous Court determinations such as *Re Sabbatical elections' returning officer (No. 07/04)* paragraphs 18 – 21 and *Re Disciplinary Committee (No. 07/07)* paragraphs 8 – 20. This issue hasn't arisen in recent years since the Court has had full appellate powers in elections and disciplinary cases. If this reform is implemented, we may see a return to these different jurisdiction and review points being argued, which would be highly regressive.

### **Disciplinary Regulation and Policy**

82. This has been drafted separately. The only version we have seen does not have tracked changes. It may be that the version available to us is an early draft, but we must work upon the presumption that it is the final version since this is all we have. There is no summary available to us of why changes have been made. It appears that it is intended that the new Regulation is primary 'start point' for disciplinary sanctions, and all disciplinary jurisdiction branches from it. If so it should be read in combination with section 18 of the constitution which performs that role.

83. The Disciplinary Policy is currently a separate document which deals with all student penalties other than censuring or dismissal. Changes to it must be approved by College Council. The Regulation currently deals with censuring and dismissal. It appears that some parts, if not all, of the Disciplinary Policy is to be incorporated into the draft Regulation. There is comment about this later.
84. The preamble to the draft Regulation has no numbering. The numbering starts at a later section dealing with “*Officers and representatives of the Union*”. To have several paragraphs of a draft regulation without any numbering at all is simply inadequate and not up to the standard of drafting one should expect of a provisional Union Regulation.
85. The current regulation has a section for general jurisdiction and sets out definitions. There are then parts for warnings, investigations, suspension, censure/no confidence motions, appeals, disciplinary tribunals and minimum rights at other proceedings.
86. There is a short complaints procedure in the current and proposed regulation, which is separate from discipline. It is a requirement of the Education Act 1994 that the Union has a complaints procedure and publishes it. As a minor point, proposed regulation 7.99 states that commercial services may have their own mechanism for complaints. This seems to miss the point: the complaints procedure is required to be written and published which Part E does. It does not make sense for one part of the Union to be permitted a separate procedure.
87. The current regulation has one disciplinary system for everyone, with minor differences where appropriate. The proposed regulation has different tracks for “officers and representatives” and sabbatical officers, Felix Editor and Court Chair; with significant duplication of text. In addition, there are proposed three different routes for disciplinary investigations, all with subtle distinctions between them. Currently there is just one.
88. The proposed regulation includes a part C for “*Committee[s] of the Union and its Clubs, Societies and Projects*”, providing for the punishment of these parts of the Union. This is currently catered for by the Disciplinary Policy. The new policy excludes such jurisdiction over clubs. The proposed regulation expands summary penalties from one week to the rest of the academic year, which is an enormous power to give to a sabbatical officer. A summary power to cancel tours is particularly significant. Essentially it removes the Disciplinary Committee entirely for clubs and societies and gives its powers to two sabbaticals.
89. On the point of the expanded summary powers over parts of the Union in part C, the College Code of Student Discipline sets out limitations on ‘summary punishment’ (that imposed by a person rather than a committee). It explicitly covers Union penalties and incorporates the Union’s policy. The Union doesn’t itself have jurisdiction to fine or impose community service – only the College does, and the Union only acts within the College’s delegated authority. The proposed part C contradicts the College Code of Student Discipline and gives more power to the relevant sabbatical than is authorised by the Code. It is thus almost certain to be unconstitutional.
90. Proposed regulation 7.83 in Part C: “*Should [DP(Activities)/President] feel the actions have mistakenly blamed on the committee, when they are the actions of a few members of that committee, they may refer these individuals for discipline under Section D.*” is one example of the sort of drafting which concerns us. The sentence does not make grammatical sense. It

includes the work “feel” which is inappropriate in a regulation. When read in context we are at a loss to understand what it means.

91. Proposed regulations 7.39 and 7.73 state the sorts of conduct which are likely to result in disciplinary proceedings. This method has previously been avoided in drafting of Union disciplinary rules. The simple word “misconduct” has been used instead – which avoids difficulties about deciding whether conduct breaches an arbitrary list of offences or not. Both sections nevertheless include a catch-all for any other misconduct which tends to render the remaining definitions pointless. In addition, specific policies such as “Speakers Policy” are named. It is not appropriate for a Regulation to name individual policies with the single exception of the Disciplinary Policy since this is College-approved. For example, what if the happens if the policy title was changed? Would the Regulation apply to it anymore? We would suggest the individual examples of misconduct are removed and the matter left simply as “misconduct”.
92. The disciplinary tribunal jurisdiction has been abolished. This was the subject of major discussion in the 2007 – 8 review, and primarily there to deal with illegality, or major personnel problems with union officers that could not be easily dealt with by Council. A case involving a sabbatical officer in 2008 was a major reason why it was set up, and the lack of such a body created some painful sessions at Council and difficulties for the sabbatical team. It was recognised that there could be some personnel matters relating to sabbaticals in particular which were legally complex (second year sabbaticals have full employment rights as well). There was advice that allegations of criminal conduct against student officers should not be aired in the public forum that is Council and should better be dealt with in a disciplinary tribunal – the Union / College could face legal action for defamation or harassment if it dealt with these publicly. There are detailed Trustee Board provisions (the “Appeals and Discipline Procedure”) which sets out how it operates with careful provisions for fair hearings. We do not understand why this has been removed and see no justification for this to have happened.
93. One example of a drafting inconsistency concerns the route for complaints about the Court Chair. In regulations 7.1.1 and 7.37 it is probably the Union President. In regulation 7.38 it is the Council Chair. In fact regulations 7.38, 7.39 and the sub-heading above them are inconsistent upon the point which given they are direct neighbours is alarming. The route for complaints about other Court members is currently the Court Chair, but with this new rule a complaint could then go further to the President. This is not appropriate for an independent body. It is not clear whether this was intended or not.
94. Current regulation 46.4 includes the provision “*The Council shall have due regard for the gravity of the motion*” in debating disciplinary motions. This has been removed.
95. The authority of a licensee to bar people from licensed premises has been included as a disciplinary sanction. This contradicts our understanding of licensing law which is that a licensee bar is not a disciplinary sanction (for example it cannot be appealed to a court) but is the general discretion of the licensee. For example there was recently a pub near Bloomsbury which barred all students – since many would apparently turn up and not buy anything. Of more serious concern is the direct mention of staff in proposed regulation 7.88. It had previously been determined that student discipline was a governance function from which staff were excluded: see the determination in *Driving ban appeal and role of staff in student discipline (09/05)*. The inclusion of staff in a rule providing for disciplinary sanctions sets an

unwise precedent. As a minor point, proposed regulation 7.90.2 misspells “licence” as “license”.

96. Section 18.3 of the constitution includes the following replacement section: “*Those found guilty in points 1-4 may appeal to the Court,*” This section includes a misspelling – of the word “point” – and ends the sentence with a comma. Normal drafting practice is to refer to “*section x*” rather than “*point x*” but this is perhaps minor. It also heralds an interesting new development in Union discipline, as it imposes on a constitutional basis (which the Discipline Regulation must now adhere to) a power of the Court to reverse any Council no confidence motion or Trustee Board disciplinary sanction on students or staff. It is not certain whether this is intended or not, but that is what this new rule says.