

# IMPERIAL COLLEGE UNION COURT

## OPINION

### Constitutional and Regulatory amendments (No. 12/02)

23<sup>rd</sup> October 2012

Panel:

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#### Contents

<i>Introduction</i> .....	1	<i>IV. Composition of the Trustee Board</i> .....	11
<i>General commentary</i> .....	2	<i>V. Non-students' potential involvement in Union governance</i> .....	12
<i>Summary of views</i> .....	3	<i>VI. Union Court / Governance Committee</i> .....	13
<i>Background</i> .....	3	<i>VII. Media regulation</i> .....	15
<i>Previous governance reviews and the Union's legal status</i> .....	4	<i>VIII. Elections Regulation</i> .....	16
<i>Openness and method of consultation</i> .....	6	<i>IX. Meetings rules</i> .....	17
<i>I. Replacing the constitution with an NUS template</i> .....	6	<i>X. Disciplinary Regulation and Policy</i> .....	19
<i>II. Financial and commercial control</i> .....	7	<i>XI. Miscellaneous topics</i> .....	25
<i>III. Sabbatical and other officer accountability</i>	10	<i>XII. Topics not necessarily raising obvious constitutional proprietary issues</i> .....	26

#### Introduction

1. The proposed restructuring of Union governance is among the most far-reaching within the last 20 years.
2. As is often the case with constitutions, the details are often dry and technical, but their provisions can have a large and enduring influence over the way in which the Union works. This is the more so here since after charity registration the permission of the Charity Commission will be required for further amendments.
3. The purpose of this opinion as required under section 22.4 of the constitution to report on the “constitutional propriety, efficacy and fairness of a proposed constitutional or regulatory amendment”.
4. For the benefit of Council and the Trustee Board, I have had some constructive dialogue with the President to challenge and inform the drafting process over a period of several weeks. I am thankful to him for the prompt responses, clarifications and drafting amendments over that time.
5. Each new sabbatical team and Council is wholly democratically entitled to look at the Union’s governance structure. This is a process which is rightly student-led, should have a student mandate and not be unreasonably interfered with by non-students, whoever they may be. The

purpose of the Union Court's role is to advise the Trustee Board (and Council, since its inception in 2007) on such amendments. This is an extra check put in by Council based upon prior experience in 2007 to make sure that Trustee Board and Council's members have a source of advice independent from the sabbatical and management team.

6. I will try to highlight points or answer questions which individual Council and Trustee Board members would most likely want to know about when considering the proposals. What emphasis they place upon it is of course up to them.

### **General commentary**

7. This restructuring will re-fashion the Union into a different sort of Union. Council can wholly entitled to do this if it wishes and this document aims to highlight some key matters for consideration. The 10 themes of concern to us have been set out below. This section looks at some broad themes.
8. As a preliminary matter: long as this opinion is, it hasn't found every change that will affect students – the changes are too comprehensive to have achieved this in the time available. We have tried to concentrate on things that students and Trustees would be concerned about.
9. The requirements for charity registration are not controversial and the current constitution was specifically written in response to the 2006 Charities Act, and approved by Bates Wells and Braithwaite Solicitors (the Union's lawyers) as so doing at the time, subject to final tweaking prior to registration itself. The Charity Commission has some basic minimum requirements in a charity constitution but none fundamentally affect how the Union operates or is governed. Charities on the whole have a very large variety of governance arrangements indeed.
10. A major driver of the changes are Trustees' liability. Should the Union become an unincorporated association apart from the College (the matter is currently a grey area) the Trustees will become personally liable to an unlimited degree. This has driven some changes, particularly with regard to financial management. The Union will not be able to recruit appropriate Trustees if there is an unacceptable risk of the Trustees being personally liable for financial losses or exposed to reputational damage.
11. However the majority of the proposed changes are not in response to either of these factors. Council and the Trustees should debate and vote upon any specific area of interest separately if they so wish.
12. This paper is not intended to restrict or direct the discussions of Council or the Trustee Board who are encouraged to raise any 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.
13. Concern has also been expressed by the Union President over Union Council and the Executive Committee wasting time discussing trivial issues. The challenge of how to address this in a proportionate and non-exclusionary manner is further developed in the rest of this document.

## Summary of views

14. The Council and Trustee Board should consider very carefully before giving their assent to these proposals, at least immediately. There are 10 topics of concern highlighted, with details following:
  - i. The discarding of the Union's basic constitutional structure, to be replaced by an NUS template form with some amendments.
  - ii. The amendments to financial and commercial control, among other things removing the (student) Executive Committee from commercial and finance matters with oversight of these passing exclusively to the Trustee Board.
  - iii. The dismantling of almost the entire accountability process for sabbatical and other officers (leaving only the last resort of censure and no confidence motions).
  - iv. The addition of all sabbatical officers on to the Trustee Board.
  - v. The removal of explicit protections against staff and other non-students' involvement directly in Union governance. In particular, the Alumni Trustee is not subject to the same restrictions as are currently placed on Life Members of the Court.
  - vi. The re-structuring of the Union Court's functions into a Trustee Board sub-committee.
  - vii. Media regulation, including the partial removal of the independent (i.e. not run through the senior Union Officers) avenue for Felix and media complaints.
  - viii. The removal of the entire election system and its replacement.
  - ix. The removal of the entire meetings rules and their replacement.
  - x. Changes to the disciplinary and complaints procedure.
15. Of these topics, only *i* is related to charity registration requirements. Topics *ii*, *iii* and *v* may be of particular interest to the Trustee Board – though both Council / TB may of course consider what they wish.
16. There are highlighted (under sub-heading XI) some smaller changes which nevertheless concern us – though Council / TB members will place what emphasis they wish on those changes. These are the Presidential interpretation, associate members and sabbaticals' portfolios.
17. We also summarise, for completeness sake, those topics which do not raise any obvious issue of constitutional proprietary under sub-heading XII.

## Background

18. The motivation for a limited number of these changes the Union's requirement to register with the Charity Commission. The financial losses incurred by the Union in 2010 and 2011, in particular in relation to the 2011 Summer Ball indicate that reforms are required to improve the Union's financial management and governance. We agree that these changes are essential and if not adopted the Union runs the risk of being unable to recruit suitable Trustees who are unwilling to accept personal liability on that basis. The Court also believes the Union has a wider duty of care in this respect to elected Officers and Student Trustees who should not be faced with an

increased risk of personal liability due to deficiencies in the Union's operating model. Some changes are urgently required to allow the Union to begin the process of registration.

19. There are a number of important areas of the Union's constitutional settlement which should be given due consideration by Council in their own right. In most cases, the Union Council is the most appropriate body to conclude on all of these matters subject to approval from the Trustee Board and Imperial College Council. If consensus cannot be reached on any or all of these areas then Council is free to defer a decision on them for a further period of consensus building.
20. A high level of scrutiny should be applied to two of these proposals regarding the role of the Executive Committee and the proposal to abolish the Union Court. The Court believes that both these changes will lead to a far more management centric decision making dynamic, particularly in regards to financial management and constitutional development.
21. The constitutional proposals and this opinion 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.
22. A small number of proposals submitted to Council are similar to those proposed last June. The comments about those proposals will thus involve some repetition.

#### **Previous governance reviews and the Union's legal status**

23. There were previous major reviews in 1994, 1996 – 1997, 2000 – 2001 and 2006 – 2007. Summarising very briefly, the 1994 review catered for the Education Act 1994 and instituted Council as the 'sovereign' body of the Union, the 1997 review incorporated the ICSM, the 2001 review changed the Union's internal committees (requiring policy and finance to be decided together), and the 2006 – 2007 review catered for the Charities Act 2006 and created the Trustee Board, Court and other elements of Union governance.

#### **1996 – 1997 & 2000 – 2001 reviews – student involvement**

24. The 1997 review went to two Councils for ratification with an earlier Council used for preliminary discussions (March, April and June meetings). The 2001 review was trailed in December, with 5 separate groups of students discussing topics of interest or concern. Their committees' reports were put to the January Council who then voted on a range of individual measures. The final text drafts were put to the February and March Councils (it then required two consecutive Council approvals).

#### **2006 – 2007 Charities Act review**

25. Even this consultation was limited compared with the 2006 – 2007 review. This review was motivated primarily by the Charities Bill / Act 2006, but also included the Union's own strategic review and Imperial College's secession from the University of London. 6 sub-groups of students, former students and staff met up over the summer and produced a 120 page report. The first of those groups dealt with the Charities Bill. The report examined and debated various proposals in depth. The initial October Council had this report, and three further Councils debated individual measures (after a month to digest the report) and approved a final version. It

was a matter of concern to the then sabbatical team that consensus was achieved at each stage among the various stakeholders.

### **Union's legal status**

26. The new version came into force over New Year 2007. However the question of the Union's legal status and composition and powers of the Trustee Board were omitted from this first change, in order to await the final version of the Charities Act 2006 (by this stage passed into law) plus the Charities Commission guidance on student unions, which had by then been produced.
27. The Union and College each instructed solicitors and Counsel to opine on the Union's legal status. The Union had instructed the same solicitors (Bates Wells & Braithwaite) and Counsel (Richard McManus QC) as the NUS, but focusing this time on our Union rather than student unions generally. He had concluded on behalf of the NUS that most student unions were independent from their parent university and were required to register.
28. However in our Union's case Counsel differed. His view was that the Union was in law a part of Imperial College. This was mainly though not solely based upon the text of the Royal Charter as granted by the Privy Council in 1997, alongside the Imperial College Act 1997. This differed from other universities' provisions for students' unions. The main provision was in section 11.1 of the Statutes (an adjunct to the Royal Charter) which said:  
  
*"There shall be a Union of Students of the University entitled "the Imperial College Union" which shall for all purposes be treated solely as an integral part of the University."*
29. The Statutes deal with the Union President briefly, and go on to say:  
  
*"Without prejudice to Statute 10(1), the Imperial College Union shall conduct and manage its own affairs in accordance with a constitution approved by the Council which shall be included in Ordinances. The Union shall present to the Council its audited annual accounts."*  
  
(When the Statutes were amended in 2007, statute 11 became statute 10. Note that "Council" above refers to the College Council, College's governing body.)
30. Thus Imperial College's own statutes require the College to allow the Union to conduct and manage its own affairs, subject to the oversight requirements set out in the Education Act 1994.
31. Ironically, College's instructed Counsel (Francesca Quint) had advised that the Union was an independent organisation. There was a conference attended by both Counsel, College representatives and the then Union President and DP(F&S) where their views were discussed. It was agreed by the Union's solicitors, Bates Wells and Braithwaite after the conference with Counsel that despite the differences of opinion, the Union should prepare for charity registration in any event out of an abundance of caution.
32. The question of the Union's legal status as a separate unincorporated association or part of the College is thus uncertain, with two senior education specialist barristers disagreeing on the point after the conference. The Union alone obviously cannot wish this problem away, and will at the least need to agree with the College what status it is to have, the default position being the terms of the College's Charter and Statutes.

33. The Union then conducted a further, small review from April to June 2007, creating the Trustee Board in its current form. This was the second part of the major 2006 – 2007 review, and followed the discussion over the Union’s legal status. This review involved further student discussion committees and a short report.
34. Bates Wells and Braithwaite solicitors reviewed the draft constitution and regulations at the end of the 2006 – 2007 review, stating that it was satisfactory. It was accepted that at the actual time of charity registration further formalities would be required such as those in section 1.3 of the “step-by-step guide” of limitation of private benefits and changing charitable objects.
35. There was a further governance review from October to December 2011. This was conducted by the Union and College, jointly instructing Farrer & Co solicitors. This was incorporation as a company limited by guarantee. The solicitors had prepared draft articles of association (the ‘constitution’ of a company) which mostly followed the current constitution, while complying with company law, charity registration requirements and the Education Act. This would have provided limited liability for Trustees as they would have company directors in law. This process was stopped at the end of 2011 before it went to the wider student body.
36. The most recent governance review was conducted between May and June 2012, which had practically no overlap with the one six months earlier within the same academic year. We had indicated concerns about the drafting quality, significant accretion of sabbatical power, staff-student protocol, abolition of the DP (F&S) position and election regulations. The review had been discussed in general terms before an EGM, and was mostly provided in the form of tracked changes. This document did not progress at the final Council. Certain elements of this review have (openly admittedly) been incorporated into the current proposed draft.

### **Openness and method of consultation**

37. We are of the view that these very significant proposals have been subject to a reasonable level of consultation with the Union Court, Council Chair and some Lay Trustees. This has allowed the concerns of several key stakeholders to be incorporated into the drafting process.
38. We would defer to Union Council regarding the adequacy of consultation with the wider student body and other elected representatives as we have no basis on which to comment. We have provided, for contrast’s sake, a summary of previous reviews and the level of student discussions, reports and consultation held for them.

### **I. Replacing the constitution with an NUS template**

39. Bates Wells and Braithwaite had advised the NUS on their legal status before drafting their template constitution; however BWB advised Imperial that our system was unusual and different. This applied to our own model of governance and our legal relationship with the College. This distinction does not appear to be recognised.
40. The proposed constitution is 25 pages long compared to 9 pages in the current document. Significant work took place during earlier governance reviews to simplify the language as far as possible and to avoid unnecessary text or clauses. Were the principle of using the NUS template as a constitution accepted, thought should be given to whether appropriate professional advice should be sought (or clarification sought directly from the Charity Commission) to make the constitution more concise and readable in order to make the proposed text more accessible.

41. In particular, much of the legal paraphernalia of this document relates to the Union being an unincorporated association. This legal form is the one which Bates, Wells and Braithwaite advised the NUS that most student unions have. BWB's advice to the Union was that its legal structure was different – see the section on the Union's legal status for more details.
42. One of the reasons this opinion is so long is that there are a simply overwhelming number of changes, both big and small to Union governance. This opinion has not covered them all, and the summary documents served with the drafts certainly do not. This is mainly as a consequence of the decision to discard the current system and replace it with the template. Separately, most regulations have been completely re-written, which has added to our labours in attempting to tell Council and the Trustee Board what actually has changed.
43. Regrettably, there has not been the time to compare the current constitution and its NUS template replacement, so we cannot set out in any detail what has changed, unless it has formed parts of the various themes of concern we have found elsewhere.

## **II. Financial and commercial control**

44. The summary of our concerns about changes to financial and commercial control are as follows:
  - i. The removal of the commercial services from Executive Committee's jurisdiction.
  - ii. The reduction in overall financial duties of the Deputy President (Finance & Services).
  - iii. The removal of the Council and Executive Committee from approving the Union's budget, it going directly from the President/senior staff member to the Trustee Board.
45. We note that in the new constitution Council will continue to exercise complete policy making powers, subject to any Trustee Board rulings to the contrary. However, the Court is at a loss to understand why the Executive Committee in the new document is not awarded all necessary powers to implement Union Policy. In particular, it has lost any powers of oversight over Commercial Services and its role in oversight of the Union's financial performance and position.
46. The Executive Committee currently has delegated authority from the Trustee Board to approve expenditure up to £500k. This figure is far too high. We agree that this limit needs to be reduced given the current net asset position of the Union, particularly given the adverse financial performance in recent years in order to reduce the risk that Trustees will be personally liable for any future shortfalls.
47. However, we do not agree that the very existence of a Committee that has delegated responsibility for monitoring commercial and financial performance on behalf of Council (as the body with the largest democratic mandate) undermines the Trustee Board. Technically all committees in the Union act under delegated authority from the Board. If the Board wishes to retain more decisions and functions for itself at a particular point in time it is entitled to do so as it exercises "all powers of the Union" (constitution section 6.1).
48. A specific problem has been identified over the ability of the Executive Committee to commit the Union to material expenditure which is outside the Trustees' risk appetite. This should be ameliorated with the reduction in spending authorisation. The President is still entitled under the current constitution to refuse to authorise expenditure. Thus we are not of the view that this in itself is a justification for the removal of most of its powers of oversight or abolishing the related reporting requirements.

49. Most companies and large organisations will have a “management board” of some description which acts as the internal executive committee. For example, Imperial College has a “Management Board” which works with the Rector. Its spending authority is £5M or £10M depending on circumstances . This body is distinct from the College Council which acts as the College’s board of directors. Such bodies’ jurisdictions are rarely limited as to what they may discuss, even if large spending decisions may have to go up to the board of directors.
50. Currently, the Executive Committee has powers to “oversee the day to day management of the Union” which has been identified as impractical in the current proposals. It may be that this section has been interpreted too widely, in particular to mean the Executive Committee itself must manage (which no committee can do). All it does is require the committee to “oversee” what the sabbatical officers and senior staff are doing.
51. The rationale behind this change is that management processes and Board reporting are sufficient for the purpose of managing the Union to its annual budget. We broadly agree that this objective can be achieved on these terms. The issue however is democracy. Careful thought should be given to the degree to which Council (through the Executive Committee) wishes to have any democratic oversight over financial and commercial matters, outside the usual areas of student interest in clubs, societies and projects. Given that a lot of policy decisions will have some financial impact it is important that Council are able to on this matter.
52. The proposed Finance Procedures state that “the Union” will propose a budget directly to the Trustee Board (clauses 4 and 5). For the first time in the Union’s history, neither Council nor the Executive Committee will have the right to approve the Union budget.
53. On a day to day basis, the sabbaticals and Union staff naturally manage and therefore have more experience of the Union’s operations which has always been the case with the Staff-Student Protocol acting to maintain the integrity of the line management structure. However given that Council are going to be directly electing four people to the Executive Committee the Executive continuing to receive a short monthly report summarising the Union’s financial performance ought to lead to a better informed policy making process and does not represent a particularly onerous reporting burden or invite inappropriate interference from elected representatives. We see no reason why this would undermine the Board and see positive advantages of the goal congruence of the Board, Council and Executive due to the closer integration of the Union’s democratic, management and governance functions.
54. It is proposed that the Executive Committee returns to being a junior body of Council, as it was until 2007 when it became a ‘paramount body’ in its own right, partly to avoid Council getting bogged down in detailed management discussions about policy implementation and the management of the Union’s operations. We would agree that it makes more sense for the Executive Committee formally to be a sub-committee of the Council (albeit not on the terms currently suggested). In reality, the Executive Committee has to follow Council policy and report to it, so it is in all practical senses a sub-committee now. This would formalise that position.
55. One benefit of the Executive Committee returning to being a subsidiary body of Council is that there is no longer any requirement to distinguish between “policy” and “operational policy”, which will prevent any further confusion on this point.
56. The proposed changes remove all reporting requirements regarding the Union’s operations other than to the Trustee Board. Any consultation with other sabbatical officers over management



decisions, let alone other Union post holders or affected students is discretionary. This leaves a lot of power and discretion in the personal hands of the President alone. This is emphasised by the reduction in authority and duties of the DP(F&S) (see its job description in chapter XI for details). It is to be hoped that decision making structures should provide a right of access for the Deputy Presidents and other elected representatives to be kept updated on key developments via a formally constituted Committee, even if their working relationships with the President sour and should not be reliant on goodwill.

57. Concern has been expressed that in recent history the Executive Committee has wasted time discussing trivial matters (such as pizza toppings) in an inappropriate level of detail which leads to a lack of focus on other broader matters. The degree to which this will happen may vary from year to year. The solution to this is normally to set a proper agenda and papers which focuses the committee discussion. Union Committees as a whole should take responsibility for ensuring that their time is used effectively.
58. The Court also sees the removal of oversight over the Union's financial performance as a regressive step as student members cannot take informed decisions over how to implement a policy or CSP budgeting without a broader appreciation of the financial position of the Union as a whole. This fundamentally changes the dynamic of this committee away from having a broader financial management role to stewardship of a narrowly defined part of the Union's overall budget.
59. The narrow scope of the Executive appears to be restricted to CSP and Constituent Union budgeting, allocating a small amount of reserve funding and approving some high value expenditure. The Court believes that this segregation between CSP and the Union's wider operations will lead to financial decisions being taken without reference to their broader context. For example, if unexpected trading losses were being incurred then the Executive Committee may be more cautious about allocating budgeted reserve funding.
60. Progress has been made in improving the quality of the budgeting process in the Union although its timing is driven by the College wide budgeting process which takes place in the summer term when officers are coming to the end of their term. This presents a problem for newly elected sabbatical officers in that they have to work with a budget that they had little input into shaping. In addition to being responsive to unexpected events (particularly unbudgeted expenses or lower than expected trading performance), to avoid disillusionment with the democratic process there needs to be a degree of flexibility over reallocating planned expenditure in line with the priorities of the newly elected officer team, within appropriate parameters as defined by the Trustee Board so as not to expose the Union to excessive financial risk or undermine any overall budgetary goal. This should be a key function of the Executive Committee to avoid the enthusiasm of new officer teams being sapped with the realisation that they have to wait three months for a Board Meeting to implement a manifesto commitment which requires such a revision.
61. In the proposed model oversight of Union finances and commercial operations will be performed by Union Officers and permanent staff. Given Council has absolute power over Union Policy, this leaves a major gap in the governance structure. What, for example, if the Union wishes to pursue a policy of profit maximisation when running the bars rather than only looking to generate a reasonable surplus in order to cover associated costs? Both options may be acceptable to the Trustee Board as neither are loss making. In the Court's view this is a legitimate question of operational policy for elected officers beyond the sabbatical team to discuss in a formal forum to

inform the budgeting process and, where material, any revisions to current forecasts considered by the Trustee Board.

62. It is also assumed that the responsibility for monitoring financial performance will move to the Trustee Board. In practice, this will be the responsibility of the Finance and Risk Committee which is a sub-committee of the Board whose current membership includes Student Trustees, a Lay Trustee and the Court Chair. However, by definition this is a non-executive governance committee (much like an Audit Committee in a listed company although with a broader remit) and not a management one. Most organisations of the Union's size will have an Executive Management Committee which meets more regularly than a Board subcommittee and is responsible for monitoring financial position and performance.
63. We understand that this role will be performed by sabbaticals and staff in an internal management meeting and not in a formally constituted Union Committee with associated public reporting obligations. There is no reason why the output of this process cannot be shared with the Executive in order to better inform their implementation of Union Policy.
64. The advantage of non sabbatical members having input in to this process, 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.
65. The senior management committee in charge of implementing any policy of either Union Council or the Trustee Board in the Union has a close connection with senior staff which is proper and correct. One advantage of the presence of the members elected by Council 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.

### **III. Sabbatical and other officer accountability**

66. The Union Council is currently the paramount Committee in the Union for scrutiny and officer accountability. As such, it has extensive powers to remove Union Officers, Trustees and other post holders. Its censure and no confidence powers remain broadly unchanged. However most other officer and sabbatical accountability provision have been deleted.
67. Currently a general meeting of the Union can be called to hold the sabbatical officers and the Felix Editor to account: constitution section 10.4.3.b. This has not been used in recent times but is symbolic of Union members' rights to demand an account of what the Sabbatical Officers or Felix Editor are doing. This is abolished.
68. Sabbatical Officers must report to each Council. Other officers may be required by Council to report to them if it wishes. Currently, approval of those reports is not an academic matter. Were those reports to be rejected, they would have to be re-presented at the next Council. If rejected again, the officer is subject to an immediate motion of censure. If previously censured, the motion is of no confidence. See regulation 6.75 – 81. This is a rigorous accountability provision held by Council as a democratic supervision of senior Union officers. It means that a sabbatical's

report to Council matters: Council's approval, or not, of their work in the past month may have consequences for them. This provision is to be abolished

69. There are currently two grounds for a censure or dismissal by Council for post-holder in the Union: misconduct and failure to maintain the confidence of the Council: constitution section 18.1.1. In the future it will be misconduct, "bringing the Union into disrepute" or poor performance: bye-law E.8. These don't include Council's confidence. The point of this latter provision is democracy. One of the axioms of a democratic system is that officers and post-holder maintain the confidence of a democratic body, however they wish to define it – rather than have it defined for them. It means officers, particularly sabbaticals currently have to work to keep Council's confidence.

#### **IV. Composition of the Trustee Board**

70. The proposed reforms enact the addition of all Sabbatical Officers on to the Union's sovereign body, the Trustee Board.
71. It is absolutely correct to say that the Union is rare among other large student unions in not having sabbaticals on their Trustee Board. This fact was known when the Trustee Board membership was established. Most other student unions were, or were planning to, put sabbaticals on. ICU decided not to, leaving them as permanent observers with full rights of attendance and speaking. The following sets out the reasons why.
72. As is the case in the current constitution, the Trustee Board can exercise all the powers of the Union. The fact that to date it has only chosen to revise the decisions of the Council, Executive Committee and Court on a limited number of occasions is down to custom only. The composition of the Board is therefore of fundamental importance to the balance of the Union's governance structure.
73. 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 having a concentration of senior officers on a Committee which can overrule any other was in conflict with the Union's wider democratic objectives.
74. The Deputy President's importance (as full time post holders) is currently reflected in their permanent observer (i.e. non-voting) status at Board meetings. The authors cannot recall any examples of when the rest of the Board have not supported an initiative proposed by the sabbatical team and on the whole Board meetings do not result in voting divisions.
75. The Trustee Board is currently majority occupied by students 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.

76. The only groups where there is more than one class of member are the Lay Trustees and Student Trustees who each have 4 Board seats. However, they are all appointed independently and have no Executive responsibility meaning that they are not likely to act as a block vote on the Board.
77. 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. This situation is aggravated by the fact that Lay and non sabbatical student attendance is unlikely to be 100% since not all can attend all the time. Sabbatical attendance is likely to be very high, not least because it is held near their offices. Thus a near majority of sabbatical officers is likely to be a fairly regular occurrence on the Board.
78. In addition, the arithmetic of adding Sabbatical Officers dilutes the voting power and numerical proportion of external Lay Trustees.
79. The Court acknowledges that the Deputy Presidents have mandates in their own right having been elected to full time officer positions and have a significant role in the day to day management of the Union's operations and representative functions.
80. However, we feel that the comparison of Board composition with other Russell Group institutions only serves to highlight that there is no settled view on an optimal structure. Several of those institutions also appear to breach a common principle of corporate governance which states that the majority of a Board should be non-Executive.
81. The fact that the NUS template has been reviewed by lawyers with these sorts of provisions included does not mean that the lawyers have given their stamp of approval that such Board memberships meet high standards of corporate governance. It merely means that such provisions are not unlawful. It doesn't follow that one has to have them. Both Bates Wells & Braithwaite in 2007 and Farrer & Co in 2011 raised no difficulty with the Trustee Board in its currently constituted form.
82. We are concerned that 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 the Union 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 / Governance Committee 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.
83. We have no particular view on the proposal to have two appointed student Trustees in place of elected ones.

#### **V. Non-students' potential involvement in Union governance**

84. There is no rule of law requiring only students to be involved in student union governance. Other unions do involve non-students in various ways, either openly or not.
85. The Union Court and Trustee Board are the main examples of it in the Union. In particular, Lay Trustees bring knowledge and experience that could not reasonably be expected to be found amongst the student body and the Life Members on the Union Court have extensive experience of the Union's rules and regulations.

86. Over time the Union (and Students' Unions in general) have grown more complex and are administered by professional managers. The relationship between elected officers, Union Committee's and staff is governed by the Staff-Student Protocol which aims to safeguard both the democratic integrity of the Union from inappropriate influence and prevent interference or public criticism from students in the day to day work of experienced staff.
87. The "government of the union" section in current constitution (section 3.5) states explicitly the circumstances in which non-members can sit on the Trustee Board and other Union Committees, or act in any other governance capacity. We understand that this can be inferred from the proposed constitution but as readers this was not obvious. Council may wish to consider retaining the existing wording for the sake of clarity to avoid any interpretational issues arising in future.

## VI. Union Court / Governance Committee

88. The "step-by-step guide" makes various assertions about the Union Court which we do not accept stand up to any serious analysis. Those assertions (and brief responses) are:

i. *"Its most important functions fall under the Trustee Board's responsibilities"*  
 This argument is circular. The new constitution simply moves those Court functions to the Trustee Board and in the case of Elections, largely to one individual.

ii. *"We can't see any good reason for a students' union, or a charity of this size to have a 'judiciary'"*  
 This is merely a statement of the step-by-step guide's authors' own opinion rather than setting out any reason.

iii. *"In practice, it slows processes down and encourages cynical complaints (e.g. during elections)"*  
 As to the presence of "cynical complaints", there is no foundation for this assertion. In fact we don't recall a single Court complaint ever received which we would categorise as "cynical". This is despite concerns at the Court's foundation that this might be a problem. As to elections, these are the sum total of all election disputes involving a Court hearing in the last five years: 2007/8: two; 2008/9: none; 2009/10: one; 2010/11: two; 2011/12: two. That is 7 election dispute hearings in 5 years.

It is difficult to understand what these delays are which are being laid at the door of the Court, since no examples have (ever) been provided to us. Without being able to respond to actual examples rather than generalised assertions, it can only be said Court members generally work hard to decide cases as quickly as possible, whilst being fair to all parties. The fact that 'panels' form so the whole committee doesn't have to meet also makes it much quicker.

iv. *"It is not well understood by students at large and is not seen as transparent or accountable – it's intention was to be so, but no-one uses it that way."*  
 This is a particularly frustrating reason for the Court's proposed removal. Its very many requirements for transparency and accountability are listed below. It adheres to them. Sadly, the Court currently exists with only 2 of its 8 members, both life members, without the Union Advocate position filled and with its website removed. Those responsible for advertising and filling the posts have failed to do so (by the 30<sup>th</sup>

October 2012 Council it will be the third Council in a row where this failure has continued). The Court mini-site is not currently available due to the upgrading of the Union website.

89. The Court, as currently constituted, is a democratically appointed body with six student and three life members which is responsible for the elections disputes, complaints and discipline, media regulation and constitutional interpretation.
90. The Court's function is narrowly defined to prevent any interference in the remits of other committees. The Court can call a meeting of Council to discuss anything of grave concern (this power has never been exercised) but generally speaking is prohibited from acting unless a current student asks it to.
91. In addition, the Court is "accountable" in several explicit ways:
  - i. It is to the Trustee Board, who are empowered to overturn any Court decision. A full appeal procedure exists. There was one appeal from a Court decision 18 months ago, though it was dismissed. That is the only appeal in the last 5 years.
  - ii. It is to students generally, as all decisions must be publicised except redactions for staff matters.
  - iii. Court panel members must justify their decision in writing (this opinion is an example); they cannot abstain from a vote as they are required to come down on a decision one way or the other.
  - iv. Court members can be censured or no confidence by Council.
  - v. Court members have a Code of Conduct approved by Trustee Board to which they must adhere, setting out high standards of personal behaviour and integrity.
92. Despite repeated requests, vacancies on the Court and Union Advocate have not been advertised nor the appointments of continuing student members formally approved. The Court's wish to be "transparent" due to unreasonable delays in this process.
93. The Court is the only committee in the whole Union to have to provide written justifications for all its decisions. All previous should be available on the Union website along with a description of what the Court does although they are currently unavailable due to the website's redevelopment. The assertion that the Union Court is "not well understood" should be seen in this context.
94. In respect of constitutional amendments, the Governance Committee would absorb some of the Court's functions but has been restricted to being purely an advisory function of the Trustee Board which means that future members of Council will not have the detailed independent commentary on constitutional and regulatory amendments. We find the motivation for this change rather odd as we see no reason to restrict advice to the Board given that Council members are also being asked to approve a very complex and important document This either implies that:
  - i. Council does not find this document useful for the purpose of identifying key discussion points; or
  - ii. It has been determined that the provision of independent advice to all decision makers in the process is somehow inappropriate.

95. The “Union Advocate” post is to be abolished. It is currently vacant, since no election was held at the end of last year, nor any since. The Union Advocate (which is a normal student position) has an important role in highlighting 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. It was also designed to be a link between the Court and wider student body.

## VII. Media regulation

96. Felix, and its editor, has been entirely written out of the new constitution, bye-laws and standing orders. The Trustees in particular should be concerned about this given that they could potentially be liable in the event that a publication funded by the Union was sued for defamation.
97. The one mention of Felix in the guidance documents is the “step-by-step guide”, which has this to say:

*“A job description for the Felix editor has been removed as they aren’t (and never had been!) an ‘officer’ they are just a ‘sabbatical’. This document is about who is an officer of the union, not a sabbatical (ie, the GSA President, President of ICSMSU aren’t listed as ‘sabbaticals’ either). The Felix Editor’s job description appears in the Felix constitution and in their job contract, so nothing in practice changes. They are still – as a member accountable to Council for Felix, the President for their ‘job performance’ and the Trustee Board for the legality of the content in Felix. The Felix Policy will also be updated by the Trustee Board to include their job description too.”*

As to this explanation: the reasoning on the removal of the Felix Editor’s job description is circular. The current document (regulation 3.C title) is ‘about’ sabbatical officers and the Felix Editor. The new one is ‘about’ sabbaticals and not the Felix Editor. The GSA President’s job description is just below in bye-law D.14; Felix is simply removed. The rest of Felix’s accountability and editorial independence is dealt with below.

98. Felix are may be exposed to the risk of subjective disciplinary decisions regarding its content without any formal mechanism of resolving disputes between the Editorial Team and Union Management, particularly where fair criticism of an officer or part of the Union is interpreted as bringing the Union into disrepute. Any that are created can easily be amended since they have no constitutional status.
99. The Union Court currently acts to deal with media complaints and is required to follow the Press Complaints Commission code of practice. In addition, it must send any media complaint to the “Mediation Board” which comprises editors of all major Union and Faculty Union publications. This body then mediates any disputes. This measure was requested by Union publication editors at the time of the Court’s creation in 2007. The point is that media regulation is provided by the Union so the College and Trustee Board can feel satisfied it is being done, but it is not handled by senior officers as they are likely to have a conflict of interest. This whole independent structure is removed, and the Governance Committee’s roles do not include media regulation.
100. The Code of Practice gives College and the Union powers to remove Felix from circulation in extremis. This is reasonable given the potential (inherent in any publication) of Felix being party to a defamation case in order to protect both the Union and the College.

101. Summary warnings for the Felix Editor are currently done by the Council Chair, so he or she does not have to report to the President (regulation 7.7). This separate line of disciplinary supervision is removed in the new bye-law, and direct disciplinary supervision is now provided by the President.
102. Regulating Felix via policy could impair their editorial independence. Policy can be changed by a simple majority of Council, an Emergency Meeting of the Executive Committee or the Trustee Board. If Felix is formally constituted, as is currently the case, any material changes to its governance requires a two thirds majority vote at Council, the approval of Trustee Board and Imperial College Council.
103. Currently the Felix Editor is elected by cross-campus ballot, and the constitution section 16.4 states that “*All Full Members of the Union may stand for and vote in ... Felix Editor elections, which shall be by College-wide secret ballot.*” The new “major election rules” in bye-law F for “all elections conducted by cross-campus ballot” do not mention the Felix Editor specifically, and as previously said, neither does the new constitution. One presumes there will be a policy stating the Felix Editor should continue to be so elected for now. But this drafting means that the Felix Editor post could be “downgraded” from being a sabbatical post, or being elected campus-wide, without amendment to either the constitution or bye-laws.
104. The Register of Interests which requires senior post-holders to declare any interest which may affect their job currently includes the Felix Editor (regulation 3.45). This is removed (bye-law D.2).
105. An emergency general meeting may be called (constitution section 10.4.3.b) to call the Felix Editor to account (as well as the other sabbaticals). This is removed.
106. The Felix Editor is currently a permanent observer of Council (regulation 5.1.i). This is removed.

### **VIII. Elections Regulation**

107. The Court agrees that the election regulations are in need of streamlining however we believe that the draft election regulations should be updated to reflect that the decision of the Returning Officer is not final – all decisions taken within the Union can be appealed to the Trustee Board.
108. As a general principle of self organisation, the student body should be responsible for administering all matters except those that are not within their competence. There may be certain circumstances in which the use of an external returning officer is appropriate but this should be the exception rather than the rule. The Court finds the wording of the proposed Election Bye-Law to be highly loaded in favour of the external option although this is not an absolute requirement.
109. As an aside, there may be circumstances where the appointment of a Returning Officer from another students union would lead to possible bias in the electoral process. If a sabbatical officer was to run for a second term, they are likely to have personal relationships with their peers at other institutions. The chances of any malpractice are insignificantly low but the risk is one of perceived bias on the part of other candidates. The Governance Committee in practice would be completely dependent on the external contacts of the existing officers and would have little choice but to accept such recommendations in good faith.



## IX. Meetings rules

110. This is perhaps the driest and most technical area of Union rules, but if a controversial meeting is conducted improperly they can become very important indeed, and have done so in the past. Meetings rules were regarded as sufficiently important in the last review (due to improper conduct in meetings) to have their student elected review group and governance report. The current version is mostly the product of that review.
111. These are a selection proposed amendments made to the meetings rules:
- i. Bye-law B.1 “Officer Trustees” (i.e. sabbaticals) become voting members of all meetings of the Union. Currently they are non-voting members of clubs, societies and Faculty Unions.
  - ii. Bye-law: B.9 requires voting cards to be produced for all Union meetings across the Union.
  - iii. Bye-law B.13 give the meeting chair a discretion to close a meeting or not if it is inquorate. Currently the meeting closes if inquorate. The point of quoracy is that the meeting has to have some legitimacy. If it continues to meet with a derisory number of the people attending then a small number of people can act on behalf of the much larger committee, even technically, one or two people. Though inquorate decisions would have to be ratified later, it may or may not be too late to reverse it.
  - iv. Bye-law B.15: this appears to permit “electronic meetings” of Council, which the Court viewed last year as unconstitutional under the present system. The main objection to this is that Council is supposed to be open to all students, and allowing free flowing debate. This doesn’t work in decisions by e-mail. Such decisions have their place in executive committees and the Trustee Board but sits uneasily with the notion of democratic open committees.
  - v. Current regulation 6.4 – 8: currently proposers of papers are required to give advance notice of papers, so committee members aren’t handed large bundles of papers without the time to read them. This has been abolished.
  - vi. Regulation 6.12: the explicit right of the committee to overturn its Chair’s rulings has been removed.
  - vii. Regulation 6.13: the default position that that Chair cannot act on behalf of the committee unless authorised under whatever terms they decide, has been removed.
  - viii. Regulation 6.17: no person may exercise a veto on the admissibility of agenda items to a committee. This was put in place in response to senior Union officers purporting to have the right to do so in the past (and then ‘vetoing’ them). This has been removed.
  - ix. Regulation 6.20: the Chair may currently not vote in a meeting except to break a tie. This has been removed.
  - x. Regulation 6.23 – 25: the rules on proxy voting have been removed. It is arguable that one could still proxy a vote under the new rules, which are silent on the matter. Proxy votes have been problematic in the past, particularly when one person holds a large number of

proxies. They have also to be in writing, in response to previous cases where people have claimed that others have orally proxied their votes to them, giving them multiple voting power on a committee.

- xi. Regulation 6.26: joint post holders hold only one vote between them. This is removed here so it is now ambiguous as to whether they would hold one or two votes. Previous to this section this matter has been interpreted both ways.
  - xii. Regulation 6.31 and 32: automatic resignation. This deals with the problem of non-attendance by committee members. Currently two non-attendances in a row without apologies.
  - xiii. Regulation 6.33 – 35: “guillotines” which are a time which a committee resolves to close down debate to stop it winding on are removed. Union meetings probably could continue to do this, though Regulations provided a consistent way of doing it.
  - xiv. Regulation 6.42 prohibits “closed session” for all Union meetings except when authorised by one of the top level committees. This is stop the remorseless abuse of closed session meetings several years ago to prevent wider debate among the student population about controversial Union decisions. Disciplinary action was threatened against Union members and Felix if details of policy/budget decisions were “leaked”. This may sound extraordinary, but did happen. This is why closed sessions were restricted. These restrictions are removed and no mention of “closed session” appears in the new bye-law.
  - xv. 6.43 – 6.45: provisions for disorder are removed. In particular only the committee has a whole can order a member removed, and the Chair can order the meeting ended in cases of grave disorder. These are removed.
  - xvi. Part C of the current regulation. The entire standing orders for Council and General Meetings has been removed. Some comments:
    - The “rejected reports” powers for Council to force a Union Officer to re-present a rejected report are removed. This is covered more in sabbatical accountability.
    - Regulation 6.48: the right of all Full Members of the Union to have speaking rights and to propose and second motions has been removed. It may be adhered to in practice for the time being, but has no underpinning in Union rules and could later be removed by a future interpretation or resolution.
    - Regulation 6.49 – 56: the Council Chair is under detailed and strict rules of independence and non-partiality. These are removed and replaced (in bye-law D.13.4) with a general duty of impartiality.
    - The cut down version of “Robert’s Rules of Order” which applies to Council has been removed.
112. Most of the above are self-explanatory, with the exception of the rules of order for Council. Council is the main democratic body of the Union with a large membership and full rights of Full Member participation (though this latter right is to be removed as a regulation and left as an unwritten convention). Large assemblies cannot work like ordinary committees as there tend to be too many people for informal chairing and discussions to work. In addition, Council may be

the body at which controversial proposals are deliberated upon, which means tempers may rise and a clear explicit set of procedural rules helps. As ever with many rules, the rules of order don't matter for most of what Council does, but when there is a problem, they matter very much indeed.

113. Robert's Rules of Order are system for large deliberative assemblies to ensure proper participation and members' rights, whilst ensuring the agenda makes progress. The Union has a cut down version of those rules of order, with adaptations specific to it. The details are far too complicated to summarise here, and one is welcome to look at current regulation 6.C to see them. I would advise that real caution is exercised before their abolition. It is possible in the future that a controversial Council with a loose system of debate will cause a some form of constitutional "farce" where different members disagree about what was voted upon or how. The rules of order are designed to minimise the chance of that happening.

## **X. Disciplinary Regulation and Policy**

114. This seeks to combine the current Discipline and Complaints Regulation and the Disciplinary Policy. It also makes amendments. The "step by step guide" makes reference to two additions of "clarity" namely licensees' disciplinary authority, and staff discipline being in accordance with College HR policy.
115. There is also a reference in the step-by-step guide to the system of disciplinary oversight by senior post-holders as "long crazy and laborious". That system in summary is: President deals with everyone, except Council Chair, Felix Editor, Court members. The Court Chair and Council Chair deal with those whom the President does not.
116. Much is unchanged. However, the other changes – which are not highlighted, summarised nor visible in any 'tracked changes' – appears to be as follows:

### **Staff**

- i. Direct responsibility for staff discipline removed from President/general manager jointly (currently constitution 18.1.5) and transferred to general manager solely (bye-law E.1.3).

### **Warnings, investigations and suspensions**

- ii. Notices of formal warnings (imposed by the President or equivalent authority) go to the Governance Committee rather than the Executive Committee.
- iii. Disciplinary investigations are no longer compulsory for alleged misconduct by a sabbatical or Trustee – thought Trustees are dealt with under a different process.
- iv. Disciplinary investigations into student officers in relation to officer misconduct could be led by staff. Currently this is prohibited (regulation 7.31.1) as staff are not currently entitled to be involved in student officer discipline except in an administrative role (see Court determination *Driving ban appeal (No. 09/05)* for discussion). This also keeps them out of student 'politics'. The drafting has specifically been changed to remove this prohibition.

- v. The Court/Governance Committee's authority to take a disciplinary investigation over or stop it is removed. A disciplinary investigation may continue as long as its convenor wishes without limit until they decide whether to take further action (bye-law E.18.3).
- vi. A suspension by the President or (perhaps less likely) the Trustee Board no longer has to be reported to the Executive Committee.

#### **Censure and no confidence motions**

- vii. It prohibits all constituent parts of the Union, Faculty Unions, clubs and societies from censuring and dismissing their own 'officers, volunteers, representatives and holders of committee positions'. Bye law E.2 makes it clear this category of post-holders must be censured/dismissed only under this bye-law. Bye law E.24 states that the "Council may censure or dismiss..." but reference to other bodies having powers for their own officers (regulation 7.39) has been deleted. There is no other body granted censure or dismissal authority except Council, and the bye law explicitly prohibits any other being set up.
- viii. The proposing power for disciplinary motions have changed. Currently it is 20 members, the President, a consequence of rejected officer reports, or the Court (regulation 7.41). Bye-law E.25 has it changes the last two to Executive Committee and Council Chair.
- ix. The notice period for disciplinary motions is reduced from 7 College Days to 5 College Days (regulation 7.42.7, bye-law E.27.6).
- x. The "substantive intent" of a motion of no confidence or censure may now be amended. This leaves a grey area of interpretation that may allow a censure motion to be amended to a no confidence motion which is currently prohibited since a defendant normally should have notice of what they are facing (regulation 7.46.1 & 2, no equivalent bye-law).
- xi. The proposer and subject of a disciplinary motion may now vote upon it. This was prohibited previously as it was felt unfair that a member of Council should be entitled to either support their motion or act against it as a defendant, as opposed to any other student (regulation 7.74.6, no equivalent bye-law). More seriously there was there problem of prior prejudice in disciplinary cases, of which there was a substantial discussion in the Court determination *Re No Confidence Motion (No 07/02)*. It was viewed then as probably unlawful for proposers or subjects to vote on their own motion.
- xii. The "two-thirds" requirement to uphold the motion is easier to pass. Currently a no confidence or censure motion must pass two hurdles: first, a two-thirds majority of those voting; second, an absolute majority of all people entitled to vote. The first part is commonly understood. The second part is to stop a person being dismissed when the majority of Council are abstaining. For example, with 50 people present, only 18 people are motivated to vote, voting 12-6 to dismiss. Thus a person is dismissed as a result of a small minority of Council members' votes. In case this is thought to be hypothetical, a few years ago a Faculty Union President was once censured by 4 votes to 2 at Council, with around 40 present: this was regarded as an unsatisfactory state of affairs, and one of the reasons for the current rule.

- xiii. The current regulation 7.46.11 (“*A motion that is not discussed for any reason at the meeting is deemed to have fallen, except when the Council specifically adjourns to reconsider the motion.*”) is removed which leaves a grey area of interpretation. This is here to provide certainty in case Council terminates early before discussing it so a defendant is not left hanging. Were Council to decide specifically to adjourn to reconsider, that is their right, but there is at least no doubt either way, under the current system.
- xiv. Appeals from censure and no confidence motions at Council no longer go to a general meeting of the Union (regulation 7.59), but to the Governance Committee, and then to Trustee Board (bye-law E.52).
- xv. Those dismissed by a motion of no confidence at Council are disqualified from holding the post they held again. Currently also a Sabbatical Officer who is no confided may not hold any other sabbatical post again either. This latter part is removed, so a no-confided sabbatical would be entitled to run for another sabbatical post (regulation 7.57, bye-law E.33).

#### **Other disciplinary powers in relation to post-holders**

- xvi. There is currently a very broad power to remove ordinary or co-opted committee members from their posts (regulation 7.56), by simple majority and without notice. This was aimed in particular at the Executive Committee’s ordinary members, but could apply to any committee (except major ones like TB/Council itself). The purpose of this provision was to put Council in practical charge of any of its sub-committees so they (in particular the Executive) would be accountable to them. Since it wasn’t dismissing officers from their posts the other formalities were not felt necessary. This is removed in the bye-laws.
- xvii. The system of disciplinary tribunals have been removed (regulation 7.62-66, no equivalent bye-law).

#### **General disciplinary authority**

- xviii. An alcohol licensee has the power to “discipline” as well as “warn” or “ban” (bye-law E.5), which includes the summary punishment authority of fining, charging for damage and compelling community service. This is further covered below.
- xix. The ‘Discipline Committee’ is currently a random selection of Executive Committee or Council members, not known to the defendant student (Disc. Policy section 18 – 21), but will now be the Governance Committee directly.
- xx. Disciplinary appeals for general misconduct hearings go directly to the Trustee Board itself, rather than to the Court, since the Court’s effective successor would be hearing the case (bye-law E.51.3).
- xxi. All the procedural protections provided to the defendant (Disc. Policy sections 26 – 27, 28 – 36 and 52) are removed. Briefly, these are reasonable notice of evidence and charges, their right to representation, the decision to be based on fair and relevant evidence, separation of decisions on facts and then misconduct, normal closed session, the student’s right to publicise the decision (no ‘secret courts’), a higher standard of

voting to convict (no more than one dissenter), and a full record kept. On appeal, the right of an appellant to receive a summary record of the case is removed.

- xxii. Reference to the Officer of the Independent Adjudicator for Higher Education (“OIAHE”) has been deleted. The College required the Union to include this in 2007, as indeed does the OIAHE so students are aware of their rights when reading a disciplinary procedure. The OIAHE requires institutions to complete a “completion of procedures letter” to be provided to the student at the end of disciplinary cases. Reference to this, too, is removed.
- xxiii. Distinctions drawn for Life/Associate members in the current Disciplinary Policy (section 65) are removed.

#### **Jurisdiction of regulation/policy/bye-law**

The current Union Disciplinary Policy applies to “registered students” of the College, not Union Full Members (section 2). The replacement bye-law applies to “Members” and “Associate Member” (bye-law E.1). This means that anyone who opts out of Union Membership, which they have a right to do under the Education Act 1994 section 22(2)(c), will not be covered by the bye-law, and thus not subject to any Union discipline.

#### **Bringing the Union into disrepute**

- xxiv. It is intended to add “bringing the Union into disrepute” as a ground in addition to misconduct for censure and dismissal motions. This is dealt with below.
117. Many of these amendments are troubling, the more disconcerting for the lack of reference to them in the guidance documents and the protracted process even in finding them all – and there is no guarantee all have been found among the 24 ones discovered. A selection will be dealt with in more detail.

#### **Employment law relating to sabbaticals**

118. The current disciplinary rules are written with employment law in mind, particularly in relation to sabbatical officers. They were checked by a barrister practising in employment law at the time, in 2007. Any second year sabbaticals have full employment rights. Any warning, censure, no confidence or other disciplinary system must comply with employment law. A particular problem is that a public and vocal disposition of a disciplinary or work performance problem at a public body like Council may result in the Union facing serious financial liability in an employment tribunal. This is why we have:
- i. Compulsory investigations for defendant sabbaticals (to be removed in the new version) as they have a right to a full and proper investigation.
  - ii. Disciplinary Tribunals, to ensure sensitive misconduct or performance-related cases which could land in the Union in serious liability had an appropriate forum.
  - iii. A step where no confidence motions passed by Council against sabbaticals are sent to Trustee Board (the sabbatical concerned is suspended throughout) to ensure legality.

All these are removed to varying extents. A defendant sabbatical can of course appeal to the Trustee Board since he/she can no longer appeal to a general meeting. These provisions were put in place following a very sensitive and difficult case involving a sabbatical officer in the past, which of course could happen again in the future. Council and the Trustee Board should consider carefully and satisfy themselves that the proposed provisions will not engender future liability for the Union.

### **Giving disciplinary powers to bar managers beyond banning**

119. Among the more alarming changes found is the granting of wide-ranging summary disciplinary powers over students to the alcohol licence holders, who tend to be the general manager and the bar managers. Again, the granting of these powers are explicit: bye-law E.35 states “the power and responsibility for ... imposing summary punishment ... rests with the relevant authority ... in clauses 4 – 6”. Clause 5 is the licensees.
120. It should be made clear that these are in addition to the normal power of banning from the premises during licensed hours, which they have anyway. The new summary powers include expulsion, suspension, a charge, fine, community service, and freeze in club privileges. These are significant powers to give to staff members, and a major shift in Union disciplinary procedure, which has up until now reserved such powers to the President alone.
121. The step-by-step guide refers to this change as follows “*Clarity has been added to ensure that the licensee of the bar is able to manage the Union’s alcohol licence properly, and in accordance with the law.*” Sadly, I am driven to the view that this description is misleading. The new granting of powers was not clear from the face of the bye-law and two distant clauses had to be read together to realise what was going on. Nor is it required by law: pub landlords for example have the power to bar, but not to fine or impose community service. There simply is no law requiring student union bar managers to have the power to fine, charge and impose community service upon students. And no reference was made to the granting of such powers in the “step-by-step guide”.
122. As for the College, no College alcohol licensee exercises equivalent authority for students, unless they happen also to have disciplinary authority. Under the College Code of Student Discipline, disciplinary sanctions must go through the College Tutors, hall wardening teams or heads of departments, or their nominees.

### **Censure / no confidence motions at Council**

123. It is not clear whether it was intended to stop constituent parts of the Union from dealing with their own officers, but the bye-law unambiguously has this effect, notably removing sections from the current rules allowing them to. This is a significant centralisation of disciplinary authority, and means parts of the Union (including clubs and societies) have to go to Council to sack their own officers.
124. The removal of ‘rejected reports’ as a disciplinary sanction has been dealt with under the separate section dealing with the dismantling of accountability provisions for Union officers, notably sabbaticals.
125. However the change in who can propose disciplinary motions to Council will also centralise power. Currently the President may propose a censure or no confidence motion, but the

Executive Committee cannot. This is deliberate. If the President wishes to do so, he or she can stand or fall alone on his/her own proposal. If the Executive Committee proposes it, several things happen: first, they will have approved the proposal and probably come to a consensus or near consensus view on it. This creates a 'block vote' of the most senior officers almost all supporting the censure/dismissal at Council. Second, individuals can hide behind the whole committee rather than signing their own name to the motion. Third, it gives substantial power to the most senior officers to impose, or threaten to impose, these motions along with its block vote should they wish. This dynamic is different with the President alone proposing disciplinary motions.

126. The current power of the Court to propose a disciplinary motion is there to ensure senior officers who had committed misconduct, or flagrantly breached the constitution, for whom no-one may have had the courage to propose a disciplinary motion, would face a hearing at Council. Council would decide whether the motion was merited. This provision is to be abolished. The Council Chair has been given this power alone, though it is not clear why – presumably not for the reason Court has it now, since the Council Chair does not fulfil the same function, and of course must be neutral at the very same body to which it is now intended he or she proposes a disciplinary motion.

### **Bringing the Union into disrepute**

127. "*Bringing the Union into disrepute*" is a separate ground for disciplinary action which has been added to misconduct. The principal concern about this is that it can only be meaningful if a post-holder's actions don't actually amount to misconduct but by some unfortunate consequence results in the Union being brought into disrepute. There is some difficulty imagining what circumstances these would be. However there is a sense of unease in allowing a blameless individual (and they must be blameless otherwise they committed misconduct) to be disciplined just because the Union has ended up looking bad.
128. An additional sense of unease about this provision is how it could be interpreted. A major Felix "exposé" of the Union may cause some individuals or parts of the Union reputational damage, but is part of what a democracy is about. Were such an article not to be true or a breach of the Press Complaints Commission code of conduct that is already a separate ground of misconduct. Bringing public attention to things or 'whistleblowing' may cause real reputational damage, which could be disciplined under this provision without misconduct being needed to be proved.

### **Removal of defendant student's rights**

129. Most references to defendant student's rights in both general discipline and officer discipline are removed. This includes the whole of current Part I of the current discipline regulation which deals with "natural justice" provision for disciplinaries. This was a consequence of a small number of damaging disciplinary actions taken within the Union in the past few years, several relating to sabbatical officers.
130. As stated above in sub-paragraph *xxi*, practically every one of the defendant student's rights in the current Disciplinary Policy is removed.



## XI. Miscellaneous topics

131. **Associate** members provision. It is intended to merge Life Members and Associate Members in terms of nomenclature, upon which we have no particular opinion. However the policy for deciding who counts as an Associate Member is drafted currently as a Trustee Board policy rather than a Council policy. Council and the Trustee Board may wish to consider whether it is appropriate to exclude Council from deciding the terms upon which the Union grants other forms of Union membership.
132. **Presidential interpretation.** Currently the Court interprets the constitution. This is moved to the Trustee Board itself. The Governance Committee (the closest thing to the Court's successor) cannot make interpretations, but only recommend them to TB (standing order 6). The President's "initial" interpretation power becomes much more powerful since one will have to wait for TB to approve any changes, whereas Court can make interpretations much more quickly.
133. A Presidential interpretation power that is more than transient is a significant power to have. A major concern in the 2006 – 2007 review was preventing constitutional 'interpretations' which favoured the President's view of things, and the abuse (and there was no other word for it) of this power at the time led, in part, to the creation of the Union Court.
134. **Sabbatical officers' portfolios:** Most portfolios remain broadly unchanged. Unlike the proposed changes in the summer term it is generally positive to see the DP (Finance & Services) retaining a key role in the authorisation and administration of Union finances along with an explicit mandate to be responsible for the services the Union provides its members. However, the DP(F&S)'s role is being reduced in certain areas.
135. The following changes for job descriptions for Sabbatical Officers were found:
  - i. President's responsibility in general terms for elections (regulation 3.53.vi) removed.
  - ii. Deputy President (Clubs & Societies) – no significant change.
  - iii. Deputy President (Education) – no significant change.
  - iv. Deputy President (Finance & Services) – the minor job description elements are unchanged. But the major ones differ – currently they are (regulation 3.54.iii – v):

*“Be responsible to the President for all aspects of the Union finances,  
Be responsible to the President for the Union's commercial services,  
Co-ordinate trading forums and the finance-related aspects of the Clubs and Societies Board.”*

To be amended to  

*“Be responsible to the President for the services the Union provides its members,  
Be responsible to the President for authorising finances in accordance with the Union's Financial Procedures.  
Be responsible to the President for the finance-related aspects of Clubs, Societies & Projects,”*

In summary the DP(F&S) overall financial responsibility is replaced with that “finance-related aspects of Clubs, Societies & Projects”, and of authorising under the Financial Procedures. The word “commercial services” is replaced with “services” but it is not clear whether this replacement is to include commercial services or not.

There is some concern that the DP(F&S)’s proposed role less clear than now. The current version is all-encompassing in respect of finance. The proposed version may or may not cover commercial services. If not (thus no sabbatical apart from the President is responsible for them) then this is a major reduction in responsibilities for the DP(F&S). It would be better if it was clarified specifically.

- v. Deputy President (Welfare) – duty to enforce the Equal Opportunities Policy is removed.
- vi. Felix Editor – though not a sabbatical officer – job description has been deleted, and the title of the job descriptions section changed from “*Job Descriptions for the Sabbatical Officers and the Felix Editor*” to “*Job Descriptions for the Officer Trustees*”. There is in fact no mention at all of Felix anywhere, which is dealt in the Media Regulation chapter above.

## **XII. Topics not necessarily raising obvious constitutional proprietary issues**

- 136. **Faculty Unions, postgraduates, Representation and Welfare Board and RSM:** We have no particular comment on these changes and defer to Union Council on the appropriateness of these changes in light of the continuously evolving representative requirements of the Union’s membership. Obviously that does not preclude others from having their own views upon them.
- 137. **Membership of Council:** Union Council should review their membership regularly to ensure that the representative needs of the student body are being catered for along with representation for the Constituent Unions and Management Groups. It has been openly stated that the current composition of Council is too heavily weighted in favour of Clubs & Societies. The Court neither agrees or disagrees with this assertion but believes that it should be discussed separately as a change to the composition of Council as a body with almost complete policy making powers is generally subject to rigorous debate.