

## IMPERIAL COLLEGE UNION COURT

### OPINION

#### Re Removing Faculty qualifications for elected Court members (No. 07/05)

Panel consisting of:

Katherine McGinn, Deputy Court Chair

11<sup>th</sup> March 2007

1. A paper proposing amendments to Imperial College Union Regulation Seven - Union Court is due to be read for the second time by Union Council on 13<sup>th</sup> March 2007.
2. As outlined in paragraph 20.6 of the Imperial College Union Constitution;

“The Court shall provide its opinion on the constitutional propriety, efficacy and fairness of a proposed constitutional or regulatory amendment to the Council before the second reading or referendum of the same. The Court may, at its discretion, provide an opinion upon the same to the Clerk to the Imperial College Council.”

While the Council maintains its sovereignty over amendments to the Constitution, the opinion of the Court in such matters is intended for the information of Council members when taking such decisions. When the Court gives an opinion on such matters, it does so primarily in order to alert the Council to any illegality, unfairness or unforeseen implications of constitutional or regulatory change. The Court also delivers its opinion on any practical issues or potential for future dispute that may arise from such changes.

3. I have been appointed to provide the Court’s opinion on the amendment to Regulation Seven that is before the Council this week.
4. The amendment before Council seeks to alter the Court’s membership, through a change to Regulation Seven, paragraph 4.1. The proposed change would remove the requirement for the three elected members of Court to be from different Faculty Unions. The proposed paragraph 4.1 would read;

“4. The Court shall consist of members appointed in the following manner:  
1. Three Full Members of the Union, elected by council.”

5. The author of the paper puts forward three main arguments in support of this change:
  - a. The inability of the Council to elect all positions on Court for “several months” (i.e. completed by the third attempt) is farcical and does not assist the Court;
  - b. Segmenting groups of students prevents the most capable people from being able to serve on it;
  - c. The Court is not a representative body, yet the current Regulation Seven creates the perception that it is, as demonstrated by recent comments from those seeking election to it on previous occasions.
6. The ICU Governance Review (2006), which led to the institution of the Court’s membership rules along the current lines, included this overall remark;

“97. Membership of the Court would need to satisfy various criteria:

- (i) Members need to be competent;
- (ii) Members need to be independent;
- (iii) The membership should never become dominated by a faction;
- (iv) The membership should have a strong participation among current students.”

7. The Court has considered the arguments put forward in support of the proposed amendment and will address each of the concerns raised in this opinion.

**The inability of the Council to elect all positions on Court for “several months”**

8. While the Court understands the frustration that some Council members may have felt during the process of electing Court members this year, it is vital for Council to bear in mind a number of issues that will have hindered the electoral process;
- a. Given that the Court did not come into being until after the start of the academic year, many experienced individuals within ICU may already have secured election to other Union committees that preclude them from membership of the Court.
  - b. In the past the election of high-quality candidates mid-year for other Union committees has always proven problematic, partly due to the aforementioned reason and also due to a relative lack of publicity.

**The inability of the Council to elect all positions on Court for “several months...does not assist the Court**

9. The Court is of the opinion that the pace with which the remaining members of Court were elected did not produce as many operational problems that Council believes it may have done. During the period when there were vacancies on Court, the Court encountered no difficulties in appointing panels from the remaining members. The delay in reaching our full complement did not impair the Court’s ability to operate during this period in any respect.
10. Furthermore, Council succeeded in electing all members to the Court in just over 2 months from the Court’s first meeting. We now have a full membership, something achieved in a satisfactory time frame given the constraints outlined in point 8 of this opinion.
11. Finally, the Court believes that the amendment proposed, if adopted by Council, would be a reaction of remarkable haste. The amendment was put before Council for the first time only two Council meetings after the Court was created. Furthermore, during that period neither Council nor any of its individual members have approached the Court to ask if the delay in electing suitable candidates was operationally problematic. Had they done so, the Court’s answer would have been a resolute ‘no’.

**Segmenting groups of students prevents the most capable people from being able to serve on [the Court]**

12. While the Court understands the Council’s concerns in this regard, it does not concur that this is a significant enough problem to warrant the proposed change. In fact, the Court believes that the risks of such an amendment may be greater than any putative benefit.
13. Each Faculty consists of several thousand students (indeed each can support an active Faculty Union) - one may hope that they provide a sufficiently large pool of potential candidates for at least one capable and willing person to be elected from each of them.

14. Furthermore, Council must consider the remarks of the recent ICU Governance Review, which implies that the competence of Court members needs to be balanced against the independence of each Court member and ensuring that Court membership is not dominated by a single faction.

#### **Factions and centralisation of power**

15. The only division of the Court's membership that is split between faculties is the elected members. Regulation Seven allows the potential for three Full members from the same faculty to be appointed to the Court should the Executive wish to do so and the Council acquiesce. As a result, there is the potential for the Executive to nominate and Council to appoint technically competent people who do not reflect the student body as a whole. By maintaining the requirement for elected members to be derived from different faculties, the Council is required to draw on a wider group of people. This is vital, not only in preventing the Court becoming dominated by a single faculty faction, but also in ensuring that there is a substantial breadth of current student experience from those Court members who are Full members of the Union.
16. While the Court appreciates that factions may not necessarily be faculty-based, it believes that it is far less likely that a "slate" of friends would be able to seek election to the Court under the current version of Regulation Seven as it is less likely that each of the slate belongs to a different faculty union.
17. Keeping the Court free from factional control is crucial to maintaining its integrity. The danger of a large group of friends, bringing in a homogenous set of views about the way in which the Court should be run and cases determined, should not be underestimated. In particular, five such members could together force the appointment of a new chair and deputy, and alter the standing orders.
18. Finally, from a practical point of view people from the same faculty (particularly from a small pool of people who take an interest in Union affairs) are likely to know each other well. Such people are likely all to be conflicted out of issues relating to their faculty. This may result in difficulties arranging panels or necessitate excessive use of single person panels, neither of which would be a desirable state of affairs.

#### **The Court is not a representative body, yet the current Regulation Seven creates the perception that it is**

19. The Court does accept the proposer's point that the current wording of Regulation Seven may give the impression that the Court is a representative body. In the past, such perceptions have also been a difficulty for the Executive Committee when its members have been drawn from various representative groups around the Union (most recently divided between clubs & societies and education & welfare). This difficulty was exacerbated by committees directly appointing members of the Executive Committee without reference to the Council, which created, among other things, two problems: firstly the elected members of the Executive saw themselves as partial advocates for their cause rather than looking after the Union's interest as a whole, and secondly it impaired the sovereignty of the Council to direct how the Union was run (through itself choosing the Executive Committee). Such problems could have been easily be replicated upon the Court, but with the greater danger that the Council could not, in most circumstances, overrule it.
20. One factor already in place that should significantly reduce the risk of a Court member acting as a faculty representative is that the Council elects the person, not their faculty. This is a change which has also recently been made with respect to the Executive Committee (regulations 3.1.3 and 3.1.4).

21. The view that elected members are representatives may be ameliorated by a strong culture for the Court in not representing any faction or group. How long this cultural tradition may survive a large influx of people who do not share its values is debatable. Such an influx is made more likely if the proposed amendment is accepted as factional control of the Court would be easier to engineer (as demonstrated earlier in this opinion).
22. In addition, the Court believes confusion demonstrated by some candidates for election to Court regarding the role of Court (with a number stating that they wished to represent their faculty on or to the Court) has acted as an excellent marker for Council as to whether the candidate understands the nature of the office they wish to hold. So far this has not hindered the election of suitable candidates to the Court (and has perhaps hindered unsuitable candidates), and the Court has no reason to believe that Council will err from its policy of electing to Court those who understand the Court's role in Union governance.

### **Structure of the amendment and its effect on other Regulations**

23. The Court was disappointed to see that the drafting of the amendment suffers from significant drafting problems. Two different forms of words are used to describe the amendment and the Court is concerned that there is ambiguity over the precise wording that would be adopted in the Regulations should Council pass this paper at its second reading. In particular, two forms of words are suggested:
  - a. "Three full member of the union, elected by council". (*first version, centred in bold*)
  - b. "Three Full Members of the Union, elected by council." (*second version, within the whole of paragraph 4*)
24. Indeed, both these versions can be found in the draft minutes of the last meeting, within two lines of each other. The Court would request that Council resolve this discrepancy before consideration of the amendment, and Court would recommend that any future amendment proposals never leave any doubt as to the words of the changes proposed. In both versions, the capitalisation, definite article and punctuation is inconsistent with the rest of the paragraph in which it would be placed.
25. The Court suggests that the following form of words are used if this amendment is to be carried:

**"Three Full Members of the Union, elected by the Council,"**
26. Finally, if Council passes this paper for a second time, paragraph 5 of Regulation Seven would become redundant. In such circumstances, the Court would recommend to Council that this paragraph be removed from Regulation Seven. It is regrettable that this somewhat obvious consequential amendment was not noticed before.
27. If the Council do intend to remove paragraph 5, it may wish to give consideration to determining whether this will involve re-numbering all the following paragraphs and changing all the cross-references as well, in this and other Regulations.