

Motion on Union Penalties for Sexual Misconduct

Disallow anyone found guilty of non-minor sexual misconduct from holding a position of authority in the Union by default, instead of at discretionary recommendation from the disciplinary boards, which then requires subsequent hearing in the Council.

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Union Notes

1. The institutional culture report about Imperial from 2016 identified one of the barriers for reporting incidents at Imperial was “the fear that nothing will be done” [1]. This barrier was echoed in the student-initiated sexual assault survey conducted recently at Imperial where one of the top three university-related barriers to reporting was that respondents “Don’t think the university will take action against the perpetrator”.
2. From above mentioned institutional culture report: “a number of participants felt that senior management would turn a blind eye to poor behaviour if the individual involved was of value to the College.” [1]
3. “Far and away, most sexual assaults and sexual violence are perpetrated by men, and typically arise within asymmetrical power dynamics, where the perpetrator occupies a more powerful or dominant position in relation to the victim” [2]
4. Sexual misconduct is about power. The power imbalances that can enable sexual misconduct can take different forms: authoritatively (e.g. being in a position of power), physically (e.g. being stronger) and situationally (e.g. exploiting intoxication), etc.
5. “Research to date generally indicates that increases in the *certainty* of punishment, as opposed to the *severity* of punishment, are more likely to produce deterrent benefits”. [3] Theoretically, the student disciplinary procedure allows for someone to be found guilty of serious sexual misconduct and not be disciplined at all, as no mandatory minimum sanctions are explicitly stated. [4]
6. ICU’s “Safe space policy” that was renewed on 07/11/2017 states that the Union disciplinary procedure is “for more serious incidents, or repeated incidents”, and that the College disciplinary procedure is for “serious incidents”. [5] This motion will thus only affect those who commit serious or repeated offences of sexual misconduct.
7. Sexual misconduct can vary in severity, and after this mandatory minimum sanction is instated there are still a wide range of additional disciplinary actions that can be taken to reflect severity, including, but not limited to: community service, exclusion, suspension, expulsion, etc.

Union Believes:

1. Any student who joins a society should be able to take for granted that those in a position of authority over them have not previously been found guilty of sexual misconduct.
2. Imposing the mandatory minimum sanction of disallowing someone found guilty of sexual misconduct from holding power will break down a barrier to reporting, will act as a

deterrent from committing sexual misconduct, and better protect the students of Imperial from perpetrators reoffending.

3. Someone who has been found guilty of sexual misconduct by the Union or College (i.e. someone who has exploited a power imbalance to hurt another person) should never be allowed to hold a position of power within the Union or a CSP. Banning someone from holding power after being found guilty of sexual misconduct should thus not be at the discretion of the Union Council, upon recommendation from the Disciplinary Board, but rather a mandatory sanction imposed in all non-minor cases where the alleged perpetrator is found guilty.
4. “Fear that nothing will be done” manifests itself mainly in two ways: Firstly, that the case won’t be progressed once reported, and, secondly, that if a perpetrator is found guilty, adequate action is not taken. Specifying a mandatory minimum sanction is a step towards eliminating the second of those barriers.
5. A common theme in the discussions about this motion has been around the definition sexual misconduct, and what offences this motion would cover. I hope below will provide some clarification:
 - a. When this motion appeared in Council in May, someone noted that the Union Governance Committee has at least once found someone guilty of sexual misconduct, but not recommended the removal of that student from a position of authority. I don’t know the specifics of that case, but I think an outcome like this shouldn’t be unexpected given the current state of our by-laws. In my opinion they aren’t holistic when it comes to sexual misconduct, even though they are holistic in other situations. As an example, if someone attempts to embezzle money in a society, that person can have their financial authority either reduced or completely revoked (Union by-laws E-36.7). If someone sexually assaults another student while being president of society X, they would probably be removed as president of society X if they misused their position of authority, but there’s nothing to stop them from then becoming president of society Y (unless the student is expelled) – this is how the rules are, and not a fault of the governance committee. I want to stress that I have complete confidence in the governance committee to act in accordance with our by-laws, and not be unduly lenient/harsh, and thus the culprit of non-holistic sanctions is the rules themselves – and this is exactly why we need to change the rules.
 - b. In relation to the defining what constitutes sexual misconduct and classifying severity, this is subject to ongoing debate. In 2016 a report commissioned by the UUK provided guidance to universities on how to handle alleged student misconduct which may also constitute a criminal offence, and in that, when it came to defining sexual misconduct, they wrote “to emphasise the work required in this area, the examples of unacceptable behaviour and examples of sanctions have not been separated into serious and less serious disciplinary offences in the Code.” [6] When a report commissioned by UUK, written by lawyers from Pinsent Masons, and with support from numerous grassroots organisations, were not able to issue guidance on how to define the severity of various forms of sexual misconduct, this paper will not be able to do so either. We must trust the governance committee’s ability to do this fairly on a case-by-case basis and change our by-laws to reflect the sanctions we want the governance committee to impose.
 - c. Mandatory sanctions ensure some degree of equal treatment among those found guilty of sexual misconduct but banning someone from holding a position of

authority for a minor incident would be inappropriate and overly harsh. As noted in "Union notes – 6" there are already measures in place that prevent minor incidents from even being brought to the disciplinary panels in the first place, but to ensure that no one will be excessively sanctioned following a minor incident, I suggest that we specify in the new by-laws that the mandatory sanctions only apply to non-minor cases. As discussed above, in "Union believes 5-b", it is not possible to define what is and is not a non-minor incident, therefore we should allow the governance committee to decide what incidents are non-minor on a case-by-case basis.

Union Resolves:

1. Suggested change of Union by-laws within E-Complaints & Discipline
 - a. Suggested change of E-2
 - i. From:
 1. Officers, volunteers, representatives and holders of committee positions may only be suspended, censured or dismissed within the provisions of these Bye-Laws.
 - ii. To:
 1. Officers, volunteers, representatives and holders of committee positions may only be suspended, censured, dismissed, or excluded within the provisions of these Bye-Laws.
 - b. Suggested addition to E-43 (The Governance Committee may impose one or more of the following penalties:)
 - i. Add E-43.12.:
 1. In cases of interpersonal violence, abuse, and sexual misconduct, that is deemed non-minor by the Governance Committee following an investigation, the following sanctions must be imposed: dismissal from all elected posts in the Union, permanent exclusion from holding elected roles, participating in all elections as a candidate, and volunteering positions that involve direct interaction with children (e.g. tutoring). The sanctions contained within E-43.12. cannot later be overturned by Union Council.
2. The Union President and Deputy President (Welfare) will insist on the College extending their cooperation with the Union in relation to disciplinary sanctions beyond "Union service", such that someone tried by the College Disciplinary Board can be sanctioned in line with the new E-43.12. of the Union by-laws.

Bibliography

- [1] D. A. Phipps, "A review of Imperial College's institutional culture and its impact on gender equality," Imperial College London, London, 2016.
- [2] L. Yonack, "Sexual Assault Is About Power," 14 November 2017. [Online]. Available: <https://www.psychologytoday.com/us/blog/psychoanalysis-unplugged/201711/sexual-assault-is-about-power>. [Accessed 06 April 2018].
- [3] V. Wright, "Deterrence in Criminal Justice," The sentencing project, Washington D.C., 2010.

- [4] Imperial College London, "Student Disciplinary Procedure," 14 July 2017. [Online]. Available: <https://www.imperial.ac.uk/admin-services/secretariat/college-governance/charters/ordinances/students/>. [Accessed 30 January 2018].
- [5] M. Lewis (DPW), "Imperial College Union Safe space policy," 07 November Renewed 2017. [Online]. Available: <https://www.imperialcollegeunion.org/dbfile/pbf/93>. [Accessed 06 April 2018].
- [6] Universities UK; Pinsent Masons, "Guidance For Higher Education Institutions: How To Handle Alleged Student Misconduct Which May Also Constitute A Criminal Offence," Universities UK; Pinsent Masons, 2016.