IMPERIAL COLLEGE UNION COURT

DETERMINATION

Re Sabbatical elections' returning officer (No. 07/04)

Panel consisting of:
Hamish Common (Court Chair),
Simon Matthews,
Sebastian Tallents,
Siddharth Singh and
Neil Monteiro.

2nd March 2007

OPINIONS:
The COURT CHAIR:

Facts

1. Elections are currently being held for the Sabbatical Officers, Felix Editor and NUS delegates. They are being administered by a single returning officer and elections committee. As part of the election process, the then returning officer, John Collins, organised a hustings for the candidates. This was in a different format from previous years, designed more as a "question and answer" debate in order to put more pressure on candidates to explain their views. This was a format suggested in the Governance Review, chapter 5, paragraph 17, accepted by the Council on the 9th October 2006. Free alcohol was also arranged.

2. The hustings and its management by the returning officer was not well received in some circles, with some of the candidates complaining that they were not given a fair opportunity to present themselves. An article on *Live!* was published on the 20th February describing the proceedings as a "farce". A number of comments followed, including one by Kirsty Patterson:

> "I was considerably upset by last night's hustings. This is because I have put a lot of time and effort into my campaign and do not think that any of the candidates were given a fiar hearing. The farce came from the floor in the form of heckling supporters and people chatting on regardless while candidates tried to speak; from some of the candidates who did not take the proceedings seriously and could be construed as attempting to sabotage other peoples campaigns and from the Returning Officer who not only seemed biased against some candidates but also prompted others unneccessarily. I think the majority of the 'slate' posed sensible answers to the questions we were asked and proved to be far more up to the competition than some people would have led us to believe.
>
> The decision to include free alcohol, given the results this produced at CSB before Christmas, is in my opinion naive and misguided. The hustings were a complete waste of everyones time and have left a number of candidates feeling that they are not being taken seriously when this is something very close to all of our hearts. The only person I believe who took these hustings seriously and acted with any decorum was Mark Flower. All respect to him."

3. The post includes the accusation that the returning officer was acting partially. It is published here since it does not add anything to the public domain that is not known already. Later on in the same evening in which this was published, Kirsty Patterson asked the *Live!* editor to remove the post as she had received an e-mail from the returning officer threatening disciplinary action. She was particularly upset by this, and

in turn made a complaint against the returning officer. The e-mail which brought about the complaint was (with the first paragraph in bold):

> "Kirsty,
>
> I take enormous offence at the accusations you have made on Live! and I am deeply hurt by your actions.
>
> If you have a problem with me and the way I conduct hustings (which were admittedly farcical because of the conduct of everybody in the room) then the right channel is to complain to me directly in a mature and adult manner.
>
> Writing rants on Live! is childish and counter productive. You saw me about an hour before you wrote your comment and you could have raised this matter with me then in a more productive way.
>
> If you continue to behave in this manner then I will refer this to the elections committee with no hesitation recommend disciplinary action.
>
> I suggest that you arrange with Rebecca to meet with me as soon as possible.
>
> John"

4. The complaint from Kirsty Patterson, along with two others, was made to Eric Lai, the deputy returning officer. These complaints had arisen by the 22nd February, upon which time Eric Lai and John Collins had discussed what would be the appropriate action to take. Following examination of the election regulations, it was decided that the correct course of action would be take the matter to the Executive Committee, in its guise as a "supervisory authority" for elections.

5. The meeting was originally expected to be held on Monday 26th February since the returning officer was unavailable on the Friday. A number of Deputy Presidents had indicated that an emergency meeting of the Executive Committee would be desirable, though did not appear formally to demand one. Under section 10.8.c of the constitution, three members may summon an emergency meeting of the Executive Committee. However, after further debates, John Collins (who in his office as President can also summon an emergency meeting in his own capacity) called one for 7pm that afternoon, with notification being provided to members a little after 5pm.

6. Six members attended the meeting: John Collins, Eric Lai, Jon Matthews, Ben Harris, James Fox and James Millen. Various others attended, including two members of staff, Kirsty Patterson, Ashley Brown, Alex Guite, Rosie Smithells, Mark Flower, Maggie Holme and Jennifer Morgan. The meeting started with John Collins as the chair. He handed it to Eric Lai. It was confirmed by all present that this was with John Collins' full agreement, since he did not want to chair a meeting discussing his own conduct. The meeting went into closed session upon the proposal of the new chair, to which there was also no dissent. This was motivated by an understandable desire that the elections would not affected unnecessarily by the meeting's deliberations.

7. The issue of conflicts of interest was raised, in answer to which Jon Matthews said he was a candidate in the election for President, asking quite rightly if anyone took issue with his presence. It was agreed that as he was standing for a different post from that of the complainant, it did not matter. The fact that he would still be deliberating upon the conduct of his own returning officer did not appear to be a difficulty. No-one then objected to his presence. Jon Matthews said that he was uncomfortable about the position he was in, but was satisfied that he could separate the matters in his mind and act justly. We have no doubt that he did. He did however vote, though was entitled to abstain.

8. Ben Harris was a candidate for the NUS delegate positions, and James Fok had until recently withdrawing been a candidate as well. James Millen was a seconder for Kirsty Patterson, the complainant. John Collins was the returning officer whose impartiality

was being questioned. Eric Lai stood to be become acting returning officer if the meeting resolved to remove John Collins. Indeed, there was not a single member of the meeting present that evening who was not arguably under a conflict of interest of some form.

9. The evidence for and against the complaint was discussed, with a meeting of the elections committee interposing at one point (while the Executive Committee recessed) to discuss another unrelated complaint. It was clear from the detailed evidence that was received and the accounts given by the members of the Executive Committee that great care was taken to hold as thorough and fair a hearing as possible. Eric Lai, upon whose shoulders rested the unenviable task of managing a hearing into a fellow sabbatical's conduct, appears in particular to have treated his role with care and conscientiousness.

10. At some point it was determined that all observers (except staff) and the returning officer, John Collins should leave. In relation to John Collins, it was not clear whether he was explicitly told to leave, or that there was an understanding that he would. However, John Collins did not appear to harbour any expectation that he would remain, whether or not he was told. No issue relating to his absence was raised at the time.

11. The committee re-formed after a recess, now with five members and some observing staff. They deliberated, in what I shall call the "second phase" (the earlier part, with several observers and the returning officer being the "first phase"). Again, the clear evidence was that these deliberations were undertaken with great care and members were anxious that the matter was considered properly and logically. We accepted this without reservation.

12. It became clear during the second phase that the precise contents of the e-mail from the returning officer to Kirsty Patterson (see paragraph 3 above) had become an issue for the meeting and it was brought up on a screen so that members could confirm the wording of it. It does not appear to have been in circulation for the debate when the returning officer and others were present in the room. John Collins had referred to parts of the e-mail, quoting them from memory. However he says that the quotations concentrated upon the reference to the elections committee for disciplinary action, which were later dismissed by the committee. Others say that the meeting ranged widely in scope – as would be expected. It was accepted that the e-mail itself was not in circulation during the first phase of the meeting. It did not appear to occur to the members present in the second phase that looking at the e-mail itself might require the returning officer and observers to return for their comments.

13. A tentative description by me of the Kirsty Patterson e-mail as being "decisive" in the second phase had received the assent of the members of the meeting present at the time. Upon further discussion, this was taken to mean the "dominant" evidence, though other items of evidence may have been relevant. When I raised the reasons as set out in Eric Lai's e-mail to John Collins after the meeting, it was agreed that without the Kirsty Patterson e-mail, it was extremely unlikely that the decision to remove the returning officer would have been taken.

14. At some point during the second phase, the issue of quorum was raised. It was agreed that the matter should go ahead, despite the members now falling below the quoracy minimum of 6 (as required under section 10.5.b of the constitution). No person challenged quorum, though the word itself, or a derivative of it, may have been said. It was also of significance in the view of the members of the meeting that it had been quorate at the beginning, by virtue of John Collins being in attendance.

15. After deliberation, and a vote of 3 to 2 upon whether to remove the returning officer, the committee came to a number of conclusions (as based upon the e-mail from John Collins to Eric Lai, and the written accounts of those present in the second phase):

(i) The e-mail to Kirsty Patterson made reference to personal matters and was strongly worded when referring to the offence it had caused the returning officer;

(ii) A reference to potential disciplinary action and the elections committee was within the duty of the returning officer;

(iii) Copying the e-mail to the elections committee was "inappropriate" and intimidating to the candidate (and should thus be referred to the Council Chair); the response was disproportionate, and affected by the personal association between the returning officer and candidate;

(iv) The post put up by Kirsty Patterson did not break any election regulations;

(v) To quote Eric Lai's e-mail to John Collins: "At no point did any member of the committee feel that you had deliberately acted in a partial manner nor was there ever any question about your honesty or integrity. The committee felt that the email was a mistake but that it did show a lack of impartiality."

(vi) That the returning officer be removed.

16. Eric Lai confirmed that the Executive Committee did not formally replace John Collins as returning officer, but merely as acting returning officer. It was a matter of common sense that the deputy returning officer would fulfil this role, something with which I agree.

17. The decision of the Executive Committee and its circumstances became the subject of a request to the ICU Court on the next day (the 23rd February), and was accepted as a case on the 26th February. I and the Deputy Court Chair had asked whether the difficulties could not have been cured, in practice, by calling another Executive Committee meeting to reconsider the questions, perhaps with more notice and better attendance. An appeal to the Council was of course possible under the rules as well. This was not accepted, the view of those requesting the hearing being that the meeting gave rise to some issues of principle which needed a determination from us.

Jurisdiction of supervisory authorities and Court

18. "Supervisory authorities" were a creation of the 2001 constitutional review and designed to allow for supervision by the Union's senior officers and committees over elections across the Union. Provision was also made for constituent parts of the Union to have similar supervisory jurisdiction. Regulation 2.66 says:

> "The supervisory authority is there to oversee elections and step in, in exceptional circumstances, to ensure to election is run fairly."

In a sabbatical election, the first supervisory authority would have been the Executive Committee. It had jurisdiction over the appointment of the returning officer: regulation 2.65

> "In the event of a dispute over the appointment (even if ex-officio) of a returning officer, the matter will be referred to the supervisory authority … who may confirm the appointment or nominate an alternative."

19. The Court, upon its institution, took over the old role of "appeal panel" from the Executive Committee and the Council, though these committee remained in their role as supervisory authorities. The division of roles is expressed in regulation 2.84

> "Depending on the type of objection, they are dealt with in the following manner:
>
> 1. objections to the appointment of the returning officer or elections committee are dealt with under part J (supervision of elections).
> 2. objections to all other matters are dealt with in the remainder of this part [Part K]."

Part J requires the supervisory authority to adjudicate upon the matter, and Part K requires the Court to do the same.

20. The creation of the Court also clarified another distinct separation of jurisdictions between the supervisory authority and the returning officer/elections committee. The supervisory authority is entitled among other things to replace the returning officer, impose an elections committee or scrutineer. It is not, however, entitled to manage the election, or act as an appeal body from the returning officer or elections committee. This distinction between "who manages" and "how they manage" was less obvious when the routes of appeal were to the same set of committees in any event. Now, any appeal from a decision of the elections committee would go directly to the Court. It is not an issue here, but it is likely that the exercise of powers of a supervisory authority merely because they disagreed with a decision of a returning officer whose impartiality and competence was not in issue would be an unconstitutional abuse of the supervisory authority process.

21. The Court is, under section 11.1 of the constitution, sovereign within the Union for a more general class of election disputes:

> "… the Court shall also exercise sovereign power over the resolution of any dispute in individual elections or referenda."

The "sovereignty" of the Court over disputes in elections allows the Court to substitute its own judgment for that of the returning officer or elections committee in election complaints. This is distinct from its normal role which is only to review the constitutionality or legality of a decision. It could be that this provision would entitle the Court to act as a full appeal body on the merits of supervisory authority decisions (arguably being a "dispute in individual elections"). However this point did not need to be decided, since the supervisory authority appeal system had not concluded as the Council had not yet deliberated upon it. The Court has thus expressly not taken a view on the merits of the complaint or the evidence surrounding it. We have conducted a review and not an appeal.

Quorum

22. A dictionary definition of quorum (Oxford Concise, 1990 *ed.*) is:

> "the fixed minimum number of members that must be present to make the proceedings of an assembly or society valid.
>
> *Derives from Latin: 'of whom' "*

There is no suggestion in any dictionary definition we found limiting the requirement or nature of a quorum. It was clear that on this elementary definition, as soon as a meeting's members fall below the requirement for quoracy, the meeting becomes unconstitutional.

23. Quorum is dealt with in regulations 4.34 and 4.35:

> "34. The presence of half the committee's voting members, vacant posts being ignored, constitute a quorum unless standing orders determine otherwise.
>
> 35. No meeting except general meetings shall start if quorum is not reached. Any Full Member of the Union shall have the right to challenge quorum. Resolutions made and elections held prior to quorum being called stand."

24. The Union has by custom taken the quorum rules to mean that as long as no person explicitly challenges quorum, the meeting is deemed to be proper. It has also become customary that a recess in the meeting followed by its later re-formation would not impose a compulsory quorum count under the first sentence of regulation 4.35. This

was a practice which perhaps developed from convenience. We are of the opinion that this is not the correct construction of the rule.

25. Regulation 4.34 states what the quorum level is – in this case it is overruled by section 10.5.b of the constitution which states the quorum to be six members. The point is moot, however, since the Executive Committee currently consists of twelve members (the five Sabbatical Officers, three FU Presidents and four ordinary members). In event, a description here or elsewhere of *what* the quorum level is does not detract from *how* the quorum rule applies in practice.

26. The elementary quorum rule, were it not to be further defined or amended elsewhere, would mean that as soon as a meeting becomes inquorate it becomes unconstitutional. There are no procedural conditions precedent – invalidity automatically follows from a lack of present members. However, regulation 4.35 does make some amendments to this rule. The first sentence requires a quorum check at the beginning of non-general meetings. If a meeting is not demonstrably quorate at the beginning, it does not start. The second sentence gives any Full Member present the right to challenge quorum (not just the meeting's members). I do not see how the granting of a right to challenge quorum detracts from the elementary rule.

27. The third sentence of regulation 4.35 ("Resolutions made and elections held prior to quorum being called stand.") is distinguished in its use of "called", rather than the "challenged" as used in the second sentence. What is it to "call" quorum? It certainly involves any discussion of quorum, or identification of the same. The customary view, that quorum could be discussed if not specifically challenged, needs in our opinion to be put to rest. Union meetings draw their legitimacy from having their members present. If others have voted with the feet (or worse, never present to begin with) it seems inapt for the remaining members to grant themselves the legitimacy denied to them by their absent colleagues. Meetings should permanently be alive to the need to remain quorate and legitimate.

28. We view the third sentence of regulation 4.35 as an evidential rule: for a resolution of a meeting to be quashed for inquoracy it would have to be demonstrated beyond reasonable doubt that it was not quorate at the time. A mere count of voters and abstainers not amounting to a quorum would not be sufficient to quash: on occasions it is common for members, regrettably, to show sufficient apathy not to even make clear their abstention. The Court is likely only to quash such resolutions in clear and compelling breaches of quoracy, and may even then exercise a discretion not to quash if the matter has become academic, or people have acted to their detriment in reliance upon the decision (unaware of its inquoracy). The Executive Committee meeting of the 22nd February, had five members in its second phase (as agreed), was such an example. On this basis alone we would quash the decisions taken in its second phase.

29. Meetings are entitled to recess themselves for periods of time, as well as adjourn to new times and places. Neither adjournments or recesses are mentioned in regulation 4 (standing orders for Union meetings), though the procedure by which they are called is dealt with in more detail for Council and general meetings in regulation 4.88. Meetings have customarily assumed to have the authority to adjourn and recess, and we can confirm that they do. This does raise the question of whether a meeting re-forming after a recess is "starting" for the purposes of regulation 4.35 – which would mean that it would specifically have to be quorate. I am of the opinion that it does "start" after a recess, and it does have to be quorate. This is a natural consequence of quoracy being a continuing obligation for a committee. In practical terms, it is simply not acceptable for a Union meeting to actively re-form and start passing policy or adjudicating without the legitimacy it would draw from having its minimum members present.

30. My opinion below relating to supervisory authorities acting as a disciplinary proceeding holds that it is unconstitutional for certain members of a meeting with conflicts of interest to be entitled to vote in certain matters. Regulation 4.34 refers specifically to "[t]he presence of half the committee's voting members" as constituting a quorum. It follows that a person who is disfranchised for a particular matter cannot count towards quorum, as he or she is not a "voting member". This would also reduce the number of voting members of the committee from which quorum would be calculated (though this would not apply to the Executive Committee with its constitutionally mandated minimum of 6 members). In the case of the meeting of the 22nd February, with the removal of the returning officer and two candidates, there were 3 voting members, which was far short of quorum.

Nature of hearing as disciplinary proceedings

Two stage process: informal hearing and disciplinary hearing

31. The supervisory authority "oversee[s] elections and step[s] in, in exceptional circumstances, to ensure the election is run fairly." Some of its discussions may be of an informal nature. The appointment of a replacement returning officer by consent would not require any obvious procedural propriety beyond what is required under the standing orders for Union meetings in regulation 4.

32. Once a supervisory authority begins to deliberate upon a complaint which may lead to a returning officer being removed it changes to something akin to a disciplinary hearing. Some principles of natural justice come into force, though a returning officer who is causing serious difficulties in an election may necessitate an expedited procedure for removal. What are those procedures? To what extent do the rules change when dealing with such quasi-disciplinary matters?

33. In *Re No Confidence motion No.2 (No. 07/02)* the Court considered what the rules of natural justice would impose upon a committee which was considering the removal of an officer. There is a potential distinction in that the post of returning officer is not the same as a continuing office: for example returning officers are appointed only for an election and the post is extinguished upon the declaration of the result of the election. Furthermore the post is in existence merely to run an election (or group thereof) and to do so to a very high standard, acting impartially and being seen to act impartially. However the fact that a supervisory authority may rightly hold the administration of an election to a high standard does not preclude the niceties of natural justice. The right of natural justice is expressly not a privilege of the returning officer. It is the right of any Full Member of the Union, and in particular elector or candidate in that election, to expect that difficulties in their election's administration are being resolved fairly.

34. The Court made certain specific orders in *Re No Confidence motion No.2 (No. 07/02),* "D" being a reference to the subject of a disciplinary motion:

> "1. It is declared that a subject of a motion of censure or no confidence is entitled have it heard according to the rules of natural justice, according to the common law, which overrides the Union's constitution.
>
> 2. It is declared that the proxying of any vote in relation to a motion of censure or no confidence under Regulation 5, at the Council or elsewhere, is unlawful and unconstitutional.
>
> 3. It is declared that the exercising of a vote by the proposer or subject of a motion of no confidence or censure under Regulation 5, at the Council or elsewhere, is unlawful and unconstitutional. [By majority]
>
> 4. It is declared that members of the Council who have knowledge or suspicion of any adverse fact or allegation about D which would tend to make them vote against him

> or her, or who have knowledge that other members do, are under a duty to tell D in order that he or she may respond to them."

I am of the opinion that these same principles apply to disciplinary decisions of a supervisory authority. The body of the opinions in that case provide the reasoning behind each of those declarations, which will not be repeated here.

Conflicts of interest

35. The Education Act 1994, section 22(2)(e) says:

> "the governing body [of the College] should satisfy themselves that the elections are fairly and properly conducted"

This also imposes upon the Union a requirement to administer elections fairly, as confirmed in section 14.1 of the constitution:

> "Elections shall be fairly and properly conducted under the terms of the Education Act 1994…"

I have great difficulties seeing how a candidate in an election administered by a returning officer should have a right (denied to candidates not happening to be on a supervisory authority at the time) to vote upon the returning officer's conduct. The returning officer is required to manage an election fairly and properly. Providing a certain class of candidate with the right to judge the returning officer's conduct at the expense of other candidates cannot ever be fair. It seems particularly unfortunate when the candidate with the right to judge almost certainly exercises it by virtue of already holding senior office.

36. I have no doubt that the candidates voting in the meeting of the 22nd February acted cautiously to separate their role as candidate and supervisor of their returning officer in their minds. There is, however no guarantee that other supervisory authorities involving election candidates would act so diligently. It is not surprising that those supporting the request to the Court commented upon this conflict of interest. Given that the meeting had decided that the returning officer had not deliberately acted impartially but demonstrated it inadvertently, it was particularly important that it did not demonstrate the same potential lack of impartiality in its own composition. The meeting had decided to consider the conduct of the returning officer in his capacity for all sabbatical and NUS delegate elections, despite the complaint of partiality only being in one of them. This was an understandable decision to make but did mean that candidates for all elections administered by the returning officer were conflicted: they were considering the conduct of their own returning officer as well as someone else's.

37. One must consider to what extent the rule on conflict of interest would be extended to those proposing, seconding or demonstrating support for candidates if sitting as a supervisory authority for a returning officer. In addition to the orders in *Re No Confidence motion No.2*, the Court had held that voting by seconders to a disciplinary motion, or those who may have expressed a preliminary view as to how they may vote, was constitutional: a decision grounded in the requirement for the Union to act democratically as well as fairly (see paragraphs 36 – 43 of *Re No Confidence Motion*). In the case of supervisory authorities the class of "candidates' supporters" could be very wide indeed, potentially encompassing anyone who was intending to vote in the election. The dangers of bias and impropriety diminish with a more distant relationship in respect of the election's administration between the member of a supervisory authority and a returning officer. Other conflicts of interest could be demonstrated, such as a person succeeding to the role of returning officer (though in many elections people may be as keen not to be appointed returning officer as those who would want to be).

38. I am of the opinion that the ambit of unacceptable conflicts of interest has to be set at election candidates, complainant and a returning officer whose conduct is subject to

question. Extending it further could present severe practical difficulties in administering any supervisory authority at all, at little obvious gain in the quality and impartiality of the supervisory authority.

39. I am of the opinion that it was constitutional for the returning officer not to be permitted to vote. The two election candidates voting in a supervisory authority upon the conduct of their returning officer was unconstitutional.

Applicability of regulation 5 to quasi-disciplinary proceedings

40. I am not of the view that the procedural rules of regulation 5 (disciplinary procedure) applies in any way to the supervisory authority, despite its overall jurisdiction paragraph potentially overlapping with the role of the supervisory authority:

> 5.1 This Regulation deals with misconduct, [or] negligence … by …others holding elected or unpaid appointed office in any part of the Union … under section 17.1.1 of the Constitution.

The fact that a returning officer could potentially be removed by a vote of no confidence at the Council does not prevent the supervisory authority from exercising the same power in a different manner. In particular, the actions (or lack thereof) of a returning officer may not attract any condemnation whatsoever, but still necessitate his or her replacement. Regulation 5 specifically condemns, via either a censure or no confidence motion. In addition the supervisory authority's primary concern, beyond that of the interests of the returning officer, is the fair and proper conduct of the election. It may be that swift action is needed to ensure an election does not become seriously compromised, which does not sit well with the long notice periods required under regulation 5. The duties of natural justice as set out above do not impose significant time or procedural restraints upon swift and decisive action. Indeed, this was partly the rationale for the Executive Committee meeting on the 22nd February, which was rightly concerned that leaving the cloud of partiality hanging over the election for most of the rest of the voting period was not acceptable. It did not excuse them from running a procedure which invited suggestions, whether well-founded or not, that they too were partial or illegitimate through inquoracy.

41. The Executive Committee decided at one point that part of the complaint against the returning officer should be referred to the Council Chair (presumably under regulation 5.4) since it potentially raised a disciplinary issue and they did not have the jurisdiction to deal with such matters. This was the correct view of their jurisdiction, though I make no comment on whether the conduct concerned warrants any separate action.

Removal of defendant and other observers from proceedings

42. The meeting decided, when moving into the second phase, to remove all observers and the defendant returning officer. When asked about this during the Court proceedings, no constitutional rule or precedent was shown to justify this. The Executive Committee does have the authority to go into closed session (under regulations 4.43 - 4.46) and is required to do so when considering "disciplinary matters concerning individuals". A committee in closed session may accept observers (regulation 4.43). However, any discretion to accept observers must be exercised in accordance with the principles of natural justice. A view had been formed that the model to use in administering the closed session was that of the Disciplinary Committee (which deliberates in the absence of the defendant and witnesses) and not that of the Council (which meets openly and cannot remove Full Members of the Union except for disorder).

43. I do not accept that removing the defendant returning officer, the complainant and their representatives was a discretion which the Executive Committee was entitled to have. The fact that the Executive Committee and the Council are entitled to go into closed

session, and if so are entitled to decide who may observe, does not thereby entitle them to deliberate privately for anything other than a proper purpose. The first phase of the meeting was in closed session with a wide range of observers to ensure that the election was not itself affected by news of the removal of a returning officer. This one may regard as a proper purpose. It would have been prudent to inform the candidates afterwards that the acting returning officer was then Eric Lai, but this does not affect the correctness of the decision.

44. The second phase excluded everyone except the five members and staff. This was in accordance with what the meeting sincerely viewed to be the proper disciplinary procedure. Indeed one member of the meeting present in the second phase expressed the view to the Court in the hearing that one may not necessarily take down all the views expressed on the minutes. This is not something that I could accept as being the rule. Whereas the minutes may, for reasons of practicality, not take down everything people say and who said it, a policy to the effect that people could deliberate without the minutes reflecting what they say is not acceptable and a denial of accountability by members of a Union committee to the Full Membership.

45. The examination by the meeting in the second phase of the e-mail from the returning officer to Kirsty Patterson and its decisive role in the decision to remove the returning officer demonstrates the dangers of deliberating in the absence of a subject of a complaint, or indeed the complainant. It is entirely possible that some nuance in the e-mail may have been relevant in the decision, yet those affected by the decision weren't allowed to comment upon it. Indeed, I have some difficulty understanding how the meeting in the first phase deliberated upon the effect of the *Live!* posting and e-mail without everyone having copies and referring to them – this seems an unnecessary encumbrance to an informed debate, something it appears the meeting realised only when it was too late.

46. I would hold that no meeting can go into closed session and exclude observers (except for reasons of disorder) to the extent of excluding a defendant, complainant/proposer and a representative for each.

Other aspects of the request to the Court

47. The request for a declaration from the Court also incorporated two other complaints: firstly that the meeting was called with only two hours' notice and that the returning officer had only a brief time to acquaint himself with the complaint; secondly that Eric Lai did not adequately explain the nature of the meeting, the available courses of action, or later provide any reasons.

48. The meeting was called at remarkably short notice, and was left hopelessly inquorate (see end of paragraph 30) as a result. There is a need on some occasions for meetings to be held at short notice to deal with difficulties that need swift resolution. The role of a supervisory authority is a classic example of when a short notice meeting would be required. The rule on quoracy, particularly in light of this determination, should provide the protection of legitimacy while allowing swift and decisive action when an election is imperilled by its administration. I do not regard the notice as inadequate.

49. The short period of time available to the returning officer to consider the complaint was equally reasonable in the circumstances. The returning officer is thoroughly familiar with the rules of the Union and the administration of the election, and I have every confidence that he capable of responding properly in the time available to him. I do not regard his preparation time as inadequate.

50. The complaints about Eric Lai's failure to explain proceedings or provide reasons are also not upheld. There is no suggestion in the accounts of the meeting that Eric Lai was

anything other than impartial and conscientious in difficult circumstances. The returning officer's knowledge of constitutional procedure would have at least been the equal of Eric Lai and there was no necessity for this to be explained to him. Eric Lai sent the returning officer an e-mail giving a detailed explanation of the reasons for the decision.

Postscript

51. It is a point of note that the Court in this and any other case, as in *Re No Confidence motion No.2*, may well consider matters which were not raised in an original request.

52. It is a matter of some regret that the Executive Committee would not meet to reconsider its decision, instead leaving it to the Court to remit the decision back to it. Had the meeting met with fuller representation from its members, practically every difficulty dealt with in this opinion would have been resolved. It could also have met somewhat sooner than we could. The Court has been required to enter into a politically sensitive area even before the internal appeal process (which ends with the Council) was concluded.

53. As indicated in paragraph 21, this was a review of the procedural propriety of Executive Committee meeting of the 22nd February, not a review of the correctness of the decision. It may be that the meeting would come to the same view after dealing with the matter properly as it did after the unconstitutional one. We take no view on the merits of the complaint.

54. We are mindful that any ruling made sets a precedent – since members and constituent bodies within the Union are entitled to expect to be treated in the same manner in the same circumstances, any ruling upon the procedural propriety of the Executive Committee meeting (irrespective of the good intentions of its members) would apply to every other supervisory authority or Union body exercising quasi-disciplinary powers. Allowing a brazenly inquorate and conflicted meeting to pass a test of constitutionality would tempt those whose intentions are less than benign to remove unhelpfully neutral or strict returning officers, or discipline people or constituent bodies unfairly. A high standard for the top committees of the Union justifies them in holding the rest to a high standard also.

Simon Matthews:

55. I agree in most respects with the opinion of the Court Chair.

56. I respectfully dissent on the matter of the applicability of regulation 5 (Disciplinary Procedure). While it is accepted that the actions of a returning officer may ultimately not attract condemnation and yet still necessitate the returning Officer's replacement, any discussion, hearing or investigation must inevitably consider whether such actions or inactions constitute misconduct or negligence and consequently fall wholly within the jurisdiction of regulation 5. Regulation 2 sets out that the Supervisory Authority shall deal with the matter. I concur with the Court Chair in his observation that the time periods set out in regulation 5 are not compatible with maintaining the integrity of the elections.

57. The Education Act 1994 imposes the duty upon the Union to hold free and fair elections. I am of the view that it is impossible for elections to be 'fair' if complaints over the conduct of those elections cannot be heard until after the elections have been concluded to all intents and purposes. Given that the Education Act takes precedence over the Union's regulations, the requirement for at least one-weeks notice to be given to the defendant and for at least 10 seconders to back a complaint are is clearly secondary to

the requirement to run fair elections and should be dispensed with in this case. In all other respects the provisions of regulation 5 should be complied with at all times.

Sebastian Tallents:

58. I agree with the Court Chair.

59. I would also emphasise that although the matter was going before ICU Court, this did not preclude the Executive Committee from meeting to discuss the issue further, and ideally it should have gone through other appeal processes before being referred to the ICU Court.

60. It would perhaps have been advisable for the paper, in that context, to have taken the form of a request for a constitutional interpretation on whether removing a returning officer should be subject to disciplinary style procedures and to what degree the procedures should be modified to account for conflicts of interest. The decision to Quash the Executive Committee meeting on procedural grounds does not have any bearing on the validity of the decision and should not be seen as such.

Siddharth Singh:

61. I agree with the Court Chair.

62. I would also like to advise that the members of the Executive Committee especially Sabbatical Officers have access to the best available information before they make a serious decision. Therefore, though time is a serious issue, due process is equally if not more important and it should be required that the Executive Committee act in the best interests of the union by being deliberate and if required seeking assistance in dealing with such sensitive matters as removal of officers or dealing with a disciplinary matter specifically regarding procedure. Though I can empathise with the Executive Committee's need to resolve the complaint and ensure that elections were not severely affected and that all members acted with the highest regard and honour for the proceedings.

Neil Monteiro:

63. I agree with the Court Chair.

64. I would also like to emphasise my opinion that this matter did not have to be brought before the Court. It is my opinion that section K of Regulation 2 refers to electoral complaints other than when then position of the returning officer is called into question and for that reason the procedure for any complaint in this issue should have followed that set out in section J of regulation 2. This is based on my interpretation of the phrase "Objections to the appointment of the Returning Officer…" in regulation 2.84.2 as meaning any complaint regarding the suitability of the returning officer to remain in his or her position.

65. Regulation 2.67 states that "an authority listed lower down in section 67 over-rules a previous one on appeal." It is my opinion that Regulation 2.67 requires appeals to go to the Council and not to Court. Whilst the complaint was regarding constitutional issues, the offer of reconvening the Executive committee made the need to appeal to court to quash the decision null on any practical level. In fact, the process would have been quicker if constitutional advice on the issue of conflicts of interest was sought from the Court before a second Executive Committee meeting and not an appeal.

DIRECTIONS:

1. None.

ORDERS:

1. It is declared that a subject of a motion or complaint to a supervisory authority under the election regulations is entitled have it heard according to the rules of natural justice, in an equivalent manner to a defendant to a disciplinary motion in *Re No Confidence motion No.2*.

2. It is declared that the exercising of a vote within a supervising authority by a candidate in an election upon the conduct of his or her returning officer or other election official is unlawful and unconstitutional.

3. It is declared that is it is the duty of all Union meetings to be quorate at all times, and that any discussion related to quoracy imposes a requirement to ensure that they are. If a meeting recesses for any period of time, it may not begin again until it is quorate.

4. It is declared that a member of a meeting who is not entitled to vote due to a conflict of interest does not count towards quorum either in counting the number of voting members present, or in counting the number of voting members of the meeting from whom quorum is calculated.

5. It is declared that the Court or any person or body in the Union with the authority to consider the question of quorum shall only act to quash or revoke a resolution or election held at a meeting for inquoracy if it can be proved beyond reasonable doubt that the meeting was inquorate. If a person or constituent part of the Union has relied upon a resolution to their detriment and unaware of its inquoracy a discretion may be exercised not to quash or revoke the decision.

6. The meeting of the ICU Executive Committee acting as a supervisory authority on the 22nd February 2007, and any decision it made, is quashed.

7. It is declared that as a result of the quashing of the Executive Committee meeting, John Collins is restored as returning officer and Eric Lai as deputy returning officer. The complaint by Kirsty Patterson against the returning officer is unresolved and must be returned to the Executive Committee for their deliberation.

8. An emergency meeting of the Executive Committee is summoned under regulation 7.51.6 to consider the complaint again.

RECOMMENDATIONS:

1. None.

Each direction, order and recommendation was approved unanimously.