

ICU Trustee Board Appeals and Discipline Procedure

Introduction

The Trustee Board has various specific appellate and disciplinary powers set out in the Union's Constitution and Regulations, in addition to its role as the sovereign body of the Union. Many of these powers involve matters which are sensitive, upon which the Union owes a duty of natural justice to individuals and which may involve dismissal of employee sabbatical officers; they may also require a swifter response than the Trustee Board would normally provide given its relatively infrequent meetings.

A. Purpose and jurisdiction

1. This Procedure establishes the system by which the Trustee Board exercises its jurisdiction in respect of:

Part C – Suspension

- i. suspension of any staff member or office-holder in the Union¹,

Part D – Disciplinary Tribunals

- ii. disciplinary tribunals of the Trustee Board itself²,
- iii. appeals from the Union Court acting as a disciplinary tribunal³,
- iv. appeals from Trustee Board disciplinary tribunals⁴,

Part E – Dismissal references

- v. references to the Trustee Board by the Council or other body entitled to pass a motion of no confidence against a holder of sabbatical or paid elected office⁵,
- vi. references to the Trustee Board by the Union Court for dismissal of a Union officer or representative,

Part F – Union Court appeals

- vii. appeals from Union Court determinations⁶,
- viii. appeals from the Union Court acting to censure or dismiss its own members⁷,
- ix. requests to the Trustee Board to reduce or rescind a penal order imposed by the Union Court⁸.

2. **Part B** deals with interpretation and particular terms and **Part G** deals with acceptance of any reference under this Procedure.

¹ Regulation 7.33

² Regulation 7 Part H (7.62 – 7.66)

³ Regulation 7.64

⁴ Regulation 7.64

⁵ Regulations 7.53 – 7.55

⁶ Regulations 2.7

⁷ Regulation 2.21.4 & 7.47.4

⁸ Regulation 7.43

3. This Procedure does not deal with:
 - i. appeals to the Trustee Board in any other capacity⁹,
 - ii. a decision by the Trustee Board to remove a Trustee as Trustee¹⁰, or
 - iii. other resolutions of the Council, General Meeting or Court in relation to Trustees.

B. Interpretation

1. In this Procedure, terms used have the following definitions:
 - i. “Appeal Tribunal” – appellate body from a Disciplinary Tribunal
 - ii. “Appellant” – person appealing against a decision taken in respect of him or her
 - iii. “Defendant” / “defendant officer” – person/officer subject to disciplinary proceedings
 - iv. “Non delegable matter” – defined under regulation 1.33 as matters which can only be decided by the whole Trustee Board, including: appointment of the Chair and Secretary, the approval of the Union’s accounts, a capital project or contract valued in excess of one million pounds, the removal of a Trustee, dismissal of the President or any other matter decided as non delegable by the Trustee Board.
 - v. “Preliminary recommendation” – an optional initial recommendation on the reference by a Trustee or committee, following possible enquiries.
 - vi. “Reference” – any appeal, reference or request made to the Trustee Board under this Procedure.
 - vii. “Resolution” – the final decision in any appeal, reference or request made.
 - viii. “Trustee Board as a whole” – the Trustee Board in a full and quorate meeting.
2. The Trustee Board Chair and the Court Chair may delegate any part of their powers and duties under this Procedure to another person, though not to a member of the Union’s permanent staff except the Secretary to the Trustee Board.
3. No other authority under this Procedure may be further delegated.

C. Suspension by the Trustee Board

1. These suspension provisions apply to any office-holder or staff member in the Union without exception. They do not extend to the suspension of any person’s status as Trustee, which may only be imposed by the Trustee Board as a whole.
2. A person holding sabbatical or paid elected office is automatically suspended if a motion of no confidence is passed at the Council or other body entitled to pass it¹¹.
3. The President has separate suspension authority for many office-holders¹² as supervised by the Union Court. Other suspension provisions may apply in relation to

⁹ For example, a proposal to the Trustee Board which would effectively reverse the decision of the Council or Executive Committee is not classed as an “appeal” for the purposes of this Procedure

¹⁰ Regulation 1.44.3 entitles the Trustee Board to remove, by two-thirds majority a Trustee; under regulation 1.47, the removal of an *ex-officio* Trustee as a Trustee does not remove them from their original post. There is also no appeal provided for from this type of decision

¹¹ Regulation 7.53 and 54

office-holders or staff. Such suspension authority is independent and not governed by this Procedure.

Grounds for suspension

4. A suspension may be imposed under the authority of the Trustee Board in the following circumstances¹³:
 - i. gross or serious misconduct is alleged,
 - ii. there may be risks to third parties or Union or College property,
 - iii. where the working relationship between the person and others may be impaired, or
 - iv. to assist, if necessary, an investigation.
5. Suspension is not in itself a disciplinary sanction¹⁴.

Time limits for suspension

6. The Trustee Board Chair may suspend a person for up to fourteen days, or twenty-eight days if any part of the first fourteen days falls outside the academic terms of Imperial College.
7. After the initial term of fourteen or twenty-eight days has expired the suspension may continue for a further twenty-eight days with the concurrence of at least two of the *ex officio* Trustees (the President, Council Chair and Court Chair).
8. After the initial term (and its extension if approved) has expired the suspension may only continue with the approval of the Trustee Board as a whole, unless the suspended person consents to further suspension.

Effect of suspension

9. The extent of a suspension shall be decided by the Trustee Board Chair, though this may be modified by the Trustee Board.
10. A suspended person may be prohibited from attending any part of the Union’s premises or areas managed by the Union. A person may also be prohibited from having contact with staff or officers.
11. The reasons for a suspension and any requirements of it should be discussed at a meeting with the suspended person, who may have a friend or representative present. Regular contact should be provided with the suspended person to advise them of the progress of any disciplinary investigation or hearing.
12. If the person is paid by the Union, they are expected, even if excluded from Union premises, to be available during working hours to attend any interview or meeting where required.
13. If the person is paid by the Union, the suspension will be on full pay (and accommodation if applicable), unless the person does not have a legal or statutory right to work.

Hearing

14. A hearing should be heard as soon as is reasonably practicable to resolve the matters which led to the suspension.¹⁵

¹² See for example regulation 7.34

¹³ Regulation 7.33

¹⁴ Regulation 7.35

¹⁵ That hearing may be a no confidence motion, Disciplinary Tribunal, staff disciplinary hearing or dismissal reference hearing.

D. Disciplinary Tribunals

Scope of part

1. Disciplinary Tribunals are established in order to consider allegations of misconduct against any person holding elected or unpaid appointed office¹⁶. Authority to convene Disciplinary Tribunals is provided under the Discipline and Complaints Regulation 7 Part H.
2. This Part deals with Disciplinary Tribunals of the Trustee Board itself¹⁷, Disciplinary Tribunals of the Union Court (acting under powers delegated by this Procedure) and appeals from Disciplinary Tribunals (rule A1(ii), (iii) and (iv)).
3. This Part does not govern motions of censure and motions of no confidence at the Council or other body entitled to pass them, nor does it cover dismissal references (covered in Part E).

Authority to request Disciplinary Tribunal

4. A disciplinary tribunal may only be requested by the President, Council Chair, Trustee Board Chair, Faculty Union President, Constituent or Campus Union President or Clubs and Societies Committee Chair¹⁸.

Grounds for convening a Disciplinary Tribunal

5. A Disciplinary Tribunal is convened if there are reasonable grounds to suspect that a defendant is guilty of misconduct. Such misconduct shall not merely constitute (though it may include)¹⁹:
 - i. a failure to maintain the confidence of the Council or other policy-making body,
 - ii. a failure to adhere to any manifesto commitment, or
 - iii. inadequate representation on behalf of the student body.
6. Typical grounds for Disciplinary Tribunals may include (but are not limited to): incapability to perform office, dishonesty, gross discourtesy, any criminal offence (whether or not prosecuted for it), drug or alcohol abuse, a holder of sabbatical or part-time paid office breaching his or her contract or showing poor attendance during contracted hours.

Powers of disciplinary tribunal

7. A disciplinary tribunal has the following general powers in relation to any defendant officer:
 - i. a warning,
 - ii. a censure (unless the defendant officer has already been censured), or
 - iii. dismissal from office.
8. The following restrictions apply to the power to dismiss from office²⁰:

¹⁶ Regulations 7.62 and 7.5

¹⁷ Regulation 7 Part H (7.62 – 7.67)

¹⁸ Regulation 7.63

¹⁹ Regulation 7.62

²⁰ Regulation 1.33.4 – the President, Council Chair and Court Chair can only be dismissed by the Trustee Board as a whole; the restrictions on the Union Court apply to those employed as a consequence of office (nearly always the sabbaticals)

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- i. A Disciplinary Tribunal of the Union Court may not dismiss a person holding sabbatical office or otherwise deriving employment from office, or the Council Chair, and
 - ii. A Trustees' Committee may not dismiss the President, Council Chair or Court Chair.
9. If the request for a disciplinary tribunal is made by a Faculty Union President, Constituent or Campus Union President or Clubs and Societies Committee Chair, then the defendant officer must hold office within the constituent part of the Union of which the requestor is President or Chair.
10. If the President has decided to take action under the Student Disciplinary Policy, the Imperial College Council has authorised Disciplinary Tribunals²¹ to impose further penalties (set out in paragraph 37 of that Policy) and include as defendants registered students of the College who do not hold office in the Union, if their conduct is connected with someone who does. In such cases the Disciplinary Tribunal must be convened in respect of at least one defendant who holds elected or unpaid appointed office. Clubs and Societies (as corporate bodies separate from their members) may also be defendants but the penalties of censure and dismissal do not apply to them.

Composition

11. A Disciplinary Tribunal may be formed of the Trustee Board as a whole, a Trustees' Committee or the Union Court.
12. The Disciplinary Tribunal shall by default be constituted from the Union Court (with a panel appointed under its own standing orders and following its own rules subject to this Procedure) with the following provisions:
 - i. If a defendant officer holds sabbatical office or otherwise derives employment from office, or is the Council Chair, dismissal is not contemplated as a penalty.
 - ii. No defendant officer is a member of the Union Court.
13. The Court Chair upon receipt of a request for a hearing shall provide the details of the request to the Trustee Board Chair and Secretary of the Trustee Board.
14. Notwithstanding the above provisions, a disciplinary charge shall instead be heard before the Trustee Board as a whole or a Trustees' Committee in the following circumstances:²²
 - i. The Trustee Board Chair directs,
 - ii. The Court Chair directs, or
 - iii. The Union Court sitting as a Disciplinary Tribunal refers it.
15. If the Union Court is not to hear the proceedings, the Trustee Board Chair shall determine whether a hearing is before the Trustee Board as a whole or a Trustees' Committee, though the Disciplinary Tribunal must comprise the Trustee Board as a whole if the defendant officer is the President, Council Chair or Court Chair and dismissal is contemplated as a possible outcome.
16. If the Disciplinary Tribunal is constituted as a Trustees' Committee it shall:
 - i. be appointed by the Trustee Board Chair,

²¹ Student Disciplinary Policy paragraph 23

²² The default for cases is the Union Court except where dismissal is contemplated for sabbaticals (or Union Court members themselves face proceedings). Nevertheless there may be reasons to refer it to the Trustee Board; one particular reason may be that charges against a sabbatical defendant which were thought not to be serious have since been shown to be and dismissal may be contemplated.

- ii. consist of three or five people,
 - iii. consist of a majority of Trustees²³, at least one of whom shall be a Lay Trustee^{Error! Bookmark not defined.}, and
 - iv. exclude any person disqualified from being a Trustee²⁴, and
 - v. exclude any person against whom misconduct is alleged, or who has a social connection with such a person.
17. The Trustee Board Chair at his or her discretion may choose to appoint the Trustees' Committee by lot, in so far as it complies with the above provisions.
18. Where the Disciplinary Tribunal is the Trustee Board as a whole and any Trustee is also a defendant officer or has a social connection with a defendant officer, that Trustee may not vote or be counted in the quorum.
19. The Trustee Board Chair will determine whether or not any person has a social connection with a defendant officer, and Trustees are expected to disclose any connection which may give the appearance of disqualifying them from sitting upon a Disciplinary Tribunal.

Procedure

20. The following procedure shall be used for a Disciplinary Tribunal hearing:

Notice and defendant

- i. The defendant officer shall have reasonable notice of the hearing and be informed of the charges against them in writing.
- ii. The defendant officer may bring witnesses and a representative, giving notice if so doing.
- iii. The hearing shall not be invalidated by the absence of the defendant officer provided reasonable notice has been given of it.

Evidence

- iv. Any evidence may be heard which is relevant and fair. Arrangements may be authorised by the Disciplinary Tribunal for witnesses to give evidence in a way which reduces their stress or discomfort.
- v. Evidence brought in support of any charge shall be heard first, and the defendant officer may ask questions of the witness if brought.
- vi. The Disciplinary Tribunal, if evidence of the charges taken at its highest could not either prove them or demonstrate misconduct, shall dismiss the case without hearing from the defence;²⁵
- vii. The defendant officer may give evidence, and if so may be questioned about it. Witnesses may also be called for the defence, and may be further questioned by the party bringing the case and the committee.
- viii. If the defendant does not give evidence at the hearing (and is competent to do so), or failed to mention when asked in any prior investigation something he or she later relied upon in the hearing, the Disciplinary

²³ Regulation 1.36

²⁴ Regulation 1.43 and constitution 9.7 - any Union Officer, the Felix Editor, member of Council, Executive Committee, Court (except the Court Chair), Clubs and Societies Board, Representation and Welfare Board, Union staff (whether permanent, part time or casual), or College staff (except casual)

²⁵ Commonly known as the *Galbraith* test in criminal law, this means that if the evidence is particularly weak the allegation should be stopped as it is not the purpose of disciplinary proceedings to force a person to incriminate himself or herself in the absence of proper evidence

Tribunal may draw such inferences as appear proper in relation to the facts or finding of misconduct;²⁶ and

- ix. The Disciplinary Tribunal may amend a charge if it does not cause injustice to the defendant to do so;
- x. Earlier misconduct shall not be presented or taken into account until a finding of misconduct has been made.
- xi. The defendant officer is permitted to make any final representations upon the charges.

Three step process for determination of charge

- xii. First, the Disciplinary Tribunal shall consider firstly in the absence of the defendant officer and any witnesses whether each of the charges is true.
 - xiii. Secondly, the Disciplinary Tribunal shall next consider whether the charges proven amount to misconduct, and shall provide the defendant officer with an opportunity to address them separately upon this issue, unless the defendant officer has already accepted misconduct.
 - xiv. Thirdly, the Disciplinary Tribunal will lastly consider, if a finding of misconduct has been made, what penalty to impose.
 - xv. The defendant officer shall be informed of the decision, its supporting reasons, and any rights of appeal.
21. If the Disciplinary Tribunal is also sitting as a Disciplinary Committee under section 23 of the Student Disciplinary Policy, then the procedural requirements of Part C of that Policy shall apply and prevail over the above provisions in case of conflict.

Appeals procedure

22. A defendant officer in respect of whom a finding of misconduct has been made by a Disciplinary Tribunal of the Court or Trustee Board is entitled to an appeal to an Appeal Tribunal.
23. The appeal must be entered within a period designated by the original Disciplinary Tribunal, for which the default and minimum period is seven days.
24. Any appeal outside the time limit may only be made with the approval of the Trustee Board Chair.
25. The appeal shall confine itself to the following matters:
- i. To review whether the matter under consideration was adequately investigated and substantiated;
 - ii. To review whether the procedures were correctly and fairly implemented; and
 - iii. To consider whether the penalty was reasonable in the circumstances known at the time of the disciplinary hearing.
26. If new evidence is submitted during the appeal hearing, the Appeal Tribunal has the discretion to remit the matter back to the Disciplinary Tribunal and invite them to reconsider their decision upon the charges, finding of misconduct or penalties.
27. The Appeal Tribunal may modify any part of the decision of the Disciplinary Tribunal, or remit it back for reconsideration with their comments.

²⁶ Failure to comment or give evidence can be held against a defendant officer – this is of particular relevance given disciplinary tribunals are held in relation to office-holders in the Union

28. The chair of the Appeal Tribunal has the discretion whether to permit a further appeal from a Disciplinary Tribunal which has re-formed following a matter being remitted back to it by the Appeal Tribunal.
29. The decision of the Appeal Tribunal is final.

Composition of Appeals Tribunal

30. The Appeals Tribunal shall comprise:
 - i. In appeals from the Union Court acting as the Disciplinary Tribunal, a single Trustee, a Trustees' Committee or the Trustee Board as a whole;
 - ii. In appeals from a Trustees' Committee acting as the Disciplinary Tribunal, either another Trustees' Committee appointed in the same manner or the Trustee Board as a whole;
 - iii. In appeals from the Trustee Board as a whole, where the penalty does not involve dismissal, to a single person appointed by Imperial College's Director of Human Resources;
 - iv. In appeals from the Trustee Board as a whole, where the penalty includes dismissal, to a panel of not fewer than three people appointed by the College's Director of Human Resources.
31. The Trustee Board Chair may direct that an Appeals Tribunal be comprised of a body named lower down the in the list above²⁷.
32. Any nominee of the College's Director of Human Resources must be of rank of Senior Lecturer or above, or its administrative equivalent.
33. No person may sit on an appeal from a decision in which they were involved. If the Appeal Tribunal is the Trustee Board as a whole, Trustees involved in the original Disciplinary Tribunal may not be present, vote or be counted in the quorum.
34. If the Trustee Board Chair sat upon a Disciplinary Tribunal, he or she should appoint an independent person to exercise the Trustee Board Chair's duties in relation to any Appeal Tribunal.

E. Dismissal references for those holding sabbatical office

Scope of part

1. A dismissal reference is a reference by an authorised body to the Trustee Board inviting them to consider dismissing a person holding sabbatical office or otherwise derives employment from office.
2. A dismissal reference is not a request for a Disciplinary Tribunal. A dismissal reference follows from either a no confidence motion or Union Court compliance ruling where the initial disciplinary hearing has already been concluded.
3. A reference by the Court acting as a Disciplinary Tribunal to the Trustee Board under section D14.iii is not covered by this part as that invokes another Disciplinary Tribunal under Part D.
4. The Council, or other committee with the authority to do so, in passing a motion of no confidence against a Sabbatical Officer or holder of paid elected office automatically

²⁷ That is to say the list in order: single Trustee or independent person, Trustees' Committee, Trustee Board as a whole, nominee of the College DHR, committee nominated by the College DHR

suspends the defendant sabbatical pending resolution by the Trustee Board²⁸ under this Procedure.

5. The Court may make a dismissal reference in respect of a Sabbatical Officer or holder of paid elected office where it has found that person to be in breach of an order or direction, following a hearing to consider the same.
6. No other person or body may make a dismissal reference. The appropriate action is to present a motion of no confidence or request a Disciplinary Tribunal.

Outstanding appeals

7. If a dismissal reference is made in a case which is subject to appeal, then the question of dismissal shall not be determined until the appeal has been disposed of.

Composition

8. A dismissal reference shall be heard by the following bodies:
 - i. Where referred by the Council following a motion of no confidence in the President²⁹, or referred by the Court in respect of the President, the Trustee Board as a whole;
 - ii. Where the Trustee Board Chair or Trustee Board directs, the Trustee Board as a whole;
 - iii. In all other circumstances, a Trustees' Committee.

Procedure

9. The Trustee Board (or delegated body) shall satisfy itself, in cases where the person enjoys employment rights under Employment Rights Act 2002 or other legislation, that those rights have been complied with.
10. The Trustee Board (or delegated body) may authorise such investigations and hearings (including any Disciplinary, Appeal Tribunal, or other hearing having the necessary characteristics thereof) necessary to remedy any deficiency in the prior process, or to obtain further information.
11. The Trustee Board (or delegated body) shall invite any written representations from any person subject to a dismissal reference, and may choose to hear from any such person or other person.

Decision

12. The Trustee Board (or delegated body) shall choose either to dismiss the person from office or not. Reasons must be provided for any decision³⁰.
13. If a person referred following a motion of no confidence is not dismissed, the person shall be automatically censured³¹, unless already previously censured.
14. The decision in a dismissal reference is final.³²

F. Union Court appeals

²⁸ Regulation 7.53

²⁹ Regulation 1.33.4

³⁰ Regulation 7.55 though this provision requires reasons in all cases, not just those required under the regulation

³¹ Regulation 7.55

³² Any appeal should have been conducted at the original disciplinary stage.

Scope and applicable rules

1. A determination³³ of the Union Court may be appealed to the Trustee Board in specific circumstances.
2. Any direction, specified compulsory direction or other matter relating to an ongoing hearing shall not be appealed. An interim order or determination may be the subject of appeal.³⁴
3. A request may also be made to the Trustee Board to stop a Union Court inquiry³⁵, to reduce or rescind a penal order imposed by the Union Court³⁶, or a decision by the Union Court to censure or dismiss one of its own members³⁷.
4. Any one of the above matters decided by the Union Court shall be known for the purposes of this Part as a “decision”.
5. Appeals from the Union Court acting as a Disciplinary Tribunal are dealt with under Disciplinary Tribunal appeals and not this Part.

Notification of intention to appeal

6. Notification of intention to appeal must be provided to the Secretary of the Trustee Board within 7 days by the person making the appeal (“the appellant”).
7. The appellant must provide to the Secretary within 7 days of notification:
 - i. The decision subject to appeal,
 - ii. A written statement stating which part of the decision is wrong and why, and
 - iii. Any evidence or copies of rules relevant to the disposal of the appeal.
8. The Trustee Board Chair may dismiss the appeal without a hearing if it appears unmeritorious, or the above provisions have not been satisfactorily complied with.

Procedure for appeals from decisions

9. The appeal shall be heard by the Trustee Board as a whole, though none of the *ex officio* Trustees shall vote or be counted in the quorum³⁸.
10. Members of the Union Court panel whose determination is under appeal shall not attend the appeal.
11. After the hearing the Trustee Board may approve the wording of the decision and reasons by electronic mail communication.
12. A decision having the effect of changing the determination must be reasoned and the reasons published.
13. The decision of the Trustee Board is final.

G. Preliminaries – acceptance of reference, enquiries and recommendations

³³ Regulation 2 Part F; “determinations” are the term used to describe the opinion and orders made by a panel of Union Court members hearing a case

³⁴ The Trustee Board will not hear appeals relating to internal matters during a hearing, but only the final decision; however an “interim order” or “interim determination” is a direction which applies to the Union generally rather than internally within the Union Court, so these can be appealed: though they risk being rescinded by the Union Court itself later when publishing the final determination.

³⁵ Regulation 7.38

³⁶ Regulation 7.53

³⁷ Regulation 21.4

³⁸ Regulation 1.42

Scope of part

1. This part deals with all references or requests to the Trustee Board under this Procedure.
2. This part sets out how the reference or request is accepted and how any enquiries or recommendations are undertaken.

Notice and preliminary assessment of reference

3. The person making the reference shall give notice through the Trustee Board Secretary to the Trustee Board Chair.
4. The Trustee Board Chair may make such enquiries as appears necessary or expedient.
5. The Trustee Board Chair shall determine whether the reference is one of those types listed in rule A1 above.
6. The Trustee Board Chair's assessment at this stage is directed at whether the reference falls within the jurisdiction of this Procedure, not the merits of the reference. However, a reference which appears to the Trustee Board Chair to be illogical, vexatious, frivolous or anonymous may be rejected.
7. A decision of the Trustee Board Chair to accept or not accept a reference on the jurisdictional grounds above is final.

Allocation of a reference for preliminary recommendation

8. The Trustee Board Chair may choose (or not) to allocate a reference for a preliminary recommendation as to the most suitable disposal on behalf of the Trustee Board or upon some other related matter. This may involve such enquiries as are deemed necessary or expedient.
9. The Trustee Board Chair shall refer a preliminary recommendation to a Trustees' Committee or single Trustee, who shall prepare the recommendation by such time as the Trustee Board Chair may direct.
10. If the recommendation is that the reference is sufficiently unmeritorious to be dismissed without further resolution, then the Trustee Board Chair is entitled to (though need not) dismiss the reference without further action.

Appointment of those dealing with preliminary recommendation

11. A single Trustee or Trustees' Committee appointed to make any enquiry or recommendation shall be appointed by the Trustee Board Chair.
12. No *ex officio* Trustee³⁹ may make any recommendation upon any Union Court appeal⁴⁰.
13. A person involved in making a recommendation or enquiry may, but need not, sit on any panel dealing with the final resolution of the matter.

³⁹ The President, Council Chair and Court Chair
⁴⁰ Regulation 1.42