

# **A step-by-step guide to the proposed Constitution, Bye-laws, Standing Orders, Financial Procedures & Associate Members Policy**

## **1.0 Background and introduction.**

- 1.1 ICU last conducted a governance review in 2008, which amongst other things created the Trustee Board and the Union Court. Whilst some changes were sensible and have worked in practice, some things haven't. The most serious evidence that the Union's current governance structures are not fit for purpose are:
  - 1.1.1 the serious financial losses suffered in 2010 and 2011
  - 1.1.2 the catastrophic failure of the Summer Ball in 2011
  - 1.1.3 serious concerns expressed by the current trustees on the current system, their ability to perform their role as trustees, and their willingness to take on legal liability for the Union under the current system
  - 1.1.4 that the results for elections take weeks to release due to bureaucracy
- 1.2 Under the provisions of the Charities Act 2006, students' union lose their 'exempt' charity status and are required to register with the Charity Commission in order to retain their charitable status. Most students unions are now registered with the Charity Commission, and whilst it has been relaxed about the timescales around registration until recently, it has now been made clear to the Union that we must complete this registration soon.
- 1.3 Registering with the Charities Commission does require some specific changes to the constitution – in particular our charitable objects have to clearly demonstrate how the Union's activities are for the 'public benefit', and we have to clearly demonstrate how we limit private benefits to members, trustees and officers.
- 1.4 Once we have registered with the Charities Commission the process for changing the constitution will be more onerous – any changes will have to be approved by the Union Council, the Board of Trustees, the College Council and then the Charities Commission. As such it is essential that the Union takes this opportunity to ensure that the governance arrangements of the Union are fit for purpose for the foreseeable future.

## **2.0 Approach**

- 2.1 Given the concerns with the current governance structures, the decision was taken to not conduct an amendment exercise on the current constitution. Rather than starting on a blank piece of paper, a model document, developed by Bates Wells and Braithwaites Solicitors on instruction from the National Union of Students, in consultation with the Charity Commission was used.
- 2.2 This ensures that, as long as some key areas of the document (in particular objects, powers and limitations on private benefits) were not changed that the registration process with the Commission should be smooth, as these clauses have been 'pre-approved' by the Charity Commission.

- 2.3 This document now seeks to 'walk through' the Core Constitution document to explain the sections, outline and key changes, and discuss the rationale behind such changes. Where changes are presentation and don't mean any practical changes, these sections have been 'skipped over'.

### **3.0 Background Section**

- 3.1 This section is not legally binding but is intended to give some background information to those reading the Constitution. A crucial section here is section C – which summarises the key principle behind the changes in the document. Whilst the Board of Trustees need to be given the authority to ensure the organisation is well managed, the principle of student leadership is at the heart of all the changes.

### **4.0 Objects**

- 4.1 This sets out the purpose for why ICU exists. Under law, a charity's objects must be expressed in exclusively charitable terms and this requires specific legal drafting. This proposed wording has been approved by the Charity Commission as acceptable for a students' union wishing to register as a Charity.

### **5.0 Powers**

- 5.1 This section sets out all the powers of the students union – these powers do not have to be exercised but are exercised at the Trustee's discretion. Giving an exhaustive list like this enable the Union to act lawfully in the future if it needs to change how it operates. For example, the Union does not currently own property. However, if we wanted to do this in the future (e.g. if an Alumni left some property to the Union or if the Union needed a presence in Hammersmith), then clause 5.16 will allow this, as the Charity Commission have agreed in advance, by accepting the constitution that this would be classed as charitable activity.
- 5.2 Clause 5.3 gives a specific provision to allow the Union to raise funds for other Charities through RAG. This clause is required as Charity Law puts serious restrictions on charities giving funds to other charities.
- 5.3 Clause 5.4 is an express power for students to campaign on issues related to the furtherance of the Union's objects.
- 5.4 Clause 5.13 includes a power for the students' union to incorporate, i.e. become a limited company in the future. This may or may not become necessary in the future, and as the decision will be taken on the grounds of risk, tax liability and financial prudence this decision is within the gift of the Trustee Board.
- 5.5 The current constitution doesn't explicitly state as many powers as this, which is why it isn't particularly helpful for setting the Union up for the future.

### **6.0 Limitation on Private Benefits**

- 6.1 This is quite a technical section that contains important provisions about the application of ICU's funds. A general principle of Charity Law is that payments to members, trustees, or connected persons are prohibited unless there is a particular provision for it. As ICU, for example, employs some of its members in the bars, and as some trustees (sabbs) are paid, this section includes specific provisions for exceptions in this case.

### **7.0 Dissolution**

- 7.1 A charity is legally required to stipulate in its governing document what happens in the case of the charity ceasing to exist. As Imperial College is our parent institution, and is also an educational charity, it is sensible to stipulate that all assets or property to the College.
- 7.2 This doesn't appear in the current constitution, but it is a requirement by law when 'registering' as a Charity.

## **8.0 Amendments**

- 8.1 The 1994 Education Act stipulates that the constitution has to be approved by the College and should be reviewed every five years – the first clause here reflects that.
- 8.2 This section also outlines the process for making interim changes to the constitution. The principle here is that the Trustee Board, Union Council and the College need to jointly agree any changes.
- 8.3 This is a slightly stricter provision than in the current constitution. Currently College doesn't have to check *all* the Regulations, just some of the important ones. As the Bye-Laws are important documents though, we see no reason for College not to be looking at them too (just in case!)

## **9.0 Membership**

- 9.1 This section outlines who the Union's members are – following the principle of the 1994 Education Act all students are automatically members unless they opt-out. The section also makes clear that only members under this definition (so not associate members) may partake in the democratic processes of the Union – only current students.

## **10.0 Associate Members**

- 10.1 This is virtually the same as in the current constitution, except we've explicitly stated that Council doesn't have to 'rubber stamp' all applications to be associate members, when they satisfy certain criteria set out by the Trustee Board. These criteria are in an accompanying policy that I am proposing, following the current criteria used for being an associate member:
- 10.1.1 Student at another University
  - 10.1.2 Staff member of Imperial College
- 10.2 For clarity, since 'life members' in the current constitution have the same rights as 'associate members', we've merged the two and note the difference as 'associate members' and 'lifetime associate members'. The term 'life member' of the Union is quite a scary term when on a Trustee Board: they aren't positions for 'life', they're people who've subscribed to be a member of the Union for life!

## **11.0 Referenda & General Meetings**

- 11.1 There have been no changes in practicalities to these sections, just the wording (as was in the NUS template constitution – it is much clearer now!)

## **12.0 Trustees**

- 12.1 There are quite significant changes to this area as outlined in the previous paper submitted to council. The changes can be summarised as
- 12.1.1 Making the Deputy Presidents members of the Board (ex-officio)
  - 12.1.2 Introducing an Alumni position
  - 12.1.3 Removing the Court Chair position
  - 12.1.4 Appointing, rather than electing, two of the four student trustees.
- 12.2 The principles that surrounded this change were:
- 12.2.1 Ensuring the Board has the skills and experience to do their job.

- 12.2.1.1 Appointing some students who have a good knowledge of Union operations, or a good accounting background, or a good knowledge of a particular Faculty in College that isn't represented on the Board will give the Board a large pool of knowledge to draw upon.
- 12.2.1.2 The Deputy Presidents have a good day to day knowledge of what problems are facing the Union and how each of their 'areas' work operationally.
- 12.2.2 Giving the Board the opportunity to address skills or background deficiencies by appointing two of the trustees
  - 12.2.2.1 As above. See 12.2.1.1.
- 12.2.3 Ensuring input from former Union members continues
  - 12.2.3.1 This will draw on their knowledge of how College and the Union operate historically, and issues we're likely to encounter, and maybe how to avoid or solve them.
- 12.2.4 Ensuring that the majority of the Board (not including the Chair) is elected
- 12.2.5 Ensuring that the majority of the Board are students
  - 12.2.5.1 Fundamentally important for a students' union.
- 12.2.6 Holding the sabbatical officers to account – making them part of the body that is *legally* liable for the Union.

12.3 The appointed student trustees will be selected, following a recruitment process, by the new 'Appointments and Remuneration Committee', a sub-committee of the Trustee Board. These names will be submitted to Council for their approval or otherwise, to ensure that Council have the final say and can make a judgement as to whether they are happy with the process that has been followed. The number of names submitted will be equal to the number of positions available to avoid this becoming a 'mini-election'.

12.4 External Trustees and Alumni Trustees will be appointed in an identical manner. This will always give the Council – the democratic body of the Union - a 'veto' on appointing Trustees in this way.

12.5 The constitution stipulates that the Chair of the Board will be external or alumni – this will ensure that they are able to apply oversight without having too much of an 'interest' in the organisation (ie, the President explicitly **can't** be the Chair of the Board as well as being the CEO).

12.6 The student body are empowered to remove any trustee they see fit. These processes are outlined in the document.

### **13.0 Powers of the Trustee Board**

13.1 The principle of this section is that the Board, as they hold liability for the organisation, have ultimate authority over decision making. As such, in extreme circumstances they can overrule decisions by another body. This section (70.) gives guidance as to the reasons that they may wish to do this.

13.2 This is the same as in the current constitution.

### **14.0 Delegation**

14.1 The key change in this section is the introduction of three Board Committees – which enable the Board to fulfil its role in overseeing the union and handling sensitive matters.

14.2 The Finance and Risk Committee (which has been in existence for about a year) analyses the Union's finances, ensuring they are on track and compliant with the law and best practice, and oversees the Union's risk profile. In practice they also take an interest in significant financial projects, such as the summer ball. The role of this (and the other new) committees is explained in the standing orders.

14.3 The Appointments and Remuneration Committee have a very specific role, which includes:

- 14.3.1 Recruitment of External, Alumni and Appointed Student Trustees
- 14.3.2 Recruitment of Senior Staff and the Managing Director in particular
- 14.3.3 Remuneration (rates of pay) for senior staff and the Managing Director and sabbaticals in Particular

14.4 The governance committee replaces some (but not all) of the responsibilities of Union Court. In particular it provides advice on constitutional issues and oversees the administration of elections.

14.5 In practice, outlining these committees means that, although the Board can set up other committees as it sees fit, it must always have these committees.

14.6 This section also clearly outlines how the senior management of the Union works. The principles here are that

- 14.6.1 The President is the Chief Executive of the Union
- 14.6.2 The Managing Director of the Union reports to the chief executive, but the Chair of the Board provides support in this to ensure continuity
- 14.6.3 The Managing director manages the central organisation on a day-to-day basis, but within the confines of the Union's budget, strategy and policy.
- 14.6.4 That the Managing director has to report regularly to the Board
- 14.6.5 That the Managing Director must be provided with a performance management structure.

## **15.0 Union Council**

15.1 Union Council's role as the policy-making body of the Union is affirmed in this section. It is the only body that has the authority to 'represent the voice of students'

## **16.0 Constituent Unions**

16.1 This section is designed to ensure that constituent unions (including faculty unions) are integrated with the Union. The section is written in broad terms, to ensure that the Constitution does not have to change if the structure of CUs changes in the future.

## **17.0 Financial Procedures**

17.1 A crucial change here is that the Financial Procedures are not included in the constitution and bye-laws. Rather, they are reviewed annually and passed by the Trustee Board. This is to ensure that

- 17.1.1 The Trustee Board can satisfy themselves that appropriate controls are in place to manage the organisations financial risks
- 17.1.2 That the financial procedures can change over time as the Union and the world changes – recent examples include online payments, development of eActivities, changes to staff member job titles.

## **18.0 Omissions**

18.1 Some significant areas, that are included in our current constitution:

### **18.1.1 Executive Committee**

This still exists, but is now a committee of Council rather than the Board. The remit of the committee has changed – in the current document the Executive Committee's role is to 'manage the day-to-day operations of the Union'. In practice it is impossible to run a £5m organisation by committee so this pseudo-responsibility has been removed. In practice this has always been the responsibility of the

Sabbatical Officers and Staff, under the supervision, scrutiny and policy setting of the Trustee Board and Union Council.

As such some of the Executive's financial responsibility has been removed. However, its role in distributing and authorising funds to CSPs has been retained.

The role of the Executive is now framed as *delivering the policy* as set out by Union Council. So, if the Union Council sets policy that the Union should campaign for (say) better bursaries for students from lower socio-economic backgrounds, then it would be Exec's responsibility to develop and deliver that campaign.

Executive Committee can also act on behalf of council for urgent matters (e.g. this summer Exec were asked to approve the IPPR response as the deadline for submission was before the first Council meeting of the year). This is a function that is retained from the current constitution. Anything approved by Exec has to be ratified by Council though.

### 18.1.2 Union Court

Union Court was established in 2008, with a role of the 'judiciary' in the union. The decision has been taken to remove Court from the Union's governance arrangements, as:

- Its most important functions fall under the Trustee Board's responsibilities
- We can't see any good reason for a students' union, or a charity of this size to have a 'judiciary'
- In practice, it slows processes down and encourages cynical complaints (e.g. during elections)
- It is not well understood by students at large and is not seen as transparent or accountable – it's intention was to be so, but no-one uses it that way.

Removing the Court is not removing peoples' rights to complain. There is a very clear complaints procedure set out in the bye-laws. It is simply a more 'direct' route to a final body to handle complaints: the Trustee Board.

Other functions – such as overseeing reporting on governance changes are being moved to the body that *replaces* (bits of) Court: the Governance Committee. This committee also retains some rights with regards to elections, including the right to disqualify candidates, etc.

### 18.1.3 Mentions of other committees

Other committees of the Union (including Management Groups, Constituent Unions, CWB, ERB, CSB etc) are listed in the bye-laws, not the constitution, so that they can be changed in the future, if necessary, by the joint agreement of Council, Trustee Board and College Council, **but** we don't have to bother the Charity Commission (who only care about the constitution) with the changes.

## 19.0 Union Bye-Laws

19.1 As hinted at above, we have tried to move all parts of the current constitution that we're keeping, that aren't charity specific into the Bye-laws. This is so we don't have to both the Charity Commission with any changes to them in the future, if they ever do change.

19.2 The bye-laws were written in a couple of different ways:

19.2.1 **Structure of the Union** – copied and pasted bits from the old constitution, other bits from scratch (as we've moved some things from the constitution into bye-laws)

- 19.2.2 **Meetings** – copied from other Unions and other bits from scratch to meet what we do already
- 19.2.3 **Policy** – copied from other Unions and other bits from scratch to meet what we do already
- 19.2.4 **Officers of the Union** – copied over from the old constitution, but with minor amendments to roles, and addition of Union Welfare officers' job descriptions. A job description for the Felix editor has been removed as they aren't (and never had been!) an 'officer' they are just a 'sabbatical'. This document is about who is an *officer of the union*, not a sabbatical (ie, the GSA President, President of ICSMSU aren't listed as 'sabbaticals' either). The Felix Editor's job description appears in the Felix constitution and in their job contract, so nothing in practice changes. They are still – as a member accountable to Council for Felix, the President for their 'job performance' and the Trustee Board for the legality of the content in Felix. The Felix Policy will also be updated by the Trustee Board to include their job description too.
- 19.2.5 **Complaints & Discipline** – copied from the old constitution and discipline policy, but changed to reflect the replacement of Court with the Trustee Board sub-committee of 'Governance Committee' and direct links to the Trustee Board.
- 19.2.6 **Major Elections & Minor Elections** – have been split up to stop arduous regulations making club and society elections boring and difficult to manage. The regulations have been copied from the old constitution, but changes have been made.

### 19.3 **Structure of the Union**

- 19.3.1 Welfare Officers have been added to Council, as agreed last year and in the proposed changes sent round this year.
- 19.3.2 All other 'operation' of Council rules are the same as last year.
- 19.3.3 Sub-committees have been split so that RWB is now CWB and ERB. Exec is now a sub-committee that reports to Council. Its financial authority is set out in the financial procedures.

### 19.4 **Meetings**

- 19.4.1 Just sets up the specifics that all meetings must adhere to. Nothing too contentious in here!
- 19.4.2 There is a distinction between 'members' and 'voting members', just for clarity – sabbs won't have votes on all club committees! This is the same as the current constitution.

### 19.5 **Policy**

- 19.5.1 Exactly what happens at the minute. Just in a different document.

### 19.6 **Officers of the Union**

- 19.6.1 This is all the Union Officers (ie, who is a voting member on Council) with their job descriptions. Links in with the "Structure of the Union" bye-law.
- 19.6.2 The DPCS has gained 'Projects' to their remit.
- 19.6.3 Clarity has been made on the DPFS role, adding that they are responsible for the services the union provides, and clarifying their work within the Financial Procedures document, set by the Trustees. It also ensures that the DPFS role is explicitly in charge of CSP finances, as the distinction between DPCS and DPFS for that has been hazy in the past.
- 19.6.4 The DPW has gained 'volunteering' to their remit.

### 19.7 **Complaints & Discipline**

- 19.7.1 Clarity has been added to ensure that the licensee of the bar is able to manage the Union's alcohol licence properly, and in accordance with the law.
- 19.7.2 Other than that, the President is still responsible for member and associate member discipline.
- 19.7.3 Clarity has been added to ensure that staff discipline is done in accordance with the College HR procedures.
- 19.7.4 Previously, the regulations only really dealt with how to remove 'officers' or people in elected positions. Now, with the merger of the discipline policy, it's about discipline as a whole.
- 19.7.5 Now the Governance Committee (not court) look at serious cases the President cant do. This is a different process for Trustees, so we've cut away from the currently long crazy and laborious process of authority moving from the President to the Council Chair, to the Court Chair for different matters concerning the senior officers of the Union: the Trustee Board will deal with them directly.

### **19.8 Major Elections**

- 19.8.1 To remove the 'politics' and perception of, or potential for bias, someone disconnected (an external) returning officer shall run the major elections of the Union.
- 19.8.2 With the exception of extreme powers to remove candidates, re-running an election or discarding voting papers (which are reserved for the Governance Committee), they run the elections within the bye-laws.
- 19.8.3 The rules in the bye-laws have been slimmed down so as to not be limiting in the future, and just set the framework for the rules that the RO will set. They are the 'minimum'.

### **19.9 Minor Elections**

- 19.9.1 These are a bit more relaxed than the old rules that were for both sabbatical officers and clubs and societies.
- 19.9.2 No major changes though, other than allowed a bit of freedom with the nominations/elections period *as long* as the timetable is sent out in advance.

### **20.0 Standing Orders**

- 20.1 These are for all sub-committees of the Trustee Board and Council. All fairly standard, just set out the remits of the committees.

### **21.0 Financial Procedures**

- 21.1 Draft Financial Procedures, based heavily on the old Financial Regulations, except that:
  - 21.1.1 Exec has a reduced level of authority to £100,000
  - 21.1.2 Split between CSP finance and Central Union finance to reduce bureaucracy within authorisation and increase clarity in the proper processes to follow.
  - 21.1.3 Split levels of authority for disposal of assets between DPFS and President.

### **22.0 Associate Membership**

- 22.1.1 As explained earlier, this is all how things work in practice at the minute, and sets up who can use our bars/facilities etc.
- 22.1.2 Life Members are changing to lifetime Associate Members for clarity and consistency with the constitution template.