8 December 2023

**Interpretation of the Regulations**

Under Regulation 1.2, there being a dispute in the interpretation of Regulation 14.2(c)(ii), I issue the following interpretation:

“For the purposes of Regulation 14.2(c)(ii), a Complaint concerns a direction or directions only when it queries or challenges the content or validity of those directions or purported directions. It is not the purpose of this clause to prevent the Returning Officer from deciding Complaints alleging a breach of a direction validly made under the Regulations.”

I make this interpretation on the following basis:

1. Regulation 14.2(c)(ii) reads “[The Returning Officer] must refer a Complaint concerning directions made under Regulation 6.2 and 6.3 to the External Appeals Officer”. Regulations 6.2 and 6.3 outline the power of Elections Committee and the Returning Officer alone, respectively, to issue directions in relation to an Election.
2. There is a vagueness in the use of the word ‘concerning’ here; a Complaint might concern a direction if it mentions it, or only if it alleges a breach of it, or only if it challenges the validity of it.
3. It is the duty of the Returning Officer to interpret the Regulations so as to be consistent with the Bye-Laws, Articles, and (by extension) relevant law. The Bye-Laws and the Education Act 1994 require Complaints to be dealt with ‘promptly and fairly’.
4. These requirements are fulfilled by the Regulations in allowing the Returning Officer, an official likely to be actively aware of the immediate electoral context, to swiftly investigate allegations and decide Complaints. They are required to be fair, and their decisions may easily and fairly quickly be appealed to the External Appeals Officer (EAO), who can then provide a fair and impartial assessment of the Returning Officer’s decision within a reasonable time-frame.
5. This model conceives of the EAO’s role as one of ‘review’; it would neither be fair or prompt to require an external person, likely to be less familiar with the Oxford University context and relevant rules, who has not made as significant a time commitment to their role, to investigate and decide Complaints at the first instance.
6. A significant proportion (or indeed a majority) of Complaints allege (implicitly or explicitly) a breach of a direction. This is exacerbated by the common re-statement of Regulations by the directions to aid understanding by Student Members.
7. Therefore, interpreting Regulation 14.2(c)(ii) as requiring all Complaints alleging a breach of a direction to be immediately referred to the EAO is neither sensible nor consistent with the Bye-Laws, in that it would put at risk the fair and prompt resolution of many or most Complaints.
8. I have considered the potential for a Complaint’s resolution to be rendered unfair by the fact that a direction may be made by the Returning Officer (as part of the Elections Committee or solely). Considering the Returning Officer’s duty to be fair, the restrictions on the Returning Officer’s power to make directions, the limited scope of this interpretation, and the separate provision of Regulation 14.2(c)(i) to require referral when the Returning Officer has a conflict of interest, I consider this risk not to be weighty in interpreting this clause.
9. When a Complaint queries or challenges the content or validity of a direction or purported direction, however, the considerations of point (5) do not apply; it is likely that the only investigation required will directly involve SU officials and, being a technical question, the electoral context is likely irrelevant. Furthermore, the risk mentioned in (8) will here be weighty since the Returning Officer is likely to have been personally involved in arranging the making of the direction and ruling on its validity.
10. It is therefore reasonable to constrain the interpretation of Regulation 14.2(c)(ii) to refer only to Complaints querying or challenging the content or validity of directions or purported directions made under the relevant Regulations. This is a reasonable reading of the vague word ‘concerning’ used in the clause, and is the only interpretation consistent with the Bye-Laws for the reasons given above.
11. I therefore issue the above interpretation.

Joe Bell

Returning Officer

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