



The
University
Of
Sheffield.

Strategy,
Planning &
Governance.

The Council, 24 April 2017

Removal of provision for deputy roles on Council

1. Background

1.1 One of the key recommendations arising from the recent Effectiveness Review concerns the current provision, in some categories of Council membership, for the appointment of deputies to attend meetings in the absence of the appointed member. It also concerns the related provision for the Student Officer who attends meetings with the President of the Students' Union and may act as a deputy in the President's absence. The practice of deputising is problematic in terms both of company law (with which relevant comparison may be drawn) and compliance with charity law, and for these reasons the Review recommends that:

- (a) the practice of appointing deputies should be phased out; and
- (b) while the arrangement whereby a second Student Officer attends Council meetings with the President of the Students' Union should continue, this individual should be clearly designated as 'in attendance' only and should not be empowered to act as a member of Council in the President's absence.

The relevant section of Pinsent Masons' Review of Council Effectiveness is attached (APPENDIX A).

1.2 These and other recommendations arising from the Review have been considered in detail by the Effectiveness Review Oversight Group chaired by Alison Hope and the Officers' Informal Group (formerly 3Cs). At its meeting on 6 February, Council approved an action plan to implement the Review recommendations, and this indicated that action would be taken to implement those relating to Council deputies. This requires amendment of the Regulations of Council, details of which are set out below. Action has already been taken to clarify the role of the second Student Officer, who is recorded in Council minutes as being 'in attendance'.

3. Regulation amendments for which approval is requested

3.1 The categories of Council membership affected by these amendments are:

- Class (2): two or three members appointed annually by the President & Vice-Chancellor from the Provost & Deputy Vice-Chancellor and the Vice-Presidents, one of whom shall be a Vice-President & Head of Faculty. Provision currently exists for the appointment of a deputy for the Vice-President & Head of Faculty.
- Class (5): one member of the Professional Staff in Grades 1-7. Provision currently exists for the appointment of a deputy for this member.
- Class (6): the President of the Students' Union. Provision currently exists for the appointment by the President of another Student Officer, who may attend meetings and act as a deputy in the President's absence. In recent years the deputy role has been assigned to the Students' Union Development Officer. However, the choice of Student Officer rests with the President.

3.2 Council is invited to approve the following amendments to the Regulations relating to the composition of Council and the attendance at meetings of non-members:

5. Substitutes and/or persons accompanying Members of Council will not be permitted to attend meetings of Council other than:
- ~~5.1 if unable to attend a meeting of the Council the Vice President & Head of Faculty appointed in Class (2) may be represented by a deputy for that meeting, that deputy being appointed to serve as such from among the Vice Presidents & Heads of Faculty by the Council on the recommendation of the President & Vice Chancellor, the appointment being for one University Year with provision for re-appointment, subject to a maximum of five consecutive Years;~~
- ~~5.2 if unable to attend a meeting of the Council the Member of Class (5) may be represented by a deputy for that meeting, that deputy being elected to serve as such by and from the Professional Staff in Grades 1 to 7 for a period equivalent to that for which the Member of Class (5) is elected;~~
- ~~5.35.1 the Member of Class (6) may be accompanied at meetings of the Council by another Officer of the Students' Union appointed by the President of the Union, who may also serve as a deputy in the absence of the Member of Class (6). This Officer shall have the right to vote only when serving as a deputy;~~
- ~~5.45.2 Members of Class (6) are Members of Council in respect of all business of the Council except matters concerning the admission, progress and academic assessment of individual Students and the powers of the Senate as listed under Regulation IX paragraphs (1.1.1) and (1.1.2); and~~
- ~~5.55.3 persons who are not Members of the Council may be permitted to attend meetings of the Council subject to the prior agreement of the Chair of the Council.~~

3.3 If approved, the above amendments will take effect from 2017-18.

Review of Council Effectiveness (Pinsent Masons, September 2016)

5.1 Deputising

- 5.1.1 For certain Council membership categories (Staff members and the Faculty PVC members) there is a practice of also appointing a deputy to attend meetings (and vote) in the absence of the appointed member. There is also a practice of allowing the 'deputy' of the President of the Students' Union to attend meetings with the President. We consider that this has a number of legal and practical implications:-
- there is no provision in the Charter or Statutes permitting the appointment of deputies or the delegation by the Council member of their role of charity trustee to another (which would not in any event be permissible under charity law);
 - the deputy is not classed as a charity law trustee in their own right and therefore has no fiduciary duty to the University in that capacity; and
 - in the event that a Council member is unable to attend a meeting, the deputy would not count towards the quorum or be permitted to vote.
- 5.1.2 It should be noted that there was some confusion by the Development Officer of the Students' Union (2015/16) (who unlike the other deputies attends all meetings with the President) that they were not a voting member of the Council. Whilst we think it is beneficial that the President attends with another sabbatical officer of the Students' Union we **recommend** that it is made clear from the outset that they are 'in attendance' only and are not able to act in the absence of the President in their capacity as Council member.
- 5.1.3 To further analyse this system of deputies, analogies may also to be drawn with the appointment of alternate directors under company law.
- 5.1.4 Under company law there is no express provision in the Companies Act for the appointment of alternate directors and specific provision must be made for this in the company's governing documentation if such an appointment is to be made.
- 5.1.5 In circumstances where such appointment is permitted, an alternate director is subject to all the statutory obligations and responsibilities of other directors. Accordingly, he or she must be registered at Companies House and his or her details must be entered in the register of directors. An alternate director will also be subject to the rules relating to disclosure of interests. Alternate directors are responsible for their own actions and do not act on behalf of their appointors.
- 5.1.6 An alternate director will generally have the same powers as the appointor, e.g. the ability to attend, speak and vote at board meetings in the absence of the director appointing them. An alternate director will need to comply with his or her general duties under company's constitution, so, if for example the company's articles provide that the directors need to attend all board meetings, the alternate director should comply with such requirements.
- 5.1.7 The University's Charter and Statutes do not expressly provide for the appointment of deputies, and unlike directors under company law, they seem to act on behalf of their appointors, are not referred to on any official University documentation as charity trustees (eg. in the financial accounts, website etc) and as such are not accountable in their own right. With this in mind, we **recommend** that this system of deputising be phased out.

Key recommendation 2: To phase out the practice of appointing deputy Council members