REPORT OF DISCUSSION

Tuesday, 14 July 2020

Following the suspension of Discussions in the Senate-House in response to government advice during the coronavirus pandemic, the Council agreed to permit Discussion remarks to instead be made by written submission (Report, 2019–20, 6584, p. 449).

Written submissions were received as follows:

**Topic of Concern to the University: Decisions taken in response to the coronavirus (COVID-19) outbreak**


Professor G. R. EVANS (Emeritus Professor of Medieval Theology and Intellectual History):

Vice-Chancellor, this Topic of Concern Discussion is intended to 'enable members of the collegiate University to share their views, so that the Council can draw lessons from the comments made, to shape the future management of an emergency on the scale of the current pandemic'. Is that really enough? This may be the story of well-meaning people doing their best in difficult times, but given what has proved to be the wholesale abandonment of the requirements of the University's governance, there must surely be accountability? They admit they have been pretty casual with the University's domestic legislation. The most important 'lesson' is that that must never happen again.

The first question is: What did the 'emergency' which triggered the adoption of the Emergency Management Plan require to be done? The second is: What required it to be done while the Regent House was left in ignorance for months? It is very hard to see how the abandonment of the required weekly appearance of the Reporter as the University's organ of official record can have been justified all this time when it has clearly been possible to publish it four times, with a fifth scheduled at the end of this month. Had the Reporter made its regular appearance, normal requirements about its contents would have curbed that recklessness.

_The lawfulness of the delegation of authority_

We are told that the Council 'recognised early on that swift action would be required to enable the University to weather the emerging crisis'. It agreed to grant delegated authority to the Chair of the Council and the Chairs of its committees to take emergency action and decisions. The General Board did the same, for itself and its own committees. This handed a great deal of personal power to the Vice-Chancellor as Chair of both Council and General Board. He has published a series of Updates since March under the heading of University Statements.1

But the Vice-Chancellor is not the University. After a fierce Discussion on 8 October 2002, it was established by ballot that he is not its Chief Executive either. The powers of the University are ultimately vested in the Regent House, which is certainly 'the University' when it comes to approving matters of governance-change.2

The Regent House may delegate its powers but it does so by Grace. It was never given the opportunity. It seems that its powers were simply seized and handed over indefinitely by the Council and the General Board. The actions and decisions taken – only now being only partially revealed in the still intermittent Reporter – have surely gone far beyond what the Council had authority to delegate?

As yet there is not even a published Minute of the important Council 'agreement' to delegate or of anything which its members have approved since. The most recent Minutes of the Council online when this 'delegation' took place were those of July 2019, and those of the General Board were for 17 November 2019. (The General Board meeting of 29 April 2020 is merely noted as having been cancelled. No business for that then?)

Moreover the Council and General Board appear to have been left ill-informed about the decision-making they were 'delegating'. We are told only that 'the Council and the Board were given a flavour of the kinds of decisions that would be taken at their meetings in March'. They also seem to have been
The integrity of the University's degree-awarding powers is of enormous importance. Its consistent care to ensure proper award of a gradius goes back more than eight centuries. It is essential that this year's graduands may be able to be confident that they actually have a Cambridge degree, but that ultimately depends on whether they were given it in compliance with the University's Statutes and Ordinances.

The Regent House has not prescribed any 'conditions' under which admission to degrees may take place without a Congregation. Yet it was admitted in the 'decisions' list of 17 June that on 25 April and 16 May degrees were 'conferred' when 'no Congregation was held'. That is where the second of the Graces published on 17 June for approval by 26 June came in, in an attempt to validate retrospectively the degrees 'conferred by the University', confirming by Order:

that each degree conferred on 27 March, 25 April and 16 May 2020 as described in the Council's Notice dated 17 June 2020 is to be treated as having been a degree validly conferred by the University on those dates and at all times henceforth.

It remains a question whether those who received them are indeed Cambridge graduates. A third Grace published on 17 June sought approval to changes to the Ordinance on Supplicats effective until 31 December this year, and permitting the conferring of degrees 'in absence on a date and at a time
determined by the Registry' but without a Congregation, and with variation of the requirements about the publication of the lists. Again, it will be important whether that will prove valid.

What can be put right and how?

It is all a bit of a mess, isn't it? And it seems it will continue. A 'Statement on key principles for the delivery of education in the 2020–21 academic year' is included in the Reporter of 17 June, on an apparent assumption that whatever ‘Taskforce’ is currently acting under the Council's and General Board's March delegations continues in authority under the 'emergency' powers and can carry on with similar casualness about the laws of the University. 'We', it says:

will adapt our timetables, teaching methods, course content and locations for delivery of teaching,

and:

By the end of July the University will issue a further statement for current and prospective students; this will confirm if any particular changes are intended to be made to any courses. Any such changes will be notified to current and prospective students through our established processes for making changes to our courses as set out in our Terms of Admission for undergraduate students and applicable contractual terms for postgraduate students.

‘Established processes’? Faculty Boards normally give notice in the Reporter of syllabus changes, but how can they do that without a regular normal Reporter? The ‘Terms of Admission’ mentioned surely constitute a student contract, and that will now mean the Competition and Markets Authority may take a view on any breakdown in observance of those ‘established processes’ for making course changes.

Information for the Regent House about the identities of those taking the ‘decisions’ was so belatedly asked to approve has remained scant. The Update dated 13 March mentioned ‘a dedicated COVID Management Team … co-chaired by Dr Dan Tucker (Chair of the Advisory Group on Communicable Diseases) and Professor Graham Virgo (Senior Pro-Vice-Chancellor for Education)’. This, the Vice-Chancellor said, was drawing on relevant expertise from across the University and Colleges to agree:

collegiate University communications, handle difficult issues, advise on policies and protocols, and act as a liaison between the University’s leadership team and the Colleges.

A Message from the Senior Pro-Vice-Chancellor among the Updates on 16 March mentioned ‘amber’ and ‘red’ phases of the emergency decision-making and a Message from the Pro-Vice-Chancellors for Institutional and International Relations (Eilis Ferran) and for Education (Graham Virgo) also dated 16 March, following that ‘evening’s announcement by the Prime Minister’, noted that:¹

The University's senior leadership team will meet first thing tomorrow morning (Tuesday) and provide further direction on what this means for the University, staff and students.

No ‘Senior Leadership Team’ is known to the Statutes and Ordinances, though the expression has begun to appear without clear definition of its membership. In the Annual Report of the Council for 2019 under a heading ‘Changes in the University’s senior leadership’ were listed new Heads of Schools not just the Pro-Vice-Chancellors and the Registrar.

If a call for accountability is to mean anything and discourage any future attempt to abandon ‘normal governance’, the Regent House will need a list of the decision-makers the newly ‘empowered’ Vice-Chancellor gathered about him from March, who decided what and when, and how it was all recorded. Meanwhile, may the Regent House please be told in the Reporter of 29 July when the present abandonment of ‘normal governance’ is to end?

Footnotes

¹ https://www.cam.ac.uk/coronavirus/news.
² Statute A III 8.
Mr D. J. Goode (Faculty of Divinity and Wolfson College):

Vice-Chancellor, impressive, isn’t it, how this University can manage a term of online teaching and examining at short notice, and award thousands of degrees remotely, yet the senior officers feel the need to suspend normal governance and any sort of oversight by its governing body – the Regent House – stop producing the Reporter regularly, halt all meaningful Discussions, willfully breach Statutes, Ordinances, and Regulations repeatedly, and then pretend none of that matters by awarding themselves a plenary indulgence.

Dr K. Ottewell (Chair of the Board of Scrutiny):

Vice-Chancellor, the Board of Scrutiny welcomes the publication of the decisions taken in response to the coronavirus (COVID-19) outbreak, both on student-related matters and on non-student-related matters.

The Board wrote to the Council’s Business Committee on 23 May to raise its concerns with respect to the suspension of the publication of the Reporter and the concomitant implications for governance. The Board was concerned that whilst there had been numerous communications from the Vice-Chancellor to staff and students, there had been no account in the form of a Notice to inform the Regent House of the pertinent decisions that have been made under delegated authority and no attempt, by the publication of Graces, to obtain any retrospective authority for those decisions. The Board noted that if the Council believed that no such Graces were needed, then Council should specify by what authority the various actions have been taken. The Board further noted its concern that the longer the suspension of the Reporter lasted, the greater was the risk of challenge either to the process or individual decisions taken without the necessary authority.

In order to restore formal communication with the Regent House and to ensure that the integrity of the University’s regulations were not open to challenge, the Board requested an edition of the Reporter within two weeks, remedying the situation noted above and clearly informing the Regent House of the timetable for reverting to the University’s governance procedures.

The Board therefore welcomes the publication of the decisions taken, but it would be remiss of the Board not to note the discrepancy in the fact that non placets or amendments to the Graces would have to have been received by 26 June (for student-related matters), when the decisions to which the Graces pertain are not to be ‘discussed’ as a Topic of Concern until 14 July. This Discussion thus seems nothing more than a placatory gesture towards the Regent House while, in effect, the University’s principal governing body has been divested of its role in the decision-making process.

Whilst the Board fully appreciates the necessity for pragmatism during the current situation, this cannot be at the expense of open and transparent governance and also specifically, accountability to Regent House. In due course, the breaches in the University’s governance procedures with respect to the rights of the Regent House will need to be revisited and provisions put in place to navigate such circumstances in the future. The Board will be addressing these and other governance issues in its forthcoming Report.

Mr G. P. Allen (Wolfson College):

Vice-Chancellor, first, I should welcome the Council’s decision, albeit late in the day, to ‘do the right thing’ by publishing its Notices of 17 and 22 June 2020, the accompanying Graces, and calling this Discussion. Although timing the Discussion after the opportunity to non placet either Grace, each bundling together a raft of decisions, had passed suggests that this is a token effort at engaging the self-governing community in the democratic process.

Secondly, I have no doubt that individuals, working under great pressure and often with incomplete information and shifting government guidance, acted with the best of intentions and in the interests of the University, its staff and students. The intention is not to criticise individuals but suggest some thoughts for a lessons learned exercise.
There has been something of a breakdown of communication between the Council and the Regent House, defined by Statute A III 1 as the governing body of the University. The Council’s short Notice of 18 March 2020 announced the curtailment of Congregations, Discussions, and University Sermons. Yet the Council’s subsequent Notice of 9 April 2020, published on 16 April 2020, stated that decisions had been taken, by the Council on 16 March 2020 and by the General Board on 11 March 2020, to make various delegations to the Vice-Chancellor and the chairs of committees. 2 Why was there a month’s delay in announcing those decisions when they could have been included in the Notice of 18 March 2020? Furthermore, the Council’s Notice of 9 April 2020 stated the hope that the ‘suspension of ordinary committee business and the publication of the Reporter, and the consequential hiatus in the University’s normal governance processes, will be lifted early in the Easter Term’. The Council remained silent on the matter until its Notice of 26 May 2020 3 two weeks before the end of Full Term. Subsequent actions have demonstrated a willingness to make amends for this silence, but only after the end of Full Term.

Turning to the Council’s Notice of 17 June 2020, the Council attempts some justification for its actions. First, that the Statutes and Ordinances do not provide measures for responding to an emergency such as a pandemic. The Statutes and Ordinances cannot be expected to legislate for every eventuality but do provide an enabling framework which can be permissive, given a little ingenuity on the part of the officers. Statute A III 8 provides for the Regent House, by Grace, to delegate authority for a matter or matters to the Council or other authority. Taken with the delegations by the Council and General Board, the use of that provision may have provided a more robust structure for decision-making visible to the Regent House. It is clear that the central bodies were thinking about this in March or earlier: we are told in the Notice of 17 June 2020 that the Council and the Board recognised ‘early on that swift action would be needed to enable the University to weather the emerging crisis’. Such thinking should have extended to how the University might continue to operate within, not setting aside, its constitution, and subject to periodic review.

The Council goes on to note that no member has made a representation under Statute A IX 1 to seek a review of a decision; that is not surprising since it was only by the publication of the Council’s Notices that members became aware of those decisions! The Council’s Notice says that ‘it is too late to reverse most of those decisions’. This misses the point of raising this matter, which is not to throw a spanner in the works but to ensure that such decisions are properly authorised and that the University is not open to challenge as a result of decisions which the Council concedes ‘were or may be in breach of the rules set down in Ordinances and General Board Regulations’.

Finally, I suggest that the decision to suspend publication of the Reporter was both unnecessary and a lost opportunity for the central bodies to maintain a formal channel of communication with members of the University. No amount of informal updates from the Vice-Chancellor, conveying decisions and reassurance, can substitute for a publication of record ‘Published by Authority’ with a readership of over 10,000. It is clear that this crisis is far from over and that the University is only beginning to see its far-reaching financial and other implications. It is vital that the University’s response to this situation is developed openly in consultation with the Regent House through the University’s established procedures.

Footnotes


Report of the Council, dated 1 July 2020, on the construction of a new freezer store at the Cancer Research UK Cambridge Institute

(p. 000; published on the Advance Notices section of the Reporter website on 1 July 2020).

Professor G. R. EVANS (Emeritus Professor of Medieval Theology and Intellectual History):
Vice-Chancellor, the Reporter of 27 May mentioned the possibility that use might be made of Advance Notices while regular publication of the Reporter was suspended. Here is an example. This Report of the Council, dated 1 July 2020, on the construction of a new freezer store at the Cancer Research UK Cambridge Institute was published by Advance Notice on the Reporter's website on 1 July with a blue link to the text. That fulfilled the requirement for the normal period for consideration between publication of a Report in the Reporter and the Discussion of that Report. But it seems undesirable that it should be allowed to set a precedent. Advance Notices do not remain on the record and are taken down when their content appears in the Reporter. But in present circumstances that could not be in time for the Discussion scheduled in the same Notice.

In any case the relevant Ordinance clearly needs review, for this does not seem to constitute publication as defined by Regulation 2 of the Ordinance governing the Reporter, which states that:

If publication in the Reporter of a Report, Grace, Notice, or other matter as required by any Statute or Ordinance is not possible for a period or by a specified date, it shall be sufficient publication for the purpose of the Statute or Ordinance if the Registrary causes it to be posted outside the Senate-House and a copy of it to be sent to the Head of each College and Approved Society, the Chair of each Faculty, the Head of each Department, and the Director or corresponding officer responsible for every other institution of the University, with a request for its publication within the institution.

One other point seems worth making, especially in the light of the admissions that those making ‘decisions’ in the name of the University seem recently to have been taking a somewhat ‘after-the-event’ approach to reading its Statutes.

Statute A II 3 says that ‘The University shall have all the powers of a natural person to acquire, manage, charge, deal with, and dispose of property, both real and personal, and to enter into and carry out any transaction relating to its property’.

Statute A III 8 adds:

Whenever it is provided that an act or thing shall or may be done or determined by the University, it shall be done or determined by Grace of the Regent House unless it is expressly stated that it is to be done or determined otherwise, provided that the Regent House may delegate by Grace to the Council or to another University body or authority to act on its behalf in such matters as it may from time to time determine.

Time was when the Regent House began to hand over its continuing control of projects like this to the Treasurer. I remember making remarks reflecting some concerns about that at the time. Now it is the Pro-Vice-Chancellor (Strategy and Planning) who will be ‘authorised to accept a tender’ by the Grace sure to be published on 29 July. What is proposed is perfectly proper under the Statutes, but I wonder how many members of the Regent House realise that in approving these recommendations by Grace they will be delegating their powers to manage their own property and will not necessarily get any more Reports about next moves?

Footnotes

1 https://www.admin.cam.ac.uk/univ/so/2019/chapter01-section1.html.
2 https://www.admin.cam.ac.uk/univ/so/2019/statute_a-section2.html#heading2-2.