

**The Petition of Dr. Peter Fletcher to the Lord President of the Council
as Visitor to the University of Keele**

1. I have before me the Petition of Dr. Peter Fletcher (“the “Petitioner”) of 16th April 2008 with ten documents annexed. Also before me is the University’s response to the Petition set out in a letter of 29th May 2008 from Professor Janet Finch, the Vice Chancellor. The Petitioner replied to the points made by the University on 26th June 2008. I have read the Petition and attached documents, the University’s response and the Petitioner’s reply.

2. The question raised by the Petition arises from conflicting interpretations of the respective roles in the management of the University’s affairs of the Council (“the Council”) and the Senate (“the Senate”) and in particular from a disagreement about the distinct roles accorded to them by the University’s Charter and Statutes, which are documents 7 and 8 annexed to the Petition.

3. Earlier this year, the Petitioner, who is a member of the University’s Faculty of Natural Sciences and of the School of Computing and Mathematics, became concerned about the procedure the University was adopting to introduce changes to the organisation of the School of Economic and Management Studies (“the School”) which was part of the Faculty of Humanities and Social Sciences. The School included the Centre for Health Planning and Management (“the Centre”).

In June 2006 the Vice Chancellor had asked external advisers to review the programmes offered by the School but not those of the Centre. She was prompted to do so by concerns about the academic direction of the School. In its report of February 2007 the review identified a need to make significant changes. The Head of the Business Management School and academic members of the School were invited to respond to the

recommendations of the report but, in the opinion of the Vice Chancellor, their comments were “disappointing and did not grasp the opportunity to make changes”. The report and the views of staff were considered by the Vice Chancellor’s Committee, the main Executive Management Committee, in July 2007. This Committee decided that the University should explore the recommendations of the report with a view “to pursuing a significant repositioning of the School”. Eventually proposals were put before the Council of the University which involved the restructuring of both the School and the Centre. These proposals would, if carried out, involve a reduction in the number of staff of the School. According to the Vice Chancellor, the Council was advised of “the strategic academic direction that would need to be followed” though it is not clear by whom it was so advised or in what terms. However, it is said to have been made clear that the Senate (supported by more detailed scrutiny in the University Learning and Teaching Committee) would play a key role in decisions about all programme withdrawals and approvals of new programmes. The Council apparently supported the strategic direction of the proposed changes and agreed that the resources should be provided to achieve the objectives the Committee had proposed.

A period of consultation with the staff ended on 31st January 2008. Submissions received from this consultation were considered by the Dean of the Faculty and an academic advisory group with a view to “making a final recommendation on the way ahead” to the Vice Chancellor’s Committee. On 5th March 2008 some members of the Faculty, who were senators, initiated a debate on the proposals. In the course of this debate it was stressed that the Council had made the major strategic decision because of the financial and staffing implications and that the Senate would be involved formally at a later stage if and when specific proposals were introduced to discontinue some programmes and approve others. On 3rd April 2008 the Council was invited to endorse the decision of the Vice Chancellor’s Committee and to approve selection criteria for compulsory redundancy, though this was to be a last resort after voluntary severance or redeployment. Following the meeting, the Council announced its decisions.

4. The Petitioner contends that the procedure followed by the University and the Council did not accord with the Charter and the Statutes because the Senate had not been asked to consider the proposals, which included the closure of the Centre and a radical reduction in the activities of the School, or to make recommendations. When the Council did refer the reorganisation to the Senate, it appeared to be *fait accompli*.

The Petitioner points to the procedure adopted in past cases of proposals to reduce or replace academic activities in the faculties or schools of the University. Such proposals had either originated with the Senate or had been approved by the Senate before being put to the Council.

To answer disquiet expressed by some members of the University, the Council issued a memorandum on 19th December 2007 to explain the procedure it had adopted. It emphasised that the Council had the ultimate responsibility for all University business but the Senate had the oversight of the academic programme. The Council reserved to itself the responsibility for setting University strategy. It said that the comparisons which were made with previous occasions when the University had withdrawn a specific programme and where the proposal had begun in the Senate were not justified because the cases were different; one involved only the closing of a single programme and the other the restructuring of a School. It emphasised that although the proposal would entail closing some courses and opening others, it was a proposal for consultation and after consultation the proposal would go to the Senate for consideration in the normal way. At the date of the Petition the Council had not put the proposals before the Senate nor had its approval been sought by the management of the University.

5. I have now to consider whether the procedure adopted by the Vice Chancellor and the Council accords with the provisions of the Charter and Statutes.

The Charter.

The Charter provides the framework for the constitution of the University.

By Clause 12, the Council, subject to the Charter, the Statutes and the laws of the realm, is to be the Supreme Governing Body with absolute power within the University. It has the management and administration of the whole revenue and property of the University, the conduct of all the affairs of the University and such other powers and duties as may be conferred by Statute or Ordinance.

Clause 13 creates the Senate which, subject to the Statutes and the control and approval of the Council, is to regulate and superintend the education welfare and discipline of the students of the University and the promotion of learning and research. The general powers of the University set out in Clause 17 include the power:-

“(G) To provide instruction in such branches of learning as the University may think fit and to make provision for research and for the advancement and dissemination of knowledge in such a manner as the University may determine.”

The Statutes of the University which are set out in the Schedule are to prescribe or regulate as the case may be ...

“(B) The constitution, powers and duties of the Council ...”

and

“(C) The constitution, powers and duties of the Senate ...”

By Clause 21 the Charter provides:-

“It shall be the duty of the Council from time to time to bring before the Court and the Senate any matters which in its opinion should be dealt with by these bodies respectively. It shall be the duty of the Senate from time to time to bring before the Council and the Board of Studies and Faculties any matters which in its opinion affect the teaching, research and general well being of the University.”

The Statutes

6. Section 21 of the Statutes sets out the powers of the Council. The relevant powers are:-

(10) To govern, manage and regulate the finances, accounts, investments, property, business and all affairs whatsoever of the University ...

(18) To review the instruction and teaching of the University both internal and extra-mural.

(19) To promote and to make provision for research within the University.

(20) To review, amend, refer back, control or disallow any act of the Senate required under these Statutes to be reported to the Council and to give directions thereon to the Senate provided that any act of the Senate which is amended by the Council shall be referred again to the Senate for consideration and report before being carried into effect.”

Section 23 defines the powers of the Senate. The relevant powers are:-

“1. To direct and regulate all instruction and teaching of the University both internal and extra-mural and the examinations held by the University, subject to the powers of the Council as previously defined.

2. To promote learning and research within the University and to require reports from time to time on such learning and research. ...

11. To make recommendations to the Council on any academic matters. ...

13. To formulate, modify or revise schemes for the organisation of Boards or Faculties of the University and to report to the Council on the expediency of the establishment at any time of Boards, Faculties, Schools, Institutes, Delegacies or Departments.”

7. The wording of the principal functions of the two bodies is significant.

The Council is, by Sec 21 (10) of the Statute, empowered to govern, manage and regulate the finances, accounts, investments property and business etc of the University; but in the specific sphere of all instruction and teaching of the University, it is the Senate which is empowered to direct and regulate the instruction and teaching, subject to the powers of the Council of review. The usual meaning of “review” is to look at, re-examine or reconsider whereas “direct and regulate” means to give direction to, to control, or to govern. By its choice of contrasting words the Statute indicates the prominent role it empowers the Senate to play in all instruction and teaching. An important purpose of the Charter and the Statute is to prescribe the division of responsibility for the executive management of the affairs of the University by the Council and the executive management of the academic programmes and courses of study, research, etc. by the Senate.

8. The question I have to consider is whether the procedure adopted by the Vice Chancellor and the Council in the proposed restructuring of the School and the closure of the Centre complies with the provisions of the Charter and Statute.

It was clearly within the power of the Vice Chancellor and the Council to carry out a review of the programme of the School and for this purpose to commission a report from an independent source. But the direction and carrying into effect of new proposals for instruction and teaching in the University clearly was the responsibility of the Senate. Whilst the actions of the Senate in exercising its powers are subject to the control and approval of the Council, it nevertheless has the primary responsibility for the implementation of proposals for the reorganisation of instruction and teaching. A

reference of such proposals to the Head of the Business School and its members is not the same as, or a valid substitute for, bringing them before the Senate.

The Statute draws no distinction between “restructuring a School” and “closing one or more programmes or courses”. Nor does it limit the Senate’s powers to direct or regulate instruction or courses to making small or minor variations. Rather, the more far-reaching the changes, the more important it would seem to be to involve at an early stage the body principally charged with implementing and controlling them. Nor do the provisions of Sec 35 of the Statute affect the status of the Senate. The fact that the Senate has no role in determining questions of redundancy among academic staff or in deciding which members of academic staff should be declared redundant does not mean that there is no need to consult the Senate about changes to the academic programme or courses which could possibly involve redundancy. Whilst the Council may suspect that if a re-organisation proposed in a review may involve redundancy of academic staff, the Senate would be reluctant to approve such a course, that is no ground for suggesting that proposals to revise and reduce the courses offered by a Faculty or School should not at least be considered by the body whose responsibility it is to direct and regulate the instruction and teaching of the University.

By placing a proposed review before the Senate, the Council has the opportunity to ensure that any “restructuring” has the support of the Senate who, under the Charter and Statute, has the responsibility of directing and regulating the instruction and teaching involved.

Decision.

9. The Council was, in my view, entitled to consider the review the Vice Chancellor had commissioned, but its powers were subject to the provisions of the Charter and Statute. They did not empower it to endorse recommendations as final or to authorize proposals for withdrawing or creating courses of instruction or teaching without first bringing them before the Senate, as Clause 21 of the Charter requires. To bring them

before the Senate, as it seems to have proposed to do, when it was too late for the Senate to influence the strategic academic direction of significant changes is not within the letter or intent of the Charter and Statutes. Of course, the financing of proposals rests with the Council who can review the Senate's suggestions. But it is difficult to see how the Council could decide how best to employ the available resources in reorganising a school or faculty before it had considered the opinion of the body principally charged with directing and regulating its instruction and teaching.

11. I understand that since the issues were raised in this Petition, the parties concerned have reached agreement on the proposals for the reorganisation of the School so that no further direction is required from me.

A handwritten signature in cursive script, reading "Roy Beldam". The signature is written in dark ink and is positioned above the printed name.

The Rt. Hon. Sir Roy Beldam