STATEMENT OF APPEAL
Joe Cotton – 14th March 2018

Dear Elections Committee (EC),

This document responds to the ruling delivered by the EC on 12th March 2018 at 2pm (elsewhere referred to as the "EC Ruling"), which states:

> The CUSU-GU Elections Committee has chosen to disqualify Joe Cotton from the GU Presidential Election. This is due to a breach of the CUSU Standing Orders, Article G.10.viii, which reads "no candidate or member of their campaign team, or any other person attempting to influence a voter may approach within three metre of the polling station except when they themselves are voting". In this instance, the breach relates to Joe's use of an iPad when encouraging voters to vote in the GU elections. According to the evidence available to the EC, insufficient steps were taken by Joe to provide space to those casting ballots on the iPad he had provided.
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> While the EC notes that this rule may not have been sufficiently communicated to candidates in the candidates briefing, we wish to highlight that the CUSU election rules state that the rules are "to be read in conjunction with the CUSU Constitution and Standing Orders, which can be accessed on the CUSU website". Moreover, for clarity, while the relevant breach relates to the CUSU Standing Orders, in this instance the election was "delegated to CUSU" and "governed by CUSU electoral rules and procedures" as per Schedule E.6 of the GU Schedules.
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> The EC wishes to highlight that it does not believe Joe intentionally attempted to coerce or intimidate voters due to this method. We have made this decision based on the duty of the EC to apply the CUSU Standing Orders, which stand as they are based on the potential of this practice to influence voters, and the principle that voters must feel free to cast their ballots free from such influence.
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> Moreover, we recognise that we do not know to what extent this breach impacted the election results, and recognise efforts by Joe to make voters aware of other candidates in the election. However, this breach, which came to EC's attention shortly before the close of voting, required a disciplinary response from EC. As a result, EC came to the decision that Joe's use of this method of campaigning throughout the election required that he be disqualified from the election.
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> Joe will be given the opportunity to appeal this ruling to Elections Committee within the next 48 hours, and the opportunity to make a further appeal to the Junior Proctor if the decision is upheld.

I understand that as an (alleged) infringement of the rules, this matter "required a disciplinary response from EC", however I am appealing the severity of the response that has been administered, which I believe is both disproportionate and undemocratic; not least because it overturns the sovereign decision of the electorate on the basis of an ambiguous and uncommunicated technicality that has had no demonstrable impact on the outcome of the election. My intent to make this appeal was clearly set out in a statement provided to the EC in advance of the publication of the election results (Appendix A), in which I wrote:

> I believe that my disqualification should only be upheld if it can reasonably be believed that the scale of allegedly unconstitutional voting made a difference to the outcome of the election.

Please note that in this appeal I will not point fault at the other candidates for their own rules violations, although I do believe that [redacted] more seriously against the spirit of free and fair elections than I was in my campaign, in which I never knowingly broke the rules. Although I have been pulled up on (one interpretation of) the letter of the law, I hope the members of the EC can agree that throughout the election I made a great effort to follow the rules as I understood them, and to comply openly and honestly with the EC

when I was found to be in breach. It is in the same spirit that I have penned this appeal, with the aim of finding the fairest and most proportionate response to this situation so that the democratic legitimacy of the Graduate Union (GU) can be strengthened now and into the future.

The arguments I will make in this appeal can be summarised as follows. Firstly, I will argue that the disciplinary response decided upon by the EC is *disproportionate* (Point 1). Secondly, I will investigate the interpretation of the rules that places my campaign in violation, asking if it is reasonable to expect the same interpretation could be arrived at by a person without guidance from the EC, or prior experience of campaigning (Point 2). Thirdly, I will contend that the specific interpretation of the rule that finds my campaign in violation of the Standing Orders was *inadequately communicated* (Point 3). Fourthly, I will contend that a 'climate of ambiguity' around the rules of the election placed an *undue burden* on both the candidates and the EC (Point 4).[1] Fifthly I set out a more proportional response in the form of vote-docking (Point 5). I conclude with recommendations for your consideration.

POINT 1: DISQUALIFICATION IS A "DISPROPORTIONATE" DISCIPLINARY RESPONSE

1.1 Proportionality

This section builds on one of the most basic legal principles, that of *proportionality*.[2] In the first instance, I believe that my disqualification is *disproportionate* due to the fact that it is the most severe punishment that could have been administered, and this goes against the proportional principle that **if a rule is unclear, the punishment for breaking that rule should be less harsh** than if a clear rule is broken. Since I have received the harshest punishment in the form of disqualification, I argue that this principle has been broken by the EC's ruling.

I agree that disqualification would be warranted if the rule was explicit, as is the case in several other students' unions where the use of iPads is explicitly forbidden:

- Aston Students' Union (2016):
  "No use of iPads, Laptops or other devices to encourage people to vote for you. Steering Committee will encourage voting in an impartial manner" (Union Officer Election, Rule 5)
- Bethel Student Government (2017):
  "Candidates are not allowed to be in proximity of a student who is voting online (this includes carrying around laptops or phones or iPads for students to vote)" (Presidential Election Guidelines)
- Loughborough Students' Union (2015-16):
  "Candidates are banned from creating private ballot boxes including the use of iPads, laptops, mobile phones etc" (NUS Delegate Candidates pack, Article 4.14)
- University of Wolverhampton Students' Union (2016):

[1] To be sure, I do not wish to unduly blame the EC on this point: Cambridge University as an institution generally lacks clear centralised information and tends to deal with issues reactively on an ad-hoc basis.
[2] Daci, Jordan (2010) "Legal Principles, Legal Values and Legal Norms: are they the same or different?." *Academicus* 109-115.

> "Candidates may not use electronic devices to encourage or help students to vote i.e. laptops, iPads, smart phones. For example, candidates must not approach voters with an electronic device and in order to get them to vote online. Please note: our membership management system to able to identify where multiple votes have been cast from one single device." (Code of Conduct for Candidates, Article 12)

- and Worchester Students' Union (2016):

> "[In person, you can't:] Stand over students when they are voting or help other students in any way to cast a vote. SU staff and volunteers will be on hand to explain the process and technology to voters and will report any activities of this nature by candidates immediately to the Elections Committee or the Deputy Returning Officer" (Code of conduct for candidates, p 2-3).

I would also agree with disqualification if iPads were not banned, but the rules governing their usage were made explicitly clear to candidates. Royal Holloway Students' Union provides a good example:

> Technology now means that students can use their phones, computers and iPads/tablets to vote in the elections. If you use this means to get people to vote then it is very important that you do not pressure students into voting there and then, and if they do, let them do this independently without standing over them and telling them who to vote for (Running an Effective Campaign, n.d., p7).

Explicit guidance is also provided for voters in the Sunderland Union (SU):

> Please note: you are entitled to cast your vote freely, privately and securely. This applies even if you are asked by a candidate or their campaign team to vote on their laptop/ipad etc. If you feel you have not been given the opportunity to cast your vote privately, please email su.elections@sunderland.ac.uk with the details (Issues voting in SU Elections, 2015).[3]

However, unlike in these cases, the rule in Article G.10.viii of the CUSU Standing Orders is highly ambiguous, requiring a specific interpretation that I will argue cannot be reasonably expected of an average reader (Point 2).

It also appears to be a *disproportionate* response given that **violations of explicit rules as set out in the Standing Orders were committed by all candidates** (specifically in relation to Article G.9, below), **and yet only in one instance has disqualification been administered**:

1.2 Rationale for Severity

Given the fact that disqualification has been administered in this instance and not others, we must ask: what was the EC's rational for jumping to the harshest punishment? There are two potential indicators in the EC's ruling.

The first reason appears to be that the (alleged) infraction of Article G.10.viii occurred "throughout the election", and indeed the evidence I provided to the EC indicates that and iPad was used to facilitate voting on every day of the election (Appendix A).

However, I do not believe this is a convincing case for increasing the severity of the disciplinary response, given that all candidates also broke Article G.9 (below) on multiple occasions "throughout the election" (EC Ruling):

> i. No pre-existing pages, groups or other social media accounts other than personal accounts may be used for campaigning.

[3] https://www.sunderlandsu.co.uk/articles/issues-voting-in-su-elections

ii. No candidates may use pre-existing mailing lists to campaign.
iii. All campaigning must abide by relevant proctoral notices and the rules of the University.

It seems to me that if allowances were made for some candidates to breach the rules as set out in the Standing Orders without disqualification, then all candidates should be awarded that same treatment. Furthermore, it seems inconsistent to pull up one candidate for a far more ambiguous breach of the rules (Article G.10.viii), but permit far less ambiguous breaches of the rules as set out in Article G.9 *by all candidates*.

I understand that disqualification operates on a strike-based system, with a candidate facing disqualification on the third strike (Article G.11.v), and so in understanding my disqualification and not my opponents' it is relevant to reflect on where my strikes were received and what the rationale for each strike was. Here I suspect that multiple strikes were awarded to my campaign due to the idea that my proximity to voters using an iPad to vote was a '*repeat offense*', deserving harsher punishment. However, **if a rule is unclear, and broken unwittingly, should not every instance of rule breaking be treated as the first offense, given that each instance is an equally honest mistake?**

A second rationale for the severity of the disciplinary response provided by the EC is that "we do not know to what extent this breach impacted the election results" (EC Ruling). This rests on the assumption that the allegedly unconstitutional practice may have impacted the outcome of the election, and therefore disqualification is necessary to prevent this. However, I believe this line of argument should be rejected on the basis of the statement I provided to the EC in advance of the election results being made public (Appendix A). This statement indicates that:

> **According to our best estimates, the number of votes cast within three metres of a candidate or campaigner on a device provided by that candidate or campaigner was around 88.** In saying this, I am not accepting the interpretation of a "polling station" in Article G.10.viii that my disqualification is based on, although I would like to identify my compliance with that interpretation once it was made known to me (on Friday 9th March at 2:30pm), which shows my commitment to every rule that I am aware of, and that this alleged rule breach was unintentional (further detailed over the page).
>
> I am providing you with this information in good faith so that:
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> a) You have a full picture of the extent of voting that was allegedly unconstitutional
> b) You can (re)consider whether disqualification is a proportionate response
> c) I can refer back to this estimate, dated before the results were announced, if I decide to appeal your decision.

I deeply regret that the EC was not able to take this statement into consideration before they made their ruling public, but I could not have provided it to them any sooner as it took significant time to contact my campaigners and bystanders, which I needed to do to ensure my estimates were as accurate as possible.

The estimates were generated in a multi stage process, in which I first tried to remember how many people chose to use the iPad to vote at a certain time and location, and wrote down an estimate. I then contacted members of my campaign team and other bystanders who were around at that time and location, and asked them how many people they saw with the iPad, without telling them my estimate. I then triangulated between these accounts to come up with a best estimate, which totals 88 votes. Of course, **I do not know**

how many of these 88 votes were cast for me, and in fact some voters actively chose to inform me that they had voted for other candidates. I also received reports from my campaigners that they had had similar experiences, which I can evidence if necessary.

Obviously, in the ideal scenario we would not have to rely on an estimate, but would calculate the figure exactly by tracking instances of multiple voting from the same device. However, this option has been indicated to me as not possible due to the nature of the Cambridge voting system. That Cambridge does not have such a system, which exists in other Universities such as Wolverhampton,[4] is not the fault of the candidate, and the candidate should not have to suffer a disproportionate response as a result. Rather, my estimate should be taken in the same good faith in which it was provided, which has not been a one-off occurrence but shown throughout the election in my encounters with the EC. **Therefore, I believe the 'unknown extent of impact' rationale is insufficient to justify disqualification.**

1.3 Comparison to Precedents

To further illustrate the *disproportionate* nature of this disciplinary response, I now invoke a second legal principle of *comparativism* to consider other cases of disqualification in student elections for the use of iPads by candidates and campaigners.

The first precedent to consider occurred in 2013, in which five candidates at the University of Manchester were disqualified for forcing students to vote on iPads.[5] A significant difference between this case and the current one is that students were tricked into logging on to their accounts, and then candidates took back the iPad to vote for themselves. In response to this controversy, Manchester University's Student Union stated that "all candidates must respect that every student has the right to vote confidentially and freely" and that "*any complaints raised by students about being unfairly pressured to vote for any particular candidate will be taken extremely seriously*".[6] I would like to reiterate that no such complaint was raised to the Elections Committee; in this case the complaint came from another candidate and concerned my proximity to voters, not from a student who felt pressured to vote, or who accused me of voting for my myself on their account.

As a result, I argue that the Manchester precedent (2013), which justifies disqualification in the case of *intentional election fraud* by iPad, is not applicable in this case, *particularly* given that the EC "does not believe Joe intentionally attempted to coerce or intimidate voters due to this method" (EC Ruling), as can be corroborated by eyewitness accounts (Appendix B). As a result, **disqualification in this case is disproportionate, and a less severe response should be administered.**

There is a precedent for this too, as in 2014 at the University of Westminster a Presidential candidate was disqualified for using an iPad to encourage students to vote

[4] "Candidates may not use electronic devices to encourage or help students to vote i.e. laptops, iPads, smart phones. For example, candidates must not approach voters with an electronic device and in order to get them to vote online. *Please note: our membership management system are able to identify where multiple votes have been cast from one single device*." (Code of Conduct for Candidates, Article 12) Emphasis added.
[5] http://mancunion.com/2013/03/15/49889/
[6] Ibid., emphasis added.

for him at the point of voting. However, he successfully appealed this decision, had his votes re-instated, and was then elected president.[7] **This shows that it is not unreasonable to ask for the disqualification to be overturned without further punishment.**

1.4 Section Summary

In this section I have argued that I would agree with disqualification if I had knowingly broken an explicit rule, but that this is not the case. I contended that neither the 'repeat offense' or the 'unknown extent of impact' rationale is sufficient to justify disqualification as a proportionate response**. As a result, I argue that disqualification is disproportionate, that a less severe response should be administered, and that it is not unreasonable to suggest that no further punishment is necessary,** based on the 2014 'Westminster' precedent**.**

POINT 2: DEFINITION AMBIGUOUS, UNREASONABLE TO EXPECT UNDERSTANDING

2.1 Ambiguity

In this second section, I will investigate the interpretation of Article G.10.viii that places my campaign in violation of the Standing Orders, asking if it is reasonable to expect the same interpretation could be arrived at by a person without guidance from the EC or prior experience of campaigning. It is my contention that the interpretation of an iPad or laptop as a mobile "polling station" meets the conditions of *Wednesbury unreasonableness* (a concept used for judicial review of public law); that is to say, it is unreasonable to expect the average person to conceive of the given interpretation. **If it is unreasonable to expect a person to understand a rule, then it is unreasonable to punish a person for breaching that rule, even more so with the most severe response.**

I believe that without the benefit of explicit guidance, previous political experience or legal advice (which may have been received by the EC in formulating their own interpretation), it is unreasonable to expect a person to conclude from reading Article G.10.viii that a "polling station" could refer to an electronic device:

> No candidate of member of their campaign team, or any other person attempting to influence a voter may approach within three metres of the polling station except when they themselves are voting.

I argue that, read in its original context in the Standing Orders, the *reasonable* understanding of a "polling station" is a *fixed* location:

> Polling stations may be set up at Colleges and run by the local College committees (Article G.10.vii).

This is the context in which my understanding of the 'three-metre rule' was based: the one which is intuitive and makes sense. In this way I argue that it is unfair to administer the harshest punishment in the case of breaking an ambiguous rule that candidates could not reasonably be expected to understand.

[7] https://smoke.media/punk-politics-uwsu-elections-happened/

2.2 Standard of Clarity

Additionally, we must remember that the very first aim of both CUSU and the GU (as set out in their constitutions) is that:

> B. The Union will seek at all times to:
>
> (i) ensure that the diversity of the Students is recognised and that equal access is available to all students of whatever origin or orientation;

Therefore, as it is one of the core functions of the EC to "review the rules and other guiding documents for use in the elections" (Article G.1.v.f.), I contend that EC should have already pursued a standard of clarity that means not just your average Joe can understand the rules (which he couldn't anyway!), but also students from different political and cultural backgrounds, who may not have relevant prior experience. The fact that I was unable to interpret the rules in line with the EC's understanding (as a home student with considerably more knowledge of the Standing Orders due to my position as CUSU Council Chair) surely illustrates the need for review of those rules (Point 4). As two-thirds of the graduate population at Cambridge is international, it is even more important that rules are clear to enable any student to run for office or join a campaign team. This is further required of the EC in their function to promote "accessibility and engagement" as well as "diversity and participation" in the whole elections process (Article G.1.v.g).

2.3 Section Summary

In this section I have argued that **it is disproportionate to administer the harshest punishment in the case of breaking an ambiguous rule that candidates could not reasonably be expected to understand, particularly when it is constitutionally required of the EC to pursue a standard of clarity that** recognises the diversity of a two-thirds international student body, and **ensures that "equal access is available to all students of whatever origin or orientation"** (Background B.i).

POINT 3: INADEQUATE COMMUNICATION OF RULES (SPECIFICALLY ARTICLE G.10.viii)

3.1 Inadequate Communication

In this section, I invoke the EC's duty to ensure that "adequate information" is provided to candidates (Article G.1.x.2), and note the EC's own admission that Article G.10.viii "may not have been sufficiently communicated to candidates" (EC Ruling). On this basis, I contend that the information provided to candidates was *inadequate*. The argument forwarded in the EC Ruling is that, regardless of the adequacy of communication of rules:

> the CUSU election rules state that the rules are "to be read in conjunction with the CUSU Constitution and Standing Orders, which can be accessed on the CUSU website" (EC Ruling).

However, I would challenge this argument on the fact that the EC is required to *distribute* the standing orders, not merely indicate where they can be accessed:

> A copy of the CUSU Election Standing Orders has to be distributed with all official nomination forms. All candidates will sign to say that they have read, understood and agree to abide by the rules and regulations of the Elections (Article G.3.v).

It has also been indicated to me that the version of the Standing Orders provided on the website (10th March 2017) is in fact out of date, although I am not aware of any significant differences in the Elections section in comparison to the current version (23rd Oct 2017).

I argue that having not been provided with a copy of the Standing Orders, it was reasonable for the candidates to assume that the materials that were provided (namely the "Candidates Pack" and the "Easter Term Election Rules") contained all of the relevant information, given this is what is stipulated in the Standing Orders:

> The Elections Committee shall be responsible for the production of an Elections Briefing prior to elections […] The Elections Briefing shall normally cover all rules governing the election (Article G.3.iv).

The fact that there is no reference to or interpretation of Article G.10.viii in the "Candidates Pack" or "Easter Term Election Rules"[8] is highly significant in determining whether or not disqualification is a proportionate response for breaching a rule that had not been sufficiently communicated.

The EC also note that the rule "may not have been sufficiently communicated to candidates in the candidates briefing" (EC Ruling), which was a presentation and Q&A session in which the candidates were acquainted with the election and campaign process.

3.2 Section Summary

In this section I have argued that I cannot reasonably be expected to have been aware of the EC's interpretation of Article G.10.viii; which in addition to being an unreasonably specific understanding (Point 2.1), was not sufficiently communicated, interpreted or distributed; as it only featured in the Standing Orders and these were only 'indicated' to the candidates as being "on the CUSU website" (EC Ruling) rather than being distributed to candidates as is required by Article G.3.v. As a result, and **as admitted by the EC in their ruling, I argue that the rule that is crucial to this case was not sufficiently communicated, and thus the penalty for breaking that rule should be greatly mediated.** In the next section I will show that as soon as the rule *was* communicated to me, I immediately showed full compliance.

POINT 4: INADEQUATE INFORMATION CREATED A CLIMATE OF AMBIGUITY

4.1 Climate of Ambiguity

In this section I will argue that the inadequate communication of unclear rules contributed to a 'climate of ambiguity', which placed an *unreasonable burden* on both candidates and the EC (Point 4.2). In this climate of ambiguity, I argue that **candidates should be expected to abide by the spirit of the law where the letter is unclear**.

I would like to state that that the climate of ambiguity is not wholly or even mainly the fault of the EC – it is a pervasive feature of Cambridge University as an institution, in which a great deal of important information is highly decentralised – but it is within their

[8] This appeal understands the "Easter Term Election Rules" as the "Elections Briefing" as stipulated in the Article G.3.vi, as it was this document that was ratified by CUSU Council, Lent III.

remit and function to resolve (Article G.1.v.d-f). I would also like to indicate my desire to contribute to this process in whatever way is most appropriate. In any case, **the result of this climate of ambiguity was that candidates were uninformed of crucial rules, and clarification over 'grey areas' were often only provided on an ad-hoc basis once candidates were pulled in for violation**.

I recognise the principle set out in the candidate's pack (2018, 3) that: "If in doubt, [candidates should] ask the Elections Committee first", although as I have already made to the members of the EC, I was not in doubt of my iPad strategy. This was because it was recommended to me by the former GU Vice President [redacted] (who is willing to give testimony); and because I had overlooked the (alleged) relevance of Article G.10.viii on the basis of my (reasonable) interpretation of a "polling station" as a *fixed* location (Point 2.1). In this way, I saw no need to seek further guidance from the EC and was not criticised for this in the EC Ruling.

4.2 Unreasonable Burden

I also believe that although the expectation "to ask the Elections Committee first" sounds reasonable (Candidates' Pack 2018, 3); considering clarification was required on so many aspects of so many rules, this expectation actually created an *unreasonable burden* on both the candidates and the Elections Committee, especially given the time constraints and the stressful nature of the election period.

This pressure fell on the candidates because they needed clarity as quickly as possible to lawfully reach an electorate of around 10,000 graduates in under 4 days (Point 4.3); but also on the EC to provide important rulings under an immense amount of pressure; not just from the size and pace of the size of the workload, and the need to be contactable 24/7, but also from their other roles and the ongoing strike action. I am certain that all members of the EC can agree that the workload generated for them this election cycle was unsustainable, and that the elections process is in dire need of review.

In light of these pressures, I contend that **the most that can be reasonably expected of candidates is that they show reasonable effort to inform themselves of the rules when they are in doubt**. I argue that since I have done this throughout the election, my disqualification for alleged rule breaking is unwarranted.

4.3 Example of "reasonable effort to seek information of rules when in doubt"

As an example of my reasonable effort to become informed when in doubt, I present a conversation I had on Facebook Messenger from EC member [redacted] (6th March, 10:01), in which I sook clarification for the rules on endorsements. You can sense my exasperation in the conversation as I know that [redacted] wants to endorse me too:

Cotton:	is this allowed? [screenshot of an article publicising Aspinall's endorsement by Lord Chris Smith, Master of Pembroke, in the *Tab*]
[redacted]:	Hmm, I guess it's a title and a position so kind of unclear. It probably can't count as a breach tbh
Cotton:	[annotated screenshot] Ah but the first line of the article states his position

[redacted]: Oh right that is only a breach if she describes it that way I think / Not sure we can interfere with the press but we'll discuss it

Cotton: thanks, will you let me know because if it's not a breach I want to do it too asap

[redacted]: It would be a breach if you did it though. We just can't stop the press researching endorsements really. Will follow it up though

Cotton: I'm really struggling to see the nuance here haha / I understand if I'm not seeing clearly cos of vested interest

[redacted]: Its that we have no way of punishing a paper that's not campaigning for her and that is editorially independent / We'll request they change it, but they aren't campaigning and Evie followed the rules in how she announced it

Cotton: ok / thanks for the explanation

This conversation shows that I still did my best to seek clarification and understand apparent inconsistencies in application of the rules (often according to very technical and arbitrary distinctions), despite the fact that this ambiguity caused a great deal of stress and frustration for me as a candidate.[9] In addition to my intention to learn and understand the rules where I have doubt, you can also see the impact of the time pressure: "let me know because if it's not a breach I want to do it too asap", to try and use the full extent of the rules to the advantage of my campaign. This pressure, in addition to the "vested interest" of the candidates makes it more difficult for them to follow ambiguous rules.

Here I return again to my argument that in a climate of ambiguity; **the most that can be expected of candidates is that they** abide by the spirit of the law where the letter is unclear, and that candidates show reasonable effort to inform themselves of the rules when they are in doubt, and that they **comply immediately when clarification is provided**.

This is also clearly demonstrable in the case of my campaign. I would like to return to the statement I provided to the EC which shows that following their initial judgement on the use of iPads in election campaigns, which further evidences my demonstration of compliance with all rules of which I could reasonably be expected to be aware. The EC's judgement was made "shortly before the close of voting" (EC Ruling) on Friday 9th March: I was emailed at 2:15pm and went in immediately for 2:30pm, which was when I was informed of the EC's interpretation of Article G.10.viii. As I wrote to the EC before the results of the election were announced:

> […] after meeting with the EC on Friday 9th March at 2:30 and hearing your interpretation of the "three metre rule", I was so afraid of being in the wrong that I lost all my confidence and stopped face-to-face campaigning for the rest of the day. Half the members of the CUSU sab team saw me in the Trockel, Ulmann & Freunde café on multiple occasions in the time between the EC meeting and voting close and could confirm I was just sitting at my laptop […] My reaction to this meeting with

[9] I complained of the ambiguity surrounding these rules in an email to my campaign 'buddy', [redacted], in advance of the rulings against my campaign: "In general, the rules of the election have been a huge source of stress. We were told we couldn't be endorsed by people, but [redacted] have been, and have publicised this widely" (7th March, 08:23). In the spirit of a "fair and equal" election (Article G.1.v.b), it seems unfair that 'loopholes' in the rules allow certain candidates to be publicly endorsed, when other candidates are told: "It would be a breach if you did it though".

> the EC was so strong exactly because it was a such a shock that I couldn't confirm I had always followed your interpretation of the "three metre rule", and I honestly thought I had not been in violation of the rules up until that point (Monday 12th March, 07:05).

This is highly significant, as it indicates my compliance with the rules as soon as I am made aware of them. Having done so, it is deeply unfair that I should receive the harshest form of punishment in facing disqualification.

4.4 Example of "reasonable effort to seek information of rules when in doubt and compliance with the rules as soon as informed"

Again, this compliance was fully in character of a campaign that openly sought to understand the rules and immediately responded to rules violations when made aware of them. I provide as a second example the case of the 'preferential' Facebook post on the Wolfson College Facebook page, for which my campaign received a formal warning. In this instance, both myself and [redacted], were demonstrably seeking clarification on electoral rules in advance of the rules breach. The evidence I provided in an email at the time to the EC shows both our commitment to abiding by the rules as far as we understand them, and the speed of our response when informed of violation (Thur 8th, 13:53):

> The upshot of this evidence is that both myself and [redacted] felt uninformed of many election related rules, particularly relating to college communication, presidential endorsement, and voter eligibility, and were trying to work a lot of things out as we went along. As well as looking through the "candidates pack" (pic 8), [redacted] sent an email [to the EC] requesting guidance (attached - Wed 3pm). Note that this request for advice was sent well before I was informed of the post's existence on the page (sent by [redacted] at 17:47, seen and replied by me at 19:37, [redacted] informed by me at 19:44, post amended at 20:26 - pic 15). I hope this shows that both myself and [redacted] were committed to following the rules, that the rule breaking was accidental, and also that we moved quickly to resolve the situation [once informed].
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> I would like to draw your attention particularly to [redacted] apology (Thur 10am - attached) in which [redacted] states:
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> > "Hi [redacted], apologies, I thought I was following the rules by including all three candidates in the post. That seemed to be in the guidance. Joe notified me last night that this was in breach of the rules and so I amended it. My fault entirely; I hope this doesn't reflect on Joe as it was certainly not his doing. I wrote to your team yesterday and to clarify what was acceptable for an email that [redacted] wishes to send out and received a response from [redacted], which was helpful. [redacted]"
>
> I believe that for [redacted] the link so clearly displays all three candidates (being a replica of the official CUSU page) that [redacted] thought [redacted] had met the requirements of equal representation, even though the "other candidates are available" comment comes across as a little flippant. On a personal note, I feel that this is no more serious than the fact [redacted] was initially endorsed by the Master of Pembroke, or [redacted] with [redacted] Labour MP endorsed flyers, which I also saw in Darwin Bar last night (Wednesday) at 6pm, picture attached.

4.5 Section summary

In this section, I argued that the most that can be expected of candidates is that they abide by the spirit of the law where the letter is unclear, and that candidates show reasonable effort to inform themselves of the rules when they are in doubt, and that they comply immediately when clarification is provided. The evidence that I

have provided shows that I have done this throughout the elections process, and therefore disqualification is unwarranted.

POINT 5: PROPORTIONAL RESPONSE

5.1 Vote-docking

Even if the previous arguments are not found convincing, and hence a disciplinary response is still warranted, I believe that the fairest and most proportionate response to this alleged infraction would be to dock votes. To reiterate my case as I made it to the EC before the results of the election were announced (Appendix A):

> I think that it is disproportionate to disqualify me on the basis of (an interpretation of) a technicality that I was not aware of at the time, and which I responded to immediately once made aware of, rather than docking a proportional number of votes.

The fact that I believed vote docking to be a more proportional response before the results were announced, and provided a detailed 'best estimate' in good faith to illustrate the extent of voting facilitated by iPads (Point 1.2; Appendix A), shows that I have no ulterior motive but to ensure the outcome of the election is unaffected by alleged rule breaches.

I believe that to remove vote-docking as an option because it may not be possible due to the complexity of transferring Single Transferrable Votes or inadequacies in the voting system is unjust: this is not the fault of the candidate under sanction and they should not have to face a stricter penalty just because the proportionate response cannot be administered. As stated previously, my 88-vote estimate should be taken in the same good faith in which it was provided, if the exact figure cannot be calculated at Cambridge, despite the fact these services exist at other Universities such as Wolverhampton (Point 1.2).

5.2 Precedent

Further to those precedents of disqualification relating to the use of iPads in student elections (Point 1.3), there is also a precedent from 2015 at the University College London Union (UCLU), in which a presidential candidate was docked 1% of his first preference votes for the use of iPads in his campaign.[10] Unlike that case, however, the complaint against me came from another candidate and referred specifically to issues with proximity, rather than coming from a voter who complained they had been pressured into voting. Applying this precedent to our case, which is a less serious offence, one would suspect a less severe penalty should be applied. However, I would like to note that even if the punishment administered to me (for a lesser offence) was *ten-times* harsher, I would retain my majority, regardless of which round the dock was administered in:

	Candidate (Votes)	*Majority after 1% dock*	*Majority after 10% dock*	*Majority after 88 vote dock**

[10] https://thetab.com/uk/london/2015/03/06/mass-fraud-allegations-hit-union-election-winners-16422

Round 1	Ropek (349)			
	Cotton (498)	144	99	61
Round 2	Ropek (430)			
	Cotton (574)	138	86	56

*Estimated extent of voting facilitated on the iPad (Point 1.2; Appendix A).

I present for your consideration a symbolic ruling of an 88-vote deduction, despite the fact that it is more than ten-times harsher than the next closest precedent (set by UCLU in 2015 for a greater offence), given that is based on a best estimate of the alleged advantage gained. I say 'alleged advantage' because this assumes that all of those who voted on the iPad voted for me, whereas in fact I was informed on multiple occasions that first preference votes cast on these devices were for other candidates. In addition, in many instances a student may still have voted at a later time had an iPad not have been provided, it was merely a matter of convenience for them (which some students appreciated, see Appendix B).

Furthermore, I would like to reiterate that I was only doing "what other candidates have an equal opportunity to do" (Candidates pack 2018, 3): I thought at the time that other candidates were using the same strategy, partly because I had been informed that it was used in previous GU elections, where there is generally a greater need to motivate people to get out the vote.

However, **we can further question if even vote-docking is a disproportionate punishment**. I ask if it is fair for 88 students to have their votes overturned because they decided to vote on an iPad instead of at a later time. These students were not aware that in doing so, they may be invalidating their vote. Thus I return to my original point (1.4) that **it is not unreasonable to suggest that no further punishment is necessary**, and that this follows a clear precedent set by the University of Westminster in 2014.

6. CONCLUSION

In summary of the arguments made in this appeal, I argue that this was a case of an unclear rule broken unintentionally, and despite the fact that it was a 'repeat offense' each instance was an honest mistake. Due to inadequate communication, the particular interpretation of Article G.10.viii could not reasonably be expected to be arrived at by the average reader, and due to inadequacies in communication, this interpretation was not sufficiently communicated to the candidates. As soon as the rule was made clear, immediate compliance was shown by the party in question, which was characteristic of the candidate's open and honest engagement with the EC throughout the elections process, in which he even [redacted]. This rules breach occurred in a climate of ambiguity, in which the most that can be reasonably be expected of candidates is that they abide by the spirit of the law where the letter is unclear, show reasonable effort to inform themselves of the rules when they are in doubt, and that they comply immediately when clarification is provided. I provided evidence to show that I

made the effort to learn and understand the rules despite being unduly burdened by the pressures of time and vested interest.

In administering a proportional response, I hope that the EC takes into account the extent of the advantage gained (if it was an advantage), and in finding it inconsequential, reject the need to administer a disciplinary response to mediate that 'advantage'.

I understand that the decision to disqualify me was taken in advance of the publication of the election results, but that does not change the fact that upholding this ruling will overturn the sovereign decision of the electorate, which placed their faith in me by an overwhelming majority, on the basis of a technicality that did not impact the outcome of the election. As it stands, 76 voters have been outright disenfranchised (given Ropek-Hewson's total vote count after my disqualification is 498, in comparison with my total count of 574), not to mention those whose preferences will have been discounted by my disqualification.

Finally, I would like to use this appeal to ask that this unfortunate situation can be used to improve CUSU-GU policy on elections, specifically through the extensive development of campaign guidelines with the aim of ensuring that both students, colleges and departments are fully aware of all the rules that govern CUSU-GU elections. In this way the mistakes made by candidates can be learned from and we can improve the elections system for everybody, as well as improving general confidence in the GU's democratic legitimacy. This is a core function of the EC:

> to make recommendations on improvements to the democratic procedure and process of elections and referendum [sic]. (Article G.1.v.d.)

As such, I propose the EC, or another appropriate body or figure, co-ordinates an "Elections Review", in which all candidates and campaigners would have a chance to reflect on their experience of the election cycle and make recommendations for how policy can be improved for the future. I would suggest that research is done into the guidelines provided by other Students' Unions, particularly the list of "do's and don'ts" provided by the University of Wolverhampton Students' Union (Appendix C).

7. RECOMMENDATIONS

In light of these arguments, I would like to suggest several potential rulings for your consideration, which could be administered in various combinations:

a) Overturn the disqualification as a disproportionate response to the (alleged) rule violation (Points 1-4).

b) Reinstate the votes received by Joe Cotton, without further penalty, in accordance with the precedent set by the University of Westminster in 2014 (Point 1.3).

c) Contemplate a proportional vote dock based on the precedent set by the University College London Union in 2015 (Point 5.2).

d) Contemplate an 88-vote dock based on the estimate provided by the candidate in advance of the election results (Point 1.2; 5.2; Appendix A).

e) Require the candidate to provide a "Elections Review" to the Elections Committee, presenting recommendations based on practices at other student unions that could inform policy making bodies at CUSU and the GU, to ensure that similar incidents will not happen in the future (Point 4.1-2).

Thank you for your consideration, and please let me know if anything further is required of me in this process.

Yours sincerely,

Joe Cotton

APPENDICIES

Please find attached in the supporting documents:

Appendix A: Statement by Joe Cotton to the Elections Committee (Monday 12th March, 07:05)

Appendix B: "On Joe Cotton's Graduate Union Presidency Campaign" ([redacted], Tuesday 13th March)

Appendix C: UWSU Elections - Code of Conduct for Candidates (October 2016)