

Westminster Briefing, 26 November 2016: Proactive Approaches to Tackling Sexism and Lad Culture on Campus

Keynote speech by Rob Behrens, Independent Adjudicator and Chief Executive, Office of the Independent Adjudicator for Higher Education

CONTEXT

I am pleased to be invited to join this conference today. I have come to listen and learn as well as contribute.

It comes at an important moment – a few days after the naming and first meeting of the UUK task-force looking at all forms of violence and harassment affecting students, but with particular focus on violence and sexual harassment against women.

The context and background of course is complicated. First, the evidence base generating public policy interest has been developing for a number of years. We need to pay tribute to the small band of researchers, including Alison Phipps, our Chair today, for relentlessly and rigorously drawing our attention to the issues. Of all the organisations pressing for change, the National Union of Students – as on so many other issues - has been at the forefront, putting its authority behind the research evidence. Thanks to Susuana Amoah, Megan Dunn and their distinguished predecessors in this regard.

The OIA, the independent ombudsman service for students across almost all institutions in higher education, has played a small role in drawing attention to harassment on campus. My Annual Report for 2014 addressed this issue, and won widespread media attention, but this was not the first or only time I had spoken out. For example, in 2010, I spoke to the Annual Conference of the European Network of Ombudsmen in Higher Education. I expressed deep concern about consensual relationships being allowed between research supervisors and research students. When these go sour, the consequences for the student in terms of their position as continuing as a research student are troubling and often problematic. And some of my European colleagues told me I was wasting their time by raising what they thought was a non-issue.

ROLE OF THE OIA

For the last eight years we have received a number of worrying complaints from students dissatisfied with the way universities and other institutions have handled harassment, discrimination and gender-related issues. A Court of Appeal judgment on a judicial review in a different context – the Maxwell case in 2012 was about disability and there was no suggestion of harassment – confirmed that the OIA is not a Court and cannot make findings of fact about discrimination. It is not our role to verify whether or not events occurred in exactly the way described by complainant or HEI.

We do however take account of the legislative context and want to know whether in any particular case the HEI has applied its own procedures. Even if it has, are the procedures reasonable in themselves? Are they widely disseminated? Are those who operate them appropriately trained? Is the alleged victim properly supported by the institution? And is the alleged perpetrator supported too? In many of the university regulations I have looked at there is an absence of consistency, and an absence of clarity, that needs to be addressed. Sometimes regulations are simply silent.

CASE HISTORIES

The range of cases received by the OIA is extensive. Many go wider than the conventional account of lad culture and its emphasis on drink-fuelled activity. They go to the heart of the integrity of the university's processes.

One of the most important cases we have looked at in the last few years concerned a case where a student alleged she was raped by a fellow student outside of university premises. She reported the allegation to her department and then to the police. The university suspended the alleged attacker. Although the file was handed to the Crown Prosecution Service, a decision was taken to take no further action, and the suspension against the alleged attacker was subsequently lifted. We had serious concerns about the way the university handled the case. While the central allegation was properly one for the criminal courts, the university nevertheless had responsibilities which we found it had not met¹:

- The harassment officer approached by the student admitted she'd had no training whatsoever and didn't know how to advise her. We had raised the issue of training key contacts with this university on a number of previous occasions;
- There was no clarity about how the student should report the incident to the university and this was greatly distressing and disadvantageous to the complainant;
- No information was sought from the alleged victim about how she would feel if the suspension of the alleged attacker were lifted once no further legal action was taken;
- The impression from the case file was the absence of any central system for dealing with a case of serious sexual harassment, and that the alleged victim was the driving force in the progress of the investigation.

In finding the case Partly Justified we recommended that the university fundamentally review its procedures and the university did indeed do so.

More recent cases illustrate similar weaknesses at other universities. A case we adjudicated on this year involved the university rejecting a student's allegation of bullying both by another student on the same course and by a staff member. The university ruled the issue out-of-time because the incidents had begun more than three months previously, in 2012, ending in

¹ We found that in the particular circumstances of that case it was reasonable for the university to decline to investigate the core allegation under its HDB policy given the very serious implications a finding of guilt would have had for the other student. The case was properly one for the criminal courts.

2014. We found the complaint Justified because the university had used the wrong regulations and failed to notice that there was no 'out of time' provision in the harassment and bullying procedure, only in the complaints procedure.

Some universities have given the impression that since allegations of serious sexual crime (or any serious crime) are matters for the police then their own procedures are of secondary importance and don't need urgent clarification and joining up. This is a profound mistake. One of the public interest cases on our website draws attention to the error of including a blanket ban on taking any action on cases that are under investigation.

Everything I have said so far has been far removed from drink, including activities of student societies, to which I now turn.

Drink-related cases

National media carries frequent stories about often but not always drink-fuelled misbehaviour by students.

The OIA sees plenty of these:

- Complaints by women students about indecent exposure at a sports club social event, leading to the expulsion of the offender. His defence was that there was no 'victim' because he hadn't flashed at anyone in particular;
- Highly offensive comments on twitter about staff and students at a named university including threats about date-rape drugs. The student claimed this was 'comedy'. He failed to meet conditions imposed to remain at university and was expelled;
- Male students barging into a woman student's flat after a party, shouting their intention was to have sex with her;
- A male student posting naked pictures and obscenities about a woman student, desecrating hall of residence bins, kettles and a toaster and justifying it all as a joke.

None of these cases is funny or comedic but they raise important questions about equal treatment and human dignity. These are all additional to the events at the London School of Economics where two separate sports clubs engaged in public exhibitions of sexist group behaviour including an offensive initiation ceremony. Or the Black Cygnets drinking society at St Hugh's College Oxford where members were told to wear 'hunting attire' in pursuit of women labelled foxes. Quite properly the Principal of St Hugh's called the group 'repugnant, sexist and secretive'.

The Underwood Report into events at LSE repays careful reading because it shows the huge challenges to be faced. Offensive and oppressive behaviour "pervades social arrangements in at least some of the halls of residence". The Report noted that "There has been a broad culture of tolerance and/or looking the other way, which needs to change." This culture included staff as well as students. And, as Underwood pointed out, there were some academics who were prepared to defend sexist behaviour in the name of freedom of expression. One submission commented "The LSE should obviously be a place where all feel welcome and valued. But it should also be a place where all dare speak their mind. Neither the puerile actions of a small group of individuals, nor our collective response to those actions, should be allowed to undermine these two crucial elements of our institutions identity."

EMERGING ISSUES

I will leave it to others to set out the remedies but I want to conclude by mentioning some of the themes that should guide the debate.

(i) Raising awareness, and preventive strategies

In the light of the case summaries I have set out, universities have much to do to address the culture described. A number are doing important work in this regard and their experience needs sharing and building on. Preventive strategies are essential since in our experience many participants do not understand or accept that their behaviour is unacceptable. It is not clear that all university leaders have communicated the message either.

(ii) Architecture of handling

As far as the architecture of case-handling on campus is concerned some of the good practice identified in the OIA's Good Practice Framework on complaints and appeals applies equally to bullying and harassment procedures. There is a need for clarity of definitions and procedures, the availability (if needed) of specialist trained resource capable of listening to students in an informal environment in advance of formal action. And the possibility of mediation where there may be the prospect of a voluntary settlement.

On the specifics of harassment and bullying, at the OIA we believe that it is important to ensure that all students who make allegations of assault are properly supported and able to access sensible advice; that regulations and procedures are very clear and accessible so that students know what will happen in these cases ***and relevant staff are trained and understand the processes too.***

We think that students who are accused of assault should also be offered support and advice; that the students are separated in a non-judgmental way – that might include suspension, or moving accommodation, in appropriate circumstances – but with an appropriate way back if the student is subsequently cleared.

We also think that it is right that very serious offences are left to the police in the first instance. Where the police are involved, and where action by the university is suspended until it is clear whether criminal action will be taken, the university still needs to follow up in a way that is appropriate and proportionate and accords with its regulations.²

(iii). Where police investigation is involved

Where there is an allegation of serious violence, Professor Graham Zellick noted in his 1994 Report, this was a matter for police investigation. This will need to be revisited by the UUK Working Party and I don't want to pre-judge the outcome. But the Zellick formula does not and should not mean an abdication by universities of any responsibility after the end of the investigation, though in too many cases this is what happens.

² If there is an admission or clear independent third party evidence, we might take a different view.

The OIA has cases where we have found the complaint Justified or Partly Justified on the basis that the university has improperly abdicated its responsibility on the basis that if the police decide not to investigate there is nothing it can do.

In cases such as student on student assault or damage to property, the university ought to be in a position to investigate and reach conclusions on the basis of available evidence. Normally there will be a lower standard of proof – but even if there isn't, that doesn't mean the HEI should not investigate in appropriate circumstances. There might also be a lesser charge – bringing the university into disrepute for example, rather than something which would amount to a criminal offence.

Finally, and in conclusion, there is the question of

(iii) Leadership

Leadership is not about predominantly male elites making plans behind closed doors. (One university we recommended review its harassment procedures did so in semi-secret without informing or involving its student union.) This is basically an issue of trust.

Leadership is about **(i) practising what is 'preached'**. Allegations of harassment are not unknown in university corporate governance, and have led to the recent resignation of one university Chair of Governors.

Leadership is about **(ii) reaching out to mobilise all affected individuals and groups, basing policy on lived experience** and changing a macho culture which has long been dominant.

Leadership is certainly not about narrowly defining lad culture so that only the behaviour of students' union societies and drinking are addressed. Rather it's about **(iii) recognising that neglect of harassment goes to the heart of institutional processes and structures in universities especially where it conflicts with hierarchy, status, power and – very recently – arguments about the primacy of freedom of expression in universities.**

Leadership has to be **(iv) inclusive, embracing all constituents and stakeholders of the university including students unions, suppliers, local citizens.** Policy development on sexual harassment has to include rigorous but not exclusive focus and involvement on the demographic group most likely to be subjected to sexual harassment and that is women. But we know too that harassment of men on campus does exist. In a recent, settled, OIA case one university made a very substantial financial payment to a male post-graduate student who was sexually harassed by his supervisor, and then sexually harassed again by another lecturer he complained to.

Leadership also has **(v) to engage in comparative learning.** There are different approaches to handling these issues in the United States and we would be foolish to ignore what works and what doesn't. Of course the context and cultures are very different but we are impoverished by not having a look. For example, Geraldine Swanton of S.G.H. Martineau has pointed out that in the USA, 'far more explicit requirements to investigate as disciplinary misconduct cases allegations of sexual assault and rape on campus have led to challenge and criticism from all sides' and male students have launched extensive litigation against universities bringing questionable findings in rape investigations.

CONCLUSION

These are all issues which require discussion, rule alignment, education and training for all parties involved. We mustn't lose sight of the huge impact these cases have on people's lives – the victims, certainly, but also the perpetrators. I have raised, and will continue to raise, these issues, not just because of the volume and seriousness of cases but because of what they say about the world in which we live. And because it is the job of the higher education ombudsman service not simply to adjudicate on complaints but to disseminate good practice so that our partners in universities and students unions can facilitate a richer set of experiences for the diverse groups of people who now constitute the student population.

Rob Behrens
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