

File: OIA remedies and redress case study

Duration: 0:07:50

START AUDIO

Alero: Hi my name is Alero Osuide I'm an Assistant Adjudicator here at the OIA. Today I'll be discussing a case study with my colleague Ossian Elkington who'll be looking at the different factors that OIA considers when it makes recommendations for justified or partly justified complaints. So, Ossian could you begin by outlining the background to this case study for us?

Ossian: Thanks, Alero. In this case a student disclosed to a provider that he experienced anxiety and depression. He began to struggle to engage with his studies and temporarily withdrew. He returned to the studies and then withdrew again and he submitted a complaint. The student complained about a number of different issues including that the mitigation procedures and the process by which he was seeking adjustments for his disability was too lengthy and too arduous for him. He said that the provider's engagement with him didn't take into account his health.

The provider didn't uphold the complaint. But for our review an important conclusion that the provider made was that the student's mental health issues may have impacted on his ability to engage with the provider's processes. The provider issued a completion of procedures letter to the student and then the student complained to us.

Alero: Okay. So, the OIA was reviewing the provider's decision not to uphold the student's complaint? Is that correct?

Ossian: Yes, that's right. The OIA reviews the final decision of a provider and in this case the provider's decision was not to uphold the complaint. And the OIA was looking at whether that was a reasonable decision and whether that was a fair decision.

As the provider had concluded that the student's mental health issues may have affected his ability to engage the provider should have asked itself three questions. Whether the student had been substantially disadvantaged by the requirement to have followed those processes? If so, whether anything could have been done to prevent that disadvantage? And thirdly whether it would have been reasonable for the provider to have taken those steps?

In the OIA's review we saw no evidence that the provider asked itself these questions. And in light of the conclusions that the provider reached that the student's ability to engage may have been affected by mental health issues. We were not satisfied that the provider's conclusions or the reasons for its decision were reasonable in the circumstances. Therefore, this aspect of the complaint was justified.

However, the student raised other matters in the complaint but we found these parts not justified. So overall the complaint was partly justified.

Alero: Okay so how did you work out what recommendation to make?

Ossian:

When the OIA is considering recommendations the general principle is to try and return the student to the position they would have been in had the failure not occurred. Our recommendations may take the form of an offer to a student or a good practice recommendation. And our aim is to provide those practical remedies wherever possible.

Although there is a wide range of recommendations we could make, we cannot make recommendations that interfere with academic judgement, that are designed to punish a provider or are directed at a particular staff member. During the process of forming our recommendations we listen to what a student's seeking in order to resolve the complaint. In this case the student was seeking an apology, a refund of tuition fees and financial compensation. As we only found an aspect of the student's complaint justified, we were only able to offer a remedy in relation to that issue.

As we concluded that the provider had failed to properly explain the reasons for not upholding an aspect of the student's complaint we would normally refer the complaint back to the provider for reconsideration. This is because it's not normally the role of the OIA to simply substitute its own decision for that of a provider.

However, in the circumstances of this case we decided that it was not appropriate for us to take that approach. If we had referred the matter back to the provider we considered that resolution of the case would have been unnecessarily prolonged, given the length of time since the complaint had been made to the provider. We also took into account the student didn't wish to return to his studies at the provider. And that the student had stated that the delays experienced so far were affecting his mental health issues.

So therefore, we concluded that it was appropriate for the provider to offer an apology to the student. And to offer financial compensation for the distress and inconvenience of failing to properly explain the reasons for not upholding aspects of his complaint.

Alero: Okay so how much financial compensation did you recommend?

Ossian: In this particular case, we recommended that the provider offer the student £2000 in compensation for distress and inconvenience.

Alero: And how was that calculated?

Ossian: In making this decision we had to consider what was proportionate in the circumstances. We took into account the extent of the inconvenience to the student, the severity of the distress caused as well as the supporting evidence that was provided. The student had complained about his teaching and learning experience but this element of the complaint was not justified because we hadn't identified any failings relating to this.

Therefore, we didn't recommend anything for actual financial loss. That is money that the student lost as a direct result of the provider's failings. If we had concluded this part of the complaint was justified, we would have taken into account factors such as whether the student had the benefit of education during his time studying? Whether he had attended

lectures? Whether he had done course work and whether knowledge had been gained during that process?

Alero: But how did you actually decide £2000 was the correct figure?

Ossian: Good question Alero. Determining levels of compensation is a matter of judgement. It cannot easily be reduced to a simple calculation. We've updated our guidance on our website and that sets out some of the factors we may consider when deciding the level of distress or inconvenience and the amount of compensation to recommend. In recommending that the provider offer £2000, we took into account the fact that the student experienced substantial distress and inconvenience in the long term as a result of the university's failure to properly explain it's reasons for not upholding aspects of his complaint.

In particular, we noted the medical evidence he provided showing the effect that his complaint and the delays in obtaining a resolution had had on his mental health. Our guidance is a very useful tool for providers and for students to understand how these factors impact upon our decision making.

Alero: Okay so did the provider comply with the OIA's recommendations?

Ossian: Yes, they did. And we expect providers to comply promptly. The OIA has almost universal compliance with its recommendations. We consider non-compliance a very serious matter. If a provider has not complied with our

recommendations, then this will be reported to our board and can be published in our annual report.

Alero: Thank you, thanks very much.

Ossian: Thanks, Alero.

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