



office of the  
independent  
adjudicator

## Learning from Complaints: Fitness to Practise – Introduction and Welcome

### Cardiff – 11 March 2010

The Independent Adjudicator and Chief Executive, Rob Behrens, welcomed delegates to the first OIA policy seminar since the publication of the [Pathway Report](#) in February. Highlighting its 40 recommendations, he drew delegates' attention to the Report's key message: that stakeholders believe the OIA performs a more useful function than its predecessors and want to see it grow and develop. He commented that the next phase of the OIA's work would include consultation on sensitive issues identified in the Report. He highlighted in particular, the issue of the publication of OIA decisions and he reminded attendees that the decisions of other ombudsman schemes – notably the Scottish Public Services Ombudsman – are already in the public domain. He stressed, however, that the OIA recognises universities are divided on the issue, that careful reflection will be needed before there are any changes to the OIA's rules, and he committed to the publication of a further issues and proposals paper after the General Election.

Rob noted that fitness to practise is a key, sensitive and growing issue in OIA complaints and he proposed a number of specific points for delegates' consideration including:

- how to ensure an adequate balance between public protection and the need to allow placement students appropriate scope to learn and develop;
- how universities can protect themselves against placement providers which unfairly seek to influence universities' decision-making by threatening to withdraw the supply of placement opportunities; and
- the question of what information should flow between the OIA and regulators, where the OIA believes there are standards issues which a university is not handling properly.

Deputy Adjudicator, Susanna Reece, set out the programme for the day, and commented that delegates represented a good mix of practitioners from both universities and student unions. She encouraged delegates to engage in open discussions under Chatham House Rules and confirmed that good practice points from the seminar would be published on the OIA website.

Assistant Adjudicators, Julia Hawkins, Zoë Babb and Jo Waite then presented outline scenarios based on past OIA fitness to practise cases and invited delegates to make a 'snap decision' about the outcomes the OIA had reached.

## Presentations by OIA Staff – Felicity Mitchell and Siobhan Hohls

Felicity Mitchell, Deputy Adjudicator, spoke on the OIA's approach to fitness to practise cases and commented on a range of topical issues including: definitions of fitness to practise and academic and professional judgment; natural justice and choice of procedure; balancing rights and the burden/standard of proof; disability and human rights issues; and recent case law.

Siobhan Hohls, Adjudication Manager, presented detailed case studies based on recent OIA complaints and explained how the OIA's approach worked in practice. View Felicity's and Siobhan's presentations [here](#).

## Discussion Groups

Delegates were divided into groups led by OIA staff facilitators to consider issues arising from anonymised fitness to practise case studies. A list of topics, generated by delegates and collated by the OIA before the seminar, was also used as the starting point for discussion of the differing approaches followed by institutions. View the topic list [here](#).

### Ben Griffith – Senior Policy Analyst, General Medical Council

Ben spoke on fitness to practise and disability from the GMC's perspective as regulator. He explained that the GMC does not keep a register of medical students but since 2007, all new graduates have been required to complete a declaration of their fitness to practise before being allowed provisional registration. Students must declare physical or mental health issues which could raise questions about their fitness to practise and whether they have been subject to disciplinary or fitness to practise procedures at medical school. A further self-declaration must be completed before full registration.

Ben referred to a number of key publications which contain guidance for students and medical schools. *Tomorrow's Doctors* (2009), deals with competence standards and conduct for registrants, and the responsibilities of medical schools and students in relation to teaching and learning. He noted, in particular, that the document stresses the importance of distinguishing between ill-health and disability in relation to fitness to practise, and specifically that "*Having an impairment does not mean that a person is in a permanent state of poor health*" (and therefore not fit to practise).

A further document, *Medical students: professional values and fitness to practise* (2009), aims to increase consistency in fitness to practise procedures and decision-making in and between medical schools by providing best practice guidance. Ben noted that the updated version now specifically addresses the relationship between health and fitness to practise and the major issue of the need for management/awareness of a health condition which might affect patient safety. Ben also highlighted the work of the Basic Medical Education Fitness to Practise Group (BMEFP) which has considered issues including sharing of information about excluded medical students as well as how to decide when circumstances are sufficiently significant to justify expulsion from medical school.

Finally, Ben drew delegates' attention to the work of the GMC in widening participation, following the establishment of the Government's 'Gateways to the Professions' programme and the resulting publication of *Gateways to the Professions: Advising medical schools: encouraging disabled students* (2008). He explained that the GMC/Gateways disability project has been developed in partnership and consultation with representatives from a range of stakeholders including hospitals, students, the Equality Challenge Unit and disabled doctors' groups. The document includes key suggestions for institutions on how to comply with their anticipatory duty under disability discrimination legislation as well as how to set relevant entry and assessment criteria which are not discriminatory and ensure good practice in recruitment.

### Dawn Wallace – Regional Inspector, General Social Care Council

Dawn gave an introduction to the role of the General Social Care Council and explained that it has operated as the statutory regulator for social work students since 2001. There are now approximately 100,000 individuals on the register, including 15,000 students. 900 registrants are currently under investigation. She noted that not all professional bodies provide for student registration but she pointed out that as well as public protection, other benefits of registration include early professionalisation of future individual practitioners and standardisation of the approach to practice, which might not otherwise be guaranteed across the range of HEIs. Registration also helps to ensure that public funds are not spent on training students who may not ultimately be fit to practise.

Dawn noted that there has been a large increase in student complaints this year about a range of topics. She explained that the reasons for this have not been clearly identified but she suggested that selection criteria may be assessing the wrong areas and that there appears to be a lack of support for some students who are struggling academically but who would otherwise make excellent social workers. Dawn explained that the GSCC's powers are limited when students approach the OIA and that the OIA is unable to share the intelligence it gains from its complaints-handling with the regulators. She suggested that this could result in a missed opportunity to remedy falling standards at an HEI where problems are identified during the OIA process.

There then followed a panel discussion during which the issues raised included the following:

- **risks posed by misuse of social networking sites** by students on vocational/professional courses, both to the individual student and a university's reputation. One university reported having introduced additional provisions to its student contract to raise student awareness of the need to act responsibly in using these sites, after a member of the public identified and complained about inappropriate material posted by a student on a professional course;
- the ramifications of recent case law on **the right to legal representation in disciplinary/fitness to practise cases** involving qualified professionals. It was noted that at present students on professional courses do not have equivalent rights but the potential for developing case law to include students was recognised. Ben Griffith commented that medical schools should consider whether it would be practical for panel membership to include someone with a legal background.

## Good Practice Points

- ensure professional standards guidance and relevant codes of conduct are clear and well-publicised to prospective and new students;
- if a CRB check is required, ensure students are aware of the requirement and assess them early, preferably before the course starts;
- in assessing adjustments for disability, consider students on an individual basis;
- consider the distinction between reasonable adjustments for a disability and a the requirement for a student to meet the competence standards required by the relevant profession; ensure that there is clarity about what is a competence standard and what might be capable of adjustment to avoid substantial disadvantage to students with disabilities;
- make fitness to practise and disciplinary procedures clear and unambiguous and ensure you comply with them!