



Press notice: 935

For immediate release

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Judicial Review

The High Court has issued its judgment (6 February) on a judicial review of the OIA decision on a complaint brought by a former medical student at the University of Leicester. The case is significant as it gives clear legal guidance on dealing with evidence that comes to light after an appeal or complaint has been closed.

The student failed her second year examinations and was withdrawn from the course. The university rejected her academic appeal, on the grounds that she did not have a good prospect for meeting the requirements of the course in the future. The university subsequently refused to re-open her appeal against this decision when, during the course of the OIA's review, she obtained medical evidence indicating that she had depression and dyslexia.

The OIA concluded that both the original decision to withdraw her, and the refusal to re-open the case, were reasonable in the circumstances, and her complaint was Not Justified.

His Honour Judge Curran QC decided that, in the circumstances of this case, it was reasonable for the OIA to conclude that:

“In the absence of compelling evidence showing that the Claimant's undiagnosed disability might itself have prevented her from engaging with the relevant procedures at the correct time, the University had no obligation to consider waiving its time-limits for the submission of evidence.”

However the judge did not rule out the possibility that there may be circumstances in which late evidence can and should be considered:

“If a case arose in which, unlike the present case, some quite unsuspected and undiagnosed condition was revealed by medical evidence soon after the failure of an examination, when there had been no reasonable possibility that it was diagnosable beforehand, it might very well be appropriate, if not necessary, for the matter to be looked at afresh by the University.”

Commenting on the judgment on the consideration of late diagnosis, Felicity Mitchell, Deputy Adjudicator at the OIA, said:

“There has been a recent increase in the number of students who are submitting new medical evidence ‘after the event’ The court's decision and guidance is timely and helpful to the OIA, both in upholding the OIA's finding on the substantive issue that for this particular



student the late medical evidence did not merit re-opening the appeal, and in the reminder that these issues should be considered on a case by case basis.”

The judge confirmed the OIA’s understanding of its role in cases which involve academic judgment. However, he upheld parts of the Claimant’s challenge to the OIA’s decision on other grounds, finding that the OIA should have considered the Claimant’s claim that there was unfairness in the university’s decision making process which led to the academic judgment to withdraw her from her studies. In particular, the OIA should have considered whether the university took into account relevant factors when considering the Claimant’s first year performance. The judge also accepted that the OIA had, “entirely blamelessly”, made a material error of fact.

The judge’s comments have implications for university appeal panels, in terms of recording the reasons for their decision and the evidence they have considered. This is consistent with guidance set out in the Good Practice Framework for Handling Complaints and Academic Appeals, which was published by the OIA in December 2014.

The claim was made extremely complex, and the judgment runs to over 100 pages. The judge records ‘an expression both of sympathy for the OIA in its difficulties in considering this case and admiration for its pertinacity in attempting to achieve a settlement’, commenting that ‘all the correspondence shows a genuine concern, patience, and a great expense of energy at the OIA in attempts to bring about an amicable conclusion by those who dealt with the matter...The OIA did its best to cope with a case which, in hindsight at least, may have expanded unnecessarily in certain respects over many months.’

As a result of the ruling the OIA will reconsider the complaint.

A copy of the full High Court judgment is available on our [website](#).

ENDS

Notes to Editors

1. For further information please contact Jane Clarkson, Policy and Communications Manager, by emailing jane.clarkson@oiahe.org.uk or by phone on 0118 959 9813.
2. The OIA is the designated operator of the Scheme for reviewing student complaints in England and Wales, established under the Higher Education Act 2004.
3. The OIA Scheme is free to students, and has been designed to be accessible to all students, without the need for legal representation.
4. The OIA has a wide remit to review student complaints about an ‘act or omission’ by HEIs in England and Wales. It does not review academic judgment or admissions issues. The Scheme Rules and all details related to OIA operations can be found at www.oiahe.org.uk.