

## OIA Annual Open Meeting 2019

### Speech by Felicity Mitchell, Independent Adjudicator: Increasing openness; delivering fairness

I'm also going to talk about fairness, but I want to start with openness.

Suzi started the morning by talking about our values. One of those values is “openness and accessibility”. One of our illustrious predecessors, Rob Behrens, spent much of his time hauling us out of the ivory tower that we built for ourselves back in 2004 (and yes, I was there!). In those early days we confused independence with aloofness and tended towards an air of mystery.

We have come a long way since then. Last year we took some big steps in our journey from Ivory Tower to Open Book, developing a greater openness about our approach to common issues arising in the complaints we see.

One big step was to publish two **briefing notes** on our approach to two knotty and topical issues. The **first** was on complaints arising from industrial action. This followed much public discussion about the USS pension industrial action that affected some of our members – remember the ministerial comments about students looking for compensation through the courts? We felt there was a need for clarity for students on the avenues open to them.

We received around 50 complaints last year about the industrial action, many from students who had not complained to their provider. Some of those students have been poorly served by solicitors' firms that have tried to get some sort of class action off the ground.

This February we published a representative selection of case summaries to illustrate the approach we are taking to these complaints. Most providers have gone to some lengths to ensure that students have not been academically disadvantaged, and this is good to see. But we don't think that's enough. It surprised me when my son, who was then a first year, announced that he had been told not to worry about the industrial action because he would not be tested on what he had missed. He was quite pleased! I was even more surprised to see some high-profile providers arguing the same thing to us. It seemed odd to me to see providers that traditionally trumpet the benefits of the all-round experience of learning at their institution telling us that it was all about the marks not the learning.

We have looked at what the providers have done to make up for what has been missed. For example, some providers have made lecture recordings, podcasts, and additional on-line materials available to students, or allowed them to sit in on other classes. Others have done nothing, and we don't think that's fair. We will be publishing a second batch of summaries of these cases in the next month or so.

The **second briefing note** coincided with the publication of the Disciplinary procedures section of the Good Practice Framework in October. For those who follow the Good Practice Framework, we will be publishing a section on fitness to practise later this year.

This second briefing note outlined the approach that we take to complaints by students about sexual misconduct or harassment by others. The 1752 Group's Silencing Students report drew attention to how difficult some students find it to make a complaint about sexual misconduct behaviours, and how frustrating the complaints process can be for those students who managed to.

Our briefing note highlighted two important points:

Firstly, students who are brave enough to make a complaint about a member of staff or another student should be given some resolution to their complaint. The bottom line is that if the behaviour of a staff member or another student has affected the complaining student's studies, health or wellbeing then the provider should offer them a remedy for that impact. That might be an apology or an explanation of any actions the provider has taken as a result of learning from the complaint. Or it might be an academic or financial remedy, depending on the nature of the concern, the impact on the student, and what the student is asking for.

Secondly, students who feel they are getting nowhere internally can ask us to review their complaint even though they don't have a Completion of Procedures letter. If a student makes a complaint about the behaviour of another student or a staff member, and their complaint is not progressed, is being obstructed, or remains unresolved as far as the student is concerned after an unreasonable length of time, we will consider accepting the complaint for review even if the student does not have a Completion of Procedures letter.

As well as being open about how we approach cases, we encourage providers to be open about their **record of handling complaints and appeals**. We encourage providers to share redacted copies of our decisions with their students' union or student representatives so that student advisers are well equipped to help the students who seek their support. We publish Annual Statements setting out information about our members' records in handling complaints and appeals and we encourage providers to share the statements at governance level and with student bodies. We try to improve the statements every year and they now include more qualitative information. The 2018 statements will be published in May.

The Annual Statements include information about the number of Completion of Procedures Letters providers have issued, and the number of complaints we have received, the outcome of those complaints, and how all of this compares with providers of a similar size. They do not tell us anything about how many complaints and appeals students are actually making. This information would provide meaningful context for the data we do hold and we think it would be useful to help providers to benchmark themselves as well as to help our own forward planning.

During 2018 we brought together a group of providers for a **pilot project** that ran from February to October 2018. Around 20 providers shared their internal data with us. Analysis of the results is not easy because of a lack of uniformity in the data submissions but there are some anomalies in the data which are themselves interesting.

We think this is worth pursuing. But of course we must make sure that collecting the data is not burdensome or bureaucratic. Our plan is to invite all our member providers to give us information for 2019 on a voluntary basis, and to offer to share anonymised data with those that do, to encourage participation.

I can't leave the subject of openness without mentioning our new website. I think it's brilliant! The structure is more accessible, small-screen friendly and intuitive. The writing style is more approachable. There is more information about our process. We hope that this will help students and those who represent them to find the information they need. And that it will make it easier for new points of contact coming into the role.

Enough about openness. Like Ben and Suzi, I want to say something about **fairness**.

When looking at cases, our job might start with checking whether the provider has followed its procedures. But it doesn't end there. We look at whether the procedures are themselves reasonable and whether the provider's decision is reasonable. For an ombuds scheme this means has this person been treated fairly?

Last year, for the first time, we held six **student discussion groups**, meeting with around 60 students to get a better understanding of students' perspectives and issues affecting their experiences. Those discussion groups and my own experience as a mother of two clever but clueless undergraduates have been a real eye opener for me.

Part of being a student is learning how to handle yourself in the world and too much spoon feeding obviously pulls against developing that sense of responsibility.

But we have to be realistic about what we can reasonably expect from students. And some students face particular challenges: those with mental health difficulties or learning disabilities, those whose first language is not English and who may come from a very different culture, part-time students who may be juggling other responsibilities, and those from backgrounds where HE procedures and practices might be entirely unfamiliar. We need to be designing our procedures with these students at the front of our minds.

The following quote is from a student who took part in one of our discussion groups and illustrates how important this is.

"I find that the University doesn't always take into consideration that a lot of students are first generation students, so they're the first in their families to go to University [...] I think that the University could take into consideration that not everybody has that support or that network or are coming from that particular background. ... I just feel that they should put the resources in for those students who are going to be coming in with challenges [...] you need something in place where you can support them because [...] they call you in and then they fail you, or

they badger you, you know and it's like well no I don't know how to do that, and I find that difficult."

I think it's very easy for providers' busy staff members to rely too heavily on process and to forget about grey areas, and the individual student in front of them. We too have to be conscious of this risk: we have an excellent team of case-handlers who care very much about students being treated fairly. But we need to be careful that we don't give too much weight to the first part of our task – checking the procedures have been followed – at the expense of the second – is the provider's decision reasonable?

And the decision can't be reasonable if the process wasn't fair.

I was surprised to see last year that the proportion of cases that we found to be Justified, Partly Justified or Settled fell from 24% in 2017 to 20% in 2018. As part of our quality control processes we did some dip sampling of the Not Justified cases and were reassured that we had reached reasonable decisions. The drop, which is less than 80 cases, might just be a blip – our numbers are small relative to the student body as a whole. Or it might indicate that providers are following our good practice guidance and getting better at resolving complaints that have merit internally.

Half of the complaints we received were about academic status, mostly arising from academic appeals and around 40% of those relate directly to a student's mitigating circumstances. We found about 70% of the Academic Status complaints Not Justified – this compares with 54% overall. So these complaints account for a lot of our Not Justified cases.

I think the ground has shifted under how the **sector deals with mitigating circumstances claims**. There has never been a single uniform approach to these cases. But the enormous growth in our membership, and the corresponding expansion in our outreach activities, is giving us a more well-rounded perspective on how providers approach them and what good practice looks like.

At the same time, pressures on the NHS mean that it is now completely unrealistic to expect students to obtain medical certificates within the short window that most providers' processes allow them.

There is always a balance to be struck between fairness to the student body and fairness to the individual student, between scepticism and trust. And there has to be a way to fairly manage those few students who are trying it on, without unfairly disadvantaging the vast majority who are not.

There is a growing concern about how to support students fairly through assessment processes when they have mental health difficulties. Is it reasonable to expect a student suffering from severe anxiety or severe depression to engage with formal processes and meet stringent deadlines?

In March this year we held a Mitigating Circumstances Forum to start a conversation about how providers approach academic appeals, and other processes, where a student raises

ill-health or personal circumstances as a reason for under-performance, poor behaviour or attendance, or fitness to practise concerns.

Around 160 delegates listened to presenters from seven different providers, from SUs and complaints and appeals handling staff, and talk about what “reasonable” looks like in the context of mitigating circumstances claims. Later this year we will be publishing a briefing note on our approach to these cases.

So let’s not lose sight of fairness when we talk about the importance of good practice. I want to end with a quote from David Watson’s *Managing Civic and Community Engagement*, drawn to my attention by the inimitable Jim Dickinson in a Wonkhe blog:

“We need to cling on to notions like joy, fun, and even **mercy**, alongside accountability and the relentless march of uniform ‘good practice’”.