

Response to the OIA consultation: The Good Practice Framework: Disciplinary procedures

The Office of the Independent Adjudicator (OIA), published a draft of a chapter of the good practice framework on disciplinary procedures. The draft can be accessed here: <http://www.oiahe.org.uk/media/123221/gpf-disciplinary-procedures-consultation-2018.pdf> (a copy is also provided with these papers). Responses are invited to the draft chapter by 31 July 2018.

The emboldened questions provided in this document are those listed in the consultation response form. If the University wishes to provide a response it will be necessary to submit it by 31 July 2018. Noting that this is one day after the meeting of the Review Committee on Discipline, any suggested amendments would helpfully be sent in advance of the meeting to Sarah d'Ambrumenil at sed52@cam.ac.uk.

RESPONSE

General

Does the whole document identify appropriately the types of behaviour that might amount to misconduct, and the circumstances in which action might be taken?

Yes. The University of Cambridge welcomes the draft guidance on disciplinary procedures, which largely brings clarity to a range of matters. In general, the University agrees with the content of the guidance with some concerns and requests for further clarification as outlined in this response.

More specifically, the types of misconduct and circumstances in which action might be taken are adequately described, except for the use of the term 'contract cheating'; whilst this term has become common place when discussing academic misconduct, it is not considered to be an accessible term from a student perspective and does not label clearly the conduct which is prohibited.

Furthermore, there is some ambiguity about when procedures other than the disciplinary procedure might be used. For example, there is a suggestion that where a student is subject to fitness to practise requirements, a case should be considered through the disciplinary procedure before being referred to the fitness to practise procedure. However, this would require a student to be subject to two distinct procedures and potentially two investigations, as the standards of behaviour for the professional course are likely to be higher than the standards of behaviour required for any other student. For cases of non-academic misconduct, it would be preferable to advise providers to refer immediately to the fitness to practise process for investigation, where this is appropriate.

The same challenge applies between discipline and fitness to study (referenced at paragraph 26). It would be helpful to clarify that, where an allegation relating to non-academic misconduct has arisen, it would be preferable to refer the matter immediately to fitness to study – again preventing the student from having to go through two procedures.

Is the structure of the whole document helpful?

The general structure is adequate. However, parts of the guidance are repetitive in subject and do not explicitly align. For example, on page 11 the guidance indicates that a provider will "normally decide the case on the balance of probability". However, on pages 23 and 24, when giving more information about the standard of proof, the guidance states "a provider's

regulations should explain clearly the standard of proof required in the disciplinary procedure” but does not make any reference to a preference of one standard of proof against another, unless no standard of proof is mentioned. Additionally, on page 23 the guidance states that the balance of probabilities standard of proof “should be used in disciplinary cases which may lead to fitness to practise proceedings against a student”. Whilst none of these statements are directly in opposition, they give different emphasis and it is unhelpful that one of them is in an entirely different section. The University was also disappointed that the OIA did not take this opportunity to specify a specific standard of proof for disciplinary proceedings.

Another example of lack of clarity is the reference to Harassment, Discrimination and Bullying procedures, which are first mentioned on page 12, but there should be a cross-reference to the section about this on page 19.

Are the case studies appropriate and helpful?

The case studies are very helpful. However, in case study 2 it is not clear why the case was not referred to fitness to practise in the first instance, particularly when there was written evidence that the messages had taken place.

An overview of the factors providers should take into account when designing disciplinary procedures

Does the Section define academic and non-academic misconduct appropriately?

Yes, except for the use of the term ‘contract cheating’; whilst this term has become common place when discussing academic misconduct, it is not considered to be an accessible term from a student perspective and does not label clearly the conduct which is prohibited.

Is the timeframe suggested for misconduct procedures appropriate?

No. This is the most challenging aspect of the guidance, although partly because of a lack of clarity about the steps that should be included within the discipline process. Even if there was a single investigation stage and then a hearing (the chapter indicates that both this and a ‘preliminary investigation’ should be completed in 60 days), this could not happen in the allocated time without restricting the student’s options for providing further submissions. As an example a brief timeframe of the steps in an investigation and hearing without any witnesses (which would lengthen the process) is as follows:

1. Complaint received from complainant – day 0
2. Investigator appointed and complaint screened for eligibility – day 1-3
3. Investigator invites complainant to meeting (gives a week’s notice so that the complainant has time to organise a supporter to attend) – day 4
4. Complainant meeting takes place – day 11
5. Complainant sent notes of meeting and given week to provide amendments – day 15
6. Complainant confirms notes of meeting – day 22
7. Investigator writes to respondent student about allegation and invites for meeting (1 week notice to organise a supporter to attend and read materials) – day 23
8. Meeting with respondent – day 30
9. Respondent sent notes of meeting and given a week to provide amendments – day 34
10. Respondent confirms meeting notes – day 41
11. Investigator writes up report and submits to decision maker – day 48
12. Decision maker confirms that hearing should take place – day 55
13. Respondent student provided with copy of investigator report, informed that there will be a hearing and given 2 weeks to make formal written representations – day 58

14. Respondent provides written representations – day 72
15. Investigator's report and respondent representations circulated to Committee – day 73
16. Committee holds hearing – day 80
17. Decision letter sent to student (with 14 day appeal option) – day 87

The OIA should specify which of these steps are unnecessary, or alternatively amend the proposed timeframe. If the OIA wishes an additional 'preliminary investigation' stage to be included it would be helpful for there to be a timescale and steps attached to this as well. The OIA should provide a simple flow chart outlining all the stages of the procedure.

Is this part of the Section clear?

This section is useful but certain elements are referenced here but described in more detail elsewhere. The name of the section is also misleading, as it implies that a procedure could be designed using this section of the guide only, when that is not the case. It would be more appropriately named as the 'Overarching principles providers should take into account...' – because the stages of the process (set out in the other sections) are also 'factors' that should be taken into account.

Harassment, discrimination and bullying

Is this part of the Section clear?

Yes, although it would be challenging for a provider to have a clear and accessible disciplinary procedure, and at the same time have different procedures for harassment, disciplinary and bullying; academic misconduct; non-academic misconduct; and fraud. Students at the University of Cambridge have explicitly asked the University to provide a single, clear disciplinary procedure and it would be helpful for the OIA to clarify how a multiple procedure approach might be made accessible to students and prospective students as part of their terms and conditions.

An overview of academic and student disciplinary procedures

Is this part of the Section clear?

Please see the comments above regarding the standard of proof. It was expected that the OIA would clearly set out the standard of proof that it would expect providers to use. Please provide more information about the 'preliminary investigation stage' – how would this stage work in practice? If an investigator is meeting with a student, would the notes of this meeting be used as part of the formal investigation? Does the complainant need to be involved at both investigation stages? If so, depending on the offence, this could be re-traumatising. Instead, could there not be a single investigation, with a decision-maker then deciding whether the offence is minor and should be dealt with in a particular way, or that it is more serious and as a result should be referred to a meeting/hearing?

Initial considerations - Academic disciplinary cases

Is this part of the Section clear?

It is ambiguous about the level of detail that should be provided to the student before they first meet with the investigator. At this stage should they be provided with all of the supporting evidence? If so, it would be helpful to re-order paragraphs 44 and 45. If it is not necessary to provide the student with supporting evidence at this stage then this should be stated explicitly.

Initial considerations - Student disciplinary cases

Is this part of the Section clear?

There is an implication that disciplinary cases should have a preliminary stage – it would be helpful to confirm whether or not this is best practice/an expectation, and to give more detail on the purpose of the preliminary stage, as indicated above.

The formal stage

Is this part of the Section clear?

The framework is clear that where students have access to resourced student support services that legal advice should not be required but procedures should make the option available to students, particularly in serious cases. Legal advice is expensive and not available within many students' financial means. The OIA should provide clarity on the practicalities of permitting legal representation, in light of the principle of providing equal access to University procedures for all students.

It is a surprise that respondent students are not allowed to provide written representations to the Committee, in advance of the formal meeting/hearing taking place, noting that they will not previously have seen the investigator's full report. It is also a surprise that the respondent student does not appear to have the right to call witnesses. This is something that would appear to be current practice within the sector and therefore the chapter should be explicit as to whether these stages are expected, particularly in reference to the tight timeframe.

The appeal stage

Is this part of the Section clear?

Yes. It is welcome that the OIA has moved away from the three grounds of appeal within other sections of the good practice framework. The explicit extension of the grounds of appeal should be reflected in other chapters.

Useful resources and footnote document references

Please identify other useful resources to include in this part of the Section.

No comments