

Responses are welcomed from students and staff, groups and individuals to be sent by 28 February 2019 to OSCCA@admin.cam.ac.uk.

Introduction

Following the [consultation](#)¹ on the principles of a revised student disciplinary procedure, which ran from 7 May 2018 to 22 June 2018, the Review Committee on Student Discipline, which includes senior representatives from the University and Colleges, has published a draft revised Special Ordinance, Ordinance and General Board Regulations relating to student discipline.

Attached is the following documentation:

- Revised policy and procedure, consisting of:
 - Special Ordinance under Statute D II 10: Student Discipline
 - Ordinance: Rules of Behaviour for Registered Students and Formerly Registered Students
 - General Board Regulations: Student Disciplinary Procedure
- Appendix A – flow chart of the Student Disciplinary Procedure
- Appendix B – role description for the Investigating Officer
- Appendix C – role description for the Student Discipline Officer
- Draft guidance on sanctions for breaching the Rules of Behaviour

The proposed paperwork sets out:

- the Rules of Behaviour expected to be followed by students and former students;
- how to raise a concern about a student's behaviour;
- the process for investigating concerns;
- consideration that takes place following investigation;
- the rights of review and appeal; and
- the consideration and action taken where current students receive a criminal conviction

The Policy and Procedure has been written with reference to the [consultation](#)² and the responses received from the [1 May 2018 discussion on the standard of proof](#)³, in addition to the [Good Practice Framework on student disciplinary procedures](#)⁴, issued by the external ombudsman, the Office of the Independent Adjudicator (OIA) in November 2018. The University is required to comply with the OIA's Good Practice Framework from October 2019 onwards or justify its non-compliance on a case-by-case basis.

As part of the consultation, responses will be sought from each College, School, as well as through the College and University committee structures. Responses are welcomed from other individuals or groups – students or staff – across the Collegiate University. Following the consultation, a response and revisions will be made by the Review Committee on Discipline prior to the drafting of a Report. It is envisaged that the timetable will enable a revised Student Disciplinary Procedure to be implemented on 1 October 2019.

¹ <https://www.studentcomplaints.admin.cam.ac.uk/consultation>

² <https://www.studentcomplaints.admin.cam.ac.uk/consultation>

³ <http://www.admin.cam.ac.uk/reporter/2017-18/weekly/6509/section1.shtml#heading2-4>

⁴ <http://www.oiahe.org.uk/media/124794/oia-good-practice-framework-disciplinary-procedures.pdf>

This cover note provides some context to the key proposed differences between the current student disciplinary process and the proposed process.

1. Updates to the Rules of Behaviour

The Rules of Behaviour are intended to replace the current [regulations](#)⁵ for students, and former students. There is no intention to widen the powers of the University to be able to investigate different types of behaviour from that which is currently permitted. However, the definition of those students who are required to adhere to the Rules of Behaviour has been widened to include all of those who are pursuing a course of study at the University, not just those who are members of the University, to ensure compliance with the OIA.

Over the last few years, as new guidance has become available, the regulations have been amended on an *ad hoc* basis. This has resulted in some inconsistency in wording. The draft Rules of Behaviour ensure that students can be clear about the behaviour expected of them and clarifies when concerns about student's behaviour should be reported. In the past former students, as members of the University, were required to abide by the same regulations as current students. However, the Rules of Behaviour that apply to former students have been narrowed, noting that the range of applicable sanctions are limited and that the University will still have recourse to civil and criminal proceedings should serious misconduct take place.

2. Further information on the Rules of Behaviour

Definitions or further information regarding the current regulations are available from a variety of sources, including the Statutes & Ordinances, guidance issued by University bodies or offices, Discipline Notices published in the Reporter following the outcome of Discipline Committee cases or, in some circumstances, within institutional memory and working practice. Providing further information on the Rules of Behaviour within a single source will ensure that all of the relevant information will be clear and accessible to all stakeholders.

3. The investigation and initial consideration of alleged misconduct

Within the current system, the University Advocate is responsible for the investigation and initial consideration of any complaint raised under the discipline procedure for both students and staff. In the past this has required the Advocate to undertake two or three investigations a year. However, recently the workload has risen significantly; fourteen student investigations were undertaken in the 2017-18 academic year. Each investigation can require multiple meetings and detailed correspondence with a number of individuals and it is not now practical nor appropriate to expect a member of Regent House to undertake this role as an additional responsibility. The University is very grateful that the current University Advocate, Dr Rosy Thornton, has been generous enough to continue with this role for so long. The proposal is for a full-time Investigator (as outlined in Appendix B) to undertake investigations of alleged student misconduct. The commissioning of an investigation and the consideration of the Investigation Report is proposed to be undertaken by the Student Discipline Officer – a member of Regent House, appointed by Grace. The Student Discipline Officer will

⁵ <https://www.admin.cam.ac.uk/univ/so/2018/chapter02-section19.html>

have the power to dismiss a case, impose a minor sanction, or refer a case for consideration by the Discipline Committee and will have the same independence enjoyed by the University Advocate. The Investigator will be responsible for presenting a case to the Discipline Committee where this is required.

Whilst the University Advocate is presently responsible for the investigation of all disciplinary matters, in the current system the Proctors are the primary contact for examination misconduct and plagiarism and undertake initial investigation meetings with the students involved. Whilst this system has enabled members of the University who are independent and knowledgeable about matters of the University to undertake such a task, the annual turnover of Proctors and their time capacity have led to the proposal that all investigations relating to alleged student misconduct, including those relating to academic misconduct, should be undertaken by the Investigator. The Investigator would be able to support and advise Departments and Faculties in relation to concerns regarding plagiarism and collusion as the Proctors do now. This development would enable a consistent approach to all investigations by an experienced and adequately resourced role-holder. The Proctors would maintain a relationship with the student disciplinary procedure as members of the Appeal Committee, which would be consistent with their role to provide scrutiny of the University's business.

4. Standard of proof

The standard of proof used in student discipline cases is currently beyond reasonable doubt. There is a range of guidance available which indicates that this is no longer appropriate practice. The OIA's Good Practice Framework on student discipline procedures confirms that it is normal for the standard of proof used in disciplinary procedures to be the balance of probability and that for students who are subject to fitness to practise proceedings (within the University this includes medical students, veterinary students and PGCE students) any disciplinary proceedings must be considered on the balance of probability.

The University has undertaken consultation with students and staff regarding the standard of proof. The Collegiate University community has strong opinions on both sides in relation to the standard of proof, however, during the previous consultation, as well as at the discussion at the Senate House on 1 May 2018, the majority of students and staff were in favour of adopting the balance of probabilities as the standard of proof for the student disciplinary procedure.

Whichever standard of proof is used in the student disciplinary procedure, in order for the procedure to be transparent, consistent and easily understood, it is important that a single standard of proof for all student discipline cases should be adopted. If this is accepted then the balance of probabilities is the only standard that can be adopted, as the OIA has required it to be used for medical, veterinary and PGCE students.

5. An internal process

The current investigation and consideration of student misconduct is based on the process followed within the criminal justice system; the University Advocate acts as the prosecutor and the accused student is almost always represented by someone who provides formal oral and written representations on the student's behalf. The

papers presented to the Discipline Committee are divided into two sections; a bundle from the University Advocate 'prosecuting' the case, and a bundle from the student's representative 'defending' the case. It is not uncommon for there to be references to case law and for references to be made to the criminal process regarding evidence, witnesses or rights of appeal. However, a student disciplinary process is not a criminal process; it is an internal process and does not have the same degree of formality as proceedings in a court of law. The outcome of a discipline case will never lead to a loss of liberty. Instead the purpose of the University's disciplinary process is to enable the University to consider proportionately the behaviour and risk that students and former students pose, both to the University and to members of the Collegiate University community. To that end it is necessary that any investigation and any subsequent consideration by a decision-maker should be primarily focused on finding out the truth and deciding upon a proportionate and appropriate outcome.

The revised procedure has been designed to enable the fullest possible investigation to take place; the investigation will not just consider the alleged behaviour, but the impact of such behaviour and any mitigation or personal circumstances of the Respondent and the impact this might have had upon their behaviour. Whilst the Respondent will still have an opportunity to provide an additional statement or evidence to the Discipline Committee following the completion of the investigation it is highly likely that all of their account, evidence and opinion will already have been captured within the investigation report. It will not be the Investigator's job to 'prosecute' the case (as is the University Advocate's), but to present the investigation material in a neutral capacity, in order that decision-makers may decide whether or not there has been a breach of the Rules of Behaviour.

Another advantage of this in-depth investigation process is that the evidence to be considered will be almost entirely in written form and available in advance of the Discipline Committee meeting. The Discipline Committee will continue to meet in person and invite the Respondent to attend, providing them with an opportunity to provide oral information, challenge the evidence and answer questions, if they wish to do so. However, its primary purpose is not to rehearse the investigation materials in detail. It is important that the Respondent has every opportunity to provide evidence to the Discipline Committee, but this needs to be done with consideration for the Reporting Person and/or Witness(es). It is important to note that the University has a clear duty of care to the Reporting Person and/or Witness(es) and therefore should only permit the challenging of evidence where such challenge is material to the Discipline Committee's decision and in a format that is appropriate to the circumstances. The availability of 'cross examination' as a means of challenging evidence should not be used for the primary purpose of putting off someone from reporting a concern, or in the vague hope that they will provide a different account of their experience in person. Where there is not the written evidence to prove that the Respondent was more likely than not to have breached the Rules of Behaviour, then the Discipline Committee should not be persuaded by an array of witnesses providing further information for the first time at a meeting. Where the evidence exists for a finding to be made, the Discipline Committee should not be put off by a nervous Reporting Person or a compellingly presented character witness for the Respondent.

The Chair of the Discipline Committee will consider each case on an individual basis and where the Respondent wishes to challenge the evidence within the investigation, a decision will be made about how this can best be arranged.

It is noted that other higher education institutions are also carefully considering the means for a Respondent to challenge a Reporting Person's or Witness' evidence in order to improve their processes. Where solutions have been implemented successfully institutions have seen an increase in reporting and no increase in the number of appeals. Where the University has consulted with victims and survivors of sexual misconduct and abusive behaviour, individuals are explicit about the negative impact the current system has on their perception of the disciplinary process (as well as the University) and the barrier it provides to them formally reporting the misconduct of other students.

It is noted that this would not be the first time that the University has considered making its methods for permitting the challenging of evidence within disciplinary procedures more flexible. The current disciplinary process for unestablished University staff members does not require the Reporting Person(s) or Witness(es) to attend, even where the potential consequences of the case for the Respondent are very serious (e.g. potential dismissal).

6. Minor sanctions and major sanctions

In the present system, before any type of sanction can be imposed, a case is considered by the Discipline Committee. This is a barrier to the University considering more minor misconduct; consideration by a Discipline Committee for minor breaches is an inefficient and disproportionate way of using University resources. However, it also provides a lack of clarity and inconsistency to students about when the University will and will not investigate alleged misconduct. By providing an option for the Student Discipline Officer to put in place minor (largely educative) sanctions, the University would enable itself to deal proportionately with breaches of the Rules of Behaviour. The revised procedure enables students to have their case considered by the Discipline Committee if they do not agree with the Student Discipline Officer's minor sanction(s), ensuring that there is no reduction in the Respondent's rights to have the alleged misconduct fully considered.

7. Right to appeal and review decisions

Currently, students are prohibited from reviewing or appealing decisions made by the University Advocate or procedural decisions made by the Chair of the Discipline Committee; this is not considered good or appropriate practice. At the same time, students have the opportunity to appeal the Discipline Committee outcome to a seven person appeal panel, presently chaired by a Justice of the Supreme Court. It is suggested that the current resource required to consider an appeal is disproportionate and out of line with other student procedures within the University, as well as the sector. Furthermore, due to the number of people required and their seniority, organising a meeting of the current appeal panel (the Septemviri) can take months; the OIA's good practice framework requires the entire appeal process normally to be completed within 30 days. The proposed review mechanisms within the draft procedure are those recommended by the OIA and are consistent with all of the other formal student procedures handled by the University.

Conclusion

The opportunity has been taken to make a number of other minor changes to the policy and procedure, which have either been outlined in previous consultations or have been already incorporated into working practice but have never been included in formal documentation. It is imperative that the procedure is transparent and consistent so that outcomes and rights are understood and are fair. The amendments to the policy and procedure have been carefully considered by the Discipline Review Committee, by the Legal Services Office and by specialist external legal advisers.

Comments regarding any aspect of the policy and procedure are welcomed, both those that support the revisions and those that would provide an alternative to the draft policy and procedure outlined in these documents.