



Complaints involving sexual misconduct and harassment

Introduction

Over the years we have received some, but perhaps surprisingly few, complaints involving sexual misconduct and harassment. The complaints we see fall into three categories:

1. The student complains to us about how the higher education provider has handled their complaint about a staff member;
2. The student complains to us about how the higher education provider has handled their complaint about another student; or
3. The student complains to us about how the higher education provider has handled disciplinary proceedings against them.

Our Good Practice Framework: Disciplinary procedures sets out the overriding principles that should apply to higher education providers' disciplinary processes. Procedures should be accessible, clear, proportionate, fair, independent, timely, appropriately confidential and should improve the student experience.

The focus of that section of the Good Practice Framework is on how providers should manage their disciplinary procedures rather than on how they should support and communicate with students who make a complaint about sexual misconduct or harassment. The purpose of this briefing note is to outline the approach that we take to complaints by students about sexual misconduct or harassment by others.

Expectations of behaviour

It can be very difficult for a student who has experienced sexual misconduct or harassing behaviour to make a complaint. This is particularly the case if the complaint is about a staff member, where there is an obvious imbalance of power.

It is important for providers to make it as easy as possible for students to raise sensitive issues, and to clearly signpost where they can go for help, support and advice.

It is equally important for providers to give guidance and training to staff members so that they know what to do when a student approaches them.

Providers should set clear expectations about how their students and staff members should behave, and explain those expectations and the consequences of failing to meet them to students and staff members. This includes explaining what sort of behaviour will amount to sexual misconduct or harassment.

This helps students who experience upsetting, troubling or unwelcome behaviour to recognise that they do not have to tolerate that behaviour, that they can complain about it, and that they have every right to expect it to stop.

Staff disciplinary processes

Normally a complaint about a staff member will be referred to the provider's staff disciplinary procedures. It is not for the OIA to tell higher education providers how to manage their human resources processes. But when a student makes a complaint about a staff member, the student complaints process and the disciplinary process can become intertwined, and the outcome of one feeds in to the outcome of the other. We will consider how the higher education provider has handled the student's complaint and whether the outcome for the student making the complaint was reasonable.

In some cases, the student will be asked to give evidence at a staff disciplinary hearing. Care must then be taken to ensure that the student feels safe and in some cases it may be appropriate to use a video link. It is not good practice to allow the staff member to cross examine the student: questions should normally be put through the disciplinary panel.

Staff disciplinary processes can take time. It is important for all concerned to make sure that there are no unnecessary delays. The provider needs to reassure the student that it is taking their concerns seriously, and taking appropriate action to address them.

Student disciplinary processes

Usually a complaint by one student about the behaviour of another should be dealt with under the provider's student disciplinary procedures, and those procedures should comply with the principles set out in the Disciplinary procedures section of the Good Practice Framework.

The provider owes the same duty to each student involved and should support both students through the process.

Remedy

The outcome of the staff or student disciplinary process will normally be confidential to the individual staff member or student, although they may consent to information being shared with the student who made the complaint. In any case, the student making the complaint should be given some resolution to their complaint. If the staff member or student's behaviour has affected the complaining student's studies, health or wellbeing then the provider should offer them a remedy for that impact. That is a separate matter to any sanction the provider applies at the end of the disciplinary process. The remedy might be an apology, an explanation of any actions the provider has taken as a result of learning from the complaint, or an academic or financial remedy, depending on the nature of the concern, the impact on the student, and what the student is seeking.

Our approach

When we consider a complaint from a student about how the provider has handled a complaint about another student or staff member we will consider the following:

- Did the student have difficulty in raising their concern or making a complaint? Was their concern taken seriously and was appropriate action taken when the concern was first raised? Were they guided through the process properly?
- Was the student properly supported through the whole process?
- Did the provider treat the student fairly, giving them a proper opportunity to make their case and equal weight to their evidence?

- Has the provider investigated the complaint thoroughly and interviewed relevant witnesses?
- Was the student involved in a disciplinary hearing – and if so were they treated fairly in that process?
- How long has the process taken, was the timeframe reasonable, and was the student kept informed about what was happening?
- Has the provider offered the student a reasonable remedy or resolution for their complaint?
- Has the provider explained to the student what they can do if they are unhappy with the outcome?

We will not review a complaint unless the higher education provider has had the opportunity to look at it first. This means that normally the student needs to have completed the provider's internal processes before complaining to us, and the provider will have given them a Completion of Procedures Letter. We can accept a complaint for review when the student has not completed the higher education provider's internal processes in "exceptional circumstances". We will do this if we believe there has been undue delay by the provider in progressing the complaint and there appears to be no prospect of early resolution, where we believe the higher education provider might be obstructing the complaint, or where there is nothing to be gained by progressing with the internal processes.

This means that 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 it for review even if the student does not have a Completion of Procedures letter.

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