



office of the
independent
adjudicator

COMPLAINT OUTCOME

Office of the Independent Adjudicator for Higher Education

Date issued:	4 September 2012
OIA reference number:	OIA/09249/10
Complainant:	Dr Georgina Chan
Higher education institution:	University College London
Decision:	Justified

Complaint

1. Dr Chan has complained about the College's decision in its email dated 6 June 2011. Dr Chan complained to the OIA that:
 - 1.1. the Academic Committee Review Panel (the "ACRP") did not properly investigate her complaints;
 - 1.2. the Grievance Panel failed to acknowledge that the deferment of the submission of her outstanding assessment was due to the gross disorganisation of the course;
 - 1.3. it was unreasonable for the Grievance Panel not to proceed with a Student Grievance Panel Hearing ("Panel Hearing") and contrary to its procedures;
 - 1.4. her submissions to the ACRP were shown to the course directors without her permission or knowledge and they were able to refute her allegations based on hearsay. Dr Chan was not provided with the Panel's report.We informed Dr Chan that we would consider her complaints in the form she raised them in the Grievance.

Background

2. Dr Chan registered at the University in 2008 to study for a Master's degree in Clinical and Public Health Nutrition.
3. On 27 March 2009, the cohort wrote a letter to the Dean of Students (Academic) regarding the quality of the course. Dr Chan engaged extensively with College staff in an attempt to obtain a resolution to her concerns. Between 25 March 2009 and October 2009, doctors diagnosed Dr Chan with stress and provided medical notes stating that she should refrain from work.
4. On 25 June 2009, an extraordinary meeting of the Staff Student Consultative Committee was held to discuss the concerns.

5. In July 2009, Dr Chan raised a complaint under the Public Interest Disclosure procedure which permits students, among other people, to alert senior staff to potential issues of malpractice.
6. The course was scheduled to finish on 15 September 2009, but it actually finished in October 2009. From 5 October 2009, Dr Chan was in full time employment. Dr Chan deferred the deadline for three assessments until the following academic year, 2009/10. She achieved an MSc degree with distinction.
7. On 14 December 2009, the ACRP was convened to investigate Dr Chan's concerns. The response was issued on 22 April 2010, which upheld some but not all of Dr Chan's complaints.
8. On 1 October 2010, Dr Chan submitted a Student Grievance form. On 28 April 2011, the University offered Dr Chan £3,300, equivalent to her tuition fees for the course, in an informal attempt to settle her complaint. Dr Chan rejected the offer on 2 May 2011. On 6 June 2011, the University upheld Dr Chan's complaint and formally offered £3,300 in compensation. This email constituted the Completion of Procedures Letter for the purposes of the OIA Scheme. The OIA received Dr Chan's OIA's Complaint Form on 06 September 2011.

OIA Review Process

9. The purpose of the OIA's review is to decide whether a complaint is Justified, Partly Justified, or Not Justified. In deciding whether this complaint is Justified, we have considered whether the University applied its regulations properly and followed its own procedures correctly. We have also considered whether any decision made by the University was reasonable in all the circumstances.
10. In considering the complaint, we have taken into account all the documentation provided by Dr Chan and the University.
11. Our decisions do not necessarily refer to all documentation provided and points raised during the course of our review. We include all material which we consider necessary to make a decision about the complaint.
12. The OIA cannot interfere with the operation of an institution's academic judgment. We cannot put ourselves in the position of examiners in order to re-mark work or pass comment on the marks given. However, we can look at whether the University has correctly followed its own assessment, marking and moderation procedures, and whether there was any unfairness or bias in the decision-making process.

Decision

13. Overall, our decision is that Dr Chan's complaint is **Justified**.

Reasons for Decision

14. In summary, Dr Chan complained of the following in her Grievance Form:
 - 14.1. The course was not organised according to published information. This resulted in her not completing the course within the anticipated one year;
 - 14.2. Inadequate teaching / supervision;
 - 14.3. Inadequate academic quality;

14.4. Senior staff failing to satisfactorily deal with the issues since March 2009.

15. The University upheld the complaint under the following grounds of grievance:

- 15.1. That inadequate teaching/supervision was provided for some or all of the programme;
- 15.2. That the programme was not organised or delivered in accordance with the information and documentation provided to students on the programme.

16. The reasons for upholding the complaint were:

- "1 The Grievance Panel has considered, acknowledged and upheld all the issues raised and outcomes of the ACRP, a copy of which you already have.*
- 2 When the Dean of Students (Academic) and Faculty Graduate Tutor became aware of the concerns regarding the delivery, assessment and teaching of your programmes in Spring/Summer 2009, steps were taken to address the problems. Also, you should note that steps were put in place by the course management system team of your programme to respond to the findings of the [ACRP]. The Grievance Panel is satisfied with the reported progress which has been made in light of the [ACRP] report. However, the Grievance Panel appreciates that these improvements would have been too late to benefit you as much of the teaching for you would have been done.*
- 3 The Grievance Panel also appreciates that you were forced to defer the submission of your outstanding coursework from summer 2009 to summer 2010 on medical grounds which stemmed from the poor quality of your MSc programme. As a result of the deferrals, you ultimately had to wait for a year for your award. The Grievance Panel is satisfied that your Department took the necessary steps, through deferrals and suspensions of regulations, to ensure that you were able to complete assessments (as first attempts) in 2009/10. The Grievance Panel is also pleased to note that you have now been awarded your MSc 'with distinction'.*
- 4 The Grievance Panel decided not to proceed with a Student Grievance Panel Hearing and to offer the level of compensation deemed appropriate given the disruption experienced."*

17. Having considered the documents provided, I make the following conclusions and observations regarding Dr Chan's complaint.

Allegations of bullying and harassment and breaches of the Data Protection Act

18. The Completion of Procedures letter states *"The Grievance Panel has considered, acknowledged and upheld all the issues raised..."*. It therefore appears that the College upheld Dr Chan's Grievance in its entirety. However, the internal documents show that the following two issues in the Grievance Form could not be considered within the Student Grievance Procedure ("Grievance Procedure"):

- 18.1. Harassment and bullying, for which there was a separate procedure;
- 18.2. Breach of the Data Protection Act, which could be dealt with under the College Complaints Procedure or with the Data Protection Commissioner.

19. We consider that the outcome letter should properly reflect the decisions reached, including identification of those matters which were ineligible under the Grievance Procedure. We consider that if a matter is ineligible under one procedure, it is good practice to inform the student and direct them to the correct procedure. It does not appear that this was done in Dr Chan's case. In the circumstances, we are not persuaded that the College properly considered these issues as anticipated in the Completion of Procedures letter.

20. We conclude this element of the complaint to be **Justified**.

Dr Chan's comments on the investigation and findings of the ACRP

21. It appears to be accepted under the Grievance Procedure that the teaching on the course was inadequate and the course was not delivered in accordance with the programme (the grounds on which the Grievance was upheld). However, in her Grievance, Dr Chan also said, among other matters, that her complaints to the ACRP had not been satisfactorily managed and the course directors made false claims to the ACRP that they were unaware of her issues with the course and her ill health. Dr Chan provided a commentary on the ACRP's investigation and findings after obtaining a copy of the ACRP report and statements from the course officers through a Freedom of Information request.

22. The College clarified to Dr Chan that the ACRP was an investigation process for the benefit of the College. We have not been provided with a copy of the ACRP Procedure from 2010, but the current procedure at <http://www.ucl.ac.uk/academic-manual/part-7/ac-review-panel> states the ACRP is part of a quality assurance process designed to investigate whether academic units deliver programmes in accordance with regulatory and procedural frameworks. The ACRP is a special investigatory process which ascertains the nature and extent of the problem, and recommends remedial action to the Chair of the Academic Committee. We observe that the ACRP did not uphold all of Dr Chan's complaints, including the allegations of academic bullying and substantive changes to module assessment and it noted that the programme organisers vigorously defended the academic content of the programme. The College has said that there is no appeal against the ACRP findings or a right of reply mechanism.

23. We appreciate that Dr Chan is dissatisfied with the ACRP's findings, believing that it did not properly consider the evidence she provided and that it did not consider the academic content of the course. It is not for the OIA to review the College's investigatory process into course standards which was for its own internal benefit. We note from the internal consideration of the Grievance that the College considered that handling and setting up of the ACRP should not be part of the Grievance Procedure because Dr Chan's substantive complaints were being investigated as a Grievance. The College upheld her complaints under Grievance Procedure at the early stage in the procedure and offered a remedy. Our role is now to determine whether that remedy was reasonable in the circumstances.

24. We conclude this element of the complaint is **Not Justified**.

Reasonableness of the College's offer

25. In the Grievance Form, Dr Chan requested the following compensatory action:

- 25.1. Reimbursement of course fees;
- 25.2. Reimbursement for loss of salary for one year;
- 25.3. Compensation for medical problems caused by the course and failure of College staff to resolve her issues;
- 25.4. Compensation for breach of contract;
- 25.5. Compensation for breach of duty of care – negligence;
- 25.6. Damages for breach of the Data Protection Act, resulting in sensitive personal data being divulged;
- 25.7. Damages for victimisation and bullying;
- 25.8. Damages for defamation of character;
- 25.9. Damages for injury of feeling;
- 25.10. Investigation into the failings of the ACRP, its refusal to examine academic quality and its failure to acknowledge evidence provided;

- 25.11. Appropriate reprimand of College staff who consciously provided false information to the ACRP;
- 25.12. Acknowledgement and apology from the College for its failings.
26. In relation to compensation for loss of earnings, Dr Chan has informed the OIA that to practise as a nutritionist she needed to leave her job in histopathology to take the course on a full time basis and to complete a Masters degree in nutrition. Dr Chan said that the MSc fitted her needs well as the promised modules were ideal and she was satisfied with the College's declaration that it was seeking accreditation for the course from the Nutrition Society. Dr Chan said that her complaint revolved around the fact that the academic content of the course was sub-standard and items in the handbook were omitted. Dr Chan's claim for loss of salary was based on two factors: (1) the money that she would have received from the career she left; and (2) the barrier created by the College preventing her from being able to start her new career. Dr Chan has also said that as she completed the course over two years, she could have done the course on a part-time basis and worked part-time also.
27. We are not persuaded that Dr Chan should be compensated for loss of salary for one year because she would not have received a salary when undertaking the course on a full-time basis in any event. We are not persuaded that Dr Chan should be compensated for missing a year of salary if she had also worked part-time because she did not elect that pathway before she enrolled on the course and the OIA aims to return students the position they were in before the circumstances complained of arose.
28. Dr Chan has also said that the College had informed her in 2008 that accreditation was being sought for the course and that she rejected two offers to start accredited courses. Dr Chan provided evidence that the College still had not sought accreditation for her course in 2011. The lack of accreditation was not specifically raised in the Grievance form, but issues of accreditation were raised in the complaint to the ACRP, particularly that the course had deviated so far from the original plan, it would be impossible for students to have the course considered for accreditation by the Nutrition Society.
29. We have not been provided with a copy of the handbook for the course in 2008 and its declarations in relation to accreditation of the course. The current information on the College's website at [http://www.ucl.ac.uk/medicine/teaching/masters/MSc Clinical Public Health Nutrition](http://www.ucl.ac.uk/medicine/teaching/masters/MSc_Clinical_Public_Health_Nutrition) states "*Nutrition Society accreditation will be sought and it should be noted that this MSc does not lead to registration to practice as a Dietitian*". We consider that it was Dr Chan's choice to enrol on an unaccredited course. Dr Chan has not brought any evidence that she has sought a job which required the MSc degree and that her application was rejected because of the course content. However, we are concerned if the College asserts on an annual basis that accreditation will be sought when it has made no attempt to do so.
30. In the circumstances, given the amount of effort Dr Chan took to seek a resolution to her concerns, the effect on her health, the additional time taken to complete the course and the College's acceptance that the teaching and delivery of the course was below the accepted standard, we consider that the College should have awarded Dr Chan compensation for distress and inconvenience as well returning her fees.
31. We conclude this element of the complaint is **Justified**.

Compliance with the Grievance Procedure

32. I have the following comments on the College's compliance with the Grievance Procedure:

- 32.1. it appears that the College decided on 2 December 2010 that a prima facie case had been established but did not inform Dr Chan at that time. This was outside of the 21 day period for responding. However we note that it appears there was a delay in appointing relevant officers who had not previously been involved with the complaint. It would have been helpful if the College had kept Dr Chan informed of the delay;
- 32.2. We are concerned that information requested from the Department during the investigation of the Grievance was not provided. However, we consider that Dr Chan was not materially disadvantaged as the College upheld her complaint;
- 32.3. The College decided not to proceed with the representation and hold a Grievance Panel hearing; it instead issued a Completion of Procedures letter on 6 June 2011. This is permitted under the Grievance Procedure. We note that the sole purpose of the interviews held by the Grievance Panel is to investigate the grounds of the representation. As the grounds of the Grievance had already been established, we consider it was reasonable not to investigate it further. The internal documents of the College show that there was concern that "*...the student may not receive more and she may receive less*" if the matter went to a Grievance Panel hearing. We note that appeals can only be made against the decision of the Grievance Panel and therefore this option was not available to Dr Chan;
- 32.4. We consider that in taking eight months to determine Dr Chan's complaint, the College delayed in considering her complaint.

33. We conclude this element of the complaint is **Justified**.

Recommendations

34. We have concluded that Dr Chan's complaints about the ACRP's handling of the complaint are **Not Justified**, but the following matters are **Justified**:

- 34.1. The College's investigation into the allegations of bullying and harassment and breaches of the Data Protection Act;
- 34.2. The remedy offered by the College;
- 34.3. The College's compliance with the Grievance Procedure.

Overall, we conclude this matter is **Justified**.

35. We **recommend** that within one month of the date of issue of this Decision the College College writes to Dr Chan offering:

- 35.1. her the sum of £8,300 in compensation. This comprises £3,300 for the return of tuition fees and the remainder for the distress and inconvenience she suffered in compensation for the amount of effort Dr Chan took to seek a resolution to her concerns, the effect on her health and the additional time taken to complete the course;
- 35.2. to consider her allegations of victimisation, bullying and breach of the Data Protection Act within the appropriate procedures as soon as reasonably practicable;

The offer should remain open for a period of 2 months and should be in full and final settlement of the matters dealt with in this review. If Dr Chan accepts the financial element of the offer, the University should ensure that payment is sent to her within 21 days of receiving her letter of acceptance.

36. We **suggest** that the College considers removing from information provided to students that accreditation would be sought for the course if there are no plans for accreditation to be sought within that academic year or it is unlikely that such accreditation will be sought within that timeframe.

