Complaints Session Working Group

25 April 2014

Present:  Fiona O’Donnell (Convener), Fiona Clark, Chris Clarke (DUSA), Graham Cowan, Claire Cruickshank, Jennifer Donachie, Heather Henderson, Graeme Hutton, Denise Jackson, Neale Laker, Rebecca Leiper, Laura Lightfoot, Keith Mackle, Pat Michie, Joan Muszynski, Janet Peggie (DUSA) and Sharon Sweeney.

In Attendance: Valerie Dougan (Dundas & Wilson) and Karen Stulka.

Opening and Complaints Handling Procedure (CHP)

Fiona welcomed everyone to the session. The session opened with a discussion and feedback on the implementation and operation of the Complaints Handling Procedure. Consensus was that most Schools/Directorates were handling the new procedure well, with very few problems arising. The main areas for discussion were:

- parties not confirming they were happy with outcomes/acknowledging resolution of complaints;
- knowing when to proceed straight to stage 2 in the process; and
- considering all the information received and deciding whether or not it is a complaint.

The Group were also reminded that their complaint forms (including nil returns) for this quarter must be returned to Karen Stulka by no later than Friday 2 May. There were still some outstanding returns to be received for collating and reporting to the Monitoring and Advisory Group on Appeals, Complaints and Discipline Procedures.

Powerpoint Presentation

CHP discussion was followed by a powerpoint presentation by Fiona on “What makes a good decision on a complaint or disciplinary matter?” (Appendix 1).

Some of the main points from the presentation were:

- In any correspondence, always say who you are and your authority reference to act (e.g. Statutes, Ordinances, Complaints Procedure, Fitness to Practice);
- Investigations should be fair and reasonable;
- List the main steps you will be taking and papers you will be taking into account;
- Control the process – feel confident to go directly to stage 2 if this is the fair way to deal with a complaint;
- Explain reasons for coming to a decision & what was taken into account – why you considered an issue in the way you did is extremely important;
- You are entitled to assess credibility and say why you believed an action etc;
- Avoid vagueness in a response – SPSO are more likely to challenge if the basis of a decision is not identified;
• If there was information you didn’t take into account, explain why the information was irrelevant;
• Notes of outcome should be part of the decision letter along with any appeal option;
• It is acceptable to put out a short letter the next day intimating that the whole rationale will be sent out within 14 days (this gives time for the panel to decide and agree on correct wording of outcome);
• A full response is easier to justify on appeal (although there is no appeal after stage 2 of the Complaints Procedure – the next step is consideration by the SPSO); and
• Be clear in your letter if it was not a unanimous decision/or why a majority decision.

Templates of Decision Letters

The Group discussed the draft template letters which had been distributed with the agenda (Appendix 2). It was agreed to include the sentence “If we do not hear back we will assume the complaint is closed” in the stage 2 letter if Schools/Directorates felt this was necessary. Val Dougan indicated that she would prepare a template for the full response section of the letters, and this would be distributed to Complaints Handlers in due course.

Case Study

The session ended with a Case Study regarding a Social Work student placement. In small groups, members discussed the case for 15/20 minutes and then reported back indicating how they would have handled this situation based on the presentation.

Legal Awareness Session

A Dundas and Wilson Legal Awareness Raising Session (facilitated by Val Dougan) followed the meeting of the Working Group. This session looked at complaint decision letters (powerpoint presentation attached as Appendix 3).

Fiona thanked everyone for attending and asked members to send their ideas for the November session to either herself (f.b.odonnell@dundee.ac.uk) or Karen (k.f.stulka@dundee.ac.uk).

Fiona B O’Donnell
Director of Legal Services

May 2014
“What makes a good decision on a complaint or disciplinary matter?”

Fiona Beatrice O’Donnell
Director of Legal Services

The importance of reasons

- 5 parts to a “good” decision
- reasons explaining what has been considered (the facts)
- reasons explaining what has been taken into account and why (the justification)
- reasons explaining what has been rejected and why
The principles behind the reasons

The reasons should demonstrate:

- fairness
- rationality
- transparency
- consistency
- accountability
- acting within the powers

Defective reasons

- “improper behaviour” in consideration (bias/prejudice)
- not addressing all the issues
- taking account of extraneous issues (relevancy)
- not applying the proper rules (competency)
- lack of clarity
- acting outwith powers (ultra vires)
Tips for discussion

- who is making the decision
- where does their power come from?
- how are the facts described (minute?)
- what the test used (balance of probabilities?)
- options for the decision and origin (description)
- basis of the deciding option? (analysis)
- timeous intimation
- (oral initially, time given to consider)

What we have learned

- if no reasons given, inference that there is “no good reason”
- discretion on deciding on credibility
- good reasons ease the justification on appeal
- open mind and open to persuasion
Summary elements to include

- include the authority of the decision maker
- list the main steps, who was present and documents considered
- include an accurate description of the facts
- refer to the regulation/procedure

Worth a double check

- contains the authority of the decision maker
- lists the main steps, who was present and documents considered
- contains an accurate description of the facts
- refers to the regulation/procedure
Surprises?

- possibly only one decision?
- choice of decisions and discretion? (include what makes it credible and be clear to show reasonableness)
- a majority decision?
- "grasp the nettle" (avoid the vague and inadequate)
- outline appeal options

The Practice

How have you shown......?

- fairness
- rationality
- transparency
- consistency
- accountability
- acting within the powers
- linkage(facts, findings and policy/regulations)
1. **Confirming receipt of a complaint (within 3 working days at Stage 2 Investigation):**

Dear .......... 

Thank you for your email/letter dated ............. I confirm your complaint will be considered at the frontline stage and we aim to respond to you within 5 working days/investigation stage and we aim to respond to you within 20 working days.

Yours sincerely

2. **Confirmation of end of Stage 1 Frontline Resolution (within 5 working days):**

Dear .......... 

**Complaint -**

Thank you for your email/letter dated ....... regarding the above. Having investigated your complaint at stage 1 (frontline resolution), I am now in a position to respond to you.

{Insert full response regarding complaint}

I trust you will find this response satisfactory. If you remain dissatisfied, you have the right to have your complaint considered at stage 2 (investigation) of the complaints procedure.

The University will now close your complaint unless we hear back from you (within 5 working days) stating that you wish for your complaint to be considered at stage 2 of the complaints procedure.

Yours sincerely

Stage 1 can also be resolved orally, face-to-face, or by telephone.
3. **Confirmation of end of stage 2 Investigation (within 20 working days):**

Dear ........

**Complaint -**

Thank you for your email/letter dated .... regarding the above. Having investigated your complaint at stage 2, I am now in a position to respond to you.

{Insert full response regarding complaint}

I trust you will find this response satisfactory and would be grateful if you could confirm in writing (within 5 working days) stating that you are satisfied with the stage 2 outcome of the procedure.

The Scottish Public Services Ombudsman (SPSO) is the final stage for complaints about public services in Scotland. This includes complaints about Scottish universities. If you remain dissatisfied with a University after its complaints process, you can ask the SPSO to look at your complaint. The SPSO cannot normally look at complaints:

- where you have not gone all the way through the University's complaints handling procedure
- more than 12 months after you became aware of the matter you want to complain about, or
- that have been or are being considered in court.

**Contact details for the SPSO:**

**In Person:**
SPSO
4 Melville Street
Edinburgh
EH3 7NS

**By Post:**
SPSO
Freepost EH641
Edinburgh
EH3 0BR

Freephone: 0800 377 7330

Online contact [www.spso.org.uk/contact-us](http://www.spso.org.uk/contact-us)

Website [www.spso.org.uk](http://www.spso.org.uk)

Mobile site: [http://m.spso.org.uk](http://m.spso.org.uk)

Yours sincerely
Appendix 3

University of Dundee
Complaints Handling:
Decision Letters
Val Dougan

Aims

- To provide guidance on writing decision letters
- To identify the structure and the thought process of the letter
- To discuss how you can go about admitting that the University has made a mistake, or failed to provide a proper service
- To be aware of the wider remit of the Ombudsman with complaints handling
Key Points with Decision Letters

Critical document which will be viewed by the Ombudsman (SPSO) and in rare cases a court

The letter must demonstrate the thought process of the decision maker taking into account the University's perspective where appropriate

For example, a decision maker should take advice to ensure that their decision is consistent with similar situations

The decisions on findings on facts, the seriousness of the issue and the consequences are separate decisions and should be set out as such

The Decision Letter - Structure

An overview of the investigation process

An explanation of what outcome the complainant was hoping to achieve, any discussions around this and the decision maker's outcomes

Headings using the same allegations or complaints which were used in the original complaint letter

The decision maker's findings for each complaint – factual conclusions/seriousness/consequences

Standard text wording for the appeal
Where do investigations go wrong?

- Loss of focus
- In disciplinary situations, an assumption of guilt as a starting point
- In complaints situations, a defensive approach to the investigation for fear of admitting a mistake and the consequences which may flow from this
- A failure to be even handed
- In disciplinary situations evidence should be included which may point to an employee’s innocence
- In complaints situations the investigator should try to establish what happened rather than trying to justify why it has happened
- Failure to interview key witnesses
- Failure to take accurate minutes of meetings
- Failure to disclose relevant evidence
- Delay in the process

The Decision Letter

Responses to each complaint:

(1) Findings of facts

- Articulation of the decision making process for each complaint and the thought process that was followed around the findings of fact — eg on balance I preferred X’s evidence and therefore conclude that you did shout at Y

(2) Seriousness of the issue

- Whether the allegation amounted to a breach of a policy or regulations and the level of seriousness.

(3) Consequences

- As a result of the complaint being upheld/not upheld what will happen?
(1) Making a Finding of Fact

- Understand the correct standard of proof
- The test is the balance of probabilities - is it more likely than not that the issue happened?
- Perfectly reasonable to explain what you believe did happen – even if that is not what the complainant alleged
- Ensure that documents, regulations and witness evidence are taken into consideration as part of the fact finding stage

Dealing with Contradictory Evidence

- Explain how contradictory evidence has been considered. You must be able to justify this and provide an explanation.
- “I took into account the explanation from x which was supported by y.”
- The following are relevant factors which can support your decision to prefer one person’s evidence over another:
  - Credibility of evidence from a witness
  - Reliability in terms of collection of events
- Minor differences in recall are normal. 3 people attending a meeting will all have slightly different versions of what happened. The differences do not mean that they are not credible. What is important to them and their personality types will influence their memory.
(2) Seriousness of the Issue

As a result of making a finding that an incident or series of events happened you then need to articulate whether this factual situation amounted to a breach of a policy, or a failure to follow regulations, or poor service.

Advice will normally be required at this stage to ensure consistency and gain expert assistance on whether this amounts to a breach/failure to follow process.

It may also be appropriate to explain what should have happened.

(3) Consequences

This is extremely important. There are a variety of further actions or solutions which can follow as a result of a finding that there is merit in a complaint. The SPSO suggest the following range of solutions:

- An explanation.
- Provision of the service.
- Taking action to fix the problem.
- A promise that what went wrong will not happen again.
- A change to procedures.
- An apology.

Ask the customer for their ideal solution early on—this way you can manage their expectations from the outset.
Making an Apology

Before making an apology in a letter the author should take advice from HR and the Director of Legal Services.

Wider legal consequences may follow as a result of an apology but that does not mean that they should be avoided.

Also refer to the SPSO guidance on making an apology in order to ensure that it is meaningful and in line with their expectations.

Don’t say “I am sorry if you feel that this was not appropriate...”

Do say “We accept responsibility and want to apologise...

The apology should also be accompanied by remedial steps – what action will the University now take in relation to the individual and the wider process as a result of saying sorry?

Admitting mistakes or failures

- Decision maker should escalate matter before admitting a serious mistake/failure in writing which could give rise to future liability
- Similar to making an apology – be live to the wider legal risks
- Take advice on the wording of acknowledgements of mistakes
SPSO Powers

- Ultimately, if the matter is not resolved at stage 1 or stage 2 the complainant can contact the SPSO
- SPSO can then speak to you and investigate
- SPSO Investigation Reports and Decision Reports are published online
- The SPSO may recommend that the University:
  - provide an apology
  - take action to sort out a problem
  - change how they do things
  - make sure they deal with complaints properly
- The SPSO cannot order compensation – no power to make fines
- Investigation reports sent to Scottish Parliament
- If a University failed to follow the recommendations of the SPSO they can lay a special report before Parliament – this has never happened.

Summary

- The letter needs to be a ‘holistic record of both the investigation and the decision and any future recommendations
- It needs to address both substantive and procedural aspects of fairness
- For example, if there has been an extension in timescales beyond the 20 days required at Stage 2 this should be addressed and an explanation provided
- Individuals are far more likely to accept a decision that they disagree with, if they think the process has been fair and they have been given a fair hearing
- In addition, the SPSO is more likely to look favourably on a University which follows a fair process and acknowledges problems in the complaint rather than tries to avoid them