

Scottish Parliament Region: North East Scotland

Case 200501676: University of Aberdeen

Summary of Investigation

Category

Higher Education: Academic appeal

Overview

A complaint was made on behalf of a student about the handling of his appeal against the University of Aberdeen (the University)'s decision to terminate his candidature on a teaching course. This included his contention that the presence as Convener of the Student Progress Committee of a member of the department in which the original decision was made amounted to an appearance of bias. He was also unhappy about the provision and use of evidence.

Specific complaints and conclusions

The matters that have been investigated are that:

- (a) reasons given for the decision by the Student Progress Committee were inadequate (*upheld*);
- (b) the Student Progress Committee was not impartial (*not upheld*);
- (c) evidence was disclosed before the Student Progress Committee without proper notice (*not upheld*);
- (d) the Student Progress Committee did not consider all relevant evidence (*not upheld*); and
- (e) the Court Appeal Committee's handling of the appeal and the reasons given for their decision was inadequate (*not upheld*).

Redress and recommendations

The Ombudsman recommends that the University issue guidance on the need to provide students with sufficient information about the reasoning behind the decision for them to make an appeal and to include in their standard letters an indication that they can request clarification if they require to do so before submitting an appeal.

The University has accepted the recommendation and will act on it accordingly. The Ombudsman asks that the University notify her when the recommendation has been implemented.

Main Investigation Report

Introduction

1. On 20 September 2005, a complaint was made on behalf of a man referred to in this report as Mr C¹. Mr C had been a student on the Postgraduate Certificate of Education (Secondary) at the University of Aberdeen (the University) in academic year 2004/2005. He had received a letter dated 28 April 2005 informing him that his candidature would be terminated and telling him that he could ask for this to be reviewed by a Student Progress Committee (the Committee). The University has a specific procedure for dealing with appeals against decisions that a student should not progress within a course or, as in the case of Mr C, have his candidature terminated on academic grounds. This involves two stages: the first before the Committee which can consider representations from a candidate that, despite not reaching the required standard, they should be allowed to continue; and the second a Court Appeal Committee (the Appeal Committee) which will not reconsider the decision of the Committee but can consider whether there were procedural failings.

2. A hearing of the Committee was held on 2 June 2005. The Committee upheld the decision and Mr C undertook a further appeal to the Appeal Committee on 9 September 2005. This again failed and Mr C complained to the Ombudsman.

3. The complaints on behalf of Mr C which I have investigated are that:

- (a) reasons given for the decision by the Student Progress Committee were inadequate;
- (b) the Student Progress Committee was not impartial;
- (c) evidence was disclosed before the Student Progress Committee without proper notice;
- (d) the Student Progress Committee did not consider all relevant evidence; and
- (e) the Court Appeal Committee's handling of the appeal and the reasons given for their decision was inadequate.

¹ Throughout this report, arguments put forward by Mr C's representative are referred to as being by Mr C.

Investigation

4. In investigating this complaint, I have reviewed the correspondence between Mr C and the University, had sight of the documents placed before the Committee and the Appeal Committee and the notes of the Committee meeting. I have also considered the relevant section of the Quality Assurance Agency's (QAA) Code of Practice and University policy and procedures.

5. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr C and the University were given an opportunity to comment on a draft of this report.

(a) Reasons given for the decision by the Student Progress Committee were inadequate

6. The Committee hearing was held on 2 June 2005. A letter dated the same day said that the Committee had agreed to uphold the recommendation that Mr C's candidature be terminated with immediate effect. The letter then gave specific advice on how to appeal.

7. On 6 June 2005, Mr C requested a copy of the minutes of the meeting in order to prepare his appeal. These were provided in a letter dated 8 June 2005, and Mr C given additional time to prepare his appeal. Mr C said in an email dated 9 June 2005 that the minutes were inadequate and further notes were requested.

8. On 5 July 2005 a transcript of the meeting notes taken by the Clerk to the Committee was provided. Mr C was given the opportunity to make a supplementary appeal statement.

(a) Conclusion

9. The letter of 2 June 2006 was brief and did not provide details on why the decision was made only that it was made. However, on request Mr C was provided with the minutes and further transcript. Although these were clearly adequate for Mr C to produce a detailed statement of appeal, it is unlikely he would have been able to do so from the letter alone. I have also noted that the letter of 28 April 2005 that Mr C received informing him that his candidature would be terminated did not provide any reasons for the decision (see paragraph 1). I, therefore, uphold this complaint.

(a) Recommendation

10. The Ombudsman recommends that the University issue guidance about the need to provide students with sufficient information about the reasoning behind the decision for them to make an appeal and to include in their standard letters an indication that they can request clarification if they require to do so before submitting an appeal.

(b) The Student Progress Committee was not impartial

11. On 24 May 2005, Mr C was informed that the Convener of the Committee would be the Director of Undergraduate Programmes for the Department of Education (the Convener). He was asked if he had any objections to this. At the start of the meeting on 2 June 2005 Mr C was asked whether he had any objections to any member of the Committee. He said no.

12. In his appeal, Mr C said that the fact the Convener was from the department who had made the decision was a clear conflict of interest and this gave 'the appearance of possible bias' resulting in a breach of article 6 of the Human Rights Convention.

13. The Convener was invited to comment on this to the Appeal Committee and said (by email dated 27 July 2005):

'Within the University, a Student Progress Committee (SPC) is normally convened by the Director of Undergraduate Programmes for the Area of Study within which the appellant's programme of study is located. Therefore, as Director of Undergraduate Programmes (Education), I convened the SPC to consider [Mr C's] case. As SPC Convener, I believe I was impartial. I had no knowledge of [Mr C's] case prior to my involvement in the SPC. Colleagues on the SPC were from other areas of study; having read and heard evidence presented, SPC members reached a unanimous decision to uphold the termination recommendation. I played no part in influencing the decision made by the individual members'

14. The Appeal Committee confirmed in their email of 15 September 2005 rejecting Mr C's appeal that the Convener was appointed in line with normal procedure. They also said that they had considered the human rights argument

put by Mr C, that Mr C had never suggested there was any actual bias or impartiality, he had been asked twice if he had any objection to the Convenership and had been represented on 2 June 2005 when no objection was made.

15. In his complaint to the Ombudsman Mr C said he had been representing himself and only accompanied by another student and that he had been unaware of the implications of his acquiescence as he had no legal training.

16. Whether a particular action (or inaction) by a public authority constitutes a breach of human rights can ultimately only be determined by the Courts. In considering this aspect of Mr C's complaint I have looked at whether the University have in place appropriate general measures relating to the impartiality of the Committee members and whether this was applied in the case of Mr C. The relevant QAA Code of Practice on Academic Appeal and Student Complaints to which the Universities policies should conform states:

'Those responding to, investigating or adjudicating upon complaints or Appeal must, as required by law, do so impartially, and must not act in any matter in which they have a material interest or in which any potential conflict of interest might arise.'

17. The guidance notes for students produced by the University going through the procedure then in force state:

'9.1 ... The Convener of the Students' Progress Committee will either be the relevant Director of Undergraduate Programmes or an alternate appointed by the relevant Director of Undergraduate Programmes in consultation with other members of the Academic Standards Committee (Undergraduate). ...

10.9 Before or at the start of the hearing of the relevant Committee, if you know any member of the Committee and believe them unable to be impartial, you will be allowed to state your objections to the Committee.'

18. The guidance notes contain an interpretation section which says:

'Conflict of Interest:

An example would be where a member of the Committee has been involved (eg. in reporting your non-attendance at classes) in the decision against which representations are being made.

Material Interest:

An example would be where a member of the Committee considering your representations against termination is related to you.'

(b) Conclusion

19. It is notable that at no point does Mr C claim there was actual bias or impartiality. He merely claims the 'appearance of bias'. There is also no suggestion at any point that the Convener had a 'material interest' in the complaint. Mr C has provided no evidence that the Convener was actively involved in the decision that was being considered.

20. The University were also proactive in clarifying with Mr C if he had any concerns about the membership of the Committee and I do not consider that Mr C would have required specific legal advice to decide whether there were any personal reasons that a member might have been unsuitable. Additionally, the University had a second stage of appeal which considered Mr C's concerns and found there had been no breach of his human rights. As the University have properly considered this matter and their procedures are in line with QAA guidance, I do not uphold this complaint.

(c) Evidence was disclosed before the Student Progress Committee without proper notice

21. Immediately, prior to the meeting on 2 June 2005, the clerk to the Committee was informed that a tutor's report dated 10 February 2005 had been omitted from the papers submitted by the School of Education. Mr C was asked if he was happy for the Committee to see this report. Mr C had seen the report himself before and was aware of its contents. Initially he refused, but then changed his mind. This report was issued to all members of the Committee who read it before Mr C entered the Committee room.

22. The report related to Mr C's second placement. There was a second tutor report and a school report from this placement already in the papers produced by the School of Education.

23. In an email from the Director dated 7 July 2005 in response to Mr C's appeal, the Director said that 'the SPC [the Committee] was of the view that the report corroborated evidence contained in other papers and did not introduce evidence that was essentially new in substance'.

24. In their decision on this point, the Appeal Committee noted that Mr C had seen this report some months previously. The Appeal Committee also noted it was aware of Mr C's academic record pertaining to his written assessments which he had passed.

(c) Conclusion

25. The report of 10 February 2005 does not differ substantially from other reports produced and I agree that it did not produce anything new. Mr C was also given notice of the report prior to it being tabled albeit this was immediately prior to the meeting. He gave his consent for this report to be tabled before the Committee. It would have been preferable if the report had been produced at an earlier stage, although I am satisfied that this had no material impact on the appeal. Accordingly, I do not uphold this complaint.

(d) The Student Progress Committee did not consider all relevant evidence

26. Mr C has said an email of 20 May 2005 was submitted but not dealt with by the Committee and that this email contained 'good positive feedback'. This is not listed in the minutes of 2 July 2005. In the email from the Director dated 7 July 2005 and referred to in paragraph 23 it is said: 'As I recall, the SPC was not offered any such evidence. However, I recollect that [Mr A] reported that [Mr C] had been allowed to undertake the third placement whilst his representation to the SPC was being processed and that, at the time of the SPC meeting, [Mr C] had not been able to take advantage of the opportunity to reach a satisfactory level of teaching performance'. This reflects the notes of the meeting taken by the clerk to the Committee.

(d) Conclusion

27. There is no evidence that the email dated 20 May 2005 was submitted to the Committee. However, it was included in Mr C's appeal statement which was seen by the Appeal Committee who concluded that 'from the evidence presented to it

that appropriate academic supervision and assessment had been provided'. I, therefore, do not uphold this complaint.

(e) The Court Appeal Committee handling of the appeal and the reasons given for this decision was inadequate

28. Mr C received an email on 15 September 2005 with the reasons for the decision of the Appeal Committee. There were five pages of this, although three pages referred to the procedure for appeal.² The pages covering the decision itself noted the documentation the Appeal Committee had before it and responded directly to each of Mr C's main arguments.

29. In his complaint to the Ombudsman, Mr C said the Appeal Committee gave no substantive reasons as to why it felt the Department of Education had followed the correct procedures with regards to his placements and information provided to a school ahead of his placement.

30. The email of 15 September 2005, specifically stated:

'The Court Appeal Committee considered the procedures followed by the School of Education in relation to your academic supervision and assessment and was satisfied from the evidence presented to it that appropriate academic supervision and assessment had been provided.'

The Court Appeal Committee considered the arguments presented regarding an alleged breach of the Data Protection Act in this context, but agreed that these did not present grounds for an academic appeal.'

(e) Conclusion

31. Mr C clearly disagrees with the decision made by the Appeal Committee. The Appeal Committee decision does, however, list the evidence on which it based the decision and dealt with his concerns point by point. Although the level of detail given varies, it is my view that it was sufficient for Mr C to understand their decision and the reasoning behind it. I do not uphold this complaint.

² The Higher Education sector was in the process of changing its complaints procedure and the options for Mr C at this stage were, as a result, complex.

32. The University have accepted the recommendation and will act on it accordingly. The Ombudsman asks that the University notify her when the recommendation has been implemented.

30 January 2007

Explanation of abbreviations used

Mr C	The aggrieved
The University	The University of Aberdeen
The Committee	The Student Progress Committee
The Appeal Committee	The Court Appeal Committee
QAA	Quality Assurance Agency for Higher Education
SPC	Student Progress Committee
Mr A	The representative for the School of Education at the Student Progress Committee meeting of 2 June 2005

List of legislation and policies considered

University of Aberdeen

Guidance Notes for Students in relation to:

- (a) Non-Progression on Academic Grounds
- (b) Discontinuation of Attendance on Courses on Academic Grounds
- (c) Termination of Studies or Candidature for an Award on Academic Grounds.

QAA Code of Practice

Section 5: Academic Appeals and Student Complaints on Academic Matters