



## COMPLAINT OUTCOME

### Office of the Independent Adjudicator for Higher Education

Date issued:	10 December 2014
OIA reference number:	OIA/52658/13
Complainant:	Mr Martin Victor Sewell
Higher education institution:	University College London
Decision:	<b>Partly Justified</b>

#### Summary

##### ***Complaint***

Mr Sewell complains about the University's decision dated 27 August 2013 not to uphold his appeal and that the findings and decision of the initial Grievance Panel stand.

##### ***Background***

The background to the complaint, including details of the University's decision and the issues the complainant has asked the OIA to consider, is set out in Section 1.

##### ***Review Process***

Details of the OIA review process are set out in Section 2.

##### ***Review of complaint and conclusions***

The OIA's review of the complaint and conclusions are set out in Section 3.

##### ***Decision***

Our decision is that this complaint is **Partly Justified** for the reasons set out in Section 3.

##### ***Recommendations***

We recommend that the University offers to reconsider Mr Sewell's grievance and to offer him £1500 and an apology for the delays in completing the Grievance Procedure. Full details of these recommendations are set out in Section 4.

## **Section 1: Background**

1. Mr Sewell registered at the University in January 2000 to study for a PhD in Computer Science.
2. Mr Sewell's first Viva took place on 9 June 2009 and he was asked to resubmit his thesis. The examiners also decided to hold another Viva which took place on 4 July 2011. The examiners decided that Mr Sewell's thesis did not meet the standards required for a PhD and offered him an M. Phil instead. Mr Sewell was given two months to accept the offer but he chose not to accept it.
3. Mr Sewell submitted a Student Grievance Procedure Application Form dated 15 August 2011. The University acknowledged the application on the same day. The University e-mailed Mr Sewell on 9 September 2011 to explain how the matter would be dealt with. The case was reviewed by the Director of Student Services (the DSS) and the Head of the Graduate School.
4. The DSS asked the Department Graduate Tutor Computer Science (the Tutor) for information about the case on 12 September 2011. The Tutor responded on 30 September 2011. This response was then considered by the DSS and the Head of the Graduate School in October 2011.
5. A Grievance Panel was convened and met on 25 January 2012. No decision was taken as further information was required. Information was submitted by the Department and Mr Sewell in February 2012.
6. The Panel resumed its consideration of the case on 20 April 2012 without the Department or Mr Sewell present. Mr Sewell submitted further information on 25 October and 12 November 2012 which was received by the Chair in December 2012. A Completion of Procedures (COP) Letter was issued on 15 February 2013 and a revised COP letter was sent by e-mail on 1 March 2013.
7. Mr Sewell submitted an appeal against the decision of the Grievance Panel on 6 April 2013. The final decision letter which was also the COP letter was issued on 27 August 2013. The OIA received Mr Sewell's Complaint Form on 26 November 2013.
8. We issued a Complaint Outcome on 20 November 2014 and Mr Sewell has commented on it. We have made some amendments to this Complaint Outcome where we have considered it appropriate to do in light of Mr Sewell's comments.
9. Mr Sewell has complained about the University's decision dated 27 August 2013 not to uphold his appeal and that the findings and decision of the initial Grievance Panel stand. Mr Sewell's complaint can be summarised as follows:
  - 9.1. The University's final decision ignored most of his complaint and contains many false statements.
  - 9.2. Procedure was breached by the Panel and
  - 9.3. The student representative member of the Panel did not take part in the decision making process.
10. The remedy Mr Sewell is seeking is for his thesis to be re-examined.

## **Section 2: OIA Review Process**

11. 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.
12. In considering the complaint, we have taken into account all the documentation provided by Mr Sewell and the University. Mr Sewell has commented on the University's response to his complaint. Mr Sewell and the University have answered questions we have asked.
13. 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.
14. In the course of our review we have identified the following documents issued by the University as of particular relevance:
  - 14.1. The Student Grievance Procedure (the Procedure)
  - 14.2. The Quality Assurance Agency for Higher Education's (the QAA) UK Quality Code for Higher Education (the QAA Code) – Chapter B9 Complaints and appeals

## **Section 3: Review of Complaint and Conclusions**

15. Mr Sewell was offered an M. Phil as it was decided that his thesis did not meet the standards required for a PhD. He was given two months to accept the offer but he chose not to accept it. Instead he submitted a Student Grievance Procedure Application Form (the Grievance) on the grounds of inadequate supervision and bias in the assessment of his thesis. The Grievance Panel (the Panel) partially upheld his complaint about supervision as it noted there had been some disruption with the supervision. It did not uphold the rest of his Grievance. The Panel refused his request to be re-examined but offered one year's worth of fees to be awarded as compensation. Mr Sewell rejected the offer and submitted an appeal. The appeal was not upheld and so the decision of the Grievance Panel stood. In addition to the refund of a year's fees, the University offered Mr Sewell £500 for the delays in dealing with his case.
16. In considering whether the University's decision not to uphold Mr Sewell's appeal was reasonable, we have reviewed the documentation relating to the Grievance Panel hearing. We have identified a number of concerns with the hearing. We note that Mr Sewell was not informed of the names of the Panel members in advance of the hearing. Whilst the Procedure does not require the University to inform the student of the Panel members, we consider that it is good practice to do so. This ensures that the Procedure is transparent and also allows the student to voice any concerns they may have regarding Panel members.
17. We note that paragraph 28 of the Procedure says that "*a single tape recording will be made... of each hearing for the purpose of providing a factual record in the event of the hearing going to appeal.*" The University has provided a transcript of the hearing held on 25

January 2012. However there are frequent notations which indicate that the recording was inaudible at various points which means that the transcript is incomplete. We consider that if the University wished to rely on the transcript as a record of the hearing it should have ensured that it was as accurate as possible. In this instance we consider it would have been appropriate for the University to have asked each person to verify the accuracy of the transcript and to fill in any gaps. . We are concerned that the Chair of the Grievance Panel reached her decision not to uphold the appeal based partially on the incomplete transcript.

18. We also note that there is no typed transcript for the second hearing, only some handwritten notes. The final COP letter which lists the documents considered at appeal stage does not include the second hearing. Given that the second hearing was necessary to enable the Panel to reach a decision, we consider that there ought to have been a record of it as required by paragraph 28 of the Procedure. Without a transcript we have no evidence of the discussion the Panel had regarding the new information which had been provided. As such, we are not persuaded that it was possible for the consideration of Mr Sewell's appeal to be thorough and fair without such a record.
19. We note that the final COP letter says that *"it has been confirmed that there is no evidence that the procedure was not followed."* We do not consider this to be accurate given the failure to meet the timescales outlined in the Procedure which resulted in extensive delays. We note that it took nearly 18 months for Mr Sewell to complete the University's internal procedures. We consider this to be unacceptable and asked the University why it had taken five months after the receipt of the Grievance to hold the hearing and why it then took over a year to inform Mr Sewell of the result of the hearing. The University explained that *"the delays were caused by the need to follow up as a result of the Panel hearing; the fact that the student submitted additional information as late as November 2012 and the fact that there were resource issues, due to staff absence."* Based on the information we have seen we are not persuaded that this explanation justifies or excuses the length of time it took to complete Mr Sewell's Grievance.
20. Chapter B9 of the QAA Code sets out the expectation that complaints will be dealt with both fairly and in a timely way. Clearly this expectation was not met in this case. We are critical of the excessive delay and consider that the University should have been more proactive in delivering an outcome. We consider that the University should have considered the likely impact the delay might have on Mr Sewell who contacted the University repeatedly in an attempt to discover the outcome of his Grievance and appeal. In his complaint to the OIA Mr Sewell commented that *"this has been a never-ending nightmare and a constant source of stress"* which is hardly surprising. We are concerned that whilst the final decision letter recognises the delay and offers compensation it makes no apology for any distress and inconvenience the delay had caused.
21. We note that the Procedure appears contradictory and unclear in places. We asked the University what the difference was between the interview described in paragraph 18 (d) and the hearing itself. The University advised that there was no difference and the two were the same. If this is the case then we consider that the Procedure should make it clear that the 'interview' is in fact the Panel asking questions of interested parties at the hearing. Paragraph 18(b) allows the Panel to *"seek further clarification of the written evidence from whomever it feels appropriate."* When read with 18 (c) which says *"copies of all documentation are to be received by all parties no later than ten days before the meeting of the Panel. No further communications of any sort will be accepted for consideration by the Panel after this date"* it suggests that the Panel can consider the information prior to the

hearing in order to know if more information is required. If this is the case then it should be clearly stated in the Procedure. Furthermore paragraph 18 (c) suggests that the Panel did not have the authority to ask for further information at the hearing. If 18 (b) is relied upon as the authority for the Panel to seek further information, it conflicts with 18 (c). We consider that the University should clarify the contradictions and revise the Procedure accordingly to ensure transparency and consistency.

22. As we have identified concerns with the reliability of the record of the first hearing, we have concluded that the fairest way forward is to recommend that the University holds a fresh Grievance hearing with a completely new Panel. The University should ensure that none of the Panel Members have any previous involvement with Mr Sewell's case. As we have expressed concern about whether it was appropriate for the University to have asked for further information at the hearing, we consider that Mr Sewell should now have the opportunity to resubmit his Grievance to take account of information presented after he put submitted his original application. This will enable him to provide written submissions if he wishes to do so. The University should ensure that a full record of the hearing is made to ensure that any appeal has a complete transcript to consider. As we are sending the Grievance back to be considered afresh, we have not looked at the specific issues raised by Mr Sewell in his Grievance and appeal. As a result we have concluded that Mr Sewell's complaint to the OIA is **Partly Justified**.

#### **Section 4: Recommendations**

23. We recommend that within 28 days of the date of issue of the Final Decision the University writes to Mr Sewell as follows:

23.1. To offer him the opportunity to resubmit his Grievance to take account of information presented after he put submitted his original application. Mr Sewell's Grievance should then be reconsidered by a new Grievance Panel at a hearing. The Panel members should have had no previous involvement with Mr Sewell or his Grievance. The University should ensure that it takes note of the comments we have made regarding the recording and transcribing of the hearing in this Complaint Outcome. The University should also expedite the matter to ensure that the hearing takes place as soon as reasonably possible. For the avoidance of doubt, we make no recommendation as to what the outcome of the hearing should be. This is a matter solely for the Grievance Panel. Committee. Mr Sewell should be permitted to appeal the decision of the Grievance Panel if he so wishes.

23.2. To offer him the sum of £1500 in compensation for the delays in the completion of the Grievance Procedure and for any distress and inconvenience this may have caused him. For the avoidance of doubt, this is in addition to the refund of a year's fees which the University offered Mr Sewell.

23.3. To apologise for the delays Mr Sewell experienced and for any distress and inconvenience this may have caused him.

24. If Mr Smith accepts the offer, the University should ensure that payment is sent to him within 21 days of receiving his letter of acceptance. The offer should remain open for a period of two months and should be in full and final settlement of the matters dealt with in this review.

25. The University should issue a Completion of Procedures letter once Mr Sewell has completed its internal procedures. The University should also supply a copy of its final decision letter to the OIA within 10 days of it being issued.
26. We also **recommend** that the University reviews the Grievance Procedure in light of the comments we have made in paragraph 21 and also considers how best it can minimise delays in the Procedure in the future. The University should report back to the OIA regarding the steps it has taken to comply with this Recommendation within six months of the Final Decision.