

**CONFIDENTIAL DRAFT**

<b>DRAFT DECISION</b> of the Office of the Independent Adjudicator for Higher Education	
<b>Date issued:</b>	<b>December 2010</b>
<b>OIA reference number:</b>	<b>OIA/08877/10</b>
<b>Complainant:</b>	<b>Mr Kevin Galalae</b>
<b>Higher education institution:</b>	<b>University of Oxford</b>
<b>Decision:</b>	<b>Partly Justified</b>
<b>Recommendations:</b>	<b>Yes</b>

**Complaint**

1. Mr Galalae is dissatisfied with the University's decision dated 31 March 2010 in which the University determined that it would not be taking any further action to investigate his complaints.
2. In his Scheme Application Form Mr Galalae states the following:
  - 2.1 The University breached due process and violated its own regulations. It mis-used the authority entrusted to its adjudicators and failed to offer redress beyond fee reimbursement.
  - 2.2 The University obstructed justice, withheld evidence, implemented double standards, gave false testimony and violated the Data Protection Act.
  - 2.3 The University acted with prejudice towards his ethnicity, engaged in censorship and used covert mechanisms of censorship.
  - 2.4 The University breached British and European anti-discrimination legislation; violated his expression of rights as protected by the Human Rights Act 1998 and European Convention on Human Rights; violated s43 of the Education Act.
3. Mr Galalae states that he is dissatisfied with the University's response to his complaint because:
  - 3.1 He has not been offered an apology.
  - 3.2 The remedy provided does not adequately compensate him.
  - 3.3 The University has failed to make certain admissions and reform its adjudication system.
  - 3.4 The University has not addressed the fact that he feels his intellectual property has been stolen.

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4. As a result of the above the remedy Mr Galalae is seeking is:
  - 4.1 Compensation;
  - 4.2 To be exonerated for any wrongdoing;
  - 4.3 For the University to be disciplined;
  - 4.4 For the University to reform its conflict resolution system and ensure safeguards are put in place to ensure adjudicators cannot abuse their power.

### **Background**

5. Mr Galalae was registered as a student of the University of Oxford in April 2009. He was enrolled on an online Political Philosophy course run by the Department of Continuing Education which is a department of the University. The course runs for ten weeks and is carried out entirely online through discussion boards and by email. There is no face-to-face contact with any tutors or any time spent in Oxford. The course is assessed by way of one short written summary and a longer written report. There are no formal entry requirements for the course and the fees charged for non-EU students are £285.
6. On 3 June 2009, after various messages had been posted by Mr Galalae and other students on the discussion board, the Course Tutor wrote to Mr Galalae stating that he had breached the rules of the course netiquette and the matter would be referred to the Online Course Manager.
7. Mr Galalae received an email from the Online Course Manager on 3 June 2009 which advised him that as a result of the breach of netiquette his access to the course was to be suspended pending a decision by the Department's Director of Public Programmes.
8. On 9 June 2009 the Director of Public Programmes considered the action taken to remove Mr Galalae's access to the forum to have been appropriate. He stated that the decision that had been made was for the good of the whole class and that Mr Galalae would be refunded the fees he paid in full.
9. Mr Galalae lodged an appeal against this decision dated 12 June 2009. He stated the following in his appeal:
  - The tutor's decision was based on ulterior motives and not on the alleged breach of netiquette.
  - His removal from the course was unfair and inconsistent with the department's common application of the rules.
  - The complaints directed at him from fellow students were motivated by "self-serving interests".
  - The decision subverted his constitutional right to free speech and his academic right to expound ideas and ideals without fear of retribution.
  - The University needed to re-evaluate its definition of what falls within the scope of netiquette.

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10. The University responded on 23 June 2009 stating that the appeal was not supported, that Mr Galalae had been found to have breached the netiquette agreement and had therefore been excluded. It was noted that the course fees paid by Mr Galalae had been refunded in full. Mr Galalae requested that his appeal be put before the University's Proctors on 25 June 2009.
11. The Senior Proctor considered whether the Department of Continuing Education had followed its own regulations in dealing with the concerns Mr Galalae had raised. He determined that for the most part the regulations had been followed but the department erred in not continuing to follow the Disciplinary Procedures and instead treated Mr Galalae's appeal against the Director of Public Programme's decision as a complaint. The Senior Proctor felt that a Disciplinary Panel ("the Panel") should have been convened instead and recommended that the department take this action. The Secretary, Continuing Education Board advised Mr Galalae that the Panel would be convened on 3 September 2009.
12. The Panel determined that Mr Galalae had breached online netiquette rule 7 by making inappropriate comments about other students, but the Panel considered that the decision to remove Mr Galalae from the course for this offence was disproportionately severe. The Panel noted that the course had ended and considered that in light of this the reimbursement of the full fee for the course was appropriate. Mr Galalae was informed of the outcome on 7 September 2009.
13. Mr Galalae requested that he be able to further escalate his concerns. The University explained on 28 October 2009 that the Panel had considered whether or not it needed to adjourn the matter in order to receive additional information from Mr Galalae. It determined that it did not need to and reached a decision on the matter. The Panel had therefore concluded its business.
14. Mr Galalae lodged a further appeal dated 15 January 2010 and did not receive a response from the University.
15. Mr Galalae's Scheme Application Form was received by the OIA on 4 February 2010. As no Completion of Procedures Letter had been provided with Mr Galalae's Scheme Application Form the OIA wrote to the University regarding this. The University issued a Completion of Procedures Letter on 31 March 2010.

### **OIA Review Process**

16. 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.

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17. In considering the complaint, we have taken into account all the documentation provided by Mr Galalae and the University. Mr Galalae has commented on the University's response to his complaint.
18. 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.
19. After considering all the documentation which has now been provided Mr Galalae has raised a number of concerns in his Scheme Application Form which have not been considered by the University in the course of his appeal against the decision to remove him from the course. I have considered the submissions which Mr Galalae has made and I have determined that the crux of his complaint to the OIA is that he feels he was wrongly removed from the course; that the University failed to follow procedure in dealing with his case; and that the remedy which was offered to him by the University was inadequate.
20. I note that Mr Galalae has also raised concerns about the late arrival of documents he requested under the Data Protection Act 1998. Complaints arising under the Data Protection Act are considered by the Information Commissioner; the OIA will usually only comment on alleged breaches of this Act where it appears that a student has been disadvantaged in his or her studies, or in pursuing his or her complaint. I consider that this matter does to some degree relate to Mr Galalae's procedural concerns and so I have commented on this particular issue in the course of this review.

### **Review of Complaint and Findings**

21. The information provided to students entitled "Online netiquette" states the following: *"Any derogatory or inappropriate comments are unacceptable and are subject to the same disciplinary action that they would receive if they occurred anywhere else within the University. Any offensive postings will be removed from the discussion areas."*
22. The Department for Continuing Education Terms and Conditions for Course Registration and Fee Payment states the following: *"In the interests of all course participants, the organizers reserve the right to enforce the removal of any delegate from the course whose behaviour or demeanour is, in their view, considered unacceptable."*
23. The Department for Continuing Education Regulations 1 of 2007 state the following:
  - *... in any other instance in which the Department in its discretion considers this to be necessary or appropriate, the Department reserves the right to suspend a student immediately from his or her course until investigation of the circumstances has been undertaken.*
24. While Mr Galalae may feel that the department's decision to suspend him from the course following the comments which were posted on the discussion board was unreasonable, I consider that this was a decision which the department was entitled to take in the circumstances. Students on the course had expressed their concern regarding the nature

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and tone of Mr Galalae's postings. I consider that it was reasonable for the staff member in charge of the course to have made the decision to remove the postings which had caused such offence and to refer the matter to the Online Course Manager who formally suspended Mr Galalae while a decision on the matter was referred to the Director of Public Programmes. In this case the Director determined that Mr Galalae should not return to the course and as such following the regulations Mr Galalae had the option of appealing this decision, which he did.

25. I consider that the Department dealt with this particular situation in a reasonable manner and in accordance with the prescribed procedures.

26. The Department for Continuing Education Regulations 1 of 2007 go on to state that:

- *The following procedure will be followed in relation to breaches of discipline:*
  - a. *An incident will be reported as soon as possible to the relevant Deputy Director, who will consider whether there is a case to be addressed. The Deputy Director will investigate by seeking information, as necessary, from the student and the tutor (or other member of the Department as relevant) together with any other witnesses or persons thought to have relevant information;*
  - b. *In addressing general disciplinary matters, there will in many cases be a less serious issue which reaches closure, which may for example include giving the student a warning, requiring that financial reparation be made, or confirming the decision to exclude a student who has been suspended. The Deputy Director should in such cases take appropriate action to settle the case;*
  - c. *In cases where there is a conflict of evidence on matters of fact which requires detailed investigation, where an appeal is made against the Deputy Director's decision under b., or in other cases where a fuller examination seems warranted, the Deputy Director shall consult the Director of the Department, who after due consideration of the issues may ask the Secretary of the Continuing Education Board to convene a Disciplinary Panel.*
- *The members of a Disciplinary Panel convened under 7c, shall be: the Director of the Department (who shall chair the panel), a Deputy Director (other than the Deputy Director who considered the matter under 7a. or 7b), the Secretary to the Continuing Education Board.*
- *The panel shall conduct its investigation as follows:*
  - a. *Before the Panel meets, the Secretary to the Continuing Education Board shall:*
    - i. *Inform the student in writing of the disciplinary matter which the panel will investigate, set a date for the panel hearing, and provide to the student written material detailing the circumstances of the case which will be made available to the panel;*

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- ii. *Provide an opportunity for the student to provide further information in writing for the consideration of the Panel, including providing supporting information from third parties, subject to it being provided not less three working days before the date set for the Panel;*
- iii. *Seek advice from the Proctors' Office on the case particulars as appropriate, and place such advice before the Panel.*
- *Students who wish to appeal against the Disciplinary Panel's decision may do so in writing to the Chairman of the Continuing Education Board within four weeks of being notified of Panel's decision.*
- *In considering an appeal, the Chairman may call for whatever further evidence or information he/she considers appropriate, and shall issue a conclusion in writing to the student. The Chairman's conclusion shall be binding on those concerned.*

27. In this case Mr Galalae's appeal was considered by the Director of the Department for Continuing Education as a complaint. The complaint was not upheld but Mr Galalae was offered the opportunity to appeal to the University Proctors. I agree with the Senior Proctor's evaluation of this process when he states that it would have been more appropriate for the department to have continued with the Disciplinary Regulations and convened a three-person Disciplinary Panel to consider the matters raised by Mr Galalae.

28. While I consider this to be a deviation from the prescribed procedures I consider that the Senior Proctor acted appropriately in identifying a procedural irregularity which had not been specifically raised in Mr Galalae's appeal and made a reasonable and fair decision to allow an independent Panel to be convened to consider the matter. I consider that this referral back to the Disciplinary Panel may have caused some confusion and delay for Mr Galalae. However, I commend the decision taken by the Senior Proctor to refer the matter back to the Panel and the Department for taking steps to arrange a Panel as soon as possible in order to comply with the decision made by the Senior Proctor.

29. I note that Mr Galalae was advised on 6 August 2009 that the Panel hearing would take place on 3 September 2009. Mr Galalae made a subject access request under the Data Protection Act which was received by the University on 17 August 2009. It seems as though Mr Galalae had specifically requested: "*access to the (or a complete copy of) the email communications of the course tutor...*" in his subject access request. The information was therefore due to be provided on or before 26 September 2009. The information was couriered to Canada on 30 September 2009 and was received by Mr Galalae on 6 October 2009 after the date of the Panel hearing. Prior to the Panel hearing Mr Galalae requested that the hearing be suspended due to the fact that he had not had an opportunity to provide the Panel with further information as he was waiting to receive this as a result of his subject access request. The Panel hearing went ahead and the University states that the Panel members considered whether it would be appropriate to adjourn the hearing due to the fact that Mr Galalae stated that he required further time to submit additional information in support of his case. I note that while Mr Galalae was invited to attend the hearing he did not do so presumably as he is based in Canada.

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30. I have some sympathy for Mr Galalae's concern as the regulations clearly say that the University would: *"Provide an opportunity for the student to provide further information in writing for the consideration of the Panel, including providing supporting information from third parties, subject to it being provided not less three working days before the date set for the Panel."* However, it seems reasonable that the Panel met and considered whether an adjournment was necessary. While it may perhaps be considered good practice in certain cases to adjourn a hearing in circumstances such as this, I consider that it was reasonable in this case that the Panel chose not to adjourn the matter. This is due to the fact that the Panel found in Mr Galalae's favour and upheld the appeal. The Panel had copies of the relevant postings made by Mr Galalae and so were able to consider the nature and tone of these postings and as a result were able to determine that these postings were in fact in breach of the online netiquette rules. It is my view that even if Mr Galalae had been in a position to supply the information he wished to provide to the Panel, notably email communication from the Course Tutor, it is unlikely that this would have in any way altered the nature and tone of Mr Galalae's postings which had offended other students. Despite this decision the Panel felt that Mr Galalae should not have been excluded from the course and that this penalty was disproportionately severe. Accordingly, Mr Galalae was offered a full refund of the fees paid. I will look at whether this was a reasonable remedy later in this decision.
31. Mr Galalae was advised by the Senior Proctor who determined that a Disciplinary Panel should be convened, that the hearing of the appeal by the Disciplinary Panel would constitute the final stage in the University's disciplinary process, after which no further internal appeal procedures would be available. I refer to the regulations quoted above which state that:
- *Students who wish to appeal against the Disciplinary Panel's decision may do so in writing to the Chairman of the Continuing Education Board within four weeks of being notified of Panel's decision.*
32. These are the regulations which the Senior Proctor felt should be followed by the Department in this case and as such I consider that it would have been within those regulations to allow Mr Galalae the opportunity to appeal the decision of the Disciplinary Panel if he had been dissatisfied with the outcome. I note that according to the regulations Mr Galalae would have been entitled to do this within four weeks of the Panel's decision. Mr Galalae did not appeal this decision within the timeframe allowed and the reason for this may have been that he had been advised that he could not do so.
33. Mr Galalae submitted a new appeal in January 2010. From the information I have been provided with it appears as though the University did not respond to the appeal. The University states that it did not understand this to be an appeal against the decision of the Disciplinary Panel. This is because Mr Galalae stated that he was appealing the initial expulsion from the course and all subsequent verdicts passed. The University pointed out that many of the attachments related to Mr Galalae's initial removal from the online course rather than the decision of the Disciplinary Panel. As stated above Mr Galalae may have felt he was unable to appeal the decision of the Disciplinary Panel as he had been given

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this information by the Senior Proctor and as such he may have felt that the only avenue open to him was to pursue a further appeal. Whether this was the correct route for Mr Galalae to follow or not, it does not appear as though the University even acknowledged receipt of the new appeal, nor did it explain why it would not be considered. I do not consider this to be good practice.

34. I do not consider it appropriate to refer this appeal back to the University to consider as the issues which Mr Galalae has raised in his new appeal, for the most part, are issues which the University has already considered in the course of his earlier appeal. As his initial appeal was ultimately upheld I do not consider that referring this matter back to the University would now achieve anything. I have therefore considered whether the outcome and remedy which the Disciplinary Panel arrived at was fair and reasonable in the circumstances.
35. Having determined that the decision to exclude Mr Galalae from the course was disproportionately severe I consider that it was reasonable for the University to refund his course fees as he did not participate on the course from 3 June 2009 until the course ended 3 July 2009 (4 weeks of the 10 week course). However, I consider that the University could have offered Mr Galalae some compensation, having acknowledged that the penalty had been harsh as this would have no doubt caused Mr Galalae some distress and frustration. The decision to exclude him also meant that he could not finish off the course that he had started.
36. In addition to the above I have highlighted some procedural irregularities that occurred during the progression of Mr Galalae's appeal. While the University did identify and correct one of these irregularities the overall effect is that the procedures followed have not necessarily been as clear as they should have been and this may have caused further confusion and frustration to Mr Galalae as a result.

### **Decision and Recommendations**

37. For the reasons set out above I find Mr Galalae's complaint to be **Partly Justified**.
38. I recommend that within one month of the date of issue of this Decision the University writes to Mr Galalae offering him the sum of £700 in compensation for the stress and inconvenience caused to him by the procedural irregularities highlighted above, and by the disproportionately severe penalty imposed by the Disciplinary Panel. 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. If Mr Galalae accepts the offer, the University should ensure that payment is sent to him within 21 days of receiving his letter of acceptance.
39. I note that the University has not been able to provide the OIA with minutes of the Disciplinary Panel hearing as these do not exist. I recommend that the University considers taking and retaining minutes of such meetings. The University should report back to the OIA within six months of the date of this decision on the steps it has taken in the light of this recommendation.