

**Case 200801977: University of Dundee**

**Summary of Investigation**

**Category**

Scottish Further and Higher Education: Student discipline

**Overview**

The complainants (Mr and Mrs C) brought a complaint on behalf of their son, (Mr A), concerning allegations of misconduct made against him by the University of Dundee (the University). They complained that the University's investigation into his alleged misconduct was not conducted in accordance with the correct procedure, or in a manner that was fair and unbiased. They also felt that the conclusions of the investigation were unfairly punitive on Mr A.

**Specific complaints and conclusions**

The complaints which have been investigated are that:

- (a) the University did not follow their own process in reaching their decision on the allegations against Mr A (*upheld*);
- (b) the University failed to take into account Mr A's special needs when carrying out their investigation (*not upheld*); and
- (c) the punishment decided upon by the University was not commensurate with the allegations made against Mr A (*not upheld*).

**Redress and recommendations**

The Ombudsman recommends that the University:

- (i) review their actions on Mr A's case prior to the commencement of the Ordinance 40 process with a view to improving the transparency of their information gathering in cases of potential academic dishonesty;
- (ii) introduce measures to ensure that students are aware of the evidence submitted to the Boards of Internal and External Examiners for consideration;

*Completion date*

28 February 2011

28 February 2011

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|---|------------------|
| (iii) introduce a policy of formally stating the allegation being made against a student at the commencement of the Ordinance 40 process; | 28 February 2011 |
| (iv) apologise to Mr A and his family for the failings identified in this report prior to the commencement of the Ordinance 40 process;   | 1 December 2010  |
| (v) introduce a policy of recording their consideration of students' special circumstances in all disciplinary cases; and                 | 28 February 2011 |
| (vi) remind staff chairing hearing panels that their decisions should be based solely on the evidence presented for consideration.        | 28 February 2011 |

The University have accepted the recommendations and will act on them accordingly.

## **Main Investigation Report**

### **Introduction**

1. The complainants (Mr and Mrs C) complained on behalf of their son (Mr A), who was a student at the University of Dundee (the University). During his third year at the University, Mr A arrived late for one of his exams and was unable to sit it at the scheduled time. On the understanding that there had been a timetabling error, the University made arrangements for him to sit the exam the following day.

2. The circumstances surrounding Mr A's missed exam were investigated by the University resulting in an allegation of student misconduct being made against Mr A. The allegation of misconduct was considered through the University's student disciplinary procedure and a disciplinary hearing panel found Mr A to have breached the University's student disciplinary regulations. As a result of this, Mr A was suspended from the University for one year and was required to repeat his third year.

3. Due to the emotional strain caused by the disciplinary hearing process, and threat of expulsion, Mr A chose not to appeal the hearing panel's decision. However, in November 2008, Mr and Mrs C submitted a formal complaint to the University on the basis that the correct procedures were not followed during the investigation into the allegations against Mr A. They felt that the investigation was inadequate, biased against Mr A, and that the University had not taken adequate account of his special needs. Specifically, Mr and Mrs C noted that no efforts were made by the University to investigate other possible causes of the timetable anomaly or to seek statements from departmental staff who may have provided an insight into Mr A's character. They complained that the University did not approach the investigation with an open mind but assumed misconduct from the outset. With regard to the disciplinary hearing, Mr and Mrs C felt that the panel (the Panel) had taken little account of the evidence submitted in Mr A's defence.

4. Dissatisfied with the University's response to their complaint, Mr and Mrs C brought the matter to the Ombudsman in July 2009.

5. The complaints from Mr and Mrs C which I have investigated are that:  
(a) the University did not follow their own process in reaching their decision on the allegations against Mr A;

- (b) the University failed to take into account Mr A's special needs when carrying out their investigation; and
- (c) the punishment decided upon by the University was not commensurate with the allegations made against Mr A.

### **Investigation**

6. In order to investigate this complaint, my complaints reviewer reviewed all of the correspondence between Mr and Mrs C and the University, details and documents from the University's investigation into the allegations against Mr A, and further supporting evidence submitted by both parties. My complaints reviewer also interviewed Mr and Mrs C and staff at the University. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr and Mrs C and the University were given an opportunity to comment on a draft of this report.

7. The University's procedures for considering allegations of student indiscipline provide the student with the right to appeal decisions made against them. Mr A decided not to appeal the University's decision on his case and, therefore, did not exhaust all of the opportunities open to him to challenge the University's decision or reduce the penalty levied against him. However, I consider Mr and Mrs C's complaint to the University to represent a separate grievance regarding the administration of the disciplinary process. I also note that the University accepted the complaint and responded to it in full. As such, in this report I have considered the University's administration of the investigation into Mr A's alleged misconduct.

#### *The University's procedure for investigating student misconduct*

8. The University's Student Discipline Ordinance Number 40 details the authority and procedures for investigating student misconduct and imposing student discipline within the University. The sections relevant to this complaint state:

3(2) A student shall be guilty of misconduct through:

...

(i) improper interference with the functioning or activities of the University, or those who work or study in the University ...

5(1) Where, apart from section 4 above, any student denies the misconduct alleged, a Hearing should be held by the Authorised Officer to consider and to determine the matter. The Authorised Officer should

decide, in the light of the seriousness of the alleged misconduct and all the circumstances, whether the Hearing should be formal or informal. Generally the disciplinary allegations must be communicated in advance to the student(s), who has/have the right to attend the Hearing and be heard by the decision-makers, to present evidence, to make representations and to present a defence countering the disciplinary case against the students.

6(2) Penalties and sanctions may be temporary or permanent and include: expulsion, exclusion or suspension from the whole University, and/or from any academic or other course(s), and/or from the use of any or all IT facilities, and/or from participation in any or all University activities, and/or from any or all other privileges, and/or from any or all part(s) of the University's precinct or premises, and/or from visiting, and/or residence in, and/or prevention from future application to, any or all University residences, flats, halls or any other University accommodation; a fine; a requirement to make good the cost of any damage or reimburse losses, a reprimand, a University Community service requirement; or the writing of an essay and/or any other penalty or sanction of any type which is appropriate in the circumstances. These penalties and sanctions apply whether or not any student has entered into a contract with the University for accommodation or for anything else.

9. As well as Ordinance 40 itself, the University publish guidelines on the operation of Ordinance 40 (the Guidance). The Guidance is extensive and details what types of issue should be considered under Ordinance 40, who should be involved and the steps that should be taken to ensure fairness and consistency of decision making. It notes that disciplinary matters should be considered by an Authorised Officer. Section 2 of the Guidance states:

'If an Authorised Officer has any prior involvement in a disciplinary case, it should be passed to another Authorised Officer who can then approach it afresh'

The Guidance notes that the Authorised Officer may deal with disciplinary cases informally if it is appropriate to do so. Section 6 provides guidance as to what issues may be considered 'formal' and states:

'Formal procedures are of course more serious and, as a general guide, they are likely to apply where a fine or other more serious sanction may be envisaged, or if academic dishonesty is involved; or if a student has

denied the conduct in question and a Hearing is therefore required, or if a case has changed from informal to formal.'

10. Section 4(3) and 5(1) of the Guidance state:

'4(3) ... if any student admits a breach of disciplinary regulations, the Authorised Officer should advise the student of the consequences of the admission and of the range of disciplinary sanctions and penalties available ...'

'5(1) Where, apart from section 4 above, any student denies the misconduct alleged, a Hearing should be held by the Authorised Officer to consider and to determine the matter...Generally, the disciplinary allegations must be communicated in advance to the student(s) ...'

11. With regard to natural justice, the Guidance states:

'In all disciplinary cases, the rules of natural justice should be observed.

In summary, this means ...; a visibly impartial, fresh judge; the opportunity for the student in question to know the case against him/her, and the opportunity for the student to defend him/herself before any decision is made or any sanction imposed.

Reasons should be provided for all disciplinary decisions, and advice given about the existence of appeal procedures ...

Procedures should be operated not only fairly, but visibly fairly.'

12. The opening section of the Guidance also notes:

'If the procedures in Ordinance 40 (and these Guidelines) are not followed then a disciplinary decision may be quashed on appeal, or may be indefensible if challenged in court and compensation may be payable by the University.

What may appear to be a wholly trivial procedural irregularity may nevertheless found a successful appeal or review if the decision based on that is subsequently challenged.'

**(a) The University did not follow their own process in reaching their decision on the allegations against Mr A**

13. Mr A was a third year student of one of the schools (the School) at the University. Mr A is dyslexic and, as such, had special arrangements for sitting exams. His exam details were included on the University's Special Needs Timetable (the Timetable), which is distributed by their Disability Services department (Disability Services). Mr A was scheduled to sit an exam on 6 May 2008. At 14:00, he arrived at the designated venue for the exam, which was due to begin at 14:15. Mr A was advised by the Invigilator that his name was not on the list of students due to be sitting an exam that afternoon. Mr A telephoned the School and was told that his exam had, in fact, been at 09:15 that morning. The School explained that, as he had missed the exam, he would be required to sit the resit in August.

14. Mr A told my complaints reviewer that he returned to his accommodation and checked his exam timetable, which stated the time of his exam as 14:15. He telephoned Mrs C who suggested that he return to the School. Mr A went to the School and presented his personal, printed, copy of the Timetable. After discussing the matter with a Senior Lecturer and the School Secretary (the Secretary), the School accepted that a mistake had been made. Arrangements were made for Mr A to sit an alternative exam paper the following day so that he was not disadvantaged by the mistake.

15. The Timetable was distributed to students by Disability Services' Disability Adviser (the Disability Adviser). On 8 May 2008, the School contacted their IT department (ICS) to ask if the emails from the Disability Adviser could be retrieved, having been deleted from Mr A's email account, to verify what information he received. ICS explained that the University's system acts as a database and that only one copy is held of any emails that are sent. The database holds a copy of the email until such time as the last person, sender or recipient, deletes it from their mailbox.

16. On 9 May 2008, the School contacted the Disability Adviser, who explained that she had sent two emails to students, attaching the Timetable. The first version was sent on 26 March 2008 and the second version was sent on 27 March 2008. The Disability Adviser forwarded copies of the two emails to the Secretary. Prior to doing so, the Disability Adviser reportedly checked the properties of both emails and was able to establish that Mr A had not opened

the first email, but had opened and read the second on 30 March 2008 at 19:37. She confirmed that the exam times were correct on the second email.

17. On 12 May 2008, the Secretary emailed Mr A, asking that he forward to her all emails that he had received from Disability Services regarding the exams, especially those attaching the Timetable. Mr A advised that he no longer had the emails containing the Timetable, as these had been deleted after he printed off a copy of the Timetable.

18. The Secretary also emailed the University's Academic Secretary (the Academic Secretary) on 12 May 2008. In her email, she explained the background to Mr A's problem and the action that had been taken to date. My complaints reviewer was provided with a copy of this email. On it was a handwritten note, initialled and dated by the Academic Secretary the same day, stating the following:

'This sounds like a case of academic dishonesty to me. You could either give him a telling-off and zero that module paper compelling him to resit in August or give him a telling-off and just grade the paper he did.'

19. The Secretary wrote to Mr A on 15 May 2008, asking that he contact her immediately to arrange a meeting to discuss the circumstances surrounding his missed exam. The Secretary's letter explained that the matter was being treated as an 'exam irregularity' and that the School was required to establish what had gone wrong and to report their findings to the Exam Board, and possibly the Academic Secretary. Mr A was asked to provide any relevant documentation and was advised that he did not have to attend the meeting alone.

20. Mr A agreed to the meeting proposed by the Secretary and attended the University with Mrs C on 20 May 2008. The meeting was also attended by four University Representatives (the Representatives). My complaints reviewer was provided with a copy of the University's note of the meeting, which records the background to Mr A's missed exam. The meeting note explains that, following the arrangements made on 7 May 2008 for Mr A to sit an alternative exam paper, the School contacted the Examinations Office to inform them of the mistake on the Timetable. The Examinations Office advised that there was no error on the Timetable that they had submitted to Disability Services, and which was subsequently circulated to students.

21. The meeting note for 20 May 2008 records that it was explained to Mr A and Mrs C that the incident with the Timetable constituted a 'serious exam irregularity' and, as such, had to be investigated so that the facts could be presented to the Internal and External Exam Boards. It was stressed that the purpose of the meeting was to pre-empt the Exam Boards' likely questions and to provide as much detail as possible. Mr A was told that the Exam Boards would 'assess the extent to which [he] had been disadvantaged and recommend the action to be taken'.

22. The meeting note records that Mr A provided a more detailed account of the events of 6 and 7 May 2008. He was asked how he had received the Timetable and what he had done with it. Mr A explained that, upon receiving the email with the Timetable attached, he immediately opened the Timetable and went through it looking for his matriculation number. He printed out the pages relevant to him on his home printer and put the printed timetable on his notice board. He then copied the dates and times of exams onto various post-it notes. Mr A explained that this was his normal practice when receiving any exam timetable. He did not save the spreadsheet onto his computer and deleted the email.

23. Mr A was asked by the Representatives if, apart from the obvious upset of missing the exam, he felt that he had been disadvantaged by sitting the exam at a different time. Mr A said that he did not think that it had made a huge difference, however, the invigilator was unaware that he required additional time to complete the exam and he lost a day's revision for his final exam.

24. Mrs C was noted as suggesting that there were three possible explanations as to what had happened to Mr A's copy of the Timetable:

- (i) There was an error on the timetable
- (ii) The information retained by the University was corrupt
- (iii) The attachment was altered by Mr A

25. Mrs C expressed concern that the School may report the facts to the Internal and External Exam Boards in such a way as to suggest that the latter scenario was the most likely. The meeting note records that Mrs C was assured that the School's only concern was to collect facts so that the Exam Board could come to a fair decision on the action to be taken and the procedural changes to be recommended to ensure that this type of event did not happen again. Mrs C expressed further concerns about the potential

damage to Mr A's reputation, regardless of the Exam Board's findings and her perception that there was a lack of independent input into the investigation process. She was assured on both accounts that the University would ensure that Mr A was not disadvantaged in any way.

26. When providing my complaints reviewer with details of her complaint, Mrs C said that she and Mr A found the tone adopted by the Representatives at the 20 May 2008 meeting to be accusatory and intimidating. They felt that Mr A was questioned in an aggressive way. They did not consider this to be appropriate given the supposed purpose of the meeting. During the investigation into this complaint, my complaints reviewer asked the University's Legal Counsellor (the Legal Counsellor) for comments in response to Mrs C's concerns. She empathised with the stress that Mr A and other students in similar situations were subject to under such circumstances, however, advised that the purpose of the 20 May 2008 meeting was to gather information and that the University gathered information from a number of sources at that time, including the School, ICS and Disability Services. The University did not consider the meeting to have been conducted in an aggressive or accusatory manner.

27. The Board of Internal Examiners met on 22 May 2008 and discussed Mr A's situation. My complaints reviewer was provided with details of the procedure that the Board follow, which had been provided to Mrs C and Mr A on 22 May 2008: The Board of Internal Examiners were provided with anonymised information regarding Mr A's exam results and the circumstances around the Timetable anomaly. His exam results and the extent to which he may have been disadvantaged would be discussed and recommendations made to revise his marks if appropriate. The Board of Internal Examiners would also consider the circumstances surrounding the Timetable anomaly and make a recommendation to the Board of External Examiners.

28. The minute of the Board of Internal Examiners' consideration of Mr A's case stated the following:

'The student was given incorrect information about the time of [the Exam] which caused him to miss it. He was allowed to sit a special paper the following day, but the incident caused him additional stress and therefore it is agreed that [the Exam] re-sit will be uncapped. Due to the time interval between exams, [one of Mr A's other exams] will be capped ...

... [the Dean of the School] reported on the case where a student had missed [the Exam]. The student presented to the School a hard copy of [the Timetable] which showed incorrect information about the timing of this exam. The School's copy of the timetable showed the correct time. The School arranged for the student to sit a special [Exam] the following day. The student attended a meeting with [the Representatives] on 20 May, but it has not been possible to ascertain how the incorrect time appeared on the student's timetable.

The Board agreed to refer the matter to [the Academic Secretary] as any error on the University's part was outwith the School's remit.'

29. The decision to leave the resit for the Exam 'uncapped' meant that Mr A would potentially be able to achieve full marks for the Exam at resit. Normally resits are 'capped', resulting in a maximum pass mark being attributed to the student regardless of how well they may do in the exam.

30. The Board of External Examiners, which comprises the Board of Internal Examiners and two external examiners, was scheduled to meet on 27 May 2008. Their purpose is to review the student's marks and additional paperwork regarding their case and approve a final mark after resolving any issues raised by the Board of Internal Examiners. Should they be unable to reach a conclusion, the matter should be referred to the University's Academic Secretary (the Academic Secretary).

31. Mrs C emailed the School on 22 May 2008 asking for clarification as to the process that would be followed in terms of escalating Mr A's case to the Board of Internal Examiners. She noted that she and Mr A were unaware of the nature of the report that the School would be putting to the Board of Internal Examiners. She also questioned who was representing Mr A's interests at this stage of the process. Mrs C said that she wished to ensure that Mr A had a fair opportunity to outline events as he experienced them to the Board of Internal Examiners.

32. The School replied to Mrs C's email on 23 May 2008, explaining what had been discussed by the Board of Internal Examiners. They invited her to submit any comments that she or Mr A may have had following the 20 May 2008 meeting so that they could be considered by the Board of External Examiners. Mr and Mrs C subsequently wrote to the University on 26 May 2008,

commenting on the 20 May 2008 meeting note. They highlighted a number of concerns regarding information that had been stated as fact in the meeting note, which they considered to be questionable, as well as information which had been discussed at the meeting, but which was not recorded in the note. They also enclosed two formal written statements from Mr A, which detailed the events surrounding his missed exam and the subsequent investigation, from his point of view.

33. On 23 May 2008, the Dean of the School (the Dean) emailed the Academic Secretary with details of Mr A's situation. The Dean suggested a number of possible explanations for the Timetable anomaly, including the possibility that Mr A could have altered the date himself. He stated that he was 'at a loss on how to proceed with this other than to suspend the assessment of this student and refer the facts to you'. The Dean concluded that, if Mr A had altered the date on the Timetable himself, then the situation would have to be considered to be a case of serious academic deceit. The Dean noted, however, that he had made no prejudgement and had not concluded that Mr A had altered the Timetable. The Dean's email was followed-up by a further email from the Secretary to the Academic Secretary, enclosing the 20 May 2008 meeting note.

34. The Board of External Examiners met on 27 May 2008. The minutes for their meeting record that Mr A's case was discussed. Background information was provided and the Board of External Examiners agreed that Mr A should not be disadvantaged should it be established that the University made an error on his timetable. However, it was also noted that the Academic Secretary had asked them to suspend their assessment of Mr A's case while the circumstances were investigated more fully. The University told my complaints reviewer that, as the Board of Internal Examiners referred the matter to the Academic Secretary following their meeting on 22 May 2008, the matter was not discussed in detail by the Board of External Examiners. They further explained that additional information such as the report of the 20 May 2008 meeting and Mr and Mrs C's comments in response were not submitted to the Board of External Examiners, as this may have compromised Mr A's anonymity. However, Mr and Mrs C's comments were made available to the Academic Secretary.

35. The Secretary wrote to Mr A on 28 May 2008, explaining that 'the Board of Examiners was unable to come to any agreement about the explanation for the

exam anomaly'. She explained that they, therefore, referred the matter to the Academic Secretary for advice. The Secretary noted that the Academic Secretary requested that Mr A's assessment be suspended while he referred the issue to the University's Committee on Academic Dishonesty (the Committee) for further investigation.

36. On 30 May 2008, the Academic Secretary wrote to Mr A. He noted that he had received a report from the School, consisting of a copy of the meeting note of 20 May 2008 and stated the following:

'The issue raised in that report, if proven, constitutes very serious alleged misconduct under the terms of the Student Discipline Ordinance Number 40, specifically paragraph 3(2)(ii) 'improper interference with the functioning or activities of the University...' in this case examinations.

Therefore I am writing to you, enclosing a copy of that report, to tell you that, acting as an authorised officer in terms of Ordinance 40, you have two choices, either to admit or deny the alleged misconduct. In either case I should tell you that the potential penalties open to me range from expulsion to reprimand or any other sanction which may be appropriate (Ordinance 40, paragraph 6(2)).

Should you admit the alleged misconduct, I would be prepared to hear representation in mitigation before determining the penalty to be imposed. Should you deny the misconduct a formal hearing will be held to consider and determine the matter (Ordinance 40, paragraph 5(1)) at which you may appear and be accompanied. If a hearing should prove necessary I shall coopt the President of the Students' Association to assist me in determining the case.'

37. The Academic Secretary's letter concluded by advising Mr A that his exam results for the May 2008 diet had been suspended. Mr A was asked to respond to the letter within seven days, intimating whether he admitted or denied the allegation. Mr A responded on 2 June 2008, confirming that he denied the allegation.

38. Mr A contracted the services of a solicitor (the Solicitors) and on 9 June 2008, the Solicitor wrote to the Academic Secretary on his behalf. The Solicitors explained that they considered Ordinance 40 to be unsatisfactory as it does not require there to be a formal investigation into the alleged misconduct

prior to the student being asked to admit or deny the allegations. Furthermore, they felt that the Ordinance 40 procedural guidance that 'generally' the allegation should be communicated in advance to the student, was a breach of the University's human rights obligations. The Solicitors questioned whether it was possible for Mr A to receive a fair hearing as a result of these issues.

39. The Solicitors arranged an informal meeting with the Legal Counsellor, the Academic Secretary and Mr A. They met on 17 June 2008. Mr A told my complaints reviewer that he attended the meeting on the basis that he had 'nothing to lose' and that, during the meeting, he and the Solicitors felt that the Academic Secretary was beginning to look favourably on Mr A's case. However, the Academic Secretary ultimately concluded that he had 'no option' but to progress to a disciplinary hearing.

40. Email correspondence between the Solicitors and the Legal Counsellor, following the 17 June 2008 meeting, confirmed the disciplinary hearing's structure and procedures. During these email exchanges, Mr A also gave his consent for the University to access his email account and clarify what information was sent to him regarding the Timetable.

41. On 4 July 2008, the University wrote to the Solicitors, confirming the date for the hearing, the hearing panel members and other attendees, and outlining the procedure that would be followed. The letter stated that the purpose of the hearing would be 'to consider the circumstances detailed in the report outlined from [the School] dated 20 May 2008 concerning the examination arrangements ... and whether [Mr A] altered the timetable received by him from the University and if so whether such action would constitute misconduct in terms of University Ordinance 40 specifically paragraph 3(2)(ii) 'improper interference with the functioning or activities of the University' in this case examinations'.

42. The hearing was initially scheduled for 10 July 2008, but was put back to 24 July 2008 so that Mr A could submit an independent technical report that he had obtained following forensic examination of his personal computer.

43. The disciplinary hearing took place on 24 July 2008. The Panel consisted of the University's Vice Principal (the Convenor), a member of the University's School of Law, and the President of the Student's Association. The Panel considered evidence submitted by the School and by the Solicitors. Further evidence was provided verbally by the Secretary and the Disability Adviser, ICS

and the University's Registry department. The Panel and the Solicitors were invited to ask these staff members questions to clarify any outstanding issues during the hearing.

44. A detailed record, dated 28 July 2008, documented the submissions put to the Panel at the disciplinary hearing. The Convenor detailed his decision and explained the basis of his findings in a separate report on 28 July 2008. This was emailed to the Solicitors the same day. He acknowledged the seriousness of the allegation against Mr A and noted that the Panel considered the evidence submitted to them with the premise that they required to be satisfied 'beyond reasonable doubt' that misconduct had been carried out by Mr A in order to make such a finding.

45. The Convenor's report recorded that the Panel were unanimously of the view that Mr A had altered the times of his examination and that such actions constituted misconduct in terms of Ordinance 40. The Convenor indicated in his report that the Panel found the technical evidence presented by the School to be stronger than the case presented by Mr A.

46. The Panel concluded that Mr A should be suspended from the University for one year, that his results for the module in question should be zeroed and that he should be required to resit the whole of third year upon his return to the University.

47. Ordinance 40 allows the student to appeal any decision that a disciplinary hearing panel may reach against them. To appeal the Panel's decision, the student must write to the University within seven days, detailing their grounds for appeal. The Solicitors wrote to the Legal Counsellor on 7 August 2008 to advise that Mr A would not be appealing the outcome of the hearing. Mr and Mrs C told me that this decision was reached in the knowledge that the penalty could increase following an appeal and they had lost confidence in the University's ability to investigate the matter thoroughly and impartially. Mr A was concerned that further denial of the allegations made against him would lead to his expulsion from the University.

48. Mr and Mrs C submitted a formal complaint to the University on 10 November 2008, raising concerns about the University's handling of the investigation into Mr A's conduct. I summarised Mr and Mrs C's complaint in the introduction to this report. In addition to the points noted therein, Mr and

Mrs C also complained that the University had failed to provide them with information that they had requested when building their case in Mr A's defence. During the investigation of this complaint, my complaints reviewer asked the Legal Counsellor what access Mr A had to the University's records when preparing his case for the disciplinary hearing. She said that Mr A could have gained full access to their computer records had he made a Freedom of Information request, however, no such request was received by the University.

49. The University responded to Mr and Mrs C's complaint on 11 December 2008. The response was written by the Secretary of the University (the University Secretary), who had reviewed the correspondence and circumstances relating to Mr A's suspension from the University and had interviewed the staff involved. He concluded that the University had followed the correct process when considering the allegations against Mr A and when reaching their decision.

*(a) Conclusion*

50. Mr and Mrs C complained that the University did not follow their own process in reaching their decision. Their complaint places significant emphasis on their perception of a lack of fairness in the University's investigation of Mr A's case and the apparent accusatory nature of the University's enquiries. They make specific reference to the fact that the University did not seek to investigate other possible causes of the timetable anomaly or to take into account Mr A's previous record as a student.

51. The process which the University was required to follow is set out in Ordinance 40, which is set up in such a way as to allow an independent assessment of alleged student misconduct to be carried out by the Panel. As such, an allegation must be made and a defence submitted for consideration. In this case, I consider that it is the School who made the allegation against Mr A, rather than the University as a whole. The Panel, while also being attached to the University, sit independently of the allegations (having not been involved in the initial complaint or the investigation) and should provide an independent decision on behalf of the University, effectively making a judgement on the dispute between the School and Mr A.

52. As it was the School making the allegation, I consider it to be appropriate for their investigation into the alleged misconduct to be focused on proving the misconduct, where they are satisfied that such misconduct has taken place. It

was Mr A's responsibility to present a case in his defence. Whilst I am satisfied that it was appropriate for the School to build a case against Mr A, I was concerned by certain elements of their approach.

53. Having not been present at the 20 May 2008 meeting, I am unable to comment as to whether the Representatives' tone was accusatory or aggressive as reported by Mrs C. It is clear from the meeting note, however, that Mr A was advised that the meeting was for information gathering purposes, and that the Representatives were seeking only to establish the extent to which Mr A had been disadvantaged. I have no reason to doubt that it was the Representatives' intention to gather information during the meeting and that the potential disadvantage to Mr A was considered. However, the University's records show that the School had gathered evidence from the Disability Adviser and ICS prior to Mr A being asked to attend the meeting, that the correct version of the Timetable had been sent to him on 27 March 2008. Furthermore, the handwritten note on the Secretary's email to the Academic Affairs department on 12 May 2008 shows that academic dishonesty was being considered prior to Mr A being invited to the meeting. I do not consider the content of the 20 May 2008 meeting to have been in any way harmful or inappropriate, however, the note of this meeting formed the basis of the case that was subsequently pursued against Mr A and I consider that Mr A should have been made aware of the nature of the School's investigation up to that point and the fact that academic dishonesty had been considered.

54. On 23 May 2008, the University provided Mrs C with details of the Boards of Internal and External Examiners' procedures and meeting dates. Following her enquiries, Mrs C was invited to submit comments for consideration by the Board of External Examiners, who were scheduled to meet on 27 May 2008. She had previously been advised that, should they be unable to reach a decision, the matter would be escalated to the Academic Secretary. Mr and Mrs C submitted comments on 26 May 2008 noting their disagreement with parts of the 20 May 2008 meeting note. The University's records show that the matter was raised with the Academic Secretary on 23 May 2008. Whilst Mr A's case was considered by the Board of External Examiners on 27 May 2008, it is clear that Mr and Mrs C's comments were not made available to them, as had been suggested to Mrs C. The matter was escalated to the Academic Secretary prior to the Board of External Examiners' meeting. The Academic Secretary's letter to Mr A of 30 May 2008 notes that his decision to commence the Ordinance 40 procedure was based on a report of the meeting on

20 May 2008, rather than the findings of the Board of External Examiners. I consider it appropriate for the misconduct issues to be progressed to the Academic Secretary rather than to the Board of External Examiners, however, the information that was provided to Mr A and his family as to how his case would be considered was clearly inaccurate.

55. I am satisfied that the allegation made against Mr A was suitable for consideration as one of 'academic dishonesty' in accordance with Ordinance 40. Given the nature of the allegation and the fact that Mr A denied the allegation, the decision to consider the matter at a disciplinary hearing was in keeping with the Guidance.

56. The Academic Secretary's letter to Mr A dated 30 May 2008 started the Ordinance 40 process. I found the fact that the letter advised Mr A of the potential penalties and asked that he admit or deny the allegation, to be in line with the Guidance.

57. However, Ordinance 40 states that 'Generally, the disciplinary allegations must be communicated in advance to the student(s)'. I find the words 'generally' and 'must' to be contradictory, however, I consider it good practice to state allegations clearly and unambiguously so that both parties are aware of what is to be investigated from the outset. I accept that all parties by then would have been aware of the allegation being made against Mr A in this case, however, I found that the University failed to formally put an allegation to him at any stage prior to the hearing.

58. Mr and Mrs C felt that Mr A was denied access to information held by the University that may have helped his defence. I consider that there may have been a general understanding on Mr and Mrs C's part that the University's investigation would have sought to establish alternative causes of the timetable anomaly. I am satisfied that they were provided with a copy of Ordinance 40, which explains the nature of such investigations. Generally, I found the University's processes to be transparent and information to be accessible. However, it would appear that Mr and Mrs C were not fully aware of what information they could obtain and how. I note that the Guidance and Ordinance 40 itself focus on the role of the University in disciplinary matters and make little mention of the student's involvement and what resources or support may be available to them. The University may wish to consider ways of improving their communication in this regard.

59. Once Ordinance 40 commenced, I found that the University followed the procedure correctly and that the Convenor's note of the hearing demonstrated that the terms of the Guidance's section on natural justice had been adhered to.

60. In considering Mr and Mrs C's complaint that the investigation itself was unfair and biased, I did not find this to be the case, or that a decision had been reached prior to the hearing. It is reasonable for a school within the University to pursue a case against a student, however, in doing so, it is vital that procedures are followed. The Guidance stresses the importance of following procedure when considering disciplinary cases and states that 'procedures should be operated not only fairly, but visibly fairly'. Although a number of the issues that I identified above largely relate to action taken prior to the Ordinance 40 process commencing, I consider that such failings would have contributed to Mr and Mrs C's feelings of the University not taking a fair approach to Mr A's case.

61. In all of the circumstances, I uphold this complaint.

(a) *Recommendations*

62. I recommend that the University:	<i>Completion date</i>
(i) review their actions on Mr A's case prior to the commencement of the Ordinance 40 process with a view to improving the transparency of their information gathering in cases of potential academic dishonesty;	28 February 2011
(ii) introduce measures to ensure that students are aware of the evidence submitted to the Boards of Internal and External Examiners for consideration;	28 February 2011
(iii) introduce a policy of formally stating the allegation being made against a student at the commencement of the Ordinance 40 process; and	28 February 2011
(iv) apologise to Mr A and his family for the failings identified in this report prior to the commencement of the Ordinance 40 process.	1 December 2010

**(b) The University failed to take into account Mr A's special needs when carrying out their investigation**

63. In their complaint to the Ombudsman, Mr and Mrs C noted that Mr A has dyslexia and expressed their concern that the University undertook an inquiry into his alleged misconduct without due regard to the impact such an inquiry may have on the health and wellbeing of a potentially vulnerable student. They also complained that no assistance was made available to Mr A to help him through the inquiry process.

64. Mr and Mrs C reiterated their view that Mr A had been placed under unnecessary and inappropriate pressure by the Representatives at the 20 May 2008 meeting and noted that this could have been harmful to vulnerable individuals that may not have had the support that Mr A had from Mrs C.

65. Mr and Mrs C said that they asked the University whether there was a support or advocacy service that Mr A could make use of. They were reportedly advised that no such service existed. The University suggested that Mr A contact the Student Advisory Service or the Students' Association. Mr and Mrs C learned that the Student Advisory Service did not offer support services and felt that the opportunity to use the Student's Association had been taken from Mr A as a result of the Academic Secretary's letter of 30 May 2008, which advised that the President of the Students' Association would be co-opted by him should the disciplinary case progress to a hearing.

66. Mr and Mrs C explained the impact that dyslexia has on Mr A. They noted that he has to work slowly and methodically to ensure accuracy when working with numbers. He also has difficulty with the 24 hour clock and organisational skills and relies on established routines, such as his normal practice of printing his timetable and copying exam details onto post-it notes, to maintain control.

67. Mr and Mrs C believed that, had the University consulted their own disability advisers, they would have realised the nature and extent of Mr A's condition and may have appreciated that it was unlikely that he would have been able to alter the Timetable in the short space of time available to him, as alleged.

68. Section 10 of the Guidance sets out the University's position with regard to respecting a student's human rights during the course of a disciplinary investigation. Section 10 states:

'10. Discrimination and human rights

Careful consideration must be paid to any situation in which it is possible that discrimination of any sort, including racial, gender or health/disability-related, may have occurred.

It may well be advisable to seek (with the student(s)'s agreement) a report from the University advisers in these areas, or from an appropriate external adviser, and to take this into account before proceeding with a disciplinary case, with a record of doing so being kept in case of subsequent challenge. A medical report should be sought in appropriate cases'.

69. My complaints reviewer found no record of the University having taken internal advice regarding Mr A's disability prior to the commencement of disciplinary proceedings against Mr A, or of Mr A being asked to consent to such advice being sought.

70. In the University's response to Mr and Mrs C's formal complaint, the University Secretary noted Mr and Mrs C's concerns about the pressure put on Mr A during the 20 May 2008 meeting. He also accepted that it may have been excessive to have four Representatives conducting the meeting. However, he felt that this was counter-balanced by the fact that Mr A was invited to bring someone with him as support during the meeting. The University Secretary noted that Mr A was also allowed to be accompanied at the hearing, where he elected to have legal assistance.

71. The University Secretary stressed that support was available from the Students' Association, but acknowledged that Mr A may have been discouraged from pursuing this due to the President of the Students' Association being included on the Panel.

72. The University Secretary considered that the note of the 20 May 2008 meeting did not suggest that Mr A was put under undue pressure, and was satisfied that Mr A and his representatives were given every opportunity to make his case in full.

*(b) Conclusion*

73. I consider that a disciplinary investigation and hearing would be a stressful event for any student, regardless of their vulnerability and that a certain degree

of pressure and anxiety is to be expected given the nature of the circumstances that would lead to such an event.

74. As I mentioned in paragraph 53 of this report, having not been present at the 20 May 2008 meeting, I am unable to comment as to whether the Representatives' approach was inappropriate. Given the Representatives' assurance to Mr A that the meeting was for information gathering purposes only, I would be disappointed if their approach was overtly accusatory at that stage. That said, I am of the view that the important issue when considering whether Mr A's disability was taken into account during the disciplinary process, is whether he was afforded the time to build a case in his own defence, the support necessary to do so and a platform to present that case.

75. I am satisfied that Mr A was afforded ample time to gather such evidence as he felt necessary and note that the hearing was postponed to allow him to present further evidence (paragraph 42 refers).

76. Ordinance 40 allows the Authorised Officer to co-opt such individuals as he or she sees fit and I, therefore, find it reasonable that the Academic Secretary co-opted the President of the Students' Association onto the Panel. I consider that this would also ensure that there is student representation on the Panel. I understand that the inclusion of the President of the Students' Association on the Panel would not have prevented the Students' Association from offering support to Mr A, however, I acknowledge Mr A's reasons for not pursuing this. Although Mr A did not benefit from support from within the University, I am satisfied, that by allowing him to bring legal representation to the hearing, the University did not obstruct Mr A's access to support.

77. I am further satisfied that Mr A was provided with the opportunity to present his case in full at the 20 May 2008 meeting and again at the hearing, by which time he would have been able to build his case and gather evidence to support his position.

78. I have considered the University's actions with specific reference to Section 10 of Ordinance 40. Whilst there is no evidence to suggest that the University sought specific advice regarding Mr A's disability and how this may affect the disciplinary process, I do not consider that this is a precondition of Section 10. The wording of that section suggests that the University consider this to be advisable, rather than essential.

79. In Mr A's case, I am satisfied that the University were aware of his dyslexia: this was mentioned in early correspondence regarding the disciplinary process, which itself related to an anomaly with the special needs timetable. However, as I mentioned under complaint (a) of this report, it is vitally important that the University is seen to follow due process and to be able to demonstrate that relevant factors have been taken into account. This will prevent the perception of discrimination or unfair treatment. The University should, therefore, consider recording their consideration of students' special circumstances, as a matter of routine.

80. However, for the reasons given above, I did not find that Mr A was disadvantaged as a result of his dyslexia during the disciplinary process. I, therefore, do not uphold this complaint.

*(b) Recommendation*

81. I recommend that the University:	<i>Completion date</i>
(i) introduce a policy of recording their consideration of students' special circumstances in all disciplinary cases.	28 February 2011

**(c) The punishment decided upon by the University was not commensurate with the allegations made against Mr A**

82. My investigation of this part of Mr and Mrs C's complaint concentrated on establishing whether the Panel adequately took account of the Guidance when deciding upon the punishment that Mr A should face.

83. The Guidance provides advice as to how Ordinance 40 decisions should be reached and what penalties are appropriate. Section 7 of the Guidance states:

'7. Consistency

...

Authorised officers should consider how previous similar cases have been dealt with, and should respond proportionately to the immediate case in the light of this and all the facts of the case including the student's defence or mitigation. Any sanction applied should be appropriate and proportionate to the conduct and all these circumstances...'

84. With regard to penalties, the Guidance states:

'6(2) Penalties and sanctions may be temporary or permanent and include: expulsion, exclusion or suspension from the whole University, and/or from any academic or other course(s), and/or from the use of any or all IT facilities, and/or from participation in any or all University activities, and/or from any or all other privileges, and/or from any or all part(s) of the University's precinct or premises, and/or from visiting, and/or residence in, and/or prevention from future application to, any or all University residences, flats, halls or any other University accommodation; a fine; a requirement to make good the cost of any damage or reimburse losses, a reprimand, a University Community service requirement; or the writing of an essay and/or any other penalty or sanction of any type which is appropriate in the circumstances. These penalties and sanctions apply whether or not any student has entered into a contract with the University for accommodation or for anything else.'

85. Accepted grounds for appeal are detailed under section 7(1) of Ordinance 40, which states:

7(1) Appeals shall only be considered if they are based upon:

- (i) substantive new evidence that has come to light since the original hearing of the case; or
- (ii) allegations of procedural irregularities (including administrative error) such as might give rise to reasonable doubt as to whether the Authorised Officer(s) would have reached the same decision had they not occurred; or
- (iii) allegations of prejudice or bias on the part of the Authorised Officer; or
- (iv) submission that the penalty imposed is unduly harsh.

86. After considering all of the evidence presented to them at the hearing, the Panel unanimously concluded that Mr A had altered the Timetable and that his actions constituted misconduct in terms of Ordinance 40 (paragraph 45 refers).

87. The Convenor's report records that, when considering what penalty should be imposed on Mr A, the Panel took into account references that had been submitted on Mr A's behalf, and the fact that there was no evidence to suggest that he had ever done anything of this nature in the past. However, the Convenor also noted the Panel's concern that Mr A's actions could potentially have impacted on the reputations of members of staff at the University.

88. The Convenor noted that one member of the Panel felt that Mr A's studies should be terminated completely. However, a majority decision was reached to suspend Mr A's studies for one year, to zero his grade for the affected module and to require that he resit his entire third year following his period of suspension.

89. The Convenor's report, which was sent to the Solicitors on 28 July 2008, noted that Mr A could appeal the Panel's decision within seven days of the publication of a full minute of the hearing, which would be made available on 1 August 2008.

90. On 7 August 2008, the Solicitors wrote to the Legal Counsellor, confirming that Mr A would not be appealing the Panel's decision. In their letter, the Solicitors explained that Mr A and his family had been subjected to a great deal of mental stress and anguish in relation to the disciplinary process and that appealing the Panel's decision would cause further, intolerable, emotional strain.

91. In their complaint to the University, dated 10 November 2008, Mr and Mrs C said that it was clear from the nature of the penalty imposed on Mr A that the Panel considered that Mr A's denial of the alleged misconduct called the reputation of the University and its staff into question. When complaining to the Ombudsman, they noted that the University Secretary stated in his response to their formal complaint that '[Mr A] duly stuck to his story, and as a consequence received the relatively light punishment of a year's suspension'.

92. As Mr A's denial had been considered when the Panel reached their decision regarding the penalty to be imposed, Mr and Mrs C felt that reiterating Mr A's denial by appealing the Panel's decision could only compound matters and would lead to a more severe penalty.

93. On 17 June 2008, prior to the hearing, Mr A and the Solicitors attended a meeting at the University. Mr A told my complaints reviewer that, at that meeting he was advised by the Academic Secretary that, if he admitted the alleged misconduct, no further action would be taken against him. Mr A maintained that he was innocent and, therefore, did not admit to having altered the Timetable.

94. Mr and Mrs C commented on the severity of the penalty imposed on Mr A during an interview with my complaints reviewer. They considered that the punishment was based solely on the fact that Mr A defended his case, rather than admitting the offence. They felt that the gap between the 'slap on the wrist' that had initially been discussed and the penalty ultimately imposed, was too great to be considered reasonable. They also felt that the offer to conclude the disciplinary process if Mr A admitted the allegations against him indicated a policy of 'guilty until proven innocent'.

95. With reference to the Secretary of the University's description of Mr A's punishment as 'a relatively light punishment of a year's suspension', Mr and Mrs C said that they felt that, in real terms, the penalty imposed on Mr A meant a two year delay to his education, expenses incurred through legal fees and evidence gathering, and the requirement to source funding for two more years of living costs. They estimated the additional costs resulting from the Panel's decision to be around £30,000.00.

96. During the investigation of this complaint, my complaints reviewer asked the University to comment on the weight of the penalty imposed on Mr A. The Academic Secretary explained that the University is generally likely to take a lenient approach if the student admits the alleged misconduct, on the basis that everyone makes one mistake. If the student admits the misconduct and apologises, then an informal agreement can normally be reached to move on. The Academic Secretary said that the severe penalty following a formal hearing is as much a reflection of the fact that the matter has been progressed to a formal process with a specifically convened panel who will consider more detailed evidence. If that evidence is compelling enough to find the student guilty of the misconduct, then the punishment will be measured accordingly. The Academic Secretary commented that, in this case, the Panel found the evidence against Mr A to be so strong that the decision reached was considered entirely reasonable.

*(c) Conclusion*

97. Mr A had the right to appeal the decision against him and, by failing to do so, he did not exhaust all of the opportunities available to him to reduce, or overturn, the penalty imposed on him. That said, I have considered this complaint in terms of the appropriateness of the University's actions within the context of their policy.

98. Ordinance 40 provides disciplinary panels with a variety of punishments to address a range of misconducts. I am satisfied that the Panel had due regard to this when reaching their decision.

99. Mr A protested his innocence throughout the disciplinary process. He and his family complained that that the University presumed that he was guilty of the alleged misconduct. They noted that guilty students can be 'let off' by admitting to their misconduct at an early stage and felt that he was pressured into accepting the allegation made against him. Having considered the University's approach from the viewpoint of an innocent student, I accept that it could seem unjust to miss out on the opportunity of a lenient, or no, punishment by honestly denying an allegation of misconduct, only to be punished harshly if one is unable to present a sufficiently convincing case at the subsequent hearing.

100. I do not find it to be inappropriate for the University to offer students the opportunity to reach an informal resolution by confessing to the alleged misconduct. However, I am concerned that by routinely offering students this opportunity, the University may be encouraging innocent students to make false confessions rather than presenting their case at an independent hearing. Faced with a choice of accepting the allegation and receiving no punishment, as Mr A was advised would be the case, or proceeding to a formal hearing, the outcome of which cannot be predicted, I fear that the temptation to make a false confession may be rather strong for some innocent students. I also consider that encouraging students to confess prior to the commencement of a hearing could give the impression that the University have already reached a decision regarding the alleged misconduct, bringing the fairness of the hearing into question.

101. Whether the University should attempt informal resolution with students should be at their discretion. However, the fact that the misconduct is denied should not directly influence the severity of any punishment decided upon should the matter later be considered by a hearing panel. The Panel's decision should be based solely on the evidence presented for consideration at the hearing. As the decision reached in Mr A's case was entirely at the discretion of the Panel, it is impossible for me to comment as to any influence his denial of the misconduct may have had on the punishment. The Convenor's note and records of the hearing suggest that the decision was reached based on the technical evidence, however, I acknowledge that the Secretary of the

University's comments may suggest a link between Mr A's denial and the severity of the punishment.

102. Generally, I found that the Panel adhered to the terms of Ordinance 40 in relation to their decision and I note that the option of an appeal was available to Mr A based on criteria which later formed the basis of Mr and Mrs C's complaint to the University. As such, I do not uphold this complaint.

(c) *Recommendation*

103. I recommend that the University:	<i>Completion date</i>
(i) remind staff chairing hearing panels that their decisions should be based solely on the evidence presented for consideration	28 February 2011

104. The University have accepted the recommendations and will act on them accordingly. The Ombudsman asks that the University notify him when the recommendations have been implemented.

**Explanation of abbreviations used**

Mr and Mrs C	The complainants
Mr A	Mr and Mrs C's son
The University	University of Dundee
The Panel	The disciplinary hearing panel
The Guidance	The University's guidelines on the operation of Ordinance 40
The School	A School of the University
The Timetable	The University's special needs exam timetable
Disability Services	The University's Disability Services Department
The Secretary	The School's Secretary
The Disability Adviser	Disability Services' Disability Adviser
ICS	The University's Information Technology department
The Academic Secretary	The University's Academic Secretary
The Representatives	Representatives of the University who attended the 20 May 2008 meeting
The Legal Counsellor	The University's Legal Counsellor
The Dean	The Dean of the School

The Committee	The University's Committee on Academic Dishonesty
The Solicitors	Solicitors acting on behalf of Mr A
The Principal	The University's Principal
The Convenor	Vice Principal of the University – Convenor of the Panel
The University Secretary	The Secretary of the University

**List of legislation and policies considered**

Ordinance 40: Dundee University's Ordinance on student discipline

Dundee University guidelines on the operation of Ordinance 40