

**Union's Response to Disciplinary Procedures in Imperial College
Union Council
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Proposer Name: Nathalie Podder (DPW)

Seconders: Grace Fisher (Working Class Officer), Nan Fletcher-Lloyd (ICUsToo Chair), Philippa Saunders, Ambika Bharadwaj (GirlUp Imperial Chair), Malinda Davies (Gender Equality Officer), Esha Kamran (Interfaith Officer), Awais Seyyad (Disabilities Officer), Lottie Barot (Mental Health Officer), Anvesh Rajeshirke (International Officer), Niamh McAuley (Arts & Entertainment Chair), Camellia Richards (ICSMSU Vice President Welfare), Hayley Wong (CGCU President), Daniel Lo (DPE), India Marsden (DPCS), Sam Lee (DPFS), Lloyd James (President)

Union Notes

1. Over a 5-year period, from 2016 to 2021, there have only been 10 complaints of sexual misconduct that have been submitted by students to the College.
2. The College's Student Disciplinary procedures were last reviewed in the summer of 2019. The working group for this did not include a student wellbeing representative.
3. In section 4.7.1 of the 2019 Review of College's Disciplinary Procedures, it states that a disclosure in the absence of a report "would have the effect of appropriate support and guidance being offered." However, there is no mention of preventative safeguarding measures being put into place.
4. In section 4.5.3 of the 2019 Review of College's Disciplinary Procedures, it states that "[f]or cases which involve multiple respondents/complainants and/or witnesses in common, the College should continue to follow the same set of procedures as are followed for cases which involve a single complainant/respondent/witness."
5. In section 5.3.3 of the 2019 Review of College's Disciplinary Procedures, it states that "In accordance with the OIA guidance, it should be made clear to the complainant that the outcome of the student disciplinary process should normally be confidential to the respondent, although they may consent to information being shared with the individual who made the complaint."
6. In section 8.3.3 of the 2019 Review of the College's Disciplinary Procedures, it states that "in cases where safeguarding measures must be put in place, including limitations on access, the College should notify Heads of Department and the complainant to prevent any breach of these measures (with suitable confidentiality requirements – see section 5.7)." However, no mention of made of what actions should be taken if these measures are breached.
7. For disciplinary cases directed at a student, the Office of Independent Adjudications (OIA) states that "at the conclusion of the disciplinary process **the student who made the complaint should be given some resolution to their complaint.** If the other student's behaviour is found to have had an adverse impact on the student who made the complaint, then **the provider should offer them a remedy for that impact.**"
8. For disciplinary cases directed at a student, the OIA states that "when a student makes a complaint about a staff member that complaint should normally be referred to the provider's staff disciplinary process. **The outcome of the process will normally be confidential to the staff member, although the staff member may consent to information being shared with the student who made the complaint.** Nevertheless, the student making the complaint should be given some resolution to their complaint. If

the staff member's behaviour is found to have had an adverse impact on the student who made the complaint then the provider should offer them a remedy for that impact."

9. Article (19) of the General Data Protection Regulation (GDPR) states that "the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security and the free movement of such data, is the subject of a specific Union legal act. **This Regulation should not, therefore, apply to processing activities for those purposes.**"
10. The Information Commissioner's Office (ICO) (the executive body for the 2018 Data Protection Act (DPA)) provides the following legal bases for the processing of data for non-law enforcement purposes: consent, contract, legal obligation, vital interests, public task, and legitimate interests. As a public authority, Imperial is justifying its withholding of disciplinary outcomes from the complainant by using consent, instead of legitimate interests, as its lawful basis.
11. The Article (9) of GDPR states that Special Category Data (which contains data concerning a person's sex life and/or sexual orientation) may be shared if "processing is necessary **for reasons of substantial public interest**, on the basis of Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject."
12. Schedule 1, article 18 of the DPA states that the condition for sharing Special Category Data for reasons of substantial public interest is met if it involves the safeguarding of children or individuals at risk. It states that "an individual aged 18 or over is "at risk" if the controller has reasonable cause to suspect that the individual . . . **has needs for care and support** . . . is experiencing, or at risk or, neglect or physical, mental or emotional harm, and . . . as a result of those needs is unable to protect himself or herself against the neglect or harm or the risk of it."
13. The Office for Students (OfS) Statement of Expectations on preventing and addressing harassment and sexual misconduct affecting students in higher education states that "[h]igher education providers should ensure that students involved in an investigatory process have access to appropriate and effective support. We consider this to include . . . **[r]eporting and responding parties being provided with an outcome of the investigatory process** where the provider is able to share this information, **or an explanation of any actions the provider has taken, or not taken, as a result of the complaint.** Should the outcome of a process change, the reporting and responding parties should be informed of this."
14. In the summer of 2020, the Report and Support Tool was launched as a means of allowing members of the College community to disclose complaints of harassment or sexual violence. There is the option to either disclose anonymously or seek support from a trained member of staff. It is important to note that anonymous disclosures will not result in any direct disciplinary action, nor will they be used in any existing investigations.
15. There is no set protocol in place for safeguarding students who make a disciplinary complaint to protect their privacy and safety, nor to communicate any safeguarding measures to the affected students.
16. According to the Union Disciplinary Bye-Laws, "[t]he investigating officer shall refer the case to the College at any point if it is deemed that the nature of the action is relevant to the College or a serious enough allegation that requires College intervention."

Union Believes

1. If anonymous disclosures cannot be used as evidence in disciplinary investigations and steps are not taken to protect the privacy of students when making a report, then this is likely to discourage students from making a disclosure or report.

2. If no safeguarding measures are put into place following a disclosure in the absence of a report, then the affected students may feel pressured to follow through with filing a report, which would result in the respondent being informed of the complaint. If there is no set protocol in place for safeguarding students who have made a report, then this could lead to highly dangerous and traumatic situations which could put the lives of the affected students at risk.
3. If the affected students and staff are not informed of what safeguarding measures have been put in place to protect their privacy and safety, then they will have no way of knowing when these measures have been violated, nor how they could seek support from College following the violation of these measures.
4. There needs to be a clear set of written guidelines for further sanctions that would be imposed as a result of any deliberate breach of a safeguarding measure. These sanctions need to be imposed whilst the investigation is still ongoing, and the consequences for breaching these measures need to be made clear to both the respondent and the complainant at the start of the investigation.
5. Using the same set of procedures for multiple complainants, as for a single complainant, does not provide room for the acknowledgement that the respondents may be exhibiting a pattern of behaviour. This needs to be taken into consideration in the outcome.
6. College has taken the default stance to bar the complainant from knowing the outcome of any disciplinary investigation, regardless of whether the respondent is a student or staff member, and cites the good practice framework from the OIA as the reason for doing so. However, the OIA only gives this guidance when the respondent is a staff member; not when the complaint is made against another student. By generalising the guidance in this way, College is disincentivizing students from making a report.
7. The OIA's good practice framework states that College should offer a remedy to students who have suffered an adverse impact from the subject of their complaint. This remedy should not inappropriately pressure the student to take an interruption of study or otherwise cause further harm or disadvantage to the student, as doing so would be a punishment, not a remedy. Furthermore, the resolution that is provided to the student should focus on what actions the College will take to respond to the complaint and continue to safeguard the affected students.
8. GDPR should not be used as a reason to avoid disclosing relevant safeguarding information or the outcome of an investigation to directly affected students, as this would violate the principles that are stated in the regulation itself.
9. The DPA should not be used as a reason to avoid disclosing relevant safeguarding information or the outcome of an investigation to directly affected students, as this would violate the principles that are stated in the act itself. Additionally, it should not be used as a reason to avoid giving a redacted report of the outcome and actions taken as a result of the investigation to both the respondent and the complainant, as the OfS states this clearly as a prerequisite to providing appropriate and effective support in its statement of expectations, which fits with the safeguarding criteria that is outlined in Schedule 1, Article 18 of the DPA.
10. If complaints of sexual violence have been determined by a College investigation to be true, then the level of disciplinary action taken by College should reflect the seriousness of the complaint. As such, there needs to be a specific, pre-written set of guidelines for the consequences of committing acts of sexual violence, as well as a non-exhaustive list of examples of evidence that would be considered in these cases. Neglecting to do so would send the message that such violence or harm is acceptable and carries minimal consequences within the College community.
11. Any investigation undertaken as part of College's disciplinary procedures should not seek to minimise the complaint that has been made, nor should it minimise the impact that it has had on the affected students.

12. In their current state, the College's Student Disciplinary Procedures do not uphold the College's duty of care to ensure the safety and privacy of vulnerable students.
13. Since serious disciplinary cases in the Union are deferred to the College, it is important to ensure that the principles that are present in the disciplinary processes in both institutions are aligned. In addition to working with College to review their disciplinary policy and procedures, the Union should also ensure that its own procedures are clear, consistent and fit for purpose.

Union Resolves

1. To work with the College to review its Student Disciplinary Procedures and ensure that they are fulfilling their duty of care to protect the safety and privacy of vulnerable students.