

# Investigation Report

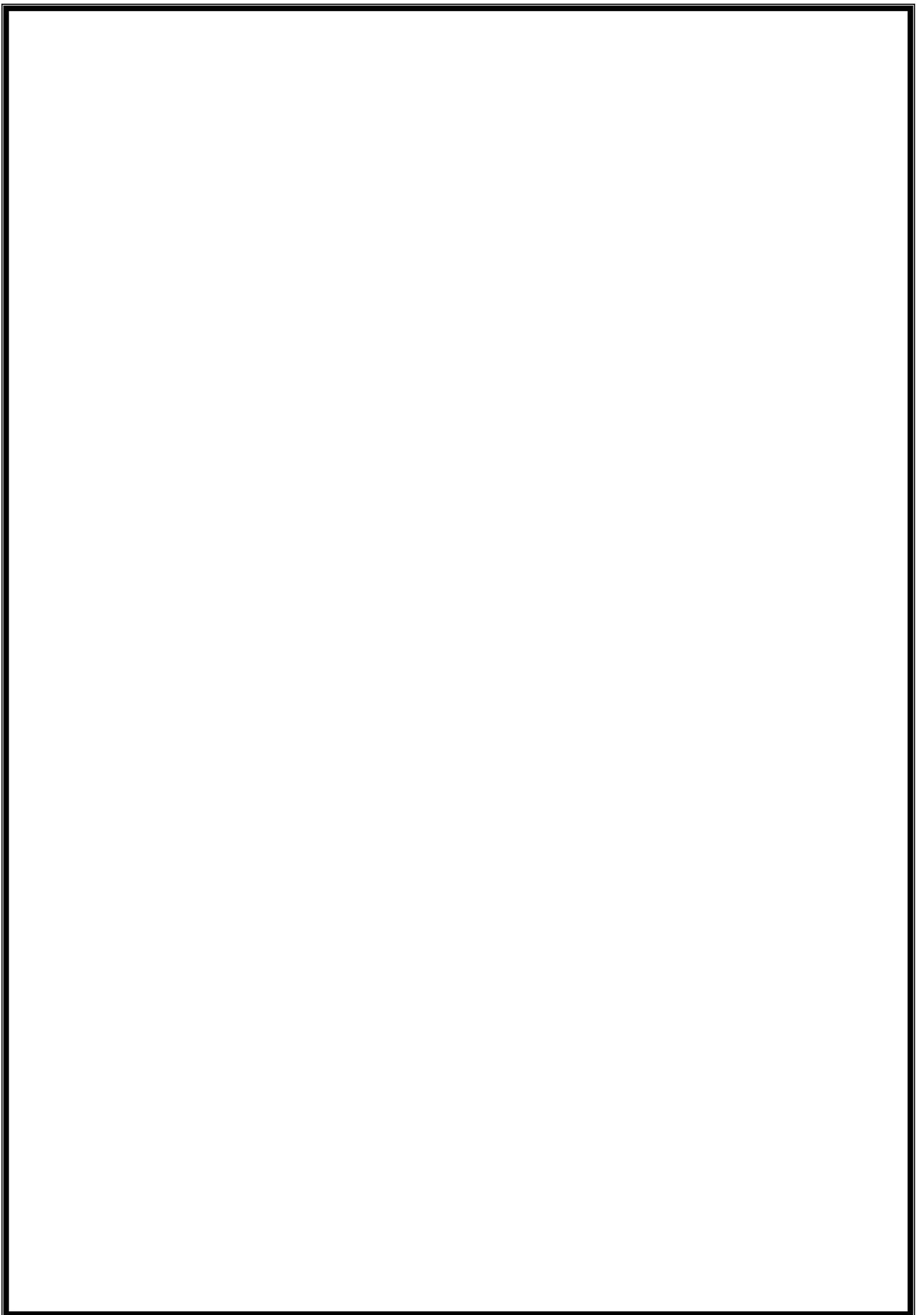
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## Investigation of a complaint against Queen's University Belfast

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**NIPSO Reference: 202000110**

The Northern Ireland Public Services Ombudsman  
33 Wellington Place  
BELFAST  
BT1 6HN  
Tel: 028 9023 3821  
Email: [nipso@nipso.org.uk](mailto:nipso@nipso.org.uk)  
Web: [www.nipso.org.uk](http://www.nipso.org.uk)  
 @NIPSO\_Comms



## **The Role of the Ombudsman**

The Northern Ireland Public Services Ombudsman (NIPSO) provides a free, independent and impartial service for investigating complaints about public service providers in Northern Ireland.

The role of the Ombudsman is set out in the Public Services Ombudsman Act (Northern Ireland) 2016 (the 2016 Act). The Ombudsman can normally only accept a complaint after the complaints process of the public service provider has been exhausted.

The Ombudsman may investigate complaints about maladministration on the part of listed authorities, and on the merits of a decision taken by health and social care bodies, general health care providers and independent providers of health and social care. The purpose of an investigation is to ascertain if the matters alleged in the complaint properly warrant investigation and are in substance true.

Maladministration is not defined in the legislation, but is generally taken to include decisions made following improper consideration, action or inaction; delay; failure to follow procedures or the law; misleading or inaccurate statements; bias; or inadequate record keeping.

The Ombudsman must also consider whether maladministration has resulted in an injustice. Injustice is also not defined in legislation but can include upset, inconvenience, or frustration. A remedy may be recommended where injustice is found as a consequence of the failings identified in a report.

## **Reporting in the Public Interest**

This report is published pursuant to section 44 of the 2016 Act which allows the Ombudsman to publish an investigation report when it is in the public interest to do so.

The Ombudsman has taken into account the interests of the person aggrieved and other persons prior to publishing this report.

# TABLE OF CONTENTS

	<b>Page</b>
SUMMARY .....	5
THE COMPLAINT .....	7
INVESTIGATION METHODOLOGY .....	7
THE INVESTIGATION .....	8
CONCLUSION .....	25
APPENDICES .....	27
Appendix 1 – The Principles of Good Administration	
Appendix 2 – The Principles of Good Complaints Handling	

**Case Reference:** 202000110

**Listed Authority:** Queen's University, Belfast

## **SUMMARY**

The complaint concerned the way in which Queen's University Belfast (the University) managed a complaint about the flat-mates of a student in University-owned accommodation.

The complainant said that the University did not follow its own policy and procedure in dealing with the complaint. The complainant also said that the University did not provide any details about how it came to its decision and failed to provide a response to queries the reporting student raised early in the process. The complainant said that he believes that there has been maladministration by the University which has resulted in injustice to the reporting student and that the reporting student feels that the University did not take the complaint, which was about bullying and harassment, seriously.

There were elements of the complaint that the investigation did not uphold. The investigation, however, established maladministration by the University in relation to a failure to record the reasons for deviating from the standard and expected practice in relation to how the complaint was managed; failure to fully address all of the reporting student's written enquiries and failure to document all the responses the University made to those enquiries which it did address; failure to evidence its decision making in relation to the outcome of the reporting student's complaint; failure to be '*open and accountable*' in accordance with the third principle of the Principles of Good Administration by not providing more detail to the reporting student about the investigation findings and how and why the decisions were made; and failure to ensure records were complete.

The investigation established that, as a result of the failings identified, the reporting student experienced uncertainty, upset, frustration, time and trouble in pursuing the complaint and the inability to obtain closure as all her questions were not answered,

she believed all her concerns were not addressed or resolved and the reasons for decisions were unclear.

I made four recommendations, including an apology to the complainant for the failings identified. I also recommended that the University ensures that relevant staff are provided with appropriate training and guidance in relation to the need for proper records, recording reasons for decisions and what information can and should be disclosed to the reporting student. I recommended that the University reviews its processes to ensure that complainants are provided with full responses to correspondence and enquiries in a timely manner and any responses are recorded; and that the University fully documents investigation findings, conclusions and recommendations. These recommendations are to be evidenced by training materials and records and the conduct of a sample audits. I also recommended that the University consider two further opportunities for improvement based on observations made during the investigation.

## **THE COMPLAINT**

1. I received a complaint about the actions of Queen's University Belfast (the University). The complaint related to the management of a complaint about bullying and harassment, which the complainant's daughter (the reporting student) made about other residents in her University accommodation.

### **Issues of complaint**

2. The issues of complaint accepted for investigation were:

**Whether the University's investigation and management of, and response to the complaint were reasonable and appropriate and in accordance with relevant procedures, guidance and standards.**

## **INVESTIGATION METHODOLOGY**

3. In order to investigate this complaint, the Investigating Officer obtained from the University all relevant documentation, together with its comments on the complainant's issues.

### **Relevant Standards and Guidance**

4. In order to investigate complaints, I must establish a clear understanding of the standards, both of general application and those which are specific to the circumstances of the case. I also make reference to relevant regulatory, professional and statutory guidance.

The general standards are the Ombudsman's Principles<sup>1</sup>:

- The Principles of Good Administration
- The Principles of Good Complaints Handling

5. The specific standards and guidance referred to are those which applied at the time the events occurred. These governed the exercise of the administrative functions and professional judgement of those individuals whose actions are the subject of this complaint.

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<sup>1</sup> These principles were established through the collective experience of the public services ombudsmen affiliated to the Ombudsman Association.

The specific standards and guidance relevant to this complaint are:

- Queen’s University Belfast Conduct Regulations (Conduct Regulations);
- Queen’s University Belfast Student Charter (Student Charter);
- Queen’s University Regulations for Students (Student Regulations);
- Conditions of Occupancy 2020/21 (Accommodation Conditions);
- Conduct Regulations-A Student Guide (Student Guidance);
- Conduct Regulations-Guidance for Schools (School Guidance);
- Investigation Meeting Guidelines (Investigation Guidance); and
- The Government Legal Department ‘*The judge over your shoulder: a guide to good decision making*’, 2018 (Government Guide to Good Decision Making).

Where appropriate, relevant extracts from the guidance considered are enclosed at Appendix four to this report.

6. I did not include all of the information obtained in the course of the investigation in this report but I am satisfied that, in reaching my findings, I took into account everything that I consider to be relevant and important.
7. A draft of this report was shared with the complainant and with the University for comment on factual accuracy and the reasonableness of the findings and recommendations.

## **THE INVESTIGATION**

### **Detail of Complaint**

8. The reporting student made a complaint to the University about four of the other students sharing her University-owned accommodation. The complaint was submitted under the Conduct Regulations and cited under ‘*abusive, threatening or intimidating, bullying or harassing behaviour*’. The complainant said that the Conduct Regulations state that, when the alleged offences fall into this

category, the complaint should be heard by a Committee of Discipline; however, the University did not follow this process as it was managed through a single Disciplinary Officer.

9. The complainant said that the reporting student raised a number of queries about the complaints process in writing circa three weeks after she submitted the complaint but these queries were not answered.
10. The complainant also said that, in the letter from the University in which it informed the reporting student that that there was '*insufficient evidence to warrant a referral to a Committee of Discipline or the imposition of a disciplinary sanction on any student*' but that the '*allegations were thoroughly investigated*', the University did not provide any information or details about the investigation or how decisions had been made. In particular, the complainant said that, although photographic and video evidence was provided by the reporting student to support her allegations, the University did not provide any information in its outcome as to how this was considered in the investigation and decision making process. The complainant said that the failure to provide these details is unfair and contrary to natural justice as the information is relevant to the complaint.
11. The reporting student said that to complain about bullying and harassment was a difficult thing for her to do but she felt that the University's actions indicated that it did not take such complaints seriously. She said that she felt that the University was '*more on the side of the perpetrators than the victim*' and caused her to question the degree of inappropriate behaviour that would be required for the University to take a complaint seriously.

## **Evidence Considered**

## **Legislation/Policies/Guidance**

12. I considered the Conduct Regulations; Student Guidance; School Guidance; the Student Charter; the Student Regulations; the Accommodation Conditions; and the Investigation Guidance.

### **The University's response to investigation enquiries**

13. As part of investigation enquiries, the University was provided with an opportunity to respond to the complaint. The University's response to my enquiries is at Appendix three to this report.

### **Relevant records**

14. I considered the investigation forms and supporting documentation for each of the responding students. I also considered the original complaint submitted by the reporting student, together with evidence provided by her at the time of the complaint to the University which included four videos and two photographs. I considered the outcome letters for each of the responding students. I considered a series of emails between the Investigating Officer and the Team Leader of Appeals and Complaints (TL Appeals and Complaints) and between the TL Appeals and Complaints and the Student's Union (Advice SU) related to some of the queries detailed in an email sent by the reporting student on 2 November 2020.

### **Responses to the Draft Investigation Report**

15. Both the complainant and the University were given an opportunity to provide comments on the Draft Investigation Report. Where appropriate, comments have been reflected in changes to the report. Other comments are outlined in paragraphs 16 to 18 below.

#### *The University's response*

16. The University referred to the findings and recommendations related to documenting investigation findings and evidencing decision-making; record-keeping; and providing appropriate information to reporting students about

investigation findings and the reasons for decisions. The University stated that it both accepted and would implement these within the required timescales. The University also stated that it noted the two observations and the associated opportunities for improvement.

17. The University stated that the Conduct Regulations specify the limited information that can be shared with a reporting individual. The University stated that it maintains that the outcome letter to the reporting student was in line with the requirements of the Conduct Regulations in place at the time. The University stated that the issue of how much can be disclosed to a reporting individual is regularly discussed across the Higher Education sector. The University stated that it is seeking legal advice on the level of detail about a responding student's case outcome that is appropriate to share with a reporting individual and that the Conduct Regulations will then be amended as appropriate. The University stated it recognised that this is a significant issue for reporting individuals which must be balanced with protection of the rights of the responding student. The University stated that both reporting and responding individuals are owed a duty of care by the University.
18. The University stated that, as this case relates to the interactions of two 'clients' which required the University to '*adjudicate on evidence brought to it by those individuals*', it represents a different type of complaint from those which are related to the service provided by the University itself. The University stated that the challenges presented by such cases are shared by others in the sector and are regularly discussed within the sector.

### **Analysis and Findings**

19. I carefully examined the University's actions in investigating and managing the reporting student's complaint.

#### *Management of the complaint by a Disciplinary Officer*

20. The complainant said that the Conduct Regulations specify that an allegation of '*abusive, threatening or intimidating, bullying or harassing behaviour*' lies within the remit of the Committee of Discipline for investigation and therefore the Disciplinary Officer should not have made the decisions in relation to the

complaint. The University also conducted its investigation and consideration of the complaint under the category of abusive, threatening or intimidating, bullying or harassing behaviour'

21. The Conduct Regulations, paragraph 3.1.13 states that allegations of '*abusive, threatening or intimidating, bullying or harassing behaviour*' will normally be considered by a Committee of Discipline. I note, however, that paragraph 2.1.5 of the Conduct Regulations which details '*Delegation of Authority*', states that '*the Vice-Chancellor will normally delegate the authority to deal with disciplinary matters to the relevant Disciplinary Officer or any other officer of the University, as is appropriate, given the circumstances of the case. This will include the decision on whether the cases of all or any of the students accused of the same or substantially similar misconduct shall be investigated and/or heard together. A reference in these Conduct Regulations to a Disciplinary Officer should be read as also applying to any other officer acting under delegated authority.*' Under the section which deals with the '*Disciplinary Officer's Decision*', paragraph 2.3, it states that '*if the Disciplinary Officer decides that there is no case to answer, then the Disciplinary Officer shall dismiss the case.*' In the Conduct Regulations, '*Annex two Disciplinary Procedure*', the flowchart which represents the procedure indicates that, after a Prima Facie case has been accepted and an investigation commissioned, the Disciplinary Officer reviews the investigation report and can either hold a hearing of the case or make a decision. The decision options listed as open to the Disciplinary Officer are to dismiss the case with no further action; impose a penalty; or refer the case to a Committee of Discipline, in consultation with Academic Affairs. This process is also reflected in the details contained in both the Student and School Guidance documents.
22. I consider that both paragraph 2.3, '*Delegation of Authority*' and Annex two of the Conduct Regulations stipulate that a Disciplinary Officer has the authority to make decisions about cases which are considered under these regulations. Therefore, I do not uphold the element of the complaint that the Disciplinary Officer should not have made the decisions about the allegations.

23. It is clear that the University has some discretion as to whether an issue can be dealt with by a Committee of Discipline or Disciplinary Officer. Given, however, that the Conduct Regulations outlines guidance on matters which, as standard practice are deemed appropriate for each authority to manage, it would be expected under the third principle of Good Administration, '*Being open and accountable*' that the University would document the reasons why it employed the discretion to deviate from standard practice. I consider that the guidance in the Conduct Regulations creates a legitimate expectation that '*abusive, threatening or intimidating, bullying or harassing behaviour*' will be normally dealt with by a Committee of Discipline. I note that the University took the complaint forward under the Conduct Regulations and under '*abusive, threatening or intimidating, bullying or harassing behaviour*' but did not follow the normal published process and did not record the rationale for applying discretion in this decision. I consider that this failure to act in accordance with the third principle of the Principles of Good Administration, '*Being Open and Accountable*' constitutes maladministration.

#### Injustice

24. I find that as a result of the maladministration, the reporting student experienced uncertainty that her complaint was being managed appropriately.

#### *Response to the reporting student's correspondence*

25. On 2 November 2020, the reporting student sent an email to the University in which she asked for clarification on a number of issues associated with how the complaint would be taken forward and investigated. Specifically, she raised four points. The first of these was that, under the Conduct Regulations, the allegations should be considered by a Committee of Discipline and if a Committee of Discipline was not to consider the case, she asked that the University provide her with an explanation as to why it was departing from its own procedures. Secondly, she questioned whether the appointed Investigating Officer had a conflict of interest, given that the complaint related to accommodation. The reporting student's third point was about how the process worked in practice and the fourth point was whether she could be accompanied by one of her parents to the meeting with the Investigating Officer, as she was

no longer a student of the University. The complainant said that the University did not provide a response to the reporting student's queries.

26. The University stated that it '*maintains that there was a telephone response to the [reporting] student's queries*'. The University stated, however, that '*it does not retain call logs or records of telephone discussions, and therefore cannot confirm the date or time of the call or the details of the telephone discussions ... [and] as the Investigating Officer no longer works at the University, the details of the conversation cannot be confirmed.*' The University provided a chronology of the reporting student's complaint which detailed correspondence and contact with the reporting student. I note that there is no record cited in the chronology of a response from the University to the reporting student's written enquiries either by telephone or otherwise.
27. Although there is no record that the Investigating Officer contacted the reporting student by telephone in response to the queries in her email of 2 November 2020, there are records which provide evidence that two of the four issues raised in that email were considered by the Investigating Officer and that he sought and obtained advice on these from the TL Appeals and Complaints. These records also indicate that the TL Appeals and Complaints liaised with Advice SU on one of these two points. Specifically, these records indicate that the queries as to whether the reporting student's parents could accompany her to the investigatory meeting and the overall process involved in the application of the conduct regulations was discussed. Although I cannot definitively conclude that the reporting student was informed about these two queries, I consider that on the balance of probabilities and in consideration of the evidence of the minutes of the investigatory meeting which references the option of Advice SU accompanying her, the University did address these two points with the reporting student, albeit verbally.
28. I consider that any correspondence with a customer or complainant should be documented, including any verbal correspondence. I consider that the University's failure to record this does not accord with the third principle of the Principles of Good Administration of '*Being open and accountable*', specifically,

*'keeping proper and appropriate records'*. I find that this constitutes maladministration.

29. As described in paragraph 25 above, however, the reporting student raised two further queries in her email. These were related to the potential conflict of interest of the Investigating Officer being a member of staff from Accommodation and her request for an explanation as to why the University would depart from the Conduct Regulations by not referring the case to the standard forum of a Committee of Discipline. I note that there is no evidence that indicates that the former query was addressed with the reporting student in any way. The records rather indicate evidence to the contrary as the TL Appeals and Complaints' advice to the Investigating Officer states that the reporting student be advised that the issue would be *'investigated separately by a member of staff outside accommodation'* which, if had been the case, would have negated the reporting student's concern. In relation to the latter query, there is no evidence provided that this was fully addressed either verbally or otherwise. In the meeting of 9 November 2020, it is documented that the Investigating Officer stated to the reporting student that he *'did not know where the case would eventually sit'* but there is no explanation recorded or referenced anywhere of the reason why the case would not be considered by a Committee of Discipline which was the specific query raised by the reporting student. Both of these issues were cited in the complaint to the Ombudsman as being unanswered questions, with the latter representing one of the core issues of the complaint to the Ombudsman.
30. In the absence of any evidence of a response to these two points detailed in the reporting student's correspondence, I consider that, on the balance of probabilities, the University did not provide a response to these two queries. I consider that this does not accord with the second principle of the Principles of Good Administration of *'Being customer focused'*, specifically, *'dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances'*. I find that this constitutes maladministration. I therefore uphold this element of the complaint.

## Injustice

31. I find that as a result of the maladministration, the reporting student experienced uncertainty and frustration as a number of her concerns and questions were not addressed.

## *Conduct of the investigation*

32. The complainant said that, as the University did not provide any details about the investigation in the letter of outcome to the reporting student, this leads to the conclusion that the University failed to conduct a proper investigation.
33. The investigation forms for each of the four responding students were completed. Each of these forms contained details of the complaint, a 'filenote' (minutes) of each the investigatory meeting and a statement from each responding student. In addition, there were appendices to each form. For all of the responding students, Appendices one and two were attached. These appendices comprised a redacted copy of the reporting student's complaint and the responding student's invitation to the investigatory meeting. For one of the responding students, there was also a confirmation of attendance at the investigatory meeting. The investigatory interviews were conducted by the Investigating Officer. I note that both the minutes of each interview and the responding students' statements were very detailed and covered each element detailed in the reporting student's complaint. It was also recorded in the minutes for each interview that the Investigating Officer shared and discussed with each responding student the video and audio evidence provided by the reporting student. There were also statements from a number of other flat-mates.
34. The University stated that it is '*satisfied that [the student's] ... complaint ... was promptly, fairly and thoroughly investigated in accordance with the Conduct Regulations.*' The University further stated that, although the student was given neither the details of the investigation nor the outcome, '*this has no relation to the proper conduct of the investigation*'. I note that the University stated that the Conduct Regulations are '*the basis by which the University takes disciplinary action against students who are alleged to have breached the*

*disciplinary code. Upon receipt of an allegation of misconduct against a student, whether received from a reporting student, a member of staff, or an external party, the University invokes the Conduct Regulations, and an investigation into the allegation of misconduct is carried out ... the Conduct Regulations are not intended to be an adversarial process between the reporting individual and the responding student. Neither are they aligned with a legal procedure which would permit each party to rebut the arguments of the other ... [it] is intended to investigate and confirm whether the responding student has breached the Conduct Regulations, and to apply an appropriate penalty, if a disciplinary offence has been committed.'*

35. Having reviewed the records, and in reference to both the Conduct Regulations and the Investigation Guidance, I consider that there is sufficient evidence that the process undertaken to investigate the complaint was appropriate. I therefore do not uphold this element of the complaint.

*The decision making process and information provided to the reporting student about the investigation into her complaint*

#### Decision making process

36. The Conduct Regulations, paragraph 11.3 states that the *'Investigating Officer shall make a written report of the findings to the Disciplinary Officer detailing all the evidence obtained and making a preliminary recommendation.'* I note that the Student Guidance states that, *'at the end of the investigation, the Investigation Officer will present a report of their findings to a Disciplinary Officer'*. The School Guidance states that *'a Disciplinary Officer will review investigation report and your recommendations and will approve report.'*
37. The following sections, headings and options are included under the *'Recommendations[s]'* section of the investigation form: *'Name of Investigation Officer'*; *'recommends that no further action is required/the offence should go to Disciplinary Officer Hearing/Committee of Discipline'*; *'Name of Disciplinary Officer'*; *'reviewed the Investigation Report and recommends that no further action is required/the offence should go to Disciplinary Officer'*

*Hearing/Committee of Discipline*'. There is also a table which details the following options, *'No further action, Disciplinary Officer Hearing, Committee of Discipline*'. There are no names inserted under either Investigating or Disciplinary Officer in any of the investigation forms associated with this complaint and none of the forms are either signed or dated by either Officer. In each of the four investigation forms, neither the Investigating Officer nor the Disciplinary Officer indicated which of the three possible options or recommendations were proposed, advised or agreed either in the narrative or in the table. I note that there is no record of the meeting between the Investigating and Disciplinary Officers or of the discussion or decision making process. There are no records of the findings and decision making of the Investigating Officer prior to this meeting and no record of the decision making of the Disciplinary Officer after the meeting.

38. The University stated that *'there is no requirement under the Conduct Regulations for a rationale to be recorded in relation to the preliminary recommendation'* and that, as the Investigating Officer is no longer in the University's employ, *'the University holds no further information beyond that included in the Investigating Officer's reports.'* I note that the University further stated that the Investigating Officer *'highlighted three possible options'* as *'a preliminary recommendation'* in his report but he did not make a *'definitive'* recommendation.
39. During the course of the University's investigation, a number of the responding students alleged that both the speaker incident, in which reference was made to *'a threesome'* with the reporting student and the incidents related to watching pornography were carried out by another student who was not named in the reporting student's complaint. I note that the speaker incident was evidenced by an audio recording, as well as statements made by a number of the responding students. In relation to the identification of this information, the University stated that *'as the Investigating Officer no longer works for the University, it is not possible to confirm how these statements and evidence were considered during the investigation. However, it is clear that the statements were included in the investigation reports, as part of the evidence collected'* and these *'were considered by the Disciplinary Officer, along with all of the available evidence,*

*in reaching her decision.*' The University further stated that the Disciplinary Officer '*noted that all four of the responding students had referred to this individual as being involved in at least some of the incidents*'; however, as the reporting student had not named this individual in her complaint, there was no allegation of misconduct to investigate.

40. The University stated that the options available to the Disciplinary Officer were discussed during the meeting between the Investigating Officer and the Disciplinary Officer. The University stated that this meeting is standard practice and allows the Investigating Officer to answer any questions that the Disciplinary Officer may have. I note that the University stated that, at this meeting, the Investigating Officer and the Disciplinary Officer discussed the preliminary recommendations, and the Disciplinary Officer reached a final decision on the basis of the evidence available to her. The University stated that, in making her decision, the Disciplinary Officer considered the reporting student's complaint; the Investigating Officer's reports for each of the responding students; responses from each of the responding students; and witness statements from a number of other flat-mates.
  
41. I refer to the statements in the Conduct Regulations, paragraph 11.3, that the Investigating Officer shall '*make a written report of the findings to the Disciplinary Officer ... and mak[e] a preliminary recommendation.*' I refer to the statement in the Student Guidance that the Investigation Officer '*will present a report of their findings to a Disciplinary Officer*' and the School Guidance's statement that '*a Disciplinary Officer will review ... your recommendations and will approve report.*' I note that there is no documented evidence of the Investigating Officer's findings or of his preliminary recommendation. Instead, the investigation 'report' is merely a compilation of the evidence gathered but without any details of how this evidence was considered or how it supported the conclusion or recommendations, both of which were also undocumented. In addition, I note that the '*three possible options*' highlighted in the recommendations section of the investigation form comprise all the options available and therefore there are neither findings nor a recommendation.

42. I consider that the University's statement that *'there is no requirement under the Conduct Regulations for a rationale to be recorded in relation to the preliminary recommendation'* is contrary to the requirement stipulated in the Conduct Regulations for a written report of the findings. I note that within the investigation form, the Disciplinary Officer did not record her decisions either, as required. Neither the Investigating nor Disciplinary Officer's names or signatures are recorded in any of the forms and none of the forms are dated. I note that there are no records of any discussions between the two Officers and the reasons for the Disciplinary Officer's decisions are not recorded anywhere.
43. I refer to paragraph 2.8 of the Conduct Regulations which allows the University to initiate an investigation of its own accord. Given both that all the responding students alleged that another student was involved in the more significant incidents and the nature of these allegations, it is my view that the University should have given consideration to carrying out an investigation into this under paragraph 2.8 of the Conduct Regulations. I also refer to the second observation below that, on receipt of these allegations from the responding students, the University could have clarified this additional information with the reporting student. As there are no records that either an investigation was considered or of how the information and allegations which emerged were in themselves considered, there are no reasons for, and understanding of, why an investigation was not undertaken.
44. I accept that the University's decision in relation to the alleged offences reported under the Conduct Regulations was a discretionary decision. I also consider, however, that there are other requirements of public bodies, other than the stipulations contained in internal policies, such as the Conduct Regulations. Public bodies are also required to employ good administrative practices and record-keeping. The absence of an evidence base for the decisions made is contrary to these standards of good practice. Furthermore, the University took no account of the need to respond to any enquiries that any party might make in the event that the reporting student challenged or queried the University's actions beyond the scope of its own internal complaints procedures. I consider that the University's failure to keep proper records in

relation to the Investigating Officer's findings and evidence for the reasons for its decisions is contrary to the third principle of the Principles of Good Administration; specifically, '*Being open and accountable*' which requires public bodies to state '*its criteria for decision making*', give '*reasons for decisions*' and keep '*full, proper and accurate records*'. I also refer to paragraphs 2.56 to 2.62 of the Government Guide to Good Decision Making which outlines why the reasons for decisions should be recorded, including fairness. I consider that the documentation of the findings and decision making process is of particular significance in the context that, although the evidence confirmed, and the University acknowledged, that '*the incidents had taken place*', the decision taken was that there was '*insufficient evidence to warrant a referral to a Committee of Discipline or the imposition of a disciplinary sanction on any student.*' I consider that this constitutes maladministration. I therefore uphold this element of the complaint.

Information provided to the reporting student about the investigation into her complaint

45. The Conduct Regulations, paragraph 3.2.7, states that '*the details of the outcome of the disciplinary proceedings against the responding student will not be disclosed.*' The Student Guide states that '*At the conclusion of the disciplinary procedure, you will normally be advised whether the Conduct Regulations were invoked and, if so, whether a sanction was imposed on the student. However, details of the outcome will not be disclosed.*'
  
46. The University stated that the intention behind this requirement for confidentiality is in line with the University's requirement under the General Data Protection Regulations and which '*is intended to protect all parties to the disciplinary proceedings*'. I note that the University stated that the reporting student was not the subject of the disciplinary proceedings, was not facing any disciplinary sanction and was therefore, '*neither required nor entitled to respond to the information provided by other students.*' I further refer to my observations below.

47. The University stated that there is no provision or requirement in the Conduct Regulations for the University to provide a full response to the reporting student or to set out the findings and conclusions of the investigation. I note that the University further stated that *'there is no provision under the Conduct Regulations for the University to enter into a dialogue with the reporting person other than to keep them up to date with the progress of the case.'*
48. The University stated that the Conduct Regulations are *'the basis by which the University takes disciplinary action against students who are alleged to have breached the disciplinary code. Upon receipt of an allegation of misconduct against a student, whether received from a reporting student, a member of staff, or an external party, the University invokes the Conduct Regulations, and an investigation into the allegation of misconduct is carried out.'* I note that the University also stated that *'the Conduct Regulations are not intended to be an adversarial process between the reporting individual and the responding student. Neither are they aligned with a legal procedure which would permit each party to rebut the arguments of the other. Instead they are the method by which the University investigates and, where it considers appropriate, takes action against students who have breached the Terms and Conditions of their enrolment with the University. The outcome of the disciplinary process under the Conduct Regulations is not intended to provide redress to the reporting party, but is intended to investigate and confirm whether the responding student has breached the Conduct Regulations, and to apply an appropriate penalty, if a disciplinary offence has been committed.'*
49. I refer to the University's response to the Draft Investigation Report. The University stated that the issue of how much information about the outcome for a responding student should be provided to a reporting individual is a matter which is discussed across the Higher Education sector and that both parties are owed a duty of care by the University. The University also stated that it maintains that the outcome letter to the reporting student was in line with the Conduct Regulations requirements. I refer to paragraph 50 below that I consider, in addition to the requirements of the Principles of Good Administration and Good Complaints Handling, that providing details to the

reporting student of investigation findings and how and why the decisions were made does not constitute the provision of details of a responding student's outcome and consequently does not contravene the Conduct Regulations.

50. I consider that the University's actions in this case and statements detailed in paragraphs 46 to 48 above indicate a focus on protecting the information rights of the responding students and which, in my reading, indicates that this overrides the reporting student's rights. Whilst I acknowledge that the University is required to adhere both to its legal obligations under data protection and sector regulations, the University needs to balance this against the reporting student's competing rights by being as open as the law allows in explaining its decision. This is stated in the first principle of the Principles of Good Administration, '*Getting it right*' that the body should act in accordance with the law and with regard for the rights of [all] those concerned. I consider that the Disciplinary Officer's outcome letter to the reporting student could have included more detail on the investigation findings and how and why the decisions were made, including how the evidence provided by, and therefore known to the reporting student, was considered in the decisions made and the reasons for the decision not to refer the case to the Committee of Discipline. I consider that a good decision will have reasons that explain and justify it. I consider that the giving of reasons is essential for fairness and transparency. I consider that this would not have breached confidentiality or infringed the rights of others as this did not require disclosure of the '*details of the outcome of the disciplinary proceedings against the responding student[s]*', rather this would have only provided details of the decision making process. I also refer to my findings at paragraphs 23, 36 to 44 above, related to the failure to document the reasons for decisions throughout the process and investigation findings. I consider that this does not accord with the third principle of the Principles of Good Administration; specifically, '*Being open and accountable*' which requires public bodies to state '*its criteria for decision making*' and give '*reasons for decisions*', particularly when a decision adversely affects the individual concerned. I consider that this failure constitutes maladministration. I therefore uphold this element of the complaint.

51. The University stated that *'the outcome of the disciplinary process under the Conduct Regulations is not intended to provide redress to the reporting party'*. I note, however, that the complaint made by the reporting student related to incidents which directly impacted on her. Although the University stated that the Disciplinary Officer considered that there had not been *'any malice on the part of the responding students, towards [the reporting student]'*, the evidence gathered in the investigation indicated that all of the responding students offered an apology to the reporting student for any offence or upset that arose from the incidents in which they had been involved, albeit they stated that it was unintentional. I note that, in her complaint to the University, the reporting student said she would like an apology from the responding students. I consider that, in addition to providing the reporting student with the information detailed in paragraph 50 above, in accordance with the first and fifth principles of the Principles of Good Complaints Handling, *'Getting it right'* by *'focusing the outcomes for the customer'* and *'Putting things right'* by *'taking account of any injustice or hardship that results from pursuing the complaint as well as from the original dispute'*, it would have been appropriate and reasonable for the University to have explored conveying the apologies to the reporting student with the consent of the responding students. This may have alleviated her upset. I would ask the University to consider how this might be taken forward as part of their process.

### Injustice

52. In considering the reporting student's complaint, I identified incidents of maladministration. Given the lack of records in relation to findings, conclusions and the reasons for decisions, I cannot be assured that the decisions made were appropriate. I further consider that, as a result of these failings, the reporting student experienced uncertainty, upset, frustration, time and trouble in pursuing the complaint and the inability to obtain closure. This is because she was unable to obtain reasons for the University's decisions, which were also unclear and she believed her concerns were not given appropriate consideration and remained unresolved.

## CONCLUSION

53. I investigated the complaint and found maladministration in relation to the University's actions.

- The University did not act in accordance with the second and third Principles of Good Administration by failing both to fully address all of the reporting student's enquiries and to document all the responses it did make to those enquiries which it addressed.
  - I am satisfied that this failure caused the reporting student uncertainty and frustration as a number of her concerns and questions were not addressed.
- The University failed to both document the findings and evidence its decision making in dealing with the reporting student's concerns about breaches of the Conduct Regulations, in accordance with both the third Principle of Good Administration and the Government Guide to Good Decision Making.
- The University did not act in accordance with the third Principle of Good Administration by failing to provide more detail to the reporting student about the investigation findings and how and why the decisions were made.
  - I am satisfied that these failures caused the reporting student uncertainty, upset, frustration, time and trouble in pursuing the complaint and the inability to obtain closure because she was unable to obtain reasons for the University's decisions, which were also unclear and she believed her concerns were not given appropriate consideration and remained unresolved.

54. I welcome the University's acceptance of, and commitment to implementing, the report's recommendations.

## Recommendations

1. I recommend that the University provides the complainant with a written apology in accordance with NIPSO 'Guidance on issuing an apology' (June 2016), for the injustices caused as a result of the failures and maladministration identified (within **one month** of the date of this report).
2. I recommend that the University ensures that relevant staff are provided with appropriate training and guidance in relation to the need for proper records, recording reasons for decisions and what information can and should be disclosed to reporting individuals within the restrictions of legislation but with regard to the rights of all concerned. This should include consideration of how in circumstances when responding students offer apologies, these may be conveyed to reporting individuals with the responding students' consent. This should be evidenced by training materials and records.
3. I recommend that the University reviews its processes to ensure that complainants are provided with full responses to correspondence and enquiries in a timely manner which should be evidenced by a sample audit. I also recommend that the University should record any correspondence with a customer or complainant, including any verbal correspondence.
4. I refer the University to the standards and guidance referenced in this report: - the Principles of Good Administration and the Government Guide to Good Decision Making and also to the published standard, '*Records Matter, a view from regulating and oversight bodies on the importance of good record keeping*' (The Public Services Ombudsman, the NI Audit Office and the Information Commissioner's Office, January 2020). I recommend that the University takes steps to ensure that all aspects of investigations, including findings, conclusions and recommendations are fully documented. This should be evidenced by sample audits.
5. I refer the University to my observations below for consideration as further opportunities for improvement.

6. I recommend that the University implements an action plan to incorporate these recommendations and should provide me with an update within **six** months of the date of my final report. That action plan should be supported by evidence to confirm that appropriate action has been taken (including, where appropriate, records of any relevant meetings, training records and/or self-declaration forms which indicate that staff have read and understood any related policies).

### **Observations**

1. Whilst the process described in paragraphs 21 to 23 is detailed in the Conduct Regulations and outlined in the Student Guidance, I note, however, that there is no cross-reference about the delegation of authority (paragraph 2.1.5) at paragraphs 3.1.12, 3.1.13, Annex two or indeed in either the Student or School Guidance. As paragraphs 3.1.12, 3.1.13 and Annex one, Tables one and two detail the offences and associated penalties which are normally managed by a Disciplinary Officer and a Committee of Discipline respectively, I consider that reporting individuals would have a legitimate expectation that the listed offences will accordingly be dealt with by the relevant authority. The University, therefore, may wish to consider including reference to the paragraph on delegation of authority at paragraphs 3.1.12, 3.1.13, Annex two and both the Student and School Guidance. I consider that this would provide clarity for reporting individuals.
2. Whilst the University stated, and I accept, that investigation under the Conduct Regulations is not an adversarial process, I note that this would not preclude the University from clarifying any issues with the reporting student which were material to the decision. For example, where the University identified any incident for which there was a lack of clarity about which responding student the reporting student had alleged was responsible, it would have been reasonable for the University to have clarified this with the reporting student, prior to undertaking the interviews with the responding students. The University may wish to reflect on this approach in undertaking investigations in the future.

A handwritten signature in cursive script that reads "Margaret Kelly". The signature is written in black ink on a light-colored background.

**MARGARET KELLY**  
Ombudsman

**8 July 2022**