



office of the
independent
adjudicator

'for students in higher education'

PRIVATE & CONFIDENTIAL

Mrs Emma Hilton Wood
Head of Academic Policy
University of Manchester
Room 2.016
John Owens Building
Oxford Road
MANCHESTER
M13 9PL

Second Floor, Abbey Wharf
57-75 Kings Road
Reading
RG1 3AB
United Kingdom

www.oiahe.org.uk
enquiries@oiahe.org.uk
Tel: 0118 959 9813

28 July 2020

Dear Mrs Hilton Wood

Ref: [REDACTED]
Complaint by [REDACTED]

We have all of the information we need and have completed our review of [REDACTED]'s complaint.

We have decided that [REDACTED]'s complaint to us is **Not Justified**. I attach our Complaint Outcome of today's date, which explains why we have reached this decision.

I also attach a copy of our letter to [REDACTED] confirming our decision.

This ends our review of [REDACTED]'s complaint and we have now closed our file.

Yours sincerely

Alison Walker
Senior Assistant Adjudicator

On behalf of the Office of the Independent Adjudicator

COMPLAINT OUTCOME

Office of the Independent Adjudicator for Higher Education

| | |
|----------------------------|---|
| Student: | [REDACTED] |
| Higher Education Provider: | University of Manchester ("the University") |
| Our reference number: | [REDACTED] |
| Our Decision: | Not Justified |
| Date of this document | 28 July 2020 |

Our Key Conclusions

1. We have carefully looked at what [REDACTED] and the University have said to us about the complaint. We have decided that the complaint is **Not Justified**.
2. **Our key conclusions are:**
 - 2.1. The University's decision not to uphold [REDACTED]'s complaint was reasonable in all the circumstances.
 - 2.2. The University did vary from its published Complaints Procedure by issuing a Completion of Procedures letter at the end of Stage 2, without a Stage 3 review. In the circumstances of this case, we are satisfied that was reasonable.
3. In the rest of this document, we explain our reasons for coming to these conclusions.

Setting the Scene

| | |
|--|---|
| Course of Study | MEng Chemical Engineering with Industrial Experience ("the course"). |
| Date of Completion of Procedures Letter | 30 April 2020 |
| Provider's decision | The University did not uphold [REDACTED]'s complaint. |
| Key procedures and documents | University: <ul style="list-style-type: none"> • Regulation XVIII Student Complaints Procedure, February 2019 ("Complaints Procedure") |

| | |
|---|--|
| | <ul style="list-style-type: none"> • Student Terms and Conditions, Courses commencing during the 2018-2019 academic year ("Terms and Conditions") • Faculty of Science and Engineering, Summary of 'No Disadvantage' Policy, 2019/20 • My Manchester News, Coronavirus: Frequently Asked Questions • School of Chemical Engineering & Analytical Science, Undergraduate Student Handbook 2018/19. <p>Other:</p> <ul style="list-style-type: none"> • Department for Education (DfE) University students and COVID-19 FAQ (published 9 April 2020) • Office for Students (OfS) Guidance for providers about quality and standards during coronavirus (COVID-19) pandemic (published 3 April 2020) |
| Why the student is dissatisfied | ██████████ says that the University did not resolve her complaint in a constructive manner. |
| What the student would like | A full or partial tuition fee refund for 2019/20. |
| Date complaint received by the OIA | 2 May 2020 |

Brief timeline and key events/facts

| | |
|---------------|--|
| 13 March 2020 | The University informed all students that in line with Public Health England and government advice in response to the global Covid-19 pandemic it would be transferring all teaching activities to online provision as far as possible from the week beginning 16 March 2020. It said that some small group teaching sessions and undergraduate practical/laboratory classes would continue face-to-face for the next two weeks, but that further changes may be possible. |
| 17 March 2020 | The University informed all students that in line with the latest government advice it was now closing all non-essential campus facilities, and moving all teaching and support services online. Students were asked to keep in contact with their Schools and tutors for details of further teaching sessions. |
| 30 March 2020 | Following her return home to ██████████ ██████████'s father emailed the University. He asked if she would still have to pay tuition fees, given that her course had been suspended indefinitely. |
| 31 March 2020 | The University emailed all students with an update on steps being taken to deliver online teaching and learning and provide support. This included summary details of its 'no disadvantage' approach to assessment; and a link to an open letter to students from the Minister of State for Universities. |
| 1 April 2020 | The University responded to ██████████'s father. It said that although face-to-face teaching had been suspended, it was |

| | |
|------------------|--|
| | continuing to support students to achieve learning outcomes and would not therefore be refunding tuition fees. It advised that the next instalment of fees be paid by the due date and provided information about its formal complaints process. |
| 10 April 2020 | ██████ submitted a formal complaint to the Faculty of Science and Engineering ("the Faculty"). |
| 15-21 April 2020 | There was ongoing correspondence between the Faculty and ██████. The Faculty said that steps were being taken to mitigate the impact of the pandemic and support students. It asked ██████ to contact the School of Engineering ("the School") directly to find out about her course and to exhaust informal avenues of complaint with the School first. ██████ said she had been advised to make a formal complaint after her earlier enquiries and was therefore doing so. |
| 22 April 2020 | The Faculty noted receipt of the formal complaint. |
| 30 April 2020 | Faculty decision issued in a Completion of Procedures ("COP") letter. The complaint was not upheld. |

Our Approach

4. The role of the OIA is to review the final decision of the provider. Our review decides whether a complaint is Justified, Partly Justified, or Not Justified. To reach our decision, we look at whether the provider applied its regulations properly and followed its procedures. We also look at whether the provider's decision was reasonable in all the circumstances.
5. When considering complaints related to the Covid-19 pandemic we take into account consumer protection legislation and relevant guidance from the Competition and Markets Authority ("CMA"), the Department for Education ("DfE"), the Office for Students ("OfS"), the Quality Assurance Agency ("QAA"), and the national and sector context, as well as the individual circumstances of the student's case. We look at a case from a wider perspective than the strict terms of any contractual arrangements.
6. We consider whether, in the circumstances of Covid-19, the provider has taken reasonable steps to minimise the academic impact of disruption on a student, what steps the provider has taken to ensure that students' expected learning outcomes can be met, and what support the provider made available to the student at the time.
7. This Complaint Outcome does not refer to every point included in the complaint, but we have thought about all the issues raised. We include all material which we think is necessary to make a decision about the complaint.

Our Reasoning

The reasonableness of the University's final decision

8. ██████'s complaint to the University was a request for a discount/refund of tuition fees because her course had been moved to online teaching following the closure of campus due to the Covid-19 pandemic. She said that online delivery was "very different" from what she expected when she started the course in 2018/19; which was a

“full University experience” with “face to face interaction with my professors/tutors, fellow students, campus life etc” which the University was not now providing. She said she therefore felt a discount/refund was “equitable” because the full fees (which for [REDACTED] as an international student were £22,000 a year) “no longer reflect the “contract services/expectations” between the student and the University.”

9. The University did not uphold the complaint. In its COP letter the University said it recognised that the Covid-19 pandemic and the impact on [REDACTED]'s studies were matters of concern. But said it would not be providing a tuition fee refund in light of the steps it had taken, and would continue to take, to *“mitigate the impact of the coronavirus pandemic on the learning and assessment of students”*. It explained what it had done to communicate changes and information to students as the situation had developed/was continuing to develop. It confirmed that [REDACTED]'s course was continuing, providing detail from the Chemical Engineering Department about the changes it had made to be able to deliver the course as far as possible online. Along with information about: the University's 'No Disadvantage' approach to assessments to prevent academic disadvantage due to the Covid-19 pandemic, how Examination Boards would be operating and how to access student support services. The University acknowledged the changes that had been made meant [REDACTED] learning experience was different from what she had expected. But it explained that in making those changes it had been acting in her interests and *“in line with advice from Public Health England, Universities UK and the Foreign and Commonwealth Office.”* The University also noted that its Terms and Conditions, as accepted by [REDACTED] at the start of the course, did allow it to make changes to teaching, learning and assessment in circumstances beyond its control. But that notwithstanding that, it was working hard to *“ensure that you can still meet your intended learning outcomes, progress in your studies and earn a qualification of which you can be proud, and which will be valued by employers and accrediting bodies.”*
10. After careful review of all the information provided, we are satisfied that the University's decision was reasonable in the circumstances. Our reasons are set out below.
 - 10.1. The global Covid-19 pandemic has caused significant disruption and concern for everyone, including in the higher education sector. Providers have been required to adapt teaching, learning and assessment considerably as a result of the pandemic. Those changes have been necessary in order to comply with public health advice and to protect the health and safety of students, staff and the general public. These are unprecedented times for everyone.
 - 10.2. From what we have seen, we think the University took reasonable steps to ensure students were kept informed at University, Faculty and individual course level about the changes it was making, the reasons for making those changes, and the actions it was taking to mitigate for academic disadvantage and provide support services, including access to its IT services and online learning resources. Understandably in the context of a pandemic, the way in which it delivered its services was different to that originally intended.
 - 10.3. We have seen several emails that were sent to [REDACTED] and the students in her cohort giving detailed information about the changes at a module level. This included how lectures, seminars, problem sessions and office hours would be provided online through the University's virtual learning environment for the remainder of Semester 2. On one module, the final few laboratory experiments were

cancelled, apologies were offered, and students were informed at the time of cancellation of the action being taken to ensure that those who had not had the opportunity to complete those experiments were not penalised. For another, an in-class assessment that had been due to take place in the week the campus closed, was changed to being run online and additional time allowed to compensate. Other emails showed how group work was being facilitated online, that discussion boards had been set up and that academic staff were varying their office hours to be available at a reasonable time for those in other time zones. Most of these changes were in place within the first week of the switch to online delivery, a change necessitated by compliance with public health requirements and government measures.

- 10.4. At the University level, information about University wide changes and services was provided in email updates from the Vice-Chancellor and other senior staff, and through the creation of a regularly updated Coronavirus Frequently Asked Questions webpage, with links to other information and services. Changes were also made to support with IT services following feedback from students, with a dedicated single phone number and email address for all to assist with remote access.
- 10.5. As the University noted in its COP letter, [REDACTED] did not raise in her complaint any specific concerns about difficulties with accessing her course once it had moved to online delivery. Nor has she raised any concern about the quality of the provision being provided online or difficulties with accessing necessary study or library materials through the online options available. Rather [REDACTED] focus was on the fact that she had expected to be able to undertake her studies on campus and could not now do that.
- 10.6. In light of that, and in the context of the global Covid-19 pandemic, we think the University reasonably explained why it was unable to continue offering a campus based face-to face service. And that it communicated clearly and in a timely way how it was continuing to deliver the course. Including opportunities to interact with staff and other students, and its support services, although through different means than originally planned.
- 10.7. The University says that it is allowed to make changes to teaching, learning and assessment in circumstances such as a pandemic under clause 10 of its Terms and Conditions. Clause 10 says: *"We shall not be liable to you for events outside our control which we could not have foreseen or prevented, even if we had taken reasonable care. Such events include, but are not limited to: strikes; other industrial action; staff illness; severe weather; fire; civil commotion; riot; invasion; terrorist attack or threat of a terrorist attack; war (whether declared or not); natural disaster; restrictions imposed by government or public authorities; significant changes to our funding or government higher education policy; epidemic or pandemic disease; or failure of public utilities or transport systems. Should any such circumstances arise, we reserve the right to change or cancel parts, or all, of the Course. We will take reasonable and proportionate steps to mitigate any adverse impact on you."*
- 10.8. We are concerned that this clause is very wide in scope. Force majeure clauses such as this should be narrowly drawn and applied and a clause that permitted the University to cancel an entire programme could be considered a surprising or important term under consumer protection legislation. However, in the

circumstances of this complaint, the University has focused on mitigating the impact of the pandemic on students, to try to make sure that students could still meet their intended learning outcomes and progress with their studies. We have therefore considered whether the steps it took were reasonable in the circumstances.

- 10.9. Guidance issued by the DfE states that *“in deciding to keep charging full fees, universities will of course want to ensure that they can continue to deliver courses which are fit for purpose and help students to progress their qualifications.”*

Consumer protection legislation has not been suspended for students. This means that providers should still deliver learning and services that students reasonably expect to receive. We acknowledge however, that what students can reasonably expect, and what providers can reasonably be expected to deliver has and will continue to change as the circumstances surrounding the Covid-19 pandemic evolve.

- 10.10. We are satisfied that the University has made reasonable efforts to continue to deliver learning and services so that students could achieve their expected learning outcomes, adapting quickly to the exceptional circumstances of the pandemic. And that it has taken reasonable steps to prevent academic disadvantage as a result of the changes in delivery method, assessment and other provisions it has had to make.

- 10.11. We understand that [REDACTED] experience as a student in 2019/20, the second year of her course, was significantly different to that of her first year in 2018/19. We recognise that the developing situation with the pandemic and how it was affecting her studies would have been difficult and worrying for [REDACTED] especially whilst still in the UK prior to her return home to her family. We also recognise the significant challenges that both providers and students have faced, and continue to face, as a result of the Covid-19 pandemic. This has necessarily led to unexpected adaptations and changes in service provision. However, for the reasons given above, we are satisfied that the University's final decision, not to uphold the complaint or provide a refund of tuition fees, was reasonable in all the circumstances of this case.

The University's handling of the complaint

11. The University's Complaints Procedure comprises three stages: informal procedure, formal procedure and review. The University issued its COP letter at the end of the formal procedure. This meant that [REDACTED] was not able to access the review stage. The University explained in the COP letter that whilst there would usually be an internal right of review, the OIA had advised that providers should *“consider issuing a [COP] letter as soon as it becomes clear that you are not going to be able to reach agreement with the student/s.”* It said that it was clear that [REDACTED] was dissatisfied because a refund of tuition fees had not been offered. And its position remained that a refund was not appropriate, because it had taken/was continuing to take, reasonable steps to keep students informed, mitigate for adverse impact on studies and make alternative provision for teaching, learning and assessment. It said its position would not change, and it was therefore issuing the COP letter.

12. We are satisfied that in the circumstances it was pragmatic and reasonable for the University to follow a shortened version of its Complaints Procedure. But we think it would have been good practice for the University to have told [REDACTED] at the start of the process that this was what it was intending to do. [REDACTED] has not said in her

complaint to the OIA that she was concerned the University did not follow its published process. And we are satisfied from the evidence we have seen that there was no disadvantage to her by the University doing so.

13. We would suggest however, that if the University has decided to shorten its published Complaints Procedure for considering complaints related to the Covid-19 pandemic, it takes appropriate steps to ensure that students are informed of the changes in advance.

END