Report of the tenth Annual Conference of the European Network of Ombudsmen in Higher Education
St Catherine’s College, Oxford, United Kingdom, 11-13 April 2013
Contents

FOREWORD 3
Introduction 4

PAPER SUMMARIES 6
Policy context 6
Mandates 7
User engagement 11
Skill sets 14
Conclusion 17
The Tenth Annual Conference of the European Network of Ombudsmen in Higher Education (ENOHE) was hosted by the Office of the Independent Adjudicator for Higher Education in England and Wales (OIA) at St Catherine’s College, Oxford, England, from 11-13 April 2013. The choice of St Catherine’s College was fitting. Its architect, the Dane Arne Jacobsen, designed the College ‘both to reflect elements of a traditional Oxford college and to be an entirely modern solution to the challenge of creating an integrated environment which would be both practical and aesthetically pleasing.’ In the same way, ENOHE combines the best of tradition and modernity in the context of student redress. The Conference was concerned with ombudsmen striking a balance between tradition and modernity in the context of fiscal crisis and rising student expectations.

This paper draws out the main themes of the Conference. It summarises or takes extracts from the presentations and includes links to all of the conference materials. I would like to thank all participants and contributors for their commitment and scholarship. I am grateful to conference rapporteurs Zoë Babb, Anne Lee and Hilary Jones for providing session reports. Jane Clarkson and Josef Leidenfrost made helpful comments on the text. Any interpretations in this paper are my own.

Rob Behrens
Independent Adjudicator and Chief Executive
Office of the Independent Adjudicator

1 Throughout this paper the term ‘Ombudsman’ is used in gender neutral terms, and as a noun and concept derived from the original Swedish.
2 www.stcatz.ox.ac.uk/college/buildings-and-grounds
Introduction

The backdrop to the Conference and papers was (and continues to be) an increased marketisation of universities, and a relatively increased cost burden on students, particularly – but not always – through raised tuition fees. There is also a step-change in student expectations away from the romantic and life-enhancing\(^3\) and towards a more instrumental, cost-conscious, rights perspective. In these circumstances, it was unsurprising (and important) that the concept of ‘student as customer’ was critiqued and argued over in terms of its merits, its behavioural impact on students and lecturers as participants in higher education, and its implications for ombudsmen as resolvers of dispute.

Some colleagues saw the ‘student as customer’ model energise the assertiveness of complainants but with potential to limit dispute resolution and constrain the discretion of academics. There were graphic examples of the challenges for ombudsmen intervention in situations (for example, Quebec, Canada) of mass student protest. More abstractly, but equally important, there was concern that the ‘students as customers’ approach deflected both universities and students from engaging in genuine partnership to enhance university experience.

Papers presented reflected a diversity of experience. Some came from relatively new initiatives, where university complaints management is an embryonic idea. Other initiatives were long-standing and, in some, fatigue and change weariness are clearly challenges. It is noteworthy that the Oxford Conference was seen by attendees not only as a learning experience in terms of exposure to alternative ways of addressing conflict, but also a rare opportunity for respite and renewal. The need for this kind of development is likely to increase rather than diminish in the continuing transition of higher education.

Some institutions represented were small and geographically discrete, others large, dispersed and multi-organisational. Remits varied, with some participants responsible for managing staff as well as student complaints. The mandates of campus ombudsmen and national schemes are a central issue. Independence of function, often hard fought for, is clearly seen as a golden thread and a \textit{sine qua non}. It manifests itself in a variety of forms ranging from wide discretion within university line management on the one hand to complete separation from university power structures in ways recognised by the Courts on the other.

Beyond this, and in the midst of diversity, there was wide agreement that there is no single ‘right’ way to structure and run an ombudsman service. Different models work in different settings, so learning from colleagues and mutual tolerance was unsurprisingly a feature of exchanges.

There is some evidence that in Europe at least, fiscal constraint has been used as a justification for closing down one campus ombudsman office. An ombudsman working alone can only go so far. There was, therefore, important reflection on the governance question ‘Who defends the ombudsman?’ Another, recurring, issue is the relative absence of ombudsman executive powers and the ability to enforce preferred outcomes. For some this is core (and happy) ombudsman territory. In any event, it puts a premium on authority, legitimacy, negotiation, consent and ‘win-win’. It also emphasises the importance of ombudsmen coordinating and influencing sector bodies that do possess executive and regulatory powers. In carrying out their functions ombudsmen should not lose sight of the wider policy environment and the potential for strategic alliances. This is not invariably a question of ‘supping with the devil’ but is a pragmatic strategy to survive and improve effectiveness.

There was a difference in emphasis on what are the key skills in the ombudsman’s portfolio. Some majored on the ‘therapeutic’ element – akin in one account to the skill of a social worker – of enabling

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\(^3\) ‘Everybody’s young days are a dream, a delightful insanity, a sweet solipsism. Nothing in them has a fixed shape, nothing a fixed price; everything is a possibility, and we live happily on credit’, Michael Oakeshott, ‘On being Conservative’ in \textit{Rationalism in Politics and other essays}, first published 1962, University Paperback, reprinted 1981, p.195.
contesting parties to negotiate their own settlement. Others focused on the adjudicatory element in which the ombudsman exercises judgement to establish whether or not there has been a detriment. Clearly there are philosophical preferences about methods, but as one experienced campus ombudsman noted ‘The adage “if all you have is a hammer, then everything looks like a nail”’ has resonance for those looking beyond method to outcome and resolution.

Even where there was agreement on the core skills, there were crucial differences in policy and practice. For example, most ombudsmen grapple with the tensions of providing a ‘confidential’ service to users, with the need for their actions to be seen to be contributing to the accountability of the university through reporting of lived experience. In one German university an on-line complaints service does not flinch from describing all student questions and all the answers and advice returned. By contrast, in the USA, a doyenne of campus ombudsmen noted the primacy of confidential engagement: ‘I enjoy “professional amnesia”’.

All agreed on the importance of a multi-skilled approach, and of the value of creativity, imagination and resilience, particularly where resources, skills and mandates are sub-optimal. Too many colleagues reported initiatives sold as a move towards the ‘broad, sunlit uplands’ but undermined by inadequate resource.

In these circumstances, effective complaints handling operations require the application of basic project management principles to ensure effectiveness and efficiency. In this, process evaluation and readjustment, where appropriate, are necessary to prevent the unravelling of goals into ‘the emperor’s new clothes’. One issue here is the question of sequencing in terms of process. Should informal approaches to complaints/issues resolution be a pre-requisite of formal approaches? Separately but related, where does mediation fit in terms of formal processes?

There were many insights from experienced practitioners on these questions. First, informal processes, early resolution and mediation are accepted as vital tools in dispute resolution, but are not appropriate for all complaints. Challenges to narrow academic judgement, for example, are not susceptible to mediation, but they might be assuaged by explanation. Secondly, the experience of working at the ‘sharp end’ in dealing with complaints means that ombudsmen gain insights and expertise that can, over time, help prevent complaints through identifying systemic problems and taking grievances seriously. There is a real danger of fetishism of process – a concentration on perfectioning the symmetry of each stage of adjudication, when more thought and creativity needs to go into resolving issues before they turn into complaints at all. As a national students’ union representative reminded the Conference, there is nothing pleasant for a complainant in going through a formal complaints or appeals process.

Another recurring theme was the importance of effective training and development for ombudsmen and complaints resolution staff. A number of presentations dealt with graduate and undergraduate programmes in conflict resolution. But less elevated on-the-job initiatives have their place too, not least because of reported impairment of positive initiatives to introduce (for example) mediation capacity through either a deficit of core skills, or ‘actor’ burn-out as a result of the stresses of operations.

The stark reality is that change fatigue or weariness is far too common for comfort in the ombudsman world of today. This puts a premium on ENOHE and similar regional organisations. Network exchange of good practice both on-line and through conference debate and argument do not just have intellectual value in promoting better practice. They address the issue of professional identity when the profession (if that is what it is, or wants to be) and the service it delivers are under continuous pressure and threat. The unanimous adoption of the Oxford Resolution at the concluding plenary is testimony to the value of ENOHE as an umbrella in stormy times.

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4 www.britishpathe.com/.../churchill-speech-finest-hour
5 www.andersen.sdu.dk/vaerk/hersholt/TheEmperorsNewClothes_e.html
6 http://www.enohe.net/oxford-resolution/
Policy context

David Palfreyman, Director of the Oxford Centre for Higher Education Policy Studies, New College, Oxford, noted that market reforms and the attendant neo-liberal agenda are not confined to Europe but have been adopted across the world. Professor Sir Alan Langlands, at the time Chief Executive of the English Higher Education Funding Council (HEFCE) set out the opportunities and challenges to higher education in the wake of market reforms. In the view of Langlands, the foundations of higher education are strong in the UK, with very high student-reported student satisfaction rates, the UK accounting for 12 per cent of the international student market, and research excellence being the most efficient in the G8. The revised, joined-up, regulatory framework for higher education, led by HEFCE in partnership with other regulatory bodies (including the OIA) has to order the functional building blocks. These include Quality Assurance and Fair Access where recruitment of students who now take out student loans to pay their tuition fees becomes more competitive.

The two other building blocks are dispute resolution, and Information for students and citizens. The ordering of building blocks has to be done in the context of rising tuition fees and falling research grants and contracts, and also questions about whether or not the 2010 UK Coalition Government higher education reforms provide long-term financial sustainability.

Reporting on the Spanish situation, Ana Hernanz Escobar, Dr Enriqueta Arias, Dr Elia Cambon Crespo, Carmen Jimenez Salcedo and Dr Isabel Hernandez (Escobar et al) explained that there had been a ‘rationalization’ (ie cuts) in public spending on education, and sharp rises in tuition fees, placing pressure on Spanish universities to reduce student numbers. Dr Marta Elena Alonso de la Varga noted that planned reduction of public funding of universities was from 80 per cent to 65 per cent.

From a Canadian perspective, Kristen Robillard, Ombudsperson at Université Concordia University and Natalie Sharpe, Director of the Student OmbudService, University of Alberta, spoke of a marketisation strategy as a result of which public universities ‘weary of fighting for government funding, are succumbing to the pressures of a neo-liberal agenda that education is for sale on a global scale’. The consequence is the introduction of corporate models of management, privatisation, and pressure on research, teaching and learning. In these ‘turbulent times’ it is important for ombudspersons to emphasise their role in promoting fairness and integrity.

Sally Varnham, Patty Kamvounias, Bronwyn Olliffe, Anita Stuhmke and Maxine Evers (Varnham et al) from the University of Technology, Sydney, and the University of Sydney, presented a comprehensive account of the policy context for ombudsmen in Australian higher education. The marketisation of higher education has resulted in higher costs for students and consequential changes in student expectations including an instrumental approach, greater regard for value for money, and an emphasis on the status of students as consumers.

7 David Palfreyman International students, higher education and immigration rules
8 Sir Alan Langlands, Short-term opportunities and medium-term challenges in higher education.
9 See below, footnote 46.
10 Langlands, op.cit, p.16.
11 Ana Hernanz Escobar, Dr Enriqueta Arias, Dr Elia Cambon Crespo, Carmen Jimenez Salcedo and Dr Isabel Hernandez, The role and remit of the Spanish ombudsman.
12 Dr Josef Leidenfrost and Dr Marta Elena Alonso de la Varga, Higher education ombudsmen: conflict management at ground level? Two insights from Austria and Spain
13 Kristen Robillard and Natalie Sharpe, Calm in the Midst of a Storm of Student Complaints: Adopting Standards of Practice to Navigate Safely in Difficult Times, pp.1-5.
14 Sally Varnham, Patty Kamvounias, Bronwyn Olliffe, Anita Stuhmcke & Maxine Evers, ‘Different country, different hemisphere – same challenges: the Student and the Australian University’, p.5.
Universities in Australia are largely responsible for maintaining their own quality and standards. However, the Australian *Higher Education Support Act 2003* requires universities to operate at an ‘appropriate level of quality for an Australian higher education provider’ to remain eligible for Commonwealth Government funding, and to undergo independent quality assurance audits at least once every five years. This last is now overseen by the new national regulator, the Tertiary Education Quality and Standards Agency (TEQSA).15

One consequence of marketisation is the internationalisation of higher education so that there are over 4 million internationally mobile students, mainly from China and India, and studying mainly in the USA, UK, France and Germany. At the same time there is now more provision by American and British universities in China, Singapore and the Middle East.16 An implication arising from these developments is that universities and national schemes need effective dispute resolution services that cross national borders.

The Conference discussed in his absence a paper by Argimiro Rojo Salgado, University Ombudsman and Professor of Political Science at the University of Vigo, Galicia, Spain.17 Salgado noted that the institution of the University Ombudsman “has become universal, generalised and steadfast” and that ENOHE’s informal networks complemented national networks in Europe, and cross-national networks outside Europe. In the light of an increasingly globalised and interdependent world ‘the creation of worldwide organisations … and forums for university ombudsmen is in keeping with the times’. A bottom-up methodology that brought existing regional networks together would facilitate the sharing of ‘information and ideas among ombudspersons in the field of higher education’.18

**Mandates**

In dealing with dispute resolution at universities in England and Wales, one paper set out the role of the OIA as a ‘classic’ national ombudsman scheme, intervening in student complaints and academic appeals only when internal university processes had been exhausted and the complainant remained dissatisfied.19 In this respect, England and Wales operate a mandate not dissimilar to arrangements in Austria (the Austrian Office of the Student Ombudsman) and Sweden (the Swedish Higher Education Authority).

Steps to excellence include the need for individual universities to be encouraged to expedite complaints and appeals as soon as they arise. Here, the paper emphasised the importance of Early Resolution initiatives and positive, speedy, outcomes for students with legitimate grievances. There was also emphasis on the development of a written Good Practice Framework on student complaints and academic appeals to guide universities and students unions through difficult cases.20 The national ombudsman needs to be self-evidently independent, transparent in all operations, strive for efficiency as well as effectiveness, and to be sensitive to the exceptionalism of higher education and particularly the sovereignty of universities to make narrow academic judgement providing due process has not been compromised.

Another exemplar of the classic Ombudsman model is the Office of the Student Ombudsman in Austria. Although existing for more than ten years, the Office was placed on an independent statutory basis under the Quality Assurance in Higher Education Act of 2012, and also re-named. At core, Ombudsman

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15 Ibid, p.3.
17 Argimiro Rojo Salgado, Reflections and Proposals on creating a worldwide network of University Ombudsmen: what to do about ENOHE?
18 Ibid, pp.5, 7, and 8.
19 Rob Behrens, Changing Higher Education through better complaints handling – surviving and steering change, p.21.
Dr Josef Leidenfrost noted “We advise students who come to us with a broad range of concerns and assist them in solving problems. We are also available to offer advice to institutions of higher education on how improvements can be made in everyday university life.”

The Office of the Austrian Ombudsman provides its services free of charge and preserves student anonymity. Its remit extends to potential students and applicants as well as current and recent students. Additionally, under the new law, the Ombudsman is empowered to make official recommendations to universities and law makers.

Other countries operate without a national higher education ombudsman but with a system of campus or university ombudsmen to handle issues and complaints. Where issues are not resolved, complainants can either approach a generic public services ombudsman or engage in litigation.

Lies Poesiat, Ombudsman for students and staff at the Vrije Universiteit, Amsterdam (VU) summarised the mandates of her office in initiating an investigation and ruling on a grievance. Investigation is at the discretion of the ombudsman who personally investigates matters and inspects documents. University employees are required to provide relevant material to support an investigation. Ombudsman recommendations must be followed ‘unless in conflict with general policy’. The legitimacy of the ombudsman role derives from its impartial and ‘independent position’ within the university and its separation from all other units and departments. This legitimacy is sustained through a publically accessible annual report.

Complaints management for students operates at a minority of German universities. It is a relatively new concept, generally unfamiliar to students, and not yet centralised or professionalised. Wolf Hertlein, Complaint Manager at Technische Universität, Darmstadt, Germany, a university of technology with 25,000 students, summarised the position of complaints handling in the 400 institutions of higher education in Germany: ‘Universities are on the way to install student ombudsmen/complaint management step by step. Different approaches have been installed, but universities with professionalised student ombudsmen are still rather limited.’

Approaches are varied. Goethe Universität was an exceptional pioneer in the field, establishing an ombudsman for students 14 years ago. The current ombudsman is a former university vice-president. At Göttingen, which began complaints management in 2007, the complaints manager is an administrative employee acting as an informal, neutral facilitator.

Hamburg University of Applied Sciences has ‘a tandem of ombudsmen’ – one student, one lecturer, combining low-key, unthreatening access (the student) with high status and familiarity with university pathways (the lecturer). By sharp contrast, Technische Universität Braunschweig operates an on-line complaints service through the blog “Sag’s uns !” (“Tell us!”) Students submit complaints on-line, ‘and as soon as there is an answer, both complaint and answer are published on the internet.’

There is wide interest in Germany in developing student complaints management from this embryonic state, and a thriving national network of 80, which meets annually to prove it. Despite the diversity of approaches the network recognises the value of core principles of independence, informal proceedings, confidentiality, neutrality/multipartiality and no executive power.

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21 Dr Josef Leidenfrost and Dr Marta Elena Alonso de la Varga, Higher education ombudsmen: conflict management at ground level? Two insights from Austria and Spain
22 Ibid.
23 Lies Poesiat, How to improve the necessary ombudsman skills: the Dutch experience.
24 Wolf Hertlein, “Approaches to Complaint Management at German Universities”
In Spain, the Spanish Organic University law and implementing regulations stipulate each university (50 public and 29 private universities) has an Ombudsman who is Commissioner of the University Senate to ensure respect for the rights and freedoms of teachers, students and administrative and service staff.\textsuperscript{25} \textbf{Dr Marta Elena Alonso de la Varga} pointed out that the guiding legislation was now somewhat outdated and more in line with old ideas of discipline and punishment, rather than the new spirit of cooperation and problem-solving. Nevertheless, lobbying for a revised law in 2011 proved abortive.\textsuperscript{26}

Under the long-entrenched legislation (1954), a campus ombudsman is elected by the Claustro, a corporate body of 300 students and staff with the Rector presiding.\textsuperscript{27} The typical duties of the ombudsman are ‘to investigate complaints and attempt to resolve them, usually through recommendations or mediation.’ Significantly, the ombudsman has no executive powers.\textsuperscript{28}

In the United States, according to \textbf{Jim Wohl}, Ombuds Officer, University of Connecticut, ‘the competition among campus constituencies and university missions breeds many complicated interest-based conflicts that are not well suited for the formalised grievance procedures often found in academic institutions.’\textsuperscript{29} This is particularly where issues arise out of communication problems or interpersonal frictions rather than discrete actions or decisions. So, many American universities have adopted ombudsmen and campus mediation programmes for both staff and students. In Wohl’s experience, the ombudsman role is positioned as an early dispute resolution channel, to be used in advance of more formal, adjudicative channels. Indeed, formal grievance procedures require that employees must attempt to informally resolve their concern before filing a grievance. And in some systems ‘looping back’ to an informal channel can occur by mutual agreement even after formal procedures have begun.

Early, assisted, informal conflict resolution has the benefit of ‘narrowing the catchment of cases to those most suited for [these] formal channels’ and preparing contested parties for participation in formal procedures where the need arises. Similarly, the prospect of using well-designed formal processes concentrates the minds of the parties during informal attempts at problem-solving.\textsuperscript{30} Multiple entry channels can be variously confusing, intimidating, and lead to ‘forum shopping’, but flexibility and choice of methodology should not be under-estimated: ‘The adage “if all you have is a hammer, then everything looks like a nail” seems appropriate to the ways an institution provides opportunities to resolve employee conflicts.’

Within this general context, \textbf{Jenna Brown}, Ombuds at the University of Denver, USA, emphasised the particularity of the mandates of individual campus ombudsmen in the USA: American universities are relatively self-organizing. While all universities must comply with local, state and federal laws, and share some common features, each university has its own policies and procedures, systems and services. Different universities may grant differing privileges to - and obligations of - those who work, study or use their services. When employees work for a university, or when students are admitted to a university, they agree to play by that particular university’s rules. All are expected to follow a university’s policies and procedures where they exist. ‘People can contact the Denver Ombuds office as soon as they are uncomfortable, but sometimes they are well into a dispute before they do. Early is better, but anytime they visit this office is fine.’\textsuperscript{31}

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\item \textsuperscript{25} Escobar et al, The role and remit of the Spanish ombudsman.
\item \textsuperscript{26} Dr Josef Leidenfrost and Dr Marta Elena Alonso de la Varga, Higher education ombudsmen: conflict management at ground level? Two insights from Austria and Spain.
\item \textsuperscript{27} See A Survey of Campus Ombudsmen in continental Europe, North and South America, and Australia and New Zealand, in OIA, \textit{Pathway 3 Consultation: Towards early resolution and more effective complaints handling}, October 2011, para A5, p.27.
\item \textsuperscript{28} Escobar et al, op.cit.
\item \textsuperscript{29} Jim Wohl, ‘Early and Effective Dispute Resolution in Higher Education’.
\item \textsuperscript{30} Varnham et al, op.cit, pp.3-5.
\item \textsuperscript{31} Jenna Brown, ‘Early is better, anytime is fine’
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The four principles that guide Brown’s behaviour are confidentiality, informality, impartiality and independence. As far as confidentiality is concerned, ‘As long as someone does not threaten harm, all conversations are confidential and private. They remain between the visitor or visitors, and myself. I take notes as an aid to listening but do not keep case files. I enjoy “professional amnesia”.’

As for connection to a formal complaints process, Jenna Brown notes: ‘I cannot insert myself into any formal process or advocate for any individual. I can help people locate and make sense of policies or procedures; prepare people to meet with advocates, administrators, and others; and review drafts for clarity.’ As for impartiality, ‘I do not take sides and I care about everyone involved, maintaining an attitude of “multi-partiality”. I cannot determine the right or wrong of a problem or complaint. I can acknowledge what people think or feel about their situation.’

And as far as independence is concerned ‘I am employed by the University and report administratively to the senior-most administrator, but I am friendly with all and friends with no-one.’

In summary, for Brown, her office is a ‘friendly agent of change… designed to provide the University with insights into problems with its policies, procedures and practices, and an opportunity to change them… I try to frame the problem and approach the person or people in a way that helps them understand and resolve the real problem.’

Dr Jorge Carmona Tinoco, University Ombudsperson at the National Autonomous University of Mexico (UNAM), explained that his Office had been established in 1985, and attended to a population of more than 300,000 students, and 30,000 academics. In contrast to some North American campus ombudsman, at UNAM, the Ombudsman not only gives consultations and advice, but also investigates around 1700 complaints a year, and makes recommendations.

In complaints management in Australia, the process for complaints management is bifurcated. Students in public universities use internal university processes – often university ombudsmen – for redress of grievances. For Varnham et al, the challenges for the university ombudsmen are to focus on systemic influence and change as well as individual redress; to ensure that their own interpretation of procedure and process is informed by developing policy and debate related to academic standards; and to have sufficient resource to ensure independence and reach.

As far as models of investigation are concerned, a wide variety is used including Triage or focus on early resolution; Multi door – a ‘one-stop shop’ focus on a central agency for resolution; ‘Therapeutic’ – focus on mediation; and last resort or investigation and recommendation.

Should students remain dissatisfied, they can ask the public services Ombudsman in the relevant State to conduct an external review. These ombudsmen can investigate the complaints of both domestic and international students about public institutions, and can also undertake ‘own motion’ investigations.

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33 Ibid, p.2.
34 Ibid,p.2.
35 Dr Jorge Ulises Carmona Tinoco, 27 years of academic ombudsing at the National Autonomous University of Mexico
36 Carmona Tinoco, Ibid. See http://www.reddu.com.mx
37 Ibid, p.15.
without being approached by a complainant first. Separately, since April 2011 international students studying in Australia at private universities have recourse to the Overseas Student Ombudsman (OSO) established within the office of the Commonwealth (i.e. Federal) Ombudsman.\(^{39}\)

In the context of fiscal and other pressures on the institution of the Ombudsman, three papers looked at the legal framework relevant to ombudsman schemes. Professor G.R. Evans, Chief Executive of the Improving Dispute Resolution Advisory Service (IDRAS) examined the ‘degree of deference’ that legislation and courts pay to academic judgement in a number of countries.\(^{40}\) Evans suggested that this deference could be under threat from a number of trends. One example is the ‘student as customer’ model taken to extremes so that payment for a degree is taken as a guarantee of passing it. A variant of this is the argument that ‘with better tuition I would have obtained a higher degree award’. Another trend is the risk that the strategic aim of putting ‘students at the heart of the system’ encourages the enabling of students playing ‘a prominent role in assessing their own academic experiences’.\(^{41}\) In summary, David Palfreyman, questioned the ‘sustainability of judicial deference to the exercise of expert academic judgement’ in the face of the neo-liberal policy agenda.\(^{42}\)

Felicity Mitchell, Deputy Adjudicator at the OIA, examined the role of Judicial Review in the moderation of OIA decisions. While the statutory Scheme, run by OIA constitutes ‘an inexpensive, fairly rapid and comprehensive avenue’ for students to follow, there are four general grounds for challenge. These are: breach of rules of natural justice; scant or inappropriate consideration; decisions constituting an error of law or unsustainable in law; and failure to give inadequate reasons.\(^{43}\)

Mitchell pointed to the successful record of the OIA in defending Judicial Review applications and the vital role that decisions in the Court of Appeal play in clarifying the mandate of the OIA. Thus, the case of Siborurema (2007) established the broad discretion the OIA enjoys as to the nature and extent of investigation required in individual cases. The case of Maxwell (2011), involving disability, confirmed that the OIA does not make legal findings of discrimination, and that the ‘judicialisation’ of the OIA would not be in the interest of students. Rather, it is an alternative dispute resolution service which takes law into account in deciding whether or not a university has acted reasonably in all the circumstances. And in the case of Sandhar, a final year medical student, Lord Justice Longmore endorsed emphatically the independence of the OIA as a complaints handling organisation.\(^{44}\)

**User engagement**

Professor Janet Beer, Vice-Chancellor of Oxford Brookes University, and current Chair of the UK Higher Education Public Information Steering Group, which has oversight of the National Student Survey, reviewed the policy context in which student expectations are managed and through which students have the opportunity to perceive themselves as being ‘at the heart of the system’. Beer’s theme was that empirically-based and widely disseminated, relevant, information has a key role in enabling informed student choice, in engaging students, and in driving university performance.\(^{45}\)

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\(^{39}\) Ibid, pp. 7-10. See http://www.oso.gov.au/

\(^{40}\) G.R. Evans, Disputes about academic judgement: has anything really changed?

\(^{41}\) Evans, Ibid, p.11, p.8, quoting HEFCE: A risk-based approach to quality assurance: Outcomes of consultation and next steps (October 2012)

\(^{42}\) David Palfreyman, op.cit,


\(^{44}\) Ibid, pp. 10,13 and 15.

\(^{45}\) Janet Beer, Putting Students at the heart of the system: the UK experience.
The prime examples are the National Student Survey (NSS), the Key Information Sets (KIS) and Student Charters. The NSS first took place in 2005, and is repeated annually. It gathers students’ opinions on the quality of their courses. The purpose of this is to help inform the choices of prospective students and provide data that assist institutions in enhancing the student experience. The majority of students completing NSS are under-graduates in their final year. More than 300,000 UK students participated in the survey in 2013. The survey provides student opinion on a range of issues including: Teaching on my Course; Assessment and Feedback; Academic Support; Organisation & Management; Learning Resources; Personal Development; and the Students Union. Its utility lies in its ability to track satisfaction scores over periods of time in a way which not only helps to make universities publicly accountable for their courses but makes prospective students better-informed about their options.\(^46\)

Key Information Sets are another vehicle through which prospective students have access on-line to comparative information relating to course level performance, employment prospects (based on the early careers of former students), and university policy in relation to fees, bursaries, and accommodation costs.\(^47\) And Student Charters, agreed at individual universities with the local students’ union, are a ‘signpost to further detail’ covering student rights, responsibilities and participation in relation to teaching, learning assessment and wider university life. As Professor Beer explained, creative university leadership draws on these initiatives to improve decision-making by tracking comparative academic performance, developing student representation, joint projects with students’ unions and key delivery objectives.

Rachel Wenstone, Vice-President (Higher Education) of the National Union of Students, UK, emphasised that putting students at the heart of complaints and appeals meant working not just ‘on behalf’ of students but ‘in partnership’ with them.\(^48\) The building blocks for action are a strong tradition of student unionism and independent student unions, regulated in education and charity law.

Departing from rosy accounts of a complaint as a ‘gift’ to institutions, Wenstone pointed out that for students ‘going through a complaint or academic appeal is an incredibly stressful time’ and unpleasant experience.\(^49\) The availability, on campus, of an independent students’ union advice service goes some way towards redressing the balance of power between a student and his or her institution. Where practice is good, these advice services work in partnership with universities to ensure that systems are fit-for-purpose and ‘to try to put provisions in place to stop students being in the position of feeling the need to make a formal complaint or appeal.’ Where the partnership does not exist, or breaks down, or where the student is determined to escalate the case or an institution ‘drops the ball’, the student has recourse to the independent ombudsman service, the OIA.

For Wenstone, students who consider themselves only ‘consumers’ of university services ‘are cutting themselves off from the very best that education has to offer’. They should be co-partners taking increasing responsibility for the shape of their education. In return, the responsibility of the institution is not to fall back on standard policies and procedures which have the effect of ‘dehumanising students by embroiling them in formal process at the exact moment when they most need to be treated like human beings with feelings.’ Rather, institutions have to work to listen to and understand student behaviour without relying on ‘lazy stereotypes’ to explain crisis or conflict.\(^50\)

Three papers from Universities in England and Wales described front-line initiatives to engage with students, manage complaints effectively and to improve the student experience, all as part of the OIA’s Early Resolution Pilot initiative. Liz Buckton, Head of the Student Conduct and Appeals Office at Sheffield University, described a joint project of the University and students union to recruit, train

\(^{46}\) Ibid. See http://www.thestudentsurvey.com/

\(^{47}\) Ibid, p.13.

\(^{48}\) Rachel Wenstone, Putting Students at the heart of complaints and appeals

\(^{49}\) Ibid, pp.2,4.

\(^{50}\) Wenstone, Ibid, pp.5-6.
and mentor six Student Conciliators from the student body with the aim of stopping ‘issues’ becoming complaints.\textsuperscript{51} Early intervention was found to have filled a gap in provision, and talking issues through with potential complainants made a difference. The Student Conciliators themselves benefited from the development opportunity.\textsuperscript{52}

\textbf{Denise Williams}, Deputy Academic Registrar at the University of Glamorgan (now the University of South Wales), described a parallel initiative in which Student Conciliators are experienced members of staff. The conciliation process was embedded in the formal regulations in 2009/10. It follows (rather than precedes) the first formal stage of the complaints procedure in which the faculty or department appoints an investigating officer to expedite the complaint. Student Conciliators become involved and put forward proposed solutions if the first formal stage has not been resolved to the complainant’s satisfaction.\textsuperscript{53}

\textbf{Jill Wilson}, Director of Student Services at Aston University, a university with 10,000 students from 130 countries, described how the University works in partnership with the students’ union to ensure students get the specialist advice they need. A key requirement is a joined-up, partnership approach involving the small and independent Union (the ARC) and the larger university (the Hub) with a wider remit.

Where the ARC provides an invaluable service to students in dispute with the university and in need of support and representation at internal hearings, the Hub offers advice on immigration and visa advice for international students, help with council tax, and the administration of hardship funds. Students can choose between the ARC and the Hub where help is needed on housing, course-related queries, money advice or student funding.\textsuperscript{54} What makes the partnership work is a strategic understanding that to meet student expectations: they have to be listened to (through a range of consultations and data sets); where students are unhappy change needs to be considered seriously (‘we go the extra mile’); and meaningful intervention has be coordinated and joined up.\textsuperscript{55}

\textbf{Doris Kiendl-Wendner}, Vice-Rector, FH JOANNEUM, University of Applied Sciences, Austria, analysed the impact of marketisation – and the associated rise of student entitlement – on student engagement by universities was also taken up by \textbf{Cliff Picton}, Ombudsman at La Trobe University, Melbourne, Australia. For Picton, ‘A consumer-based notion of value for money, “but I worked hard on that assignment,”’ presents the university ombudsman with a challenge.\textsuperscript{56} The concept of rights and entitlements could become ‘the thin end of the wedge’ leading to a ‘customer is always right’ attitude. This requires campus ombudsmen to be sure that their practice is well-grounded. This involves adjudication where the university has breached its own regulations or failed to honour contractual obligations. Additionally, perhaps even primarily, however, the ombudsman makes non-adversarial interventions seeking resolution by consensus.

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Doris Kiendl-Wendner, Vice-Rector, FH JOANNEUM, University of Applied Sciences, Austria, analysed the impact of marketisation of universities on the idea of students as consumers.\textsuperscript{57} Student expectations are shaped by a range of market-related variables including perceived employability after graduation, the image of the university in the light of branding and marketing, and tuition costs. Expectations need to be actively managed through value-added university initiatives or guarantees. These include the prospect of personal development (guidance and mentoring), relationship building, and the offer of Quality Assurance enhanced by student participation. This means student representation in quality management, course evaluations by all participating students, and continuous communication with students on

\begin{itemize}
  \item \textsuperscript{51} Liz Buckton, [The] Student Conduct and Appeals Office
  \item \textsuperscript{52} Ibid, p.10.
  \item \textsuperscript{53} Denise Williams, Use of Student Conciliators at the University of Glamorgan.
  \item \textsuperscript{54} Jill Wilson and Liz Larkin, The Aston University student experience: The Students’ Union and University Working together. pp.1-6.
  \item \textsuperscript{55} Ibid, pp.8-9.
  \item \textsuperscript{56} Cliff Picton, Alternative Dispute Resolution in the Rights-Based Era of University Education.
  \item \textsuperscript{57} Doris Kiendl-Wendner, The effect of student participation in quality assurance on student complaints.
\end{itemize}
quality improvements. Ultimately, Kiendl-Wendler argues such initiatives should diminish formal student complaints. This is because concerns can be expressed within the quality assurance lifecycle. More generally, students may have more trust in the university management and be prepared to express their concerns informally.58

Chris Taylor, Student Engagement Manager, at the UK Quality Assurance Agency (QAA) set out the creative ways in which students participate in Quality Assurance in the UK.59 This includes specific commitments to students in the Strategy Plan, and direct involvement of students in the Quality Assurance Process.

Anne Lee, Adjudication Manager at the OIA in England and Wales, noted that there are over 430,000 international students studying in the UK, with 79,000 from China alone. 23 per cent of complaints to the OIA came from international students outside the European Union, and a further seven per cent from students from non-UK EU countries.60 In reviewing complaints raised by international students, Lee noted the importance of universities writing accurate accounts of what could legitimately be expected, particularly where prospective students are applying from different countries and cultures. There were also common themes relating to ambiguity in terms of the extent and nature of supervision for graduate research students. Overall, while managing expectations and exhibiting cross-cultural sensitivities are key competences when engaging with all students, they are paramount in engagement with international students.61

Skills sets

In terms of the context of skills-sets for campus ombudsmen, Dr Josef Leidenfrost noted the hierarchical culture of universities. This was exemplified by status and status symbols, ‘strict precedence and subordination between organisational levels and rules’, and communication through pyramid structures and vertical lines. All of this was a recipe for conflict,62 and therefore created a premium for conflict resolution.

Lies Poesiat identified the following key skills: being conscious of the obligation of confidentiality; being able to distinguish between grievance, appeal and (routine) objection; recognising a grievance through insight into psychological factors; being conscious of impartiality, establishing facts and presenting findings without value judgement; having interview technique, being able to ask (open) questions; making clear, straightforward agreements with the complainant; and crucially, being able to indicate whether or not an action was improper.63

In conclusion, however, Lies Poesiat emphasised that success could not be guaranteed through formulaic process. Ombudsmen need to be not only persistent and have no fear of authority, but also to be creative they need to explore possibilities by consulting with colleagues and getting the contesting parties to think about a solution.

For Cliff Picton, mediation is at the root of ombudsman practice. Mediation is challenging because it aims for a result where competing parties want an outcome which leaves them with a sense of

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58 Ibid, pp.4,9,10.
59 Chris Taylor, Student Participation in Quality Assurance.
60 Anne Lee, Cases relating to international students: the challenges of managing expectations and cross-cultural sensitivity, pp.8-9
61 Ibid, pp.15-19
62 Dr Josef Leidenfrost and Dr Marta Elena Alonso de la Varga, Higher education ombudsmen: conflict management at ground level? Two insights from Austria and Spain.
63 Lies Poesiat, op.cit, p.3.
achievement – ‘win-win’. This requires skills development and training. For Picton (and others) the role and skills of an ombudsman are ‘akin to those of a social worker and therefore can be said to have therapeutic dimensions.’ The ombudsman ‘aims to assist the disputing parties to change themselves through empowerment and recognition.’ In doing so, the ombudsman variously plays the role of: catalyst (on the parties); educator (setting out the process); translator (conveying competing proposals in a way likely to be listened to); guide (pointing the way through the complex university hinterland); the bearer of bad news (without escalation of hostility); and scapegoat, (making disputants aware of the realities of the environment and its rules).  

Reflecting on 18 years of Conflict Management at the University of Georgia, USA, Lin Inlow paid tribute to the ‘visionary’ adoption in 1995 of a system-wide policy initiative that mandated the introduction of conflict management systems at each of the 34 institutions within Georgia State University (USG). While practices resulting from the initiative have not made things worse, the early aspirations have been elusive.  

The model for developing conflict management did not include any evaluation component of the original concept. There was a disregard for tactically motivating Initiative champions or refreshing the creativity of champions grown weary. Initiatives were less than optimal because of failure to commit necessary resources, and to ‘garner support’ from key decision makers. There was also a relative failure of project/initiative oversight and governance.

A critical success factor is the commitment to training and development of colleagues in conflict resolution through the establishment of an ‘annual training institute’, now having convened annually on 13 occasions. Masters and Doctoral programmes in conflict management are also being introduced. In parts of the University where conflict management initiatives were successful their implementers developed into communities of practice and exemplars of design and practice. Within five years of the launch of the initiative, all campuses had established mediation services, and today more than 20 per cent of USG institutions have Ombuds, all institutions have mediators, and the research institute offers third party facilitation of academic dishonesty cases.  

In summary, Inlow noted that USG ‘like most large, complex, public universities in the United States, has experienced a rapidity of changes that have reportedly been motivated by economic exigencies. Some of these change processes have been characterized by a lack of senior leadership accountability, ineffectual transition management, innovation fatigue, and poor, if any, organizational readiness for the change...These large, system changes are cloaked in a disguise of meaningful innovation and creative problem solving. This has been the environmental context of the USG for the past 10 years. Although conflict flourishes in such an environment, developing champions for CM has been extraordinarily difficult ... In these situations, collaboration becomes more difficult and employees become change weary... The key to sustainability of the Initiative in times of organizational turbulence and uncertainty are individuals at the system and institutional level who inspire and influence others toward a shared purpose, communicate effectively and frequently, and collaboratively problem-solve toward achieving the stated goals.’  

The rise of social networking has had an important effect on students and university life, and Hilary Jones (Assistant Adjudicator) and Steven du Cros (Digital Media Officer) of the OIA presented a paper looking at its impact on student complaints. They gave examples of cases involving inappropriate photographs and comments about staff and fellow students placed on Facebook, an unfavourable review

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64 Ibid, pp.3-6.
66 Ibid, pp.4-5.
68 Ibid, p.10.
of a nursing course in a student on-line blog, and staff use of social media commenting on issues beyond their own professional competence.69

All of these incidents point to the importance of complaints handlers thinking through the consequences of the rise of social networks and developing an organisation-specific social media strategy. This should include whether or not the organisation can accept complaints through social media, policy about interaction between staff and complainants on social networks, and privacy, security and data protection issues for both staff and complainants.70

Ewa Gmurzynskya reflected on the early experiences of the creation of an Ombuds Office at the University of Warsaw, the largest university in Poland with 65,000 students. The University draws on the Standards for Ombudsman activities set out by the International Ombudsman Association (IOA) including Confidentiality, Independence, Neutrality, Impartiality, and Informality.71 Within this context, the goals of the ombudsman are to promote high standards and to help in Alternate Dispute Resolution (ADR); to identify sources of conflict at the university and support people and institutions in solving problems connected to university activities; and to recommend necessary improvements to the ADR system. A key challenge here is overcoming ‘the mental barriers of approach to conflicts’ within time and resources limitations.

Spencer Boudreau, Ombudsperson at McGill University, Montreal, and Nancy Chamberland, at Université Laval, both from Quebec, Canada, gave a concrete account of the dilemmas faced by ombudsmen where crisis occurs in the context of marketisation of higher education. They described the events leading up to the ‘Maple Spring’ in Quebec where a rise in tuition fees resulted in mass student protests. They asked the recurring question about whether individual ombudsmen or associations have a public role to play in commenting on or resolving public policy dilemmas in higher education.72

In part answer to this, Kristen Robillard and Natalie Sharpe described the creation of the Standards of Practice (SoPs) for members of the Association of Canadian College and University Ombudspersons (ACCUO). These guidelines (not prescriptive rules) began in draft form in 2004 and have been developed in consultative fashion. They are designed to clarify and set out the essential elements to carry out the work of an ombudsperson so that she/he can provide value to the institution and its community.73

The Standards of Practice Preamble notes that ‘With a focus on fairness, equity and respect, the ombudsperson builds capacity to help the institution be accountable to its own value and mission statements. In working with individuals, the ombudsperson facilitates fair resolutions that build trust and fortify the relationship between individual and institution.’ It achieves these goals through the principles of Independence, Impartiality, Confidentiality, and Accessibility. Using these principles ombudspersons: provide information and advice; decide whether and how to intervene; make recommendations on case-specific or systemic matters; publish annual and special reports; and promote ‘Integrity of its Service to fulfil its Mandate’. These are the embryonic hallmarks to a good or best practice guide.74

Carolyn Hirst, Susanna Reece and Craig Cathcart (Hirst et al) of Queen Margaret University, Scotland, were among contributors who looked at the developing skills set for Ombudsmen.75 Of course, defining the skills set is both contextual and role specific. In the UK, responsibility for higher education is a devolved function with subtly different jurisdictions for each of England, Wales, Scotland and Northern

69 Hilary Jones and Steven du Cros, Social Networking and its impact on student complaints and the OIA
70 Ibid
71 Ewa Gmurzynskya, System of Disputes Resolution: University of Warsaw Early Experience
72 Spencer Boudreau and Nancy Chamberland, The Maple Spring in Quebec.
73 Kristen Robillard and Natalie Sharpe, Calm in the Midst of a Storm of Student Complaints: Adopting Standards of Practice to Navigate Safely in Difficult Times, pp.1-5.
75 Carolyn Hirst, Susanna Reece and Craig Cathcart, Alternate approaches to dispute resolution: developing the skill set.
Ireland. The policy instrument common to all countries of the UK is the Quality Assurance Agency’s (QAA) Quality Code with its specific chapter B9 on Complaints and Appeals.76

Universities have responsibility for resolving student complaints and appeals, with the OIA (in England and Wales) and the Scottish Public Services Ombudsman (SPSO) acting as ombudsmen of last resort. Appropriate training includes understanding (and generating) Culture and Practice, developing Procedural Fairness, and developing People Skills. Knowledge and Skills of this kind are available from a small number of UK universities, including Queen Margaret University.

Conclusion

Nothing in higher education stays the same, but fiscal crisis, the globalisation of universities and rising student expectations are on the agenda for the foreseeable future. All of this makes the task of ombudsmen even more challenging. Diversity of mandate, form and practice are ‘the name of the game’ for higher education ombudsmen. This is a reality generated by interventions in universities on different continents, with different traditions, cultures and sizes. This is a strength not a weakness.

The strength is conditional on a number of behaviours. First, that ombudsmen work to understand what our core function is and utilise and develop mandates for this purpose. Secondly, that seeking to operate without continuous engagement with users is futile. Ombudsmen will never be loved, but must be inventive in finding ways of listening to users, especially dissatisfied ones. Listening is not enough in itself, merely a pre-condition for revising operational interventions. Out of this comes an appreciation of the importance of early resolution wherever possible. Thirdly, our effectiveness is largely dependent upon our skills-sets. We need to invest more time in comparing and contrasting what we think the core skills are, and more resource in creating time for professional development.

For all these reasons, ENOHE continues to be not just a ‘brief enchantment’77 at Conference time, but an essential prop to our professional development, and a key source of inspiration for our practice.

77 Michael Oakeshott, ‘The Voice of Poetry in the Conversation of Mankind’, op. cit, page 247
Alternative approaches to dispute resolution in higher education in turbulent times