
Clarity and fairness in harassment policy and practice

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PART D of Statute XII deals with Discipline, Dismissal, and Removal from Office. Hence, a case being under Part D may first arise under other policies which deal with unacceptable behaviour. This includes policies concerning harassment and bullying. There is thus a need to ensure that Statute XII can be applied consistently and effectively from the operation of such policies, and in particular, that the principles contained in Part A of Statute XII are upheld, including the principles of justice and fairness. These must be protected not just for all the parties immediately involved in a case, but for the sake of the wider academic community and the reputation of the University.

Laws concerning discrimination, and harassment law in the form of the Protection from Harassment Act 1997, have come into force since Statute XII was created, and prompted the creation of institutional harassment policies. How well are those in Oxford working within the framework of Statute XII?

There is no definition of harassment within Statute XII, so any case involving such allegations must look elsewhere. Unfortunately, this is where the trouble starts. Most accounts of harassment acknowledge the difficulty of providing a definition. Whilst the nature of the beast does make a precise definition difficult, any definition must try to avoid too much unclarity and above all, unfairness. The University's policy on harassment gives a definition which is perhaps typical in embodying an essential tension between 'objective' and 'subjective' elements.¹ On the one hand, '11. Behaviour will not amount to harassment if the conduct complained of could not reasonably be perceived as offensive'; but on the other hand, it explicitly states that '16. The intention or motives of the person whose behaviour is the subject of a complaint are not conclusive in deciding if behaviour amounts to harassment or bullying'. Whilst the effect on any alleged victim must of course be relevant, to have a definition which incorporates a subjective element without reference to the intention or motive of the alleged harasser opens the way to dispute. The definition of harassment also to be found on the University's website given by the University's Occupational Health Service takes a subjective element even further and says: 'Harassment is considered to be unwanted conduct affecting the dignity of men and women in the workplace. ... The key is that the actions or comments are viewed as demeaning and unacceptable to the recipient.'²

I would suggest that for an individual to be open to charges which are formed entirely from the subjective content of the mind of another person cannot be just: an individual must have a reasonable chance of avoiding a charge driven by malice or personal pique, and must have a reasoned way of countering such allegations of wrong doing.

Some college definitions of harassment include a 'serious' and 'substantial' terminology which may go some

way towards addressing this issue; although the very fact that definitions of harassment vary within the collegiate University is a further cause of the confusion that pervades such cases.³

There are great difficulties here, because just what is reasonable behaviour in the academic context is precisely what is in dispute, amongst changing social and cultural contexts, as, for example, is entirely evident in recent and heated discussions around harassment in philosophy departments in particular.⁴ In illustration, for readers of the '*What is it like to be a woman in philosophy*' blog, it is apparent that there is a large spectrum of views about what behaviour is or is not reasonable, from somewhat staggering accounts of alcohol-fuelled hyper-sexualised culture, to notions that all relations within a university must always and at all times be entirely formal.⁵ Indeed, on some definitions of harassment within the collegiate University, 'unwanted sexual advances' counts as harassment;⁶ (for all who are not mind-readers, the safe policy might be to avoid even mentioning anything as innocent as going for coffee). No wonder some people are worried about how to police their own behaviour.

A recent case concerning the suicide of a graduate student in Oxford has received considerable attention both at Oxford and indeed in the national, and international, press. Since it is in the public domain, I shall discuss aspects of this case for the lessons that might be learned for understanding difficulties of constructing policies for dealing with disciplinary cases involving harassment.

At the inquest, a public hearing of course, evidence was given relating to an allegation of harassment against an Oxford University employee.⁷ This was reported widely in the press, but perhaps for our purposes, the most significant article was that in the *Oxford Mail* on February 27th. This reported that the University of Oxford confirmed that a review into the death had taken place and that the staff member mentioned in allegations made before the death remained an employee. 'A University spokesman said: "A university review concluded in October. Its purpose was to inform senior members of the university of the circumstances of [the] death and to advise on any future steps. The findings of the review remain confidential, but the university is continuing to consider the most appropriate action as a consequence."⁸

Because of the confidential nature of harassment cases, no information at all had been forthcoming, including information about when any concern raised might be resolved. So, when a grieving, concerned group of students, including some very close to the events, had been told nothing could be revealed, then read, months later, that a University spokesman had issued a statement to a journalist, but not to the Faculty, this produced understandable fury and confusion. More thought needs to be given about how to handle such unusually fraught cases and to balance the concerns of

the wider community with the need for confidentiality to protect all concerned in a painful and stressful matter. The case now is apparently resolved; although conditions of confidentiality prevent the University from commenting, the employee himself announced in the Leiter Reports blog that he had been ‘terminated’ from Oxford as from April 2014;⁹ the announcement was also reported in *Cherwell*.¹⁰

Lack of transparency about the procedural aspects can lead to escalation and confusion. On March 5th, a group of 135 students published an open letter to the Vice-Chancellor and others, (which was later that same week endorsed by OUSU), in which lack of comment about the case from the University was linked to what was described as a ‘difficult atmosphere in the Philosophy Faculty’.⁹ This letter expresses precisely a widespread lack of trust that harassment charges are not being taken seriously. The letter went on to suggest that in order to comply with its duty of care towards students, a policy of suspension pending during a review process should be adopted.

It was reported at a Philosophy Faculty meeting shortly afterwards that some students did not feel safe regarding harassment. I would suggest that feelings of unsafety are likely to stem from a general anxiety that the policies and procedures of harassment in the institution are not working.

The risk of injustice is manifest when expectations are raised which cannot be met, or when uncertainty is created which then in turn acts to undermine trust. It is crucial to note that in any system where ‘charges’ are levelled (to use Statute XII language) but where these are dealt with under a thick blanket of confidentiality even about procedural matters, the level of trust which is expected of the University community in relation to the handling of harassment cases has to be extremely high. In making this point, I am quite sure that a significant part of the escalating lack of trust among many graduate students was precisely attributable to numerous areas of uncertainty with regard to policy. Again, it must be emphasised that the provision of a workable, fair and just policy for dealing with cases of harassment is a matter not just for individuals involved in such cases, but for the University community as a whole. Indeed, the harassment policy for Hertford College states that ‘harassment is demeaning and damaging not only to the victim but also to the college’; inclusion of such an explicit statement in policy more widely may be welcome.¹⁰

A large part of this uncertainty is created by the very cumbersome nature of harassment policy and procedures and difficulties in piecing together how the process even works. The difficulty of achieving a good level of understanding of the process needs to be taken very seriously. It can be hard for students (and also for staff) to comprehend the complex structures of the University and who is responsible for what. Greater clarity in material for understanding and navigating the complex procedures would be welcome.

There is explicit inconsistency within statements about harassment procedures. Students have raised the point that University harassment policies state that cases should be normally dealt with within six weeks.¹¹ However, this is patently absurd when dealing with the complex procedures outlined under Statute XII. Expectations are raised which cannot be fulfilled. We are

of course on the horns of a dilemma that it is precisely the serious cases which need to be dealt with most promptly. Naturally if a student body feels a lack of trust in disciplinary proceedings then they are much more likely to ask for stricter remedies. Clearing away uncertainties and inconsistencies would be one step in the right direction. More effective and routine use of mediation would also be another, as suggested in last week’s *Oxford Magazine* by G. R. Evans.¹²

A community needs to feel an extremely high level of trust in any situation where serious charges are dealt with under conditions of strict confidentiality. Injustice for the goose is injustice for the gander: if any party to a case feels unfairly treated, this casts doubt upon the outcome for all concerned; serious thought needs to be given to how justice can be seen to be done when cases are dealt with so confidentially that it may become impossible to gather evidence and hold a fair hearing.

¹ University Policy on Harassment and Bullying, http://www.ox.ac.uk/sites/files/oxford/field/field_document/Policy%20on%20Harassment%20and%20Bullying.pdf

² <http://www.admin.ox.ac.uk/uohs/at-work/mental-health/bullying/>

³ <http://www.admin.ox.ac.uk/eop/harassmentadvice/collegeharassmentpolicies/>

⁴ There is much recent discussion, for example on the blog The Leiter Reports, <http://leiterreports.typepad.com/>

⁵ ‘What is it like to be a woman in philosophy?’ <http://beingawomaninphilosophy.wordpress.com/>

⁶ See for instance, <http://www.balliol.ox.ac.uk/current-members/harrasment-code-of-practice>
http://www.linacre.ox.ac.uk/uploads/image/docs/Harassment_member_version_.pdf
<http://www.nuffield.ox.ac.uk/About/Freedom%20of%20information/Documents/Harassment%20Code%20of%20Practice.pdf>

⁷ It is vital to emphasise that the coroner made no findings of responsibility or blame; it was revealed at the inquest on February 26th that the student concerned had been, sadly, under a number of different pressures, and no note was found.

⁸ ‘Oxford Student With History of Depression Took Own Life’, *Oxford Mail*, February 27th 2014, http://www.oxfordmail.co.uk/news/11039155.Oxford_student_with_history_of_depression_took_own_life?ref=var_0

⁹ <http://leiterreports.typepad.com/blog/2014/03/statement-by-jefrey-ketland.html>

¹⁰ ‘Tutor Jeffrey Ketland “terminated” after harassment case’, *Cherwell*, March 26th 2014, <http://www.cherwell.org/news/oxford/2014/03/26/tutor-jeffrey-ketland-terminated-after-harassment-case>

¹¹ The Open Letter was first published in the Feminist Philosophers website, before being reproduced elsewhere: <http://feministphilosophers.wordpress.com/2014/03/05/open-letter-from-over-100-oxford-students-and-alumni/>

¹² <http://www.hertford.ox.ac.uk/sites/default/files/content/files/my-hertford/Harassment.pdf>

¹³ University Procedure on Harassment and Bullying, section 39. <http://www.admin.ox.ac.uk/eop/harassmentadvice/policyandprocedure/>

¹⁴ ‘Rethinking dispute-resolution in Oxford’, G. R. Evans, *Oxford Magazine*, No. 347, Noughth Week, Trinity Term 2014, 3 - 4