A Guide for Responsible Officers investigating student complaints referred under the Student Complaint Management Policy and Procedures

**Student Complaint:** A complaint is a student’s expression of dissatisfaction that their rights, existing interests and/or reasonable expectations have been adversely and unjustifiably impacted because of an action, decision or omission within the control or responsibility of the University.

Any circumstance related to University operations, services, and decisions, or the conduct of its staff, its students, or people associated with the University or using University facilities may be the subject of a complaint.

The purpose of these guidelines is to provide Responsible Officers under the Student Complaint Management Policy and Procedures with a useful framework for resolving formal student complaints.
Contents

What is a Formal Student Complaint? ................................................................. 3
When will students make a formal complaint? .................................................. 3
Role of the Student Complaint Management Unit .............................................. 3
Steps to take when a formal complaint is referred to you .................................. 5
Investigation of complaints .................................................................................. 6
  Hearing all sides ................................................................................................. 6
  Exploration of options and consequences .......................................................... 7
  A decision must always be based on & supported by facts or considerations that are relevant .......................... 7
  Minimising possible victimisation ..................................................................... 8
  Ensuring support for parties to a complaint ......................................................... 8
  Re-establishing positive relationships ................................................................. 9
Scoping appropriate Remedies .............................................................................. 9
Additional considerations that may apply ............................................................ 10
Making a determination about a complaint .......................................................... 11
Who is responsible for advising the student of the outcome of their complaint? ............................................. 12
Communicating a Decision ................................................................................... 13
What documentation should be kept in relation to a complaint? ......................... 14
Responsibilities .................................................................................................... 16
What is a Formal Student Complaint?

A formal student complaint is a complaint that is submitted by a JCU student in writing to the JCU Registrar in accordance with Student Complaint Management Policy and Procedures. It is referred to an appropriate Responsible Officer, a senior manager or academic within the University who will seek to resolve the complaint.

When will students make a formal complaint?

- When the student is dissatisfied with the informal resolution process or its outcome; or is unwilling to try to resolve the complaint informally;
- When a staff member is not confident that he or she can deal with it fairly and impartially, or feel’s that the student will perceive that his or her complaint is not being dealt with fairly and impartially.
- When the nature of the complaint warrants it being formalised, for example, it involves a breach of the law, it involves a serious allegation against another person, or the student’s concerns are complex and appear to have had a serious impact on the student.

Role of the Student Complaint Management Unit

The Student Complaint Management Unit acts on behalf of the JCU Registrar to receive, assess and refer formal complaints made under the Student Complaint Management Policy and Procedures.

The Unit performs the following tasks in relation to managing formal student complaints:

- Acknowledges receipt of a complaint
- Evaluates whether there is sufficient detail (for example, about the respondent(s) and event(s)) to enable referral of a complaint to an appropriate Responsible Officer
- Establishes whether or not it is reasonable to recommend to the student further actions to resolve the complaint informally
- Requests further documentation from the student
- If the complaint is made anonymously, considers if further action is possible
- Assesses if the complaint is vexatious, frivolous or trivial (complaints that are will not be referred.)
- Assesses which policy or policies apply
- Considers who might be the most appropriate Responsible Officer, after taking into account any respondents or apparent conflicts of interest identified by the student
- Refers the complaint to a Responsible Officer
- Advises the complainant of the referral

Extract from the Student Complaint Management Policy and Procedures

2.8 ... the JCU Registrar will refer a Formal Complaint within five (5) days of its receipt.

Where the complaint falls within the provisions of another University policy, the complaint will be referred to be dealt with under that policy.

Where the complaint is to be managed under this policy, the complaint will be referred to the relevant Head of School, Director or equivalent, or, with regard to research candidature matters, the Dean of Graduate Research Studies (the “Responsible Officer”). Where the JCU Registrar determines that a conflict of interest or apprehension of bias exists, the next most senior officer will be appointed as the Responsible Officer.

The JCU Registrar will advise the complainant of the Responsible Officer, the date of referral of the complaint and anticipated timeframe for response.

Once a complaint is referred, the Unit monitors the progress of its resolution. It can assist the Responsible Officer by providing advice, informational resources, and correspondence templates.

After a complaint has been resolved, the Unit maintains records associated with the complaint and makes these available, as appropriate, should a student appeal. The Unit also follows up and reports to various JCU committees regarding recommendations or systemic improvements to University practices.
Steps to take when a formal complaint is referred to you

Extract from the Student Complaint Management Policy and Procedures

2.9 The Responsible Officer will determine a process for resolving the complaint. This may include:

- nominating an appropriate staff member to assist;
- meeting with the parties (with their respective support person), together or separately, and/or;
- providing for mediation, conciliation or investigation of the complaint by an appropriately trained and independent person.

The Responsible Officer shall ensure all parties are afforded natural justice, which includes providing the respondent with the opportunity to respond in writing to the complaint.

Where the complaint relates to an allegation of discrimination or harassment, the Responsible Officer shall seek advice from the Director, Equity & Student Engagement.

1. Consider whether the SCMU was correct in referring the complaint to you.

2. Confirm for yourself that:
   - you do not have a conflict of interest in dealing with the matter,
   - the student would not perceive you to be biased in your consideration of the matter

Should you determine that a conflict of interest or an apprehension of bias exists, please contact the Student Complaint Management Unit immediately in order that the complaint be referred to an alternative Responsible Officer.

3. Determine the process you believe will resolve the complaint. Is there a policy to guide you?

4. You should seek out the views of University staff likely to be affected by your decision.

5. Where appropriate, clarify and document the details of the complaint with the complainant. When a student presents an argument or a request make sure you fully understand the student’s situation and request. Students are not always fully aware of University policy and procedure and may omit important information. Always ask for further information if you are unsure.

6. You should advise students and/or staff, whether complainant or respondent, that in their dealings with you they are entitled to the support of a representative or advocate.
Investigation of complaints

An investigation is a fact finding process – a search for, gathering and examination of information in order to establish facts. An investigation is one step in a decision-making process which starts with an issue and ends with a decision. The purpose of an investigation of a complaint is to establish and document relevant facts, reach appropriate conclusions based on the available evidence, and determine a suitable response. The nature and scope of the investigation required in response to a complaint will depend on the circumstances of each case.

Responsible officers may delegate responsibility for the complaint investigation to another unbiased officer who has the appropriate experience, however, the evaluation of the information from the independent investigation, and any decisions regarding the complaint determination, must be made by the Responsible Officer, who must also provide his/her reasons for the decision to all affected parties.

Hearing all sides

It is often useful to let people tell their story before you ask any questions or make any comments; this can help diffuse any tension or anger that the student may have and ensure that you don’t comment inappropriately.

Treat the complaint seriously by:

- indicating through your posture and responses that you are actively listening
- avoiding unnecessary interruptions and distractions
- avoiding judgements based on the presentation of the complaint or the complainant.

Check that you have understood the complaint:

- Repeat the essence of the complaint back to the student.

Informing the Respondent:

- Make sure that you give the respondent sufficient information and time to respond to the complaint allegations.

You need to consider the implications of seeking statements from third parties before getting the response. Failing to allow a respondent to have the opportunity to respond prior to involving other people unnecessarily in the investigation process is unfair. It may also be unproductive in terms of organisational resources spent in investigation activities.
The key to determining when to seek statements is whether delay will increase the risk of the respondent repeating the behaviour of which they are accused, whether crucial evidence will be removed or sabotaged and whether there is a risk of confidentiality being breached and others learning of the allegations before the respondent has had time to address the allegations.

Exploration of options and consequences

It is important to explore all of the options available with the complainant to avoid one of the most common, and most easily preventable, complaint handling problems - unintended consequences. Often a process or outcome can develop in unexpected ways, which result in detriment to the complainant.

The easiest remedy is to explore all the options:

- What does the complainant want or need in order for this matter to be resolved? For example, an apology (written or verbal), a change to a process, disciplinary action against another party?
- What are all of the possible steps involved in the chosen option? What are likely to be the best possible outcomes and what is unpredictable or could go wrong?
- What is the balance between the option that the complainant prefers and the option most appropriate for the university?
- Encourage the complainant to explore all the options even if they arrive with a scenario in mind.
- Encourage the complainant to take time to think about what has been discussed and seek more information if necessary and to make a choice in as calm and considered a manner as possible. This may delay the process but is a good investment.

A decision must always be based on & supported by facts or considerations that are relevant.

1. Always consider both sides of an argument where there may be:
   - a dispute about certain facts or events, or
   - an unequal perception of impact of events or seriousness of the alleged inappropriate conduct;

2. The rules of evidence that normally apply in a court do not apply, but they cannot be completely ignored.
   - Evidence must always have some persuasive value and be reliable
   - Mere suspicion about something is not a good foundation for a decision
   - Responsible Officers should only consider information or evidence that is relevant to the questions to be answered in understanding and resolving the complaint
3. The criminal standard of proof, “beyond reasonable doubt”, does not necessarily apply – the civil dispute resolution standard, “reasonable satisfaction”, is sufficient.
   * In the course of undertaking an investigation, you may also need to consider the notion of "reasonableness" – would a reasonable person have considered the complainant’s concerns or claims well-founded in the circumstances?

However, where findings and outcomes from those findings are serious for the person affected by the decision, more rigour should be applied to assessing evidence. The decision-maker may have to assess the ‘quality’ of the evidence, and the ‘sufficiency’ of the evidence to the central questions in the complaint. If a respondent admits to behaviour which on the basis of the complaint, is deemed to be inappropriate in the circumstances, the respondent should be asked to identify any mitigating circumstances that might have been a factor in this matter.

### Minimising possible victimisation

It is important that the Responsible Officer identifies points of potential victimisation and develops strategies to deal with them. Some questions that may need to be considered include:

- How can information be handled in order to ensure that only relevant people are involved and these people are bound to observe proper processes?
- How can natural justice be observed and safety maintained? If another party to the complaint needs to be informed and given the opportunity to respond and the complainant is frightened (with or without established reason), what measures can be put in place?
- How can the outcomes of a complaint be handled to ensure no one is victimised at a later stage?

### Ensuring support for parties to a complaint

Complainants may be distressed in relation to their complaint and may be nervous when talking to university staff. The following actions are recommended for Responsible Officers talking with complainants who may be upset, crying, withdrawn or confused:

- provide some privacy;
- remain calm and reaffirming;
- when the student regains their composure, ask if they are able to explain their concerns or if they would like to come back;
- offer to have the student return with a support person;
- paraphrase, summarise and clarify what they are saying to convey understanding to the student and to check that you are clear about their concerns;
- depending on the chosen course of action, it may be useful to arrange a follow up time for the student to talk to you again.
Re-establishing positive relationships

Responsible Officers should consider any action that may re-establish positive working, learning and teaching relationships for all parties to a complaint. This might be achieved by:

- being explicit about all parties' rights and responsibilities;
- getting agreement between parties on future behaviour;
- facilitating a meeting (formal or informal) for parties to talk about future arrangements; and
- being clear about the expectations on all parties.

It will not always be possible or appropriate for this to occur; sometimes it will be in everyone's best interest for arrangements to be made that minimise the level of contact necessary between parties to a complaint.

It is important that all parties are told who to approach if problems occur following the resolution of a complaint to enable quick intervention and prevent the escalation of another complaint.

Scoping appropriate Remedies

Extract from the Student Complaint Management Policy and Procedures

5.1 If a complaint is upheld, the Responsible Officer must give consideration to an appropriate remedy and should take into consideration any remedial action the complainant has sought.

5.2 A remedy must be within the authority of the staff member who has determined the complaint or considered the appeal, or, if not, recommended by that staff member to another staff member who has the authority to grant such a remedy and approved by that authorised staff member.

5.3 If a remedy is approved, then the University will action its corrective and preventative actions as soon as possible. The staff member who authorised the remedy will keep the complainant informed of progress in implementing the remedy.

Redress circumstances

In broad terms, some form of remedy might be considered when one or more of the following things has been found to have occurred:

- Poor communication has resulted in miscommunication or misunderstanding
- An inappropriate, unfair or unreasonable decision has been made
- An inadequate or unfair process was used to arrive at a decisions, or
- A decision was made that was disproportionate or unreasonable in the circumstances.
The redress process

Step 1. Did the student suffer a detriment as a result of a circumstance that requires redress?

Step 2. Consider the nature of the detriment

Step 3. Decide what it would take to satisfy the complainant or restore the complainant to their original position.

Step 4. Determine what would need to be done to prevent a recurrence.

When things go wrong, many complainants want no more than to be listened to, understood, respected and, where appropriate, provided with an explanation and an apology.

Redress principles

- All mistakes are admitted and put right (or mitigate if you cannot completely rectify)
- The process for considering redress is procedurally sound.
- A sincere and meaningful apology, or expression of regret, is offered.
- A resolute and authentic assurance that improvements will be made where procedures or practises are at fault.
- The remedy being sought by the complainant is considered, and any unrealistic expectations of the complainant are addressed by the Responsible Officer.
- Redress should be fair and reasonable to both the person affected and the University, taking into account equity in relation to other students and the proportion of detriment.
- A remedy must not be offered unless it has been approved by an Officer with the appropriate level of authority. Responsible Officers should not raise the expectations of a complainant where a remedy can only be granted by a different authority, for example, refund of tuition fees or the awarding of compensation.
- If a remedy is approved by an authorised person, then the Responsible Officer will follow up with University staff as necessary to finalise and keep the complainant informed of progress of this.

Additional considerations that may apply

Before making a final decision, you should review your assessment and handling of the complaint:

1. Have you afforded procedural fairness to all parties? If not your decision may be subject to an internal appeal, or scrutiny by an external agency.
2. Was the complaint the result of a failure to comply with required policy or procedure?
3. Did the person taking the action or making the decision which led to the complaint, have the authority to do so?
4. Consider whether all of the available evidence is relevant to the consideration of the complaint. If the introduction of that evidence creates unfair prejudice, confuses the issue, or is misleading, it should not be used.
5. Like matters should be treated alike – ensure your decision-making considerations and processes are equitable and consistent. Where there are apparent differences in the treatment of similar matters this must be justifiable on the basis of substantive differences in the circumstances.

### Making a determination about a complaint

1. Act fairly and impartially;
2. Disclose any actual or potential conflicts of interest immediately you become aware of them;
3. Act within the limits of your authority;
4. Comply with any applicable statutory requirements (for instance, those relating to public interest disclosures or complaints involving international students);
5. Undertake an appropriate level of fact checking and investigation to obtain relevant evidence that may not be available to the student;
6. Assess the evidence fairly and objectively;
7. Ensure the student and/or respondent has had a reasonable opportunity to respond to any evidence that may not be favourable to him or her;
8. If you are the authorised decision-maker, make a decision that only takes into account (a) the evidence relevant to that decision, and where appropriate, (b) any mitigating circumstances.
9. Thank the student for bringing his/her concerns to your attention and, if relevant, advise them of changes you will suggest, or make, to ensure the same issues do not arise in the future.
10. Document all steps taken to investigate and resolve the complaint, including communications with all parties.
11. If resolution is delayed through some circumstance, the Responsible Officer should contact the Student Complaint Management Unit to request an extension to the resolution deadline and explain the circumstances, and keep the complainant (and any respondent) informed so that expectations do not become unrealistic.
**Who is responsible for advising the student of the outcome of their complaint?**

Responsible Officers will determine the outcome of a student complaint and ensure the complainant and respondent receive written advice of the outcome of the complaint and any action taken in response to the issues or concerns they have identified.

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**Extract from the Student Complaint Management Policy and Procedures**

2.12 The Responsible Officer will report in writing on the complaint resolution process and the determination concerning the complaint (“the Responsible Officer’s Report”) to the complainant, any respondent and the JCU Registrar within not more than fifteen (15) University working days of receipt of the complaint, other than where the Registrar has approved an extension (see 2.13 and 2.14)

The Responsible Officer’s Report will:

- Document the process used for resolving the complaint and findings relevant to the complaint.
- Note if an agreement has been reached by the parties and, if so, the terms of that agreement.
- If no agreement is reached by the parties, state the determination and provide reasons in support of it.
- Where the Responsible Officer has authority to do so, state any actions (including remedies if appropriate) which, as a result of the determination, have been undertaken or are to be undertaken under the Responsible Officer’s direction.
- Recommend actions (including remedies if appropriate) which are not within the Responsible Officer’s authority but which the Responsible Officer considers are required as a result of the determination.
- Refer to the student’s right to appeal—see section 4 below.

For record-keeping purposes, the Responsible Officer will also provide the JCU Registrar with a copy of all documentation relevant to the complaint.

If the Responsible Officer has made any recommendations for actions required as a result of the determination, including the review of policies or procedures, the JCU Registrar will consider the recommendations and take action as appropriate.
The University’s response to a student complaint should be comprehensive, and should address all aspects of the complaint. It is not always possible to achieve a satisfactory outcome from the complainant’s perspective, but it should be clear that all aspects of the student’s complaint have been considered, investigated as required and responded to.

Communicating a Decision

1. Give Meaningful and Accurate Reasons for your Decision

The policy and or process used and the facts relied on in making a decision must be communicated in writing, by the Responsible Officer, to the complainant and other interested parties, including the Student Complaint Management Unit for the JCU Registrar.

Checklist for your written response:

1. A summary interpreting the complaint which covers all elements of the complaint
2. How each element of the complaint was considered by the Responsible Officer, including:
   a) The questions that needed to be addressed
   b) Any university policies or procedures that apply
   c) Any investigation undertaken
3. The information and/or evidence relied on for understanding the facts, including documents and/or testimony (whether direct evidence, or used to corroborate other evidence), and
4. The rationale for weighing up evidence or interpretations of the evidence
5. The findings in relation to questions that needed to be addressed in order to consider either the complaint elements or the complaint in its entirety.
6. Any consideration of redress, including the complainant’s requests in this regard.
7. Any mitigating circumstances
8. A summary of the decisions made taking all these things into consideration.

2. Certainty

Your decision should be clear. It must leave no room for doubt as to what has been decided and what the consequences of the decision are.

You may determine that the original action or decision:

- was appropriate; or
- was not appropriate. In this case, you should revise the original decision within the limits of your delegation. This might be to overturn the original decision or reverse the original action, or to pursue some other course of action that you believe constitutes a reasonable resolution of the matter.
Your decision may also require you to refer the matter to other areas or officers of the University for further action.

3. **Inform Students of Rights of Review or Appeal**

Templates are provided by the Student Complaint Management Unit that include details of a students’ rights of Review or Appeal.

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### What documentation should be kept in relation to a complaint?

**Extract from the Student Complaint Management Policy and Procedures**

Clause 2.12

For record-keeping purposes, the Responsible Officer will also provide the JCU Registrar with a copy of all documentation relevant to the complaint.

**General record keeping principles**

You should keep an accurate, clear, complete and detailed written record and this must be maintained in a confidential storage system with appropriate security. Each Unit within the University should have a share drive or some other suitable system so that important records can be stored and managed appropriately.

**What records need to be kept?**

You need to keep records which explain and prove the procedures used and the facts established and taken into consideration. A list of documents, or a jumble of documents without explanation is not sufficient because if you ever asked to account for your decision you need to be able to show that you followed the rules of natural justice.

The records to keep include the following items.

1. File notes that you have made and correspondence and/or agreements that:
   
   a. Explain how the complaint came to your attention, and the chronology and rationale for the processes you used at each stage, or
   
   b. provide a link between the documents and:
      
      i. the procedures used, or
      
      ii. the choices/decisions you made, or
iii. the establishment of relevant facts, or

iv. the pathway to resolution

2. Documentary material (electronic or in print) which:

   a. explains the complaint, including:

      i. information and documents the complainant has provided

      ii. information found as part of fact-checking or investigation

   b. demonstrates that you afforded all parties natural justice, and

   c. explains the reasons for your decisions, or the resolution that was offered to the parties.

When the complaint relates to an allegation of unlawful behaviour such as discrimination or harassment, files and case notes must be detailed and should be retained in the event of subsequent proceedings under anti-discrimination law. Such records may form the basis for a defence against claims made against the university or its officers such as defamation or vicarious liability. In all cases the University must be able to demonstrate that it took "all reasonable steps" to deal with the problem(s) responsibly and within the law.

What to record in confidential file notes

- Who made the complaint (unless it involves a public interest disclosure) and when
- What the complaint was about
- The relevant University policy or process used for deciding one or more aspects of the complaint (including the applicable version)
- Any applicable statutory obligations or laws
- What is to be decided (that is to say, the nature of the finding to be made and/or any penalty where relevant);
- Who was interviewed (unless it involves a public interest disclosure);
- What documents (if any) were reviewed and evidence taken or not taken into account;
- What evidence is not available (and why, if relevant)
- Any other lines of inquiry pursued in the investigation;
- What the decision is and the reasons for it. This does not require a meticulous analysis of every detail of the case, however, the reasons should indicate the findings that led to the decision(s) reached;

- What internal or external avenues of review or appeal are possible for the student

- If applicable and appropriate, identify any systemic problem with University processes that might come to light from the complaint or appeal and recommend how these might be improved;

- Care should be taken in the wording of written material, as absolute confidentiality cannot be guaranteed; disclosure can sometimes be compelled under of the Right to Information legislation.

**Managing confidential information**

Information related to complaints, complainants and respondents should be kept strictly confidential and should not be disclosed to anyone who is not directly involved in the complaint. Additional copies of complaints documentation should be kept to a minimum and stored in a manner that will prevent accidental disclosure or access.

### Responsibilities

James Cook University is committed to treating all complaints seriously, promptly, sensitively, confidentially and without bias. Responsibilities that are common to all parties to a complaint include:

- Recognise the rights of the student and of the respondent
- Keep details of the complaint confidential
- Apply the principles of natural justice
- Comply with the Student Complaints Management Policy and Procedures

The specific responsibilities of particular parties involved in complaint resolution under the *Student Complaint Management Policy and Procedures* are outlined in Appendix A.
### Appendix A

<table>
<thead>
<tr>
<th>Complainant</th>
<th>Respondent</th>
<th>Student Advocate</th>
<th>Responsible Officer</th>
<th>Student Complaints Management Unit</th>
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</thead>
<tbody>
<tr>
<td>Be informed about the allegations and have the right to reply</td>
<td>Provide information &amp; advice to the student about the process</td>
<td>Liaise within academic college or group in investigating and resolving complaint</td>
<td>receiving formal complaints and appeals;</td>
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<tr>
<td>Participate in process towards resolution</td>
<td>Monitor the fairness of the process on behalf of the student</td>
<td>Maintain accurate, objective &amp; confidential records</td>
<td>ensuring the prompt referral of complaints and appeals and the convening of Appeal Panels;</td>
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<tr>
<td>Seek support and advocacy (e.g. Union Rep, colleague)</td>
<td>Ensure respondents who have allegations made against them are sufficiently informed of the complaint and provided with a right of reply</td>
<td>Provide complainants with advice of the progress of their complaint</td>
<td>overall monitoring of the progress of complaints and appeals handling under the Student Complaints Management Policy and Procedure;</td>
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<tr>
<td>Seek support and advocacy</td>
<td>Report in writing on the resolution of the complaint</td>
<td>Identify and investigate systemic issues arising from complaints and recommending organisational improvements;</td>
<td>providing independent and impartial advice and assistance to managers or supervisors who have received and are handling a complaint;</td>
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<tr>
<td>Respectful conduct in accordance with University policy, procedures and guidelines</td>
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<td>providing independent, impartial and confidential information to complainants and respondents about the procedure for dealing with complaints including listening to the issues and helping the person clarify the facts;</td>
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<tr>
<td>Present the facts that relate to the complaint</td>
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<td></td>
<td>identifying and investigating systemic issues arising from complaints and recommending organisational improvements;</td>
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<td>Collect and provide objective evidence to support facts</td>
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<td></td>
<td>identifying the training needs of staff handling complaints;</td>
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<tr>
<td>Consider the resolution you are seeking and cooperate with the Responsible Officer</td>
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<td></td>
<td>providing to the Deputy Vice-Chancellor (University Services and Registrar) regular reports on the number, type and nature of complaints received by the Unit and advice on any action the University needs to take to protect or improve the integrity of policies or procedures.</td>
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