

INDEPENDENT REVIEW OF STUDENT DISCIPLINARY AND APPEALS PROCESSES COVERING NOTE

Scope of the review

1. On 13th February 2019, I agreed to carry out an independent review of the student disciplinary and appeals processes at Warwick University. The review arose directly from what was referred to as 'the group chat' case.
2. The terms of reference were as follows:
 - 1 *To review the event from the receipt of the original complaint until the present day, in order to advise on what lessons can be learnt for the future, especially but not restricted to:*
 - *How the parties were treated*
 - *Adherence to the University's processes and procedures ("process")*
 - *Communications, in its widest sense, throughout the process, especially but not restricted to, the communications with the parties involved*
 - *Communications, in its widest sense, following the end of the process and up until the present day*
 - 2 *To review the current University disciplinary process for handling misconduct paying specific reference to how to deal with complaints or incidents relating to sexual misconduct, hate crimes, racist or sexist and/or bullying behaviour, with a view to recommending an alternative process to future-proof it as well as:*
 - *Reinforcing the University's values of openness, diversity, respect and trust. In addition, the Strategy promises that we will defend academic freedom, welcome difference and always challenge and stand up to intolerance, prejudice and unacceptable behaviours*
 - *Aligning the disciplinary process to the work of the Advisory Group also being set up with a view to producing a statement of acceptable behaviours to reflect the values mentioned above*
 - *Better enabling the University to communicate with its community and stakeholders should a similar situation arise in the future*
3. It was estimated that the review would take 20 days or so. I was asked to produce draft recommendations in time to inform a joint workshop on 20th May 2019 with the Joint Advisory Group of Senate and Council, which has been working on the formulation of a code of conduct or 'statement of acceptable behaviours'.
4. It was originally envisaged that the review and work of the Advisory Group would align to become joint draft recommendations to be consulted upon and presented to Senate on 12th June 2019, and Council on 20th July 2019.
5. I circulated 30 draft recommendations before the joint workshop, and spoke about their rationale. At the end of the workshop, it was agreed that, in fact, the streams of work – the review and the statement - were largely independent, and that the review should be presented separately.
6. Following the workshop, I have been able to refine my **recommendations**, which are set out at **Annex A. Annex B and C** are short summaries of the factual basis for the recommendations based on the two parts of the review.

7. The recommendations at **Annex A** can be considered in various ways. One way is by process – and they follow the sequence of an investigation (1-8), a disciplinary panel and an appeal (11-22), and then more general points. They could also be considered thematically, by reference to the guiding principles of the Office of the Independent Adjudicator (OIA), as recommendations directed to accessibility and clarity (10-12), proportionality, timeliness (3), fairness (1-2, 13-22), independence (20, 23), confidentiality (6-7) and “improving the student experience” (12,24-26, 29) – albeit in the very specific context of this review. A third, more general way of looking at them is as a series of measures directed to fairness towards all parties, creating as much transparency as is possible within proceedings which are confidential, and to the restoration of confidence in the disciplinary processes, all of which have emerged as critical themes from the review.
8. It will be noted that I have not been able to recommend any specific alternative process to ‘future proof’ the disciplinary process - although I have made many recommendations to ‘future proof’ the existing process. This is, in part, because so much is already in flux in the University itself. In January 2019, an internal Review of Complaints went to the Registrar. There are also two other pieces of work on proposed reform of the disciplinary regulations and processes by the Student Disciplinary Team (SDT) and Residential Life Team (RLT.) In these circumstances, I have not been able to formulate any clear recommendation, except in general terms.
9. **Annex B** is a short procedural chronology of the ‘group chat’ case and a very abbreviated summary of some of the issues that arose in the interviews. There is little that can properly be put in the public domain; the University has duties of care to the individuals who were complainants and respondents, and disciplinary proceedings are not public. It should also be noted that this review is not a fact-finding exercise or a second appeal. There are conflicting accounts on many points, and on the merits of particular decisions made, which I have not sought to resolve. It would have been a very different and much longer exercise to fact-find fairly or adjudicate between various points of view. More importantly, the terms of reference are to make recommendations for the future, which I have been able to do.
10. **Annex C** is a ‘snapshot’ of the current disciplinary processes.

The review

11. I began the review proper at the end of March 2019. I had access to the investigatory and disciplinary material connected to the ‘group chat’ proceedings and interviewed a very wide range of people who had been centrally involved - the complainants / victims¹, some of the respondents, the father of one of the respondents, the Investigating Officer (IO), and members of the Major Disciplinary Committee and Appeal Committee.
12. I also interviewed staff and former staff involved in different capacities in the University disciplinary processes, Wellbeing Support Services, the Student Union Advice Centre, representatives of the Gender Task Force, and members of Coventry Rape and Sexual Abuse Centre (CRASAC), including the on-campus Independent Sexual Violence Adviser (ISVA.) Many people had comments relevant to both parts of the review.
13. I looked at Investigation Reports in other cases, and spoke to other investigators, internal and external, and relevant department Heads, and sabbatical officers of the Student Union (SU). I also held half day ‘drop in’ sessions and, again, saw and spoke to a wide range of people of staff, students and residents on campus. In total, I spoke to 54 people; I also read

¹ Generally, I have referred to ‘complainants’ until the point that breach is formally admitted, and ‘victim’ after that point, as that is the language used within the disciplinary process. These terms, however, hide a submerged fact - that the same person may simultaneously be a complainant (and not, or not yet, a ‘victim’) in the disciplinary context, but a victim / survivor in the support or therapeutic context.

and considered 81 contributions to an online consultation, and policy documentation from Warwick and other universities.

14. I was also been able to speak informally to experts in the field of sexual violence and misconduct (SVM), including Dr Mott and Professor McGlynn, to discuss specific issues. The report and recommendations are, however, solely mine.

The recommendations

15. I hope that the connection between the recommendations and the narratives in Annex B and C is reasonably clear, and that they are self-explanatory. Many are likely to be uncontroversial, and build on, or connect with, work which is already going on in the University, or practices that may already be changing.
16. I have indicated the recommendations that, from the discussions I have had, seem likely to attract conflicting views. The categories that they fall into are themselves revealing. Some recommendations are at first sight uncontentious – like the formulation of terms of reference for the Student Disciplinary Review Committee (9) – but may be controversial because of the suspicion that the University is influenced in the case decisions it makes by its own reputational concerns. This would seem to be part of the legacy of mistrust generated by the ‘group chat’ case. On the other hand, there is one where the principle itself – the exploration of restorative justice in the context of SVM (28) - is in itself contentious.
17. There are many others where the principle is uncontroversial, but what it means, and implementation – for example, the content of any code of conduct or who should deliver training - may be more disputed (6, 7, 10, 11, 15, 16.) These issues must ultimately be worked through and decided by those responsible for Student Discipline and University policy, having regard to the fairness and independence of the disciplinary processes, the OIA framework and any other relevant policy, sector² good practice, and lawfulness. It is hoped, however, that these recommendations will, at least, have helped to frame a clearer context for these discussions, and the formulation of disciplinary practices for the future.

Sharon Persaud
10.6.19
(Minor revisions – 1.7.19)

² ‘Sector good practice’ includes both the general university disciplinary sector, and relevant experts in SVM in the university context.

From ‘lessons learnt’ to ‘future proofing’: recommendations

Some recommendations restate (in part) existing practice but I have included them where they are required to make the context of other recommendations, or other parts of the recommendation, clear.

Recommendations which are more likely to attract conflicting views are asterisked and have been dealt with in more detail in the report.

Investigations (1-8)

1. Sexual violence and misconduct (SVM) and other serious cases must be investigated only by investigators with specialist skills. Consideration should be given to the development of in-house expertise to ensure a diverse pool of investigators who are expert in the university context, and so that there can be the option of gender matching for complainants.
2. Existing investigators (IOs) involved in SVM and other serious cases or cases where it is relevant must have ‘face to face’ training, including trauma-informed training by sector experts.
3. More generally, all existing IOs should be offered ‘face to face’ training to supplement the written guidance they are given; consideration should be given to making investigations part of their formal role or otherwise formally allowing sufficient time for investigations to be completed in a timely manner.

Specialist policies and procedures for SVM cases

4. In SVM cases, complainants should receive an early signpost to the ISVA, who is able to offer independent, specific and specialised support.¹ Consideration should be given to a longer-term commitment to continuing the current resourcing of an on-campus ISVA service, and an ongoing relationship with CRASAC.
5. The University should put specialist policies and procedures in place for investigating SVM. Recommendations 1-4 are part of a stop-gap until these are implemented in full. This should also involve a comprehensive review of all the associated guidance sheets, sample interview plans, and training materials.

Confidentiality

6. Consideration must be given to how confidential information is safeguarded within the investigative and disciplinary context. One possibility is that all parties (complainants, respondents, witnesses, supporters) are asked to sign a specific agreement to limit disclosure of particular information - but legal advice would have to be taken on the scope, and permissible form. Another possibility is that it is expressly within any new code of conduct.*

¹ It should go without saying that, in all cases, the University has a duty of care to both complainants and respondents, and that, depending on their circumstances, respondents may also require particular and specialised support in relation to their own histories of sexual violence, mental health issues or other vulnerabilities. I have not made a specific recommendation as the general duty seems clear and well-understood.

7. Consideration should also be given to using a leaflet for friends and family of those involved in investigations; I understand that one is used at Cambridge University, and is aimed at stopping inadvertent dissemination of confidential information by people supporting the complainants or respondents.
8. There should be terms of reference for the Student Disciplinary Review Committee which considers the investigation reports in cases of sexual misconduct.*

Student disciplinary processes (9-23)

Case management system

9. Consideration should be given to a case management system so all documentation and correspondence is readily available to appropriate users, and information can be shared, stored and retrieved securely.

Recommendations about clear expectations

10. Consideration should be given to the incorporation of a clear, simple code of conduct into the student contract so that breach and its consequences are obvious.
11. Generally, consideration should be given to the work already in progress in the SDT for systematic overhaul; this is potentially controversial in relation to categorisation of breaches of the regulations.*
12. Consideration should also be given to producing simple information / flowcharts for complainants, respondents, and their supporters, on key points in the student disciplinary processes and the hearing, and on the role of the supporter. It is essential that there is no misunderstanding attributable to what the student has been led to expect, and what the disciplinary processes will deliver.

Disciplinary panels

13. Consideration should be given to the establishment of a permanent secretariat to assist the committees and panels, including arranging the provision of legal advice to the panel in advance if required. The secretariat could also consider evolving needs - for example, for training or guidance on proportionate sanctions, or the assessment of evidence in more complex cases.
14. All panel members should receive induction training on the disciplinary framework before they sit on a panel. This should cover understanding the scope, rules and procedures of the investigation and hearing, and the underlying legal and policy principles.
15. All panel members who deal with cases of sexual misconduct should receive additional training, including in relation to understanding consent, trauma-informed investigatory practices, and in assessing credibility.*
16. As an over-arching point, in formulating processes and procedures, and in every case, active consideration must be given to how to secure fairness both for any complainant / witness and the respondent.*

17. If a breach is admitted / proved, opportunity must be given for any victim's voice to be 'heard' before the imposition of sanction; consideration must be given as to how this is achieved, and how the outcome of the proceedings is communicated. It may also sometimes be appropriate to adjourn to ensure that the respondent can fully prepare their mitigation.
18. Consideration must also be given to how any sanction is going to work in practical terms, and the effect upon others in the relevant department, or those who may be affected more widely. In some cases, it may be appropriate to liaise with the Head of Department, or to give the opportunity for a victim to give an updated 'victim impact' statement.²
19. Consideration should be given to measures to obtain a broad consistency of approach to proceedings and to assessing sanction. This might involve having standing members, or additional guidance / training.
20. Consideration should also be given to the panel composition. It is essential that both senior and other academic staff and Student Union representatives remain; it is also essential to consider issues of independence, diversity and inclusion, and perhaps the addition of a professional services perspective from the University community.
21. Consideration should be given to the more detailed recording of the rationale of the decisions made and to the content of the outcome letters sent, to ensure that they are sufficiently clear and detailed, and accurately reflect the decisions made.
22. On appeal, detailed reasons for the first decision should be made available, and, as now, the Chair of the first panel invited to attend to assist the appeal panel. Consideration should also be given to asking the IO to attend, and of notifying the members of the first disciplinary panel if the decision is significantly changed.
23. As an over-arching point, regular consideration should be given to how to properly support investigators, panel members and other members of staff involved in the disciplinary processes, and how to safeguard and support the impartiality and independence of their function. This must include an understanding of the risks attached to even the perception of bias.

Communications with complainants and respondents (24-26)

24. Consideration should be given to a protocol for communication with complainants and respondents, informed by victim / witness care and any other relevant principles: this should include regular updates; through a single point of contact where that is appropriate, and when support is available.
25. When fixing key dates, consideration must be given to important examination dates, or other significant stressors, and to the support that is available for the student. This may involve, for example, moving interviews or canvassing hearing dates in advance.

² I gather that some institutions take these steps as a matter of course.

26. More generally, communications should always be tailored to the individual student, and their very specific circumstances; consideration should also be given to cumulative effect of communications, and whether they have been consistent, fair and sought to address the concerns being raised.

Policy formation

27. Consideration should be given to creating guidance which sets out the basis of the University's disciplinary policy, and its general principles and procedures. This might assist in its evolution, and in strengthening and demonstrating its coherence as a distinct and fair set of processes, with its own aims, concepts and language.

28. More broadly, consideration should be given to policy development to investigate whether restorative justice approaches may have any role to play in the student disciplinary context, either in suitable / appropriate SVM cases where it is one of a number of choices for the victim / survivor or, as a more general approach, in cases not involving SVM³. I set out some background in Annex C; it is a highly complex and contested field, but there may be an institutional 'fit' because of the focus both on victim / survivor empowerment and learning / rehabilitation.*

29. Consideration must be given to the formulation / implementation of a SVM policy, for which the Registrar has overall responsibility. This is essential to join up the various disparate initiatives, to formulate an overall strategy, and to provide a framework against which to consider other policy developments.

External communications

30. Consideration must be given to how to convey and balance complex messages – which may be in tension with each other - when facts cannot be put in the public domain. Some of the key themes raised by interviewees in relation to the 'group chat' case included the need for earlier affirmation of the University's values, even in general terms, and reassurances about the processes in train; clearer support for the importance of fair, impartial and independent investigations and disciplinary processes; and more "authentic" 'victim-centred' communications that recognised the harms done, both to particular victims and more widely.*

³ For the avoidance of doubt, even in non-SVM cases, restorative justice approaches require that both parties agree to participate in the process.

INDEPENDENT REVIEW OF STUDENT DISCIPLINARY AND APPEALS PROCESSES ANNEX B (1.7.19)

'The group chat': formal processes and procedures

1. The bare procedural facts – including some facts which touch upon procedural propriety - of this case are as follows:

Events in 2018

2. On 9th March 2018, two female students told their personal tutors about a closed Facebook 'group chat' between some male students of which they had become aware. Some messages within the 'chat' were in violent, racist and misogynistic terms in relation to them, other students, and generally.
3. All the students were in their second year and most knew each other. There are not clear dates for the messages in the material I have seen but it appears to have been accepted that some, if not all, related to the previous academic year. The two female students were referred to their Head of Department (a 'stage 1' complaint), and then to the RLT, and then to Wellbeing Support Services.
4. On 25th April, a formal 'stage 2' complaint and screenshots of the messages were submitted to the Senior Assistant Registrar by Wellbeing Support Services on behalf of the complainants.
5. The same day, the Director of People Group, on behalf of the Registrar, formally determined that the complaint would be investigated under regulation 23, which sets out student disciplinary 'offences'¹ and incorporates breaches of the Dignity at Warwick policy. Precautionary suspensions were imposed immediately on 11 male students who were thought to be parties to the 'chat.'
6. On 27th April, an IO, who in his 'day job' was Director of Press and Media, was formally appointed on behalf of the Registrar. He recused himself from dealing with any press coverage of the case.
7. On the same day, the male students were given formal notice of the investigation. All the students were given generic information sheets, indicating that matters relevant to the investigation should be kept confidential and directing them for support to Wellbeing Support Services and the Student Union Advice Centre.
8. A series of interviews then began with the complainants and the 11 male students. Other investigative steps were taken, including investigation of online accounts and liaison with West Midlands police.² Two male students were quickly cleared of any involvement at all, and their precautionary suspensions lifted. By this stage the complainants were being supported by the Students' Union Advice Centre, rather than Wellbeing Support. (The SU is a separately incorporated body independent of the University.)

¹ As I have indicated elsewhere, the use of the language of criminal processes is problematic and misleading.

² The police were involved in relation to two separate aspects of the investigation, and decided that no action should be taken.

9. In early May, social media coverage began, and there was press interest. The Tab student newspaper named some of the male students and published photographs. The story was picked up by the BBC and other media outlets.
10. The University issued a press statement indicating the nature of the investigation in progress and that no further comment could be made. One of the male students indicated that he wanted to withdraw from the University. The atmosphere on campus was described by one interviewee as “febrile.”
11. On 22nd May, the IO completed his investigation report and submitted it, with all supporting documents, to the Director of People Group. The report itself summarised his investigation, and made individual recommendations in relation to each male student as to exoneration - which for two had already happened informally - or whether there was sufficient evidence of disciplinary breach to proceed; and if there was, whether, in the individual case, the route should be sanction for minor disciplinary breaches or a referral to a Major Disciplinary Committee.
12. The Director of People Group, on behalf of the Registrar, took a decision to follow the report’s recommendations. Three of the male students were sent for sanction for minor disciplinary breaches and six were referred for major disciplinary hearings. On 29th May 2018, the complainants made detailed submissions asking for a reconsideration of one of the decisions to send a respondent for sanction for a minor disciplinary breach.
13. On 1st June, the three respondents sent for minor disciplinary processes were variously reprimanded, warned as to future conduct, and fined. The reprimand was to be kept on their files for a year. Their precautionary suspensions were lifted.
14. Of the other six male students, one had by now withdrawn from the University, and the other five respondents proceeded to Major Disciplinary hearings on 4th / 5th June. The Disciplinary Committee was made up of an academic member of the University’s Executive Board as Chair, three other academic members of staff and two Sabbatical Officers from the Students Union. They had all the investigative material and ‘victim impact statements’ from the two complainants, and from one other young woman who had become aware of the ‘group chat’ and had also been affected.³
15. In all but one case, the respondents accepted that they had breached the Dignity at Warwick policy and so, for those four cases, the only issue to consider was what penalty should be imposed. The fifth respondent disputed the ‘charge’ as drafted. In all cases, the Committee heard from the respondents and, in some cases, their parents.
16. The University had no jurisdiction under regulation 23 over the young man who had by now withdrawn as he was no longer a student, but his case was nonetheless dealt with and he was sent an ‘outcome letter,’ and informed that he would have been expelled, and was banned from the campus indefinitely.

³ From the information available to me, it was evident that other female students had also been affected by the ‘group chat,’ but they were not formally involved in the proceedings.

17. Two other respondents were expelled⁴, and banned from the campus for 10 years. A further two respondents were required to withdraw for a year with immediate effect. On return, they were not to live on campus; it was recommended that they were not allowed to join SU clubs or societies; one was required to go on a course; both were required to produce evidence from a “suitably qualified individual” that they were no longer at risk of contravening the ‘Dignity at Warwick’ policy. These decisions were to remain on the individuals’ student records for varying periods of time. The case against the fifth respondent was not proven, and so his precautionary suspension was lifted the next day.
18. These outcomes were, in broad terms, published in an official statement on MyWarwick on 11th June.
19. The two respondents who had been expelled and subject to 10 year bans appealed, separately and on different dates. There is no appeal ‘as of right’ - certain criteria as set out in regulation 23 have to be met. Their points were considered, and their cases were listed for two separate appeal hearings on 24th July and 14th September 2018.
20. The appeals were heard by properly constituted panels. (The two appeal panels were the same, except for one member.) Again, the panels had all the material that had been before the original panel and the Chair of the original panel was present, gave a short statement and answered questions. After consideration of their cases and individual circumstances, the Appeal Committees considered that their penalties should be adjusted to be in line with those respondents who had been required to withdraw for a year.
21. The respondents were notified of the results on appeal on 25th July and 26th September, and the victims were sent a ‘stage 2 outcome letter’ on 17th October. On 31st October, the victims submitted a wide-ranging ‘stage 3’ complaint, directed to the way that aspects of the investigation had been conducted, the decision that one of the respondents should only face minor disciplinary proceedings and the outcomes on appeal, as well as more general issues of communication.
22. On 18th December, the VC determined that there were insufficient grounds to progress the ‘stage 3’ complaint further, and the victims received a ‘completion of procedures’ letter. On the material I have seen, they then heard nothing further from the University until after the story returned to the media in early 2019. This meant that there was no contact between the VC’s rejection of their complaint and the ‘open letter’ on 4th February 2019, expressing revulsion at the messages which they themselves had first drawn to the attention of the University.

⁴ The outcome letter refers to expulsion. Other documentation expresses the penalty differently, but the net effect was the same.

Events in 2019

23. Towards the end of January 2019, the University received information that details of the disciplinary case were again in the public domain, and that more respondents had been named. On 30th January, coverage spread across social media, and via telephone and email. On 31st January, the Provost made a statement which gave context to the decision on appeal. On 1st February, the VC sent an 'open letter' expressing his shock and revulsion at the 'group chat', but upholding the legitimacy of the appeal processes.
24. Over the next days, the 'group chat' continued to feature heavily across national and local media. Students and individual departments distanced themselves from the decisions on appeal. There was also significant social media coverage and direct messages to staff via university channels, emails and phone calls from alumni, donors, prospective students and the wider public. The IO, in particular, was subjected to intense personal attack.
25. On 4th February, there was a further message from the VC, committing to ensuring "the safety of our community." He indicated that he had spoken to the two students who had successfully appealed their expulsion, and that they would not, after all, be returning. On 6th February, Council committed to a thorough, external and independent review of the disciplinary processes.
26. It is clear from this narrative that the overwhelming view was that the University appeal process had let down the victims – both the direct complainants and the other young women affected - because of the reduction in penalty per se; because they were then faced with the possibility of encountering the respondents again, having been assured to the contrary; and because of the delays in communicating the appeal result. To compound this, the victims were not contacted again in January / February 2019, when the case returned to prominence.
27. To the external eye, however, there were other very problematic features connected to processes and procedures, and the obvious lack of trust in them: [1] how this sequence of events could arise from a case in which the misconduct was clear and admitted; [2] the gulf between the decisions of the original panel and the appeal panel; [3] the difficulty in understanding – and the University's difficulty in communicating - the rationale of either decision; [4] the widespread view that the appeal decision was wholly illegitimate; [5] the effect of the dissemination of confidential material into the public sphere; [6] the ready assumption that University processes were not independent or impartial, and the inability of the University to effectively demonstrate the contrary.

How the parties were treated / communications

28. As I set out earlier, between 9th April and 7th May 2019, I spoke to many of the people who had been centrally involved, including the complainants / victims and some respondents.
29. The complainants raised a number of issues, including the way in which key decisions had been communicated to them, and – centrally – what they felt was the collective failure of the University to acknowledge the harm done to them, to the other

young women affected, and to the university community, by the terms of the ‘group chat.’

30. The respondents also raised a wide range of issues – and, as one would expect – their perceptions varied with their individual circumstances. A common thread, however, was the difficulty created by the double leak of confidential material into the media, both print and social, and all subsequent reporting and commentary. For some, it had created an atmosphere of threat, or circumstances in which they felt it was difficult to have a fair hearing; for others, the return of the coverage in January and February 2019 had heightened the anxiety that, irrespective of remorse or ‘rehabilitation,’ they would not be able to put the matter behind them.⁵
31. As well as the obvious differences, however, there were also some surprising similarities in the concerns of the complainants and respondents.
32. The key issues raised concerned aspects of the investigation, and the support available during it; the unwillingness or inability of the University to recognise or respond to a student’s individual circumstances; the assessment of relative culpability as between the respondents. There was also a general sense of dissatisfaction about the stark difference between the two panels’ ultimate decisions – and, from many, the sense that, throughout, the University had been more concerned with its own reputational interests than in a fair or just assessment of the case. I should say that this view was not uncommon amongst the wider groups of people I interviewed.
33. Connectedly, it also appeared to me that – perhaps unsurprisingly – there was no common understanding of what the disciplinary process was for, what its philosophy was, how offending conduct was or should be weighed against mitigating features; where this case should have fallen on a scale of seriousness, in comparison to other breaches, and what factors were relevant to setting a sanction.
34. I had the advantage of seeing all the papers and meeting the IO and some of the panel members from both the original committee and the appeal hearing. I am therefore certain that all the actions taken and decisions made were made conscientiously, in good faith and with the best of intentions. Despite those intentions, however, the fact is that there was a profoundly unsatisfactory outcome for almost every single person involved.
35. As I have made clear, the recommendations in Annex A arise both from the ‘group chat’ and the wider disciplinary review. Even this bare narrative, however, indicates some of the reasoning underlying the recommendations that I have made for more specialist investigations, particularly in cases of SVM (recommendations 1-3,5); for specialist and independent support for complainants (4), and for a more proactive safeguarding of confidentiality (6-7.)
36. It also speaks to the need to promote clarity in the disciplinary processes. This encompasses thinking about different ways of communicating with the parties, so expectations are clearer, and both complainants and respondents can participate effectively in the proceedings (12, 17, 24-26), through to the development of a more

⁵ I should say that confidentiality has cropped up in this case in the context of the respondents’ identities. It is more often a vital protection for complainants – but is clearly equally important for either party.

demonstrably clear and consistent approach by panels, and in the disciplinary processes as a whole (13-22.) It also points to the need to train and support staff involved in the disciplinary processes, and ensure that the impartiality and independence of their function is beyond question (2, 3, 13-15, 19, 23.)

Wider effects: the Warwick community, misinformation, social media

37. It was obvious from all the interviews that the re-emergence of the case in January / February 2019 had also had a traumatic effect on the wider Warwick community.
38. Some interviewees noted – which I also observed - that discussions about the case were in often in binary and polarised terms; decision-makers were anxious about becoming widely known; university IOs were likely to think twice about accepting cases. In interview, some people cried; others spoke of “catharsis” or “trauma.” Others wanted to be anonymous. Academic and professional staff felt that they had been misrepresented or placed in intensely difficult situations in which they had either been unsupported by senior leadership, or required to support decisions with which they profoundly disagreed –but in all cases had put personal considerations aside to continue to support University processes.
39. It was also obvious that there was a great deal of misinformation, caused by a double-bind of confidentiality on the one hand, and sometimes inaccurate reports spread across social media on the other. Because I had access to the papers I knew what, in fact, had happened at various stages – but almost without exception, the people I interviewed were under some factual misapprehension. This inevitably fuelled further unhelpful speculation, based on factual error.
40. Finally, various features of the case also illustrated the profound influence of contemporary social media: in the very medium of the ‘group chat’ and how young men, in particular, appear to communicate; in the easy dissemination of confidential information; and in the social media storm in late January / early February 2019, which appeared to persuade the University to take steps to reverse the appeal committee’s decision.
41. One notable feature was the widespread acknowledgement that the ‘chat’ “could have happened anywhere” - ie that a parallel and deeply disturbing online world is now a form of social norm.
42. Some contributors talked about the general role of toxic ‘group chats’ in legitimising sexual violence and misconduct. Another interviewee talked about the phenomenon of being a “edge lord” or “winning” conversations within a closed group, and reflected on an increasing division between ‘online’ personae and ‘real world’ views. There was also discussion of the different sensibilities created by simultaneous use of many platforms and whether there was, an “ethical gap in understanding,” which needed to be addressed more openly and clearly when students start at Warwick. Although outside my remit, I would strongly endorse that view.
43. As a connected point, other contributors also raised the importance of bringing difficult discussions to mainstream conversations, and how to achieve that – with its possibilities of learning and change - in a University environment. This strand of conversation also seemed to me a crucial part of broader discussions on the

educative remit of the University to grapple and actively engage with the phenomenon of, and the widespread harms caused by, these uses of the online world.

44. Many of these more diffuse cultural concerns are more difficult to make practical recommendations about – and are also outside my terms of reference. However, there were some that touched on my remit, and which reinforced my sense that

(a) the university processes need to be more transparent and better understood – which means that there is less likely to be misinformation and suspicion;

(b) there has to be a way to discuss difficult disciplinary issues (such as what the sanction in this case should have been) in a more constructive and less fracturing way – which means, in turn, that the underlying nature and philosophy of the University disciplinary processes has to be broadly agreed, clearer and more intelligible.

WARWICK REPORT - ANNEX C (1.7.19)

Snapshot of the current 'stage 2' disciplinary processes (April / May 2019)

1. Warwick's disciplinary processes cover all breaches of regulations 23 and 27, which deals with misconduct in a residential setting. They therefore encompass a very wide range of misconduct from noise to drugs, to plagiarism, to rowdiness on campus, and from minor nuisance to serious sexual violence.
2. Complaints and the disciplinary processes must be seen in the context of complex legal obligations, including duties of care and contractual duties to complainants / witnesses (if there are any) and respondents; duties under the Human Rights Act and Equalities Act; various duties of data protection and confidentiality.
3. Disciplinary procedures must also comply with the requirements of the Office of the Independent Adjudicator (OIA), and its guiding principles of accessibility; clarity; proportionality; timeliness; fairness; independence; confidentiality and "improving the student experience." The OIA Good Practice Framework issued in October 2018 indicates that, usually, cases must be completed within 90 days.
4. They must also be seen in a wider policy context, including the Universities UK (UUK) Task Force Report in October 2016, relating in part to the investigation of alleged misconduct which might also be a criminal offence. Universities are now more likely to be called upon to investigate conduct which they might once have left to the police.
5. In a nutshell, therefore, the University must receive complaints; support all the parties; fairly investigate and make decisions as to route; adjudicate; deal with any appeal, and administer that process; implement any sanction and deal with all the associated processes, and observe all its various legal obligations while doing so.
6. This task is rendered more complex by various factors including (a) the need to ensure that its processes remain, and are seen to remain, independent of its own reputational issues; (b) the wide range of potential misconduct; (c) an increasing number of complaints, particularly about sexual misconduct; (d) different perceptions about those complaints. Other university policies I have seen explicitly welcome and reduce barriers to complaints, and so do not regard a higher number as necessarily reflecting badly on the institution; by contrast an anxiety amongst some interviewees was that Warwick was likely to "see complaints as a problem."
7. I should make clear that the recommendations at Annex A have been made with the OIA Good Practice Framework in mind, as informed by the material relating to SVM which I have seen in the review. Although the review's terms of reference include 'hate crimes,' racist, sexist and bullying behaviour these raise distinct issues, and I am afraid that – as I flagged at the joint workshop on 20th May 2019 – I have been unable to address them in the time available, and so they may need to be revisited.

The present position at Warwick

Investigations

8. The 'group chat' investigation ran alongside some investigative changes at the University: an ISVA from CRASAC started to be based on campus in late March 2018, and an external investigator, a former police officer 'recruited' in consultation with the University's Respect Project Manager - began in May 2018, and presently deals with all sexual misconduct cases. There is also now another external investigator with expertise in cyber-bullying.
9. There is also a recently formed – and initially ad hoc – Student Case Review Committee headed by the Directors of Legal, Wellbeing and HR, which reviews IO investigation reports in cases of sexual misconduct, as a form of quality assurance for those reports and to have an oversight of issues 'coming upstream,' before the Registrar's decision as to whether they should proceed to disciplinary proceedings.
10. I had a look at some statistics to gain an overall feel for the current trajectory of cases. As I understand it, in the academic year 2015-2016, there were 18 major disciplinary cases, of which 4 were sexual misconduct and 3 were threatening, offensive or indecent behaviour. In 2016-2017, the same figures were 36, 3 & 4 – ie a doubling of the total number of cases overall, but with the numbers of sexual misconduct / threatening, indecent or offensive behaviour staying the same. In 2017-2018, the figures were 39, 10 & 8 – ie a doubling of both categories of case. In the first quarter of 2018-2019, the relevant figures were 10, 5 and nil. If the first quarter was extrapolated over the whole academic year, then there would be approximately twice the number of major disciplinary cases compared to 2015-2016, but five times the number of cases of sexual misconduct.
11. The view from all of those involved in the disciplinary process was that allegations involving sexual misconduct ranged from those which would have amounted to serious sexual assault in the criminal context to behaviour which was unacceptable, but not criminal, and much less serious. The view was also expressed that there was a cultural shift to "calling out" sexual harassment or other misconduct which was likely to lead to an increase in reporting of allegations of all types.

Major disciplinary cases

12. In relation to major disciplinary cases, the Warwick structure is a kind of 'hybrid' – a disciplinary case is brought for breach of the regulations / policy, based on the civil standard of proof, but with a quasi-criminal structure in that it is brought by the University in a quasi-prosecutorial role.
13. As is familiar from the 'group chat' case, the basis for action is breach of the Student Regulations, by which students have agreed to be bound in a student contract. Cases are decided on the civil burden of proof, with the University bringing the case and therefore having to prove the breach on the balance of probabilities. The most serious sanction that can be applied is expulsion. This structure is simple and clear when the 'wrong' done is impersonal – for example, possession of drugs or cheating.

14. It is, however, more complicated in 'student – student' complaints, particularly in the context of SVM. Again, the University brings the case for breach of its policies, and has to prove the breach on the balance of probabilities. Here, however, the complainant is a witness, not a party in the case – which means that in a disputed case (a) in the context of the proceedings, there is no "victim" until the case is admitted or proved¹; (b) there is generally no scope for a complainant / witness to be legally represented within the proceedings; (c) after breach, a victim's statement and wishes are important, but not determinative of the penalty to be imposed; (d) the most serious penalty available is expulsion, with the proceedings remaining confidential. Even if the process is fair and OIA-compliant, it is easy to see where a mis-match in expectations can arise – particularly if there is an unspoken assumption that the university context will mirror the criminal justice process.
15. In these circumstances, it is inevitable that cases of serious sexual misconduct will engage issues which are difficult for a university investigation and disciplinary process to resolve in a way that is fair to both complainant and respondent.
16. On the papers that I have seen, these will, and already do, include: the provision of appropriately skilled support, especially for complainants; the boundary of university and police investigations; expert evidence-gathering; the nature of a proportionate investigation in the university context; fair disclosure; the assessment of evidence which in the criminal context might be the subject of directions to the jury (the approach to credibility; delay in reporting); and fair processes for the examination and cross-examination of complainant / witnesses. It also seems likely that university processes will come under legal challenge from complainants, respondents or both.
17. It therefore appears that, in the context of SVM², the current student disciplinary system is being stretched in two directions, neither of which it was designed for. It is having to deal with conduct which might, in the criminal context, be in the Crown Court; it is also having to deal with a wide range of allegations of unacceptable but much less serious behaviour. It is, perhaps, an additional complication that both are presently encompassed within the term 'sexual misconduct.'
18. Everybody engaged with student discipline to whom I spoke was keen to preserve the sense of it as a distinct entity, with its own aims, rules and procedures – and most definitely not as a quasi-criminal court. A number of sentiments were bound up within this: an anxiety that disciplinary procedures would have to mimic the criminal courts, with all its inherent difficulties; that greater formality would detract from the flexibility desirable when assessing and dealing with young people; that the very distinct nature of disciplinary proceedings - ie as a breach was of University regulations or a policy, and expressly not a crime - would be lost.
19. The interviews also showed the great care taken by panel members both in fact-finding and setting penalties in all types of cases. It also became evident that there are very specific considerations on penalty across all types of case which are unique to the institutional context.

¹ Of course, there may well be a 'victim / survivor' in the support or therapeutic context throughout – and it is important that the support available is appropriately skilled. (See Recommendation 4.)

² University processes are used to dealing with conduct which may amount to a criminal offence in other contexts - like possession or supply of drugs and theft.

20. Some issues are conceptual: the balance of punishment / education / rehabilitation within a University setting; what terms like 'harm' or 'risk to' or the 'safety of' the University community mean, and whether it is helpful to use them in the disciplinary context without greater clarity; whether, as an educational institution, there is a greater moral responsibility to seek to educate students, rather than expelling them to, as one panel member put it, "become someone else's problem."
21. Other points are very practical, but equally context-specific: whether any meaningful penalty between suspension for a year and expulsion exists; how to allow both victims and respondents to bring all relevant factors to a panel's notice before sanction; the effect of proceedings or sanction on departments; the effect of precautionary suspensions; the impracticality of finding suitable 'community service' type of sanctions, which were safe, monitored and did not clash with University work.

Other relevant work in progress

Disciplinary processes

22. There are also two substantial pieces of work in progress - as I understand it, as part of the routine review of University processes - which are directed to the general reform of the student disciplinary processes. These have been placed on hold pending this review – but in fact, in their emphasis on simpler processes and a step-change in investigating and determining more complex cases, echo some of the themes of the review.
23. One is a joint initiative between the SDT and RLT, directed to a general overhaul of the disciplinary regime, in part to get rid of anomalies between the way that similar cases are dealt with under regulation 23 and regulation 27. The overall aim is to make the regulations simpler, coherent, and more streamlined. I understand that one effect may be to categorise more cases as minor breaches under regulation 23, with fewer cases going to major disciplinary panels. (I was told, for example, that a second 'breach' for possession of cannabis would be routinely dealt with by a larger fine in the residential setting, but under regulation 23, would have to go to a major disciplinary panel.)
24. A second piece of work within the SDT relates to those cases which do go a major disciplinary panel, and is concerned with formulating proposals to equip panels for the more complex cases that they may hear. I gather that these are likely to involve recommendations for a 'mixed economy' of internal and external investigators, a smaller pool of more intensively trained panel members, a standing chair and deputy, and a permanent secretariat.

'Future-proofing'

25. With a view to 'future proof' processes, I asked investigators, both internal and external, and staff connected to the SDT what practical difficulties they faced at present, and were likely to face in the future. In discussions with them, and the panels who are assisted by them, four practical factors emerged as particularly important.
26. Firstly, some volunteer IOs (ie those members of University staff who carry out investigations) indicated that they would benefit from more training and support - perhaps from an informal 'investigators network' - in carrying out their function. They were all fitting in challenging investigations around their main employment; one IO

spoke about dealing with a suicidal student; another of investigating a highly sensitive allegation of anti-semitism; another of the difficulties of dealing with a complaint which later developed into a police investigation.

27. Secondly, the SDT is significantly under-resourced and under strain, particularly in the context of increasing numbers of more complex cases. At the time of the 'group chat' case, the total SDT investigations 'resource' was, in theory, 0.5³ FTE at FA8, and 0.8 at FA 5, shared with other duties. There is now an additional 0.6 FA8, spread across investigations, discipline framework and mediation. From the correspondence in the 'group chat' case, it was absolutely clear that the investigations were only completed in a timely manner because of the personal commitment of the University staff involved.
28. Thirdly, there would be significant practical benefits to having a better case management system. It would assist data collection and retrieval; it would allow case documentation to be centrally stored and available securely to the multiple 'agencies' of the University (Wellbeing, SDT, RLT, Academic Office, Departments) who may be involved; it would also be a way to comprehensively retrieve correspondence and review all relevant material.
29. Fourthly, panels are greatly assisted by good secretariat support at a sufficiently senior level to, for example, assist in considering / formulating agendas, anticipate when professional support or legal advice is required, provide advisory assistance and make sure that panel decisions are recorded and communicated in appropriate detail.

Initiatives around SVM

30. In the course of interviews, I was also alerted to various arrangements and initiatives in progress which are relevant to the University policy on sexual misconduct, and so also, directly or indirectly, touch on the disciplinary processes. This is a very short summary of those that I have been able to identify in the available time but there may be others.
31. The first is a stream of work developed in conjunction with CRASAC, including a draft SVM policy. This has been undertaken with the project manager for the 'Respect' programme, who co-ordinates ongoing work with CRASAC and the ISVA through the Wellbeing Team. Constraints of time and resource have meant that the policy has remained in draft; I understand that the draft is based on the policy at Durham University and would therefore have to be worked through and reconsidered in the Warwick context.
32. A second is a paper on developing educational interventions in the context of restorative justice which the Sexual Violence Task Force have left with the Registrar. A third is an initiative on 'Bystander Training' run jointly by the Institute for Teaching and Learning and the Student Union. A fourth is work through drama on race and gender to which I was anecdotally alerted by the Gender Task Force.

³ The additional 0.5 FTE was attributable to safeguarding

Other institutions

33. Finally, I should say that I looked at elements of the disciplinary proceedings from a number of other institutions for assistance. They are all suggestive and helpful, but have sprung from lengthy policy work and consultation in their particular context, and so are not necessarily readily transferable to other institutions.
34. With that caveat, however, I was particularly struck by the simplicity and coherence of the policies of some other institutions. Oxford University set out misconduct and an indicative penalty or range of penalties in a tabular form; Durham University set out a SVM Policy and Procedure Guidance Flowchart, which connected to a clear and discrete but comprehensive and 'joined up' policy. I gather that the Registrar is already seized of the need to collate and distill the useful features from other institutions, and so I have not made a separate recommendation on this point.

Drawing the threads together: from 'lessons learnt' to 'future proofing'

35. As before, I hope that the narrative set out above provides the backdrop for the recommendations at Annex A. I have not been able to make any recommendation for any alternative process which is 'future proof', but I have made a 'best guess' at practical measures to equip the existing process for the imminent challenges. There is, in fact, a great deal of overlap between the two halves of the review, and indeed there is only one purely practical recommendation that relates solely to the second half of the review - the case management system (9).
36. The second half of the review has, however, strengthened my view about the importance of the changes I have suggested. If there are going to be more cases of SVM, then there must be more investigators with specialist skills (1); if there are going to be more complex cases, then panels need to be equipped (13-22); if there are going to be more cases on which there may be strongly conflicting views, or where the balance of fairness as between complainant and respondent is in dispute, then it is essential that, at least, all parties understand the position (12) and there is some built-in reflexivity, so fairness and impartiality is always considered (16 & 23), and, if necessary, legal advice is taken on the proposed course of action.
37. The second half of the review is also responsible for the three broader recommendations that I have made:
 - (a) to consider the formulation of comprehensive guidance which sets out the aims, principles and procedures of the University discipline processes (27);
 - (b) to consider increasing the range of resolutions and sanctions available across all complaints — including, where appropriate, skilled mediation and restorative justice alternatives (28);
 - (c) the formulation of a specific sexual violence and misconduct policy (29.)

Guidance on the disciplinary processes

38. The rationale for the formulation of comprehensive guidance for the disciplinary processes – which is a tentative recommendation as it may be that it is considered unnecessary - arises from the new challenges which the processes are facing.
39. It is obvious what a disciplinary panel isn't: it isn't a criminal court, or any other kind of court; it isn't a professional misconduct panel; it isn't a tribunal. It is, however, less obvious that everybody understands what it actually is – a University body with a general duty of fairness deciding on breaches of regulations by students, where the ultimate sanction is expulsion - or what exactly what duties it has a result of that status.
40. It therefore seemed to me a timely moment to consider setting out all the disciplinary materials and guidance in one place, for a variety of reasons. One is that the present disciplinary landscape makes legal challenge to any university process more likely, and so it may be practically helpful to have all materials to hand, and its conceptual house in order. Secondly, and relatedly, if panels are to make complex decisions with any confidence, they must have a reasonable sense of where the boundaries of fairness are likely to lie. They are already deciding these issues: I have seen a decision on the limits of cross-examination of a complainant – but I think it would be helpful to have a systematic sense of the legal and policy basis for, and approach to, the issues that panels are likely to encounter.
41. It might also help in the creation of a language that more accurately reflects the policy / breach context, rather than persisting with the language of the criminal justice system. Perhaps most importantly of all, however, it might assist in providing some of the transparency that was missing in the 'group chat' case - so that even if a particular case could not be reported, the underlying principles of the disciplinary system, and the underlying philosophy on appeals or sanction, could be set out.

Restorative justice

42. The second broader recommendation is directed towards refocusing the discussion and debate on how to deal with complaints. So far, these discussions have focused purely on traditional disciplinary processes and their sanctions – and, in fact, in the course of interviews, I also noticed the view that any other resolution was regarded as inevitably trivial.
43. This seemed to me unfortunate as – crucially, depending on the case and the wishes of the complainant - there might be more positive and innovative resolutions available than via a formal disciplinary hearing. This was a theme in the interviews, material in development from the Warwick University Sexual Violence Task Force, and online responses which spoke persuasively of the possibilities both of varieties of skilled mediation in some instances, and of restorative justice in others.
44. As I have discovered, this is a complex and highly contested field. The policy material I have looked at suggests that there is considerable international agreement that mediation is not good practice for SVM – though it may well be suitable for other sorts of cases. This is, in part, because mediation is essentially a neutral process, with no attributing or admission of responsibility, for dispute resolution - whereas cases of SVM involve harm done by one person to another, without their agreement or consent.

45. Restorative justice is fundamentally different from mediation in that a respondent must acknowledge their responsibility for their harmful actions. It has clear potential benefits for complainant / victims by making them central: it encourages early admissions of wrongdoing, gives them greater voice in the process and allows them to share the impact of their experiences. It may also, arguably, be more effective at prevention and rehabilitation than conventional disciplinary processes. Restorative justice programmes have been used - and were considered in a recent Select Committee report - in the criminal justice context.
46. It should be noted, however, that restorative justice remains controversial in the context of SVM – though perhaps less so than mediation - and there is criticism that it “privatises” and minimises the effect of SVM. There are also serious risks if undertaken without adequate resourcing or without highly trained staff.
47. I made some enquiries with sector experts about the first steps to policy formation; I understand that even these could only follow a period of review and consultation with the University community. Any review group would have to have student representatives, victim-survivors, experts in sexual violence, like CRASAC – depending on their views, which I have not canvassed - restorative justice professionals with experience in SVM, and University management and staff connected to the disciplinary processes and Wellbeing Support. The remit of the review group might include evidence-gathering on the use of restorative justice in the university context for SVM cases, canvassing options amongst the university community including victim-survivors, a review of training and resourcing and development of process.
48. Even this one recommendation, therefore, would involve a considerable investment of time and resource, and might only be suitable for a relatively limited number of cases. I have hesitated whether to include it, but have done so because it seems to me only helpful that a wide range of serious and credible choices be available to those who bring complaints – and also important that, as an educational institution, the University looks more widely than the options prescribed by traditional discipline and punishment. It is also the case that there is already academic expertise in restorative justice within the Warwick community, albeit in a different context.

SVM policy

49. The rationale for formulating a distinct sexual violence and misconduct policy is more straightforward. I have set out a snapshot of the initiatives around sexual violence and misconduct already in progress at Warwick. These include a draft policy still in development. I have also referred to other disparate aspects of policy development, procedures, support and training. In my view, these should be ‘joined up,’ and championed by the senior leadership of the University, so there is a clear policy against which other new policies and practices in development can be considered.