

Overseas Students Ombudsman

Council of International Students
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Overview

- What is an Ombudsman?
- Overview of Overseas Students Ombudsman's role
- Internal complaints and appeals
- Common complaints to OSO
- What do we do with complaints?
- What we look for
- Possible outcomes
- Case studies



What is an Ombudsman?

- An Ombudsman investigates complaints about businesses or government agencies
 - Free, impartial, independent
- Different Ombudsmen deal with different governments and industry sectors
 - Eg Commonwealth Ombudsman – Australian Government agencies such as DIAC
 - Telecommunications Industry Ombudsman – telephone and internet companies
 - Fair Work Ombudsman – employment issues



The Overseas Student Ombudsman

- The OSO investigates complaints from overseas students about private education and training providers
 - State Ombudsmen investigate complaints about public providers eg Universities
- We work with providers to help them improve their internal complaints and appeals processes
- We report to government on trends and systemic issues that we see from the complaints we investigate



The Overseas Student Ombudsman

- Australia has a strong consumer protection framework for overseas students
 - Overseas Students Ombudsman
 - Tuition Protection Service
 - Industry regulators
 - General consumer law principles
- We mostly focus on the consumer protection principles in the Education Services for Overseas Student Act and the National Code
- We also apply general Consumer Law principles



The Overseas Student Ombudsman

- We receive most complaints directly from students
 - Can be a former or intending student, as well as a current student
- Students can nominate someone else to complain on their behalf (in writing)
- Complaints can be made through our online complaint form, by phone, email, post or in person
- We have received more than 1,000 complaints since we began operating in April 2011



The Overseas Student Ombudsman

- You should try first to resolve the complaint directly with the provider
- You can complain to OSO if:
 - The provider refuses to deal with the complaint
 - The provider doesn't finalise the complaint in a reasonable time
 - You are unhappy with the outcome



Internal complaints and appeals

- Providers must have a documented complaints and appeals process and must:
 - Ensure their complaints and appeals policy is easily accessible
 - Keep written records of complaints
 - Acknowledge promptly, and keep students advised of progress
 - Allow students to have a support person or representative



Case Study

Ms L enrolled in a hospitality course at XYZ College. Soon after arriving in Australia, she realises that she has been overcharged for her course fees. One day after class Ms L mentions this to Lynn, the receptionist. Lynn says that she will tell Sue from accounts and Sue will get back to Ms L. Ms L does not hear back from the College, so two weeks later she contacts the Overseas Student Ombudsman.

- Would we investigate?
- What could Ms L do differently?



Tips for complaining

- Read the provider's complaints and appeals policy
- Complain in writing
- Clearly identify what the complaint is about
- Clearly identify the outcome you want
- Be calm and polite
- Keep records – copies of emails, letters etc
- Persist – contact the provider if they do not contact you
- Make sure you get a written outcome



Discussion

- What are your experiences with provider's internal complaint and appeals?



Common Complaints to OSO

- Transfer between registered providers
- Formalisation of enrolment (written agreements)
- Monitoring course progress
- Monitoring attendance
- Refunds



When you complain to OSO

- We consider whether we can investigate your complaint
 - Is it in our jurisdiction?
 - Action taken by a private provider (not South Australia)
 - In connection with an overseas student
 - For example we can't investigate:
 - Complaints against landlords about a student's accommodation
 - Complaints against employers about wages and conditions
 - Complaints about public providers
 - If we can't investigate, is there someone else who can?
 - Fair Work Ombudsman
 - State Ombudsmen for public providers



When you complain to OSO

- We also consider whether we should investigate your complaint:
 - Is there a genuine problem?
 - Have you tried using the provider's internal complaints process?
 - Is there a possible remedy?
 - Is there a better avenue?
- Refunds:
 - Provider defaults and visa refusals - refer immediately to TPS
 - We are likely investigate cases where the provider and the student disagree about entitlement to or amount of refund



How we investigate

- We are independent and impartial
- We investigate in private
- We ask the provider to explain what they did and why they did it
- We give the provider an early opportunity to resolve any problems
- We try to get all relevant documents from both parties



How we investigate

- In refund cases, we particularly look at:
 - Was the written agreement signed before course money was paid?
 - Does the written agreement:
 - Accurately state the study periods?
 - Correctly itemise the relevant fees?
 - Include the provider's refund policies?



How we investigate

- In transfer cases, we particularly look at whether the provider:
 - Has implemented and properly applied a student transfer policy
 - Considered whether the transfer would be detrimental to the student
- In inadequate course attendance and progress cases, we particularly look at:
 - has the provider implemented and properly applied course progress and attendance policies
 - sent appropriate warnings



How we investigate

- In almost every case, we look at whether the provider has a fair and accessible complaints and appeals policy, and has applied it properly policy in the particular case
- We also look for signs that other students may have been affected by the same or similar problems
 - is there a systemic issue?



How we investigate

- When we receive all the information we need, we decide:
 - Did the provider follow the legal rules?
 - Are the provider's policies and procedures fair and reasonable?
 - Did the provider follow their own policies and procedures?
 - Did the provider act fairly and reasonably in this case?
- We give both sides an opportunity to comment before we finalise our investigation
- Where we find problems, we try to make clear and helpful recommendations to the provider



Possible outcomes

- If the provider made a mistake or acted unfairly, we can ask them to:
 - Apologise
 - Change or reconsider a decision
 - Change their policies or procedures
 - Refund part or all of your fees
 - Not report you to DIAC for non-compliance with visa conditions
- If we find that the provider acted correctly, we explain why



Possible outcomes

- If we think there is a wider systemic issue, we may publish a public report
- If we consider that the provider may have breached the ESOS Act or National Code, we may notify ASQA



Case Study

Mr A's provider told him that he would be reported to DIAC for inadequate course progress. When Mr A complained to our office, we agreed with the provider that Mr A's course progress was not satisfactory. However, we found that the provider had not properly applied its appeals policy, and had not given Mr A an adequate opportunity to comment on its decision.

- What should we do?



Case Study

Ms B complained that she had withdrawn from her course one week before it started, but her provider had refused to give her a refund. The provider's refund policy was included in Ms B's written agreement. The policy said that no refund would be given if a student withdrew less than four weeks before the course start date.

- Should Ms B get a refund?
- Would it be different if the refund policy had not been included in the written agreement?



Case Study

- Mr C enrolled with a provider to study in Australia, but his visa was refused. Subsequently Mr C enrolled again with the same provider and this time his visa was granted. However, he withdrew from the course a few weeks after it started. He had pre-paid 50% of the course fees. The provider engaged a debt collector to pursue Mr C for the other 50%. Our investigation found that Mr C had not signed a new written agreement with the provider, which had relied on the previous agreement.
- Outcome?



Case Study

Mr D enrolled in a 10-week fitness training course. The contact hours for the 10 week course were 7 hours/day, five days/week. Mr D found a part-time job that sometimes clashed with his course contact hours. After 3 weeks, the provider sent Mr D a warning that he was at risk of being reported for inadequate attendance. Mr D then read the provider's attendance policy, which required Mr D to attend 90% of course contact hours.

- Could the OSO help Mr D?
- What should Mr D have done differently?



Case Study

Ms E complained to our office that her provider would not give her a letter of release allowing her to transfer to another provider. We found that Ms E did need a letter of release because she had commenced her course less than six months earlier. However, the provider had not shown that the transfer would be to Ms E's detriment.

- What should OSO do?



Case Study

Ms F's provider decided to report her to DIAC for inadequate attendance. The provider calculated that she had attended only 65% of the contact hours for a particular unit of study, and said that reporting was mandatory under Standard 11 and its policies. We found that the provider had miscalculated the number of course contact hours, that Ms F had actually attended 78% of the unit's contact hours, and that reporting was discretionary.

- Outcome?



Case Study

Mr G complained about his provider's decision to report him to DIAC for poor attendance. As part of our investigation, we asked the provider for evidence that it had sent Mr G a warning letter before his attendance fell below 80%. The provider provided proof that it had sent a warning to his home address. However, Mr G had changed address without telling his provider and Mr G never received the letter.

- Outcome?
- What difference would it make if Mr G had notified the change of address but the provider had not updated his record?



Case Study

Mr H withdrew from his course before finishing and returned home. He asked his provider for his OSHC, so that he could obtain a partial refund of the premium. He complained to us when the provider failed to send him the card in a reasonable time. We found that his provider had never paid his OSHC fees to the health fund.

- Remedy?
- Other action we could take?



Avoiding Problems

- Before you enrol:
 - Read the written agreement carefully before you sign it
 - Read the provider's refund policy carefully as well, before signing the agreement
 - Know the student visa conditions
 - Read the provider's attendance and course progress monitoring policies – some are stricter than others



Avoiding Problems

- When you have enrolled:
 - Get a copy of written agreement
 - Read your provider's policies and procedures
 - Tell your provider if you change address so that you receive any written warnings or important information
 - Get your Overseas Student Health Cover (OHSC) card right away when you arrive
 - Talk to your provider as problems arise (don't let things drift)



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