

DATA PROTECTION ACT/HUMAN RIGHTS ACT

The Data Protection Act and Human Rights Act have implications for Higher Education and practices within the University:

- the way in which the University records and makes accessible to students decisions regarding their performance at Boards of Examiners and in particular, the consideration of Extenuating Circumstances
- the right of students to have access to comments made by Internal/External Examiners on examination scripts

Conduct of Boards of Examiners

Under the Act, students have the right to see any written record relating to any decision taken in respect of them by a Board of Examiners, including those sections of the minutes of the Board of Examiners in which reference is made to their performance. This includes any discussion where students are named or referred to by identifiers, such as UB numbers. Obviously, individual students will not be permitted to see material relating to any other students.

This has implications, in particular, for the way in which the consideration of Extenuating Circumstances is recorded. As you are aware, the University's policy in the past has been to discourage detailed discussion on the personal circumstances of individual students at the Board of Examiners itself (External Examiners had expressed concern about this practice, feeling that it was inappropriate to discuss sometimes intimate personal details at a full Board, quite apart from the amount of time expended.) The University, therefore, agreed that all cases of Extenuating circumstances be considered by an Extenuating Circumstance Sub-Committee which looked at cases in detail and made recommendations to the Board of Examiners.

A change to the Policy and Procedures for Managing Cases of Extenuating Circumstances (December 2009) relating to the reporting and approval of extenuating circumstances means that Faculties must also put in place a mechanism for receiving, considering and granting approval **in advance** when a student has not attended an assessment or missed the deadline for the submission of assessed work. Decisions will be made by specified staff within Faculties regarding the veracity and relevance of evidence submitted as part of any request for extenuating circumstances in relation to non-submission of assessed work and the length of the extension to be granted. Decisions made by specified staff as part of the arrangements put in place by Faculties for the approval of non-attendance at assessments in advance, will be confined to a judgement as to whether the extenuating circumstances are genuine and relevant. They will not make any recommendation to the Board of Examiners as to an appropriate course of action in relation to a student's progression and award.

The Extenuating Circumstances Sub-Committee will consider only those cases in which students are claiming impaired performance, after sitting an assessment or submitting a piece of work, and the cases of those students who are claiming that they were unable, for good cause, to notify the University and obtain approval in advance for non attendance/submission.

Faculties are required to keep a confidential record of the decisions made by specified staff in both the above categories, as well as formal minutes of the Extenuating Circumstances Sub-Committee and Board of Examiners.

Thus, Faculties need to be aware that a student is entitled to have access to that part of the record of the decision made or the relevant section of the minutes of the meeting of the Extenuating Circumstances Sub-Committee and the Board of Examiners which relates to the student concerned. Any decisions made will need to be recorded in a concise, precise and relevant way, which fulfils the requirements of the Act and allows an 'extract' to be given to an individual student without breaching confidentiality in matters relating to other students. If information cannot be disclosed to one student without disclosing personal data about a third party, the identity of the third party can be withheld by erasure of the name or identifier from the disclosed material.

In summary, Faculties are asked to be mindful of the fact that students may ask to see the records/minutes. Thus the formal record needs to include a statement to the effect that a claim of extenuating circumstances relating to an individual student was received and considered, whether the claim was accepted or not and if not, why not? If accepted, what was the resulting decision (in cases where an extension has been requested). If, in the past, a fairly bland statement was made, for example, 'medical evidence was taken into account in the case of the following 5 students,' - this will not suffice. Faculties need to record a more specific, individual statement which is concise and refers to the documented evidence which informed the decision. (Obviously, given the increase in the number of students and the growing numbers who claim extenuating circumstances, it is not possible or sensible to go into great detail. Staff are advised to use their judgement and experience to ensure that there is sufficient detail to fulfil the basic requirement.)

Model minutes are available to assist those responsible for minute taking. These show the format to be followed for the Extenuating Circumstance Sub-Committee. The subsequent minutes of the Board of Examiners which receives recommendations direct from the Extenuating Circumstances Committee should follow the format of the model minutes for Boards of Examiners. The Board of Examiners will receive the recommendations of the Extenuating Circumstance Sub-Committee, via the mark sheet, and either approves or rejects these recommendations. If the Board of Examiners rejects a recommendation then the minutes need to reflect this, recording the new decision and indicating the basis of this new decision. These model minutes should be read in conjunction with the 'University Policy and Procedures for Managing Cases of Extenuating Circumstances' which form part of the Guide which is updated annually in preparation for Boards of Examiners' meetings.

Examination Scripts/Assessed Essays

Examination scripts are expressly exempted from the Act which means that the University is under no obligation to permit examination candidates to have access to either original scripts or copies of the scripts. 'Examination' means 'any process for determining the knowledge, intelligence, skill or ability of a candidate by reference to his/her performance in any test, work or other activity.' Thus written assessed work, essays, projects, reports, fieldwork etc are covered. However, **all comments on scripts** made by examiners, both internal and external, are required to be released to students on request under the Act. Faculties would also need to ensure that examiners' comments on examination scripts, assessed work etc are capable of being produced in a meaningful form and are intelligible and appropriate.

Current University policy therefore recommends that examination scripts are not annotated as to do so confers rights to the student, which would then require the University to make available such scripts to students, if requested. Examiners should not annotate the scripts but record comments on a separate sheet(s).

For those Faculties, however, who do routinely continue to annotate scripts, the University has reviewed the advice given regarding the implications of the DPA in the light of subsequent legislation, namely the Freedom of Information Act. The original guidance advised that where scripts had been annotated, the candidate must be notified of this fact and had rights of access to the script within 40 days of notification. The University has moved away from the time period defined in data subject access to one in line with University policy on feedback to students and the QAAHE Quality Code on Assessment:

‘Institutions should ensure that appropriate feedback is provided to students on assessed work in a way that promotes learning and facilitates improvement.’

The University does not wish to impose an obligation on students (or staff) to apply for this feedback under data subject access timescales (ie. Within 40 days of notification and with accompanying £10 fee.) Instead Faculties should aim to provide feedback to students within a period which is valuable and relevant to the student.

Faculties will wish to decide how to notify students of the fact that their coursework/examination scripts have been annotated, and to decide how to make the comments available to students on request. Faculties may wish to develop their own operational guide in order to ensure that these procedures are implemented; for instance, some Faculties may wish to inform students of their rights through programme handbooks, others may wish to set up specific periods of access to annotated scripts/coursework and notify students of this fact by email.

The policy applies not only to our home students but also to students on our programmes offered overseas.