

Response To Review Report of DISCHO

University of Cape Town

11 January 2016

First of all, I would like to extend a sincere word of appreciation and thanks to the Panelists. I also want to acknowledge the fact that the Panel operated under severe time constraints, which may not have allowed for more exploration and in-depth discussion on many issues, especially the ones I critique and refer to below.

I am responding only to issues that I feel is pertinent for immediate attention. I trust that the ongoing process of implementing the recommendations will afford more opportunity for the exchange of ideas, suggestions and debate. I have made attempts to consolidate and combine Rashieda's responses in this document.

General

Rashieda raised the following issues (and I agree):

- It is not clear from the Review report if DISCHO is complying with the three social justice policies that informs the work that we do, and more importantly how does it compare with relevant policies and legislation on these matters, and this needs to be highlighted. It can hardly be stated that DISCHO is failing at effectively applying and implementing these social justice policies, if they cannot show us how it is done or should be done.
- The report for instance does not state how long it takes for matters to be resolved, and it does not state clearly if DISCHO followed the wishes of a complainant. This is important as it affects DISCHO's credibility and effectiveness.
- The issue of confidentiality is complex, but one of the most important fundamentals of confidentiality is that the complainant and the respondent is the holder of that privilege. DISCHO is not the holder of the privilege, but merely ensures that the right is protected, and therefore confidential information cannot be divulged to anyone else about a matter, other than the party self. Only a party can decide with whom to share confidential information with. Unfortunately not all structures at the university appreciate the nature of confidentiality, and the lack of confidentiality has on occasion, resulted in more emotional and psychological harm and damages to a party.

Findings & Recommendations

Training and Education: Line-managers.

There are a number of misconceptions (by interviewed stakeholders) that have been recorded by the Panel. These include perceptions about the operation, scope and effect of No-Contact Orders. If there had been more effective engagement from Line-managers to know and understand the policies relating to these aspects, less confusion would have existed. More and focused sessions are necessary to explain procedures and orders such as No-Contact Orders, so that the views and misunderstandings heard by the Panel could be dealt with effectively at a much earlier stage. I would like to suggest that it is necessary to present information sessions not just about the core content of the policies, but also explanations for line-managers on the application and granting/refusal procedure in No-Contact Orders (such as the fact that the University is unable to issue no contact orders against staff members: Employer Relations deal with staff discipline and to date, have not been able to issue a no contact order as it lacks authority and capacity to do so (see sections 3.8 and 3.9).

In this context, Rashieda has added the following, and I absolutely agree:

‘Apart from making the training compulsory as stated in 3.7 of the report, I would also have appreciated if the review panel could provide suggestions on how to ensure line managers comply with the respective social justice policies. This could be done by them completing perhaps a HR form

- where they indicate when they received their social justice training,
- when last they attended a knowledge enhancement session, and
- how they dealt with a complaint when it was reported to them.’

The recommendations pertaining to future training (*‘Training for line managers, student councils, residence wardens, the SRC, UTAC, UHRC and Faculty Transformation Committees on social justice policies should be compulsory*) are commendable. It should, however, bear the following in mind:

Firstly, it is not clear whether HR will accept the rather onerous responsibility of training, especially given the sheer size and scope of training that is required. If this challenge is accepted, then DISCHO will be the most appropriate office to provide assistance, guidance and co-facilitation to HR in this regard.

Secondly, the capacity issue will need to be addressed at the level of DISCHO’s operational and training capacity first. The latter will have to provide detailed and focused training to HR trainers (if, indeed, that is going to be accepted) on the policies, and related issues, such as No-Contact Orders. Train-the-Trainer workshops will provide some workable solution, but then the issue of resources within DISCHO will have to be addressed more urgently. At present, the office is

still functioning without any administrative support. The continuation of disabling this office in this manner will not make the recommended training projects possible.

From a resourcing and staffing point of view, this office has remained disturbingly out of balance compared to the rate of expansion of the University in terms of staff, students, interests and a developing campus community.

Mediations (6.3.10)

It is not clear on what basis the finding of the Panel is articulated with regard to the 'huge concern of the students' relating to DISCHO's 'actively pursuing' ADR as option under the informal policies. Statistics reveal that close to 170 parties were involved in mediations since 2001. The tables provided by the Panel do not offer insight on the issue of feedback with regard to those that have actually been involved in mediations. The following extract from the report is problematic:

'Many students interviewed felt that they were often left with little choice in the decision on which route to follow and that DISCHO leaned heavily on alternative dispute resolution processes even when it came to sexual assault.'

It is unclear in which capacity (interviewed or surveyed) students were giving feedback. It is also not clear if they (or some) were actually parties to mediations. If this has been done as part of the Monkey Survey, it would have been helpful if it could have been highlighted in the relevant table. As it stands, it assumes an undeserved statistical presence in clear contradiction with the Panel's own disclaimer earlier in 6.2.1: *'With a response rate this low, the panel felt the results cannot be relied on as an accurate assessment of the services rendered by DISCHO.'*

The low response rate of 50 respondents is amplified even more when compared to the number of clients since the inception of the office (close to 1000).

I find the following extract from the Panel's recommendations problematic: *'To this end, the panel suggests that the informal route for complaints needs to be thoroughly rethought; in its current form, as it is leading to the perception amongst almost all stakeholders that complainants are being asked to shoulder the burden of accepting an ADR solution to their own detriment.'*

One would assume that all stakeholders were asked and/or prompted about the option of mediation. It is totally unclear how the assumption, that accepting the option ('burden') of mediation, would automatically equate into a sweeping conclusion of *'accepting an ADR solution to their own detriment.'* If all stakeholders (including the mediators?) agreed to that statement, then this signals a warning that much more should be done to clear present misconceptions about how the process of mediation works. The statement also does not reflect the experience of those who had valuable engagements as a result of their choice to make use of mediation. This assumption also undermines the autonomy of complainants and respondents who exercised a conscious

choice in favour of mediation. The right and ability to make such a decision is, incidentally, one of the cornerstones of mediation. No mediator will facilitate a mediation session without all the basic requirements having been met; and one of the cornerstones here would be the right to self-determination.

To simply refer to the fact that the Director is championing mediation on campus, and lump it together with a reference to the options of apologies contained in the relevant policies, and then suggest that mediation is inappropriately advanced, is unsubstantiated and unfair. The following extract also assumes a lack of diligent approach by DISCHO, which is unfounded: *‘These and assault cases need to be approached from within a trauma model that offers appropriate support to complainants, that acknowledges complaints of this kind as widespread, and vigorously avoids the perception that the rights of alleged perpetrators in any way outweigh those of the complainant.’*

There appears to be an assumption about the approach (or lack of) followed by DISCHO. The suggested modus operandi (or lack of) that was, however, never interrogated during interviews with DISCHO staff, which would have been opportune to investigate and invite comment or rationale, given the severity of this allegation. This is a pity, as the Panel might have been able to consider evidence detailing complexity, the kind of preparation and the level of support offered to complainants in deciding to pursue this route, and particularly in the context of sexual harassment.

Rashieda has added a reference to an additional legal framework in this context, namely that it must also be noted that Labour Relations Act makes provision in section 7.3 of the Code of Good Practice in Sexual Harassment Cases for mediation where it states that:

‘[i]t may be sufficient for the employee concerned to have an opportunity where she/he can explain to the person engaging in the unwanted conduct that the behaviour in question is not welcome, that it offends them or makes them uncomfortable, and that it interferes with their work.’

Notwithstanding this provision, it has always been our practice that any endeavour to bring together a complainant and respondent in a context that is often characterized by inequality in terms of positioning and power relations, should be done with circumspection and careful consideration. I regret not having been offered the opportunity to at least refer and substantiate past efforts as evidence to this.

An Independent DISCHO:

Section 8.2 raises the question of independence. This has been thoroughly canvassed and dealt with in my earlier submissions to the Panel. To reiterate: making DISCHO part of a cluster has shown the following obstacles, in that it:

- Creates an additional gateway in reporting lines, one that detracts and filters the sense of urgency attached to reporting directly to a member of the Executive Management,
- Diminishes the authority of the office, and its ability to manage and take decisions effectively, and
- Impacts on the line of communication with senior line-managers and campus community in general.

I would suggest that DISCHO once again reports directly to the DVC with the Transformation portfolio, to re-establish clear lines of communication, instant access to information that is (and will be) crucial in terms of diversity and transformation management to the University.

I look forward to the opportunity to engage with further and in-depth discussions of working towards the implementation of negotiated and accepted recommendations.

With thanks,

Francois Botha

Director: DISCHO