



PATHWAY PROJECT

CONSULTATION ON THE DEVELOPMENT OF THE **OIA** SCHEME

Issues and Questions Paper

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October 2008

ISSUES AND QUESTIONS PAPER

EXECUTIVE SUMMARY

The OIA is the designated operator of the student complaints Scheme established under the Higher Education Act 2004. After four years of successful operation, the OIA Board has resolved to consult on the further development of the Scheme through a Pathway Project. This will be conducted by the Independent Adjudicator and Chief Executive leading a small project team, and will be consultative and evidence-based. It will draw on both qualitative and independent quantitative research to find out the views of complainants, their representatives, Higher Education Institutions in England and Wales (HEIs), student bodies, HE sector stakeholders, and other interested parties. Ministers in the Department for Innovation Universities and Skills, the Welsh Assembly Government and other HEI, student and sector stakeholders have been fully consulted in launching this Project.

Since its inception the OIA has received 2375 Scheme Application Forms, and reviewed and (up until the end of June 2008) closed 2062 complaints by students about HEIs. Since 2004, 26 per cent of all eligible complaints have been found to be either Justified or Partly Justified. All OIA Adjudications, including the award of approximately £500,000 in compensation to students have been complied with. In addition, HEIs have responded positively to a number of suggested changes to their regulations and practices. The OIA now has an annual turnover of £2 million per annum and the unit cost of handling each complaint is approximately £2000. This represents significant value for money when compared to the alternative of litigation through the Courts.

Issues and Questions

General

1. What are the strengths and weaknesses of the current system for handling student complaints about HEIs?
2. Is the current Scheme an improvement on previous arrangements?
3. Has the existence of the OIA improved the way in which HEIs engage with students in the areas of student complaints and appeals?

Funding of the Scheme

4. Is the current funding model appropriate? If not, are there alternative funding arrangements you would suggest?

Remit

5. Is there a public interest in the OIA developing its remit, for example by:
 - a. including students studying for foundation degrees at Further Education Colleges?
 - b. reviewing individual complaints about pre-registration admissions?
 - c. including in the Scheme non qualifying institutions such as private degree awarding bodies?

Accessibility

6. Do you think that the current mechanisms for making students aware of OIA processes are adequate? What improvements, if any, would you suggest? Are there specific areas where students are not aware that they can bring a complaint?
7. Do the existing arrangements ensure that the OIA is sufficiently accessible for students to make a complaint? How might the OIA improve its website and communications?

Efficiency and Effectiveness

- 8.** How might the OIA increase its operational efficiency and improve the timeliness of decision-making?
- 9.** Do you have any comments about the way in which the OIA reviews complaints or about the quality and consistency of its decisions?
- 10.** Are existing OIA processes sufficiently user friendly and transparent?
- 11.** Do you have any suggestions for amending the OIA Rules to increase effectiveness?

Impact

- 12.** Does the OIA offer effective and appropriate remedies for students whose complaints are upheld?
- 13.** Should OIA adjudications be published?
- 14.** How might the OIA share better its knowledge and experience of complaints handling and promote good practice?

Governance

- 15.** Is the independence and impartiality of the Scheme safeguarded sufficiently?
- 16.** Is the present composition of the Board appropriate? Should there be additional student representation?

- 17.** Have you anything further to add?

How to respond

The Independent Adjudicator would welcome replies to any or all of the questions set out above. It is not necessary to have had experience of the OIA's complaint handling process to respond, but if you have had experience, please feel free to refer to it. The Independent Adjudicator intends to produce a published Report of the Pathway Project recommendations in the summer of 2009.

The deadline for submissions is 29 January 2009, giving a full three months for this Consultation.

Submissions must be received via the form on our website www.oiahe.org.uk/pathwayproject

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1. INTRODUCTION AND BACKGROUND

- 1.1 The Office of the Independent Adjudicator for Higher Education (“OIA”) operates an independent student complaints scheme pursuant to the Higher Education Act 2004. The OIA is the designated operator of the Scheme with effect from 1 January 2005. All Higher Education Institutions in England and Wales are required to comply with the Rules of the Scheme. Decisions of the OIA are subject to Judicial Review.
- 1.2 The first Independent Adjudicator for Higher Education was Baroness Ruth Deech and the first Chief Executive was Mike Reddy. Following the retirement of Baroness Deech in May 2008, Rob Behrens was appointed Independent Adjudicator and Chief Executive and has been tasked by the OIA Board with carrying out the Pathway Project.
- 1.3 There are currently 25 OIA staff members including a small management team, 13 case handlers and 8 administrators. This is supplemented by a small team of consultant case handlers. The Independent Adjudicator has full operational independence for adjudication and reports to the Board on matters of policy (see paragraph 4.24 below).
- 1.4 This paper sets out the Terms of Reference for the Project, the expected outcomes, the current arrangements for handling complaints against HEIs and how to participate through the submission of evidence.

2. TERMS OF REFERENCE FOR THE PATHWAY PROJECT

- 2.1 The Pathway Project will examine the OIA’s operations in the context of the mandates of the Scheme (the Higher Education Act 2004, Chapter 8, the interpretation of this Act in litigation, and the “Rules” of the Scheme), in order to:
 - a. Establish the areas where current processes could be improved to enable an even more effective “review of unresolved complaints by students about acts and omissions of HEIs and the making of recommendations” [OIA Rules 2008, paragraph 1].
 - b. Identify what changes, if any, to the mandate may be required to enable the OIA to deliver a service which is:
 - i objective and fair to student complainants and the HEIs whose actions are complained about;
 - ii customer focused and reflective of wider good practice;
 - iii [as set out in Schedule 2 of the 2004 Act] effective, not-for-profit, free to complainants, timely, independent, and competent
 - c. Consider how the Scheme might develop in the next five years so that it retains its coherence, utility and the satisfaction of its users and stakeholders.

3. OUTCOMES OF THE PATHWAY PROJECT

- 3.1 The Independent Adjudicator will provide, through a report to the Board, and for subsequent publication, the following outcomes based on research evidence:
 - An analysis of the strengths and weaknesses in the current complaints system based on extensive research including qualitative and independent quantitative surveys of the views of complainants and HEIs;
 - Recommendations for improvements in the complaints handling and supporting arrangements taking into account the considerations set out in 2.1(c) above;
 - Following consideration of the recommendations by the Board a timetable for consultation on and implementation of the agreed recommendations.

4. COMPLAINTS AGAINST HEIs - THE CURRENT ARRANGEMENTS

- 4.1 The statute-based Scheme for student complaints has been in operation since January 2005 replacing previous arrangements including the allocation of complaints by some Universities to individual Visitors. A transitional scheme allowed participating HEIs to become familiar with the new arrangements from March 2004.

What are the strengths and weaknesses of the current system for handling student complaints about HEIs?

Is the current Scheme an improvement on previous arrangements?

Has the existence of the OIA improved the way in which HEIs engage with students in the areas of student complaints and appeals?

- 4.2 The Scheme is free to students and funded by subscriptions from all of the participating HEIs. The level of subscription payable is based on the number of registered students at the HEI, taken from the Higher Education Statistics Agency data. A list of participating Higher Education Institutions covered by the OIA is available on the OIA website (www.oiahe.org.uk).

Is the current funding model appropriate? If not, are there alternative funding arrangements you would suggest?

- 4.3 Under the current Rules, anyone who was or is registered as a student at a participating HEI can complain about 'any act or omission' of that institution, including:

- a programme of study or research for which he or she is or was registered;
- a service provided to him or her by the HEI;
- a final decision by the HEI's disciplinary or appeal body;

The OIA can also review complaints about a participating HEI from students registered at other institutions whose course leads to an award of that HEI.

- 4.4 The OIA does not look at a complaint if:

- it has not been investigated first by the HEI (unless there are exceptional circumstances);
- it relates to a matter of academic judgement;
- the matter is or has been the subject of court proceedings;
- it concerns a student employment matter;
- it relates to an institution which is not an HEI;
- is about admission to an HEI.

- 4.5 A student at another institution, for example a Further Education College, undertaking a course of study or programme of research leading to the grant of an award by a participating HEI, is also covered by the OIA Scheme. There are a number of Higher Education Funding Council for England (HEFCE) and Learning and Skills Council (LSC) funded places in Further Education Colleges. Some of these students are studying for higher education qualifications in the same College as Higher Education collaborative-provision students. However, currently they are not eligible to apply to the OIA as their awarding body is not an HEI. At present they do not have an external organisation to appeal to if they believe that a complaint has not been fairly dealt with.

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Is there a public interest in the OIA developing its remit, for example by:

- a. including students studying for foundation degrees at Further Education Colleges?**
- b. reviewing individual complaints about pre-registration admissions?**
- c. including in the Scheme non-qualifying institutions such as private degree awarding bodies?**

- 4.6** The number of Scheme Application Forms and eligible complaints received has been rising steadily and on an annual basis since 2004. About 20 per cent of Scheme Application Forms have been judged ineligible each year. 344 eligible complaints were received in 2005, 462 in 2006 and 616 in 2007. On current outturns a 10 per cent rise is predicted in 2008 with a further 10 per cent increase in 2009.
- 4.7** 70 per cent of all complaints since the inception of the OIA have been related to academic appeals, examination results and degree classification. Many of these concern the handling of mitigating circumstances and the response to disability-related issues. A disproportionate number of complaints has related to postgraduate study, both taught and research-based.
- 4.8** Before students are able to bring a complaint to the OIA, they must first exhaust the internal complaints procedures of the HEI. The HEI must mark the conclusion of its investigation by issuing the student with a 'Completion of Procedures' (COP) letter.
- 4.9** Students have three months from the date of COP letter to bring a complaint to the OIA. The issuing of a COP letter does not give the student an automatic right to bring a complaint to the OIA. The complaint must be eligible under the Rules and the student must have grounds for complaining.

Do you think that the current mechanisms for making students aware of OIA processes are adequate? What improvements, if any, would you suggest? Are there specific areas where students are not aware that they can bring a complaint?

- 4.10** A complaint must be made in writing using the OIA's Scheme Application Form. The form should be available from the student's HEI or students' union. Alternatively it can be obtained direct from the OIA. The OIA will make reasonable adjustments to this element of the Scheme to meet the needs of students with disabilities.

Do the existing arrangements ensure that the OIA is sufficiently accessible for students to make a complaint? How might the OIA improve its website and communications?

- 4.11** The form must be accompanied by a COP letter and all relevant information about the complaint. An initial screening will take place to see whether the application is eligible for consideration under the Rules. If the OIA decides that it is not eligible at that stage, it will advise the student accordingly and will usually send a copy of the Form and the letter rejecting the complaint to the HEI. In 2007 approximately 17 per cent of applications were rejected at this stage.
- 4.12** Where the OIA decides that a complaint is eligible under the Rules it will conduct a review. Normally, the OIA will first write to the HEI requesting that it provides representations and any further information. If the OIA then considers it has sufficient information it may issue a Preliminary Decision which the parties can comment on before the issuing of a Formal Decision or taking further steps to review the complaint. In 2007 over 34 per cent of complaints were the subject of this "fast-track" procedure.

- 4.13** In all other cases the OIA will conduct a more detailed review. The HEI must provide all relevant information about the complaint. This will then be copied to the student for a response. Once the OIA has all the information it requires it will review the full case and make a decision.
- 4.14** The OIA will normally first send a draft of the Formal Decision to the parties who may comment on material inaccuracies and the practicalities of any draft recommendations. It will consider responses and then issue the Formal Decision. In 2007 26 per cent of complaints were upheld either fully or in part and 8 per cent were settled by an HEI in favour of the complainant without the need for a Formal Decision. The average review time for complaints is six months and there are currently no backlogs.
- 4.15** In deciding whether a complaint is justified the OIA may consider whether or not the HEI properly applied its regulations and followed its procedures and whether or not a decision made by the HEI was reasonable in all the circumstances. Where a complaint is wholly or partly justified, the OIA will also consider whether any particular recommendations should be made. Where a complaint is not justified, the OIA may consider making suggestions or observations where it identifies shortcomings in the HEI's procedures and practices.
- 4.16** Where the OIA recommends that an offer be made to the student it will ask the HEI to keep it informed of the outcome. If the student accepts the offer then he or she may not be able to take the complaint further. Where the OIA recommends that the HEI reviews or changes its procedures it asks the HEI to report back within a specified time period.

How might the OIA increase its operational efficiency and improve the timeliness of decision-making?

Do you have any comments about the way in which the OIA reviews complaints or about the quality and consistency of its decisions?

Are existing OIA processes sufficiently user friendly and transparent?

Do you have any suggestions for amending the OIA Rules to increase effectiveness?

- 4.17** The OIA expects HEIs to comply with Formal Decisions and any associated Recommendations fully and promptly. Under the OIA Scheme Rules the Independent Adjudicator is under a duty to report any HEI non-compliance with a Recommendation to the Board for its consideration and also to publicise the matter in the Office's Annual Report. HEI compliance has been outstandingly good - there has been no history of non-compliance – and is a salient feature of the operation of the Scheme to date.
- 4.18** In making recommendations the OIA has wide discretion. Some of the most common recommendations include:
- To refer back to the HEI for a reconsideration of a final decision or allow the student another opportunity to take an assessment;
 - To ask the HEI to consider changing its internal procedures and to report back;
 - To award financial compensation to the student.

Does the OIA offer effective and appropriate remedies for students whose complaints are upheld?

- 4.19** Decisions by the OIA are confidential and are not in the public domain. The OIA does not currently publish statistics on the number of complaints received against any particular HEI.

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Should OIA adjudications be published?

- 4.20** Comprehensive and suitably anonymised case summaries are published on the OIA web-site and in each Annual Report. The OIA also runs an annual events programme to disseminate good practice.

How might the OIA share better its knowledge and experience of complaints handling and promote good practice?

- 4.21** A significant number of complainants (38 per cent) are post-graduate students. 56 per cent of complainants are under-graduates. 35 per cent of complainants are non-British nationals and 19 per cent are International students from outside the European Union. Only 30 per cent of complainants are under 25 with about half of complainants being between 25 and 40.
- 4.22** There have been 15 applications for Judicial Review of OIA decisions so far and of these only 2 have been granted permission to apply. In December 2007, the Court of Appeal issued a landmark judgment in the case of *The Queen on the application of Siborurema v Office of the Independent Adjudicator* [2007] EWCA Civ 1365. Here, the application was refused on its merits. The judges accepted that there is a broad discretion under the Scheme as to how the review of a complaint is to be carried out and that the decision whether a complaint is justified or not involves an exercise of judgment with which the court will be very slow to interfere.
- 4.23** The OIA is not currently a 'public authority' subject to requests under the Freedom of Information Act 2000. Nor is its appointments process ratified by the Commissioner for Public Appointments. However, the OIA is conscious of the obligations and accountability of the Independent Adjudicator and Chief Executive to the OIA Board, notwithstanding his operational independence. As a corporate body, the OIA fully subscribes to the Nolan Rules and the Seven Principles of Public Life. Further, it respects without question the supervision and scrutiny of its decisions by the Courts.
- 4.24** The primary responsibility of the OIA Board is to safeguard the independence of the adjudication process. Board members are not permitted to access case files or intervene in any way in decisions made by the Independent Adjudicator or his staff. The Board currently has 14 members. A majority, eight, (including the Chair) are Independent Directors, appointed under Nolan Rules of fair and open competition in light of the value and relevance of their skills and experience. Five are nominated by the major representative bodies in higher education in England and Wales. A sixth is nominated by the National Union of Students. Together these six are the Nominated Directors. The representative bodies may also appoint Alternate Directors, to attend Board meetings if their Nominated Director is not available.

Is the independence and impartiality of the Scheme safeguarded sufficiently?

Is the present composition of the Board appropriate? Should there be additional student representation?

Have you anything further to add?

5. CONFIDENTIALITY

5.1 All responses from **individuals** will be treated as confidential unless a respondent specifically states that (s)he wishes to waive this right. Where the Independent Adjudicator wishes to refer in his published Report to specific individual responses he will do so in a suitably anonymised form so that no individual is identified. **HEI and other corporate stakeholder responses** should be submitted on the basis that the Independent Adjudicator may wish to quote from the submission in responsible fashion in the final Report and cite the HEI in a footnote.

5.2 The OIA undertakes to process any personal data obtained from responses to this consultation in accordance with the requirements of the Data Protection Act 1998. The data you supply will only be used to inform the Pathway Project. We may use the information you provide to contact you for further information about your views. We will not provide your contact details to any other organisation. We will not intentionally publish any information which identifies individual respondents.

Reading, October 2008.



Fifth Floor
Thames Tower
Station Road
Reading RG1 1LX
t: 0118 959 9813 **f:** 0118 9559099
w: www.oiahe.org.uk/pathwayproject