



office of the
independent
adjudicator

**Speech given by Rob Behrens, Independent Adjudicator and Chief Executive at
the launch of the OIA's Pathway Report at the Institute for Government, London**

11 February 2010

- 1. A team effort.** Mr Chairman, Ladies and Gentlemen, friends and colleagues. The Pathway Exercise began in October 2008. It is published today, 15 months later, and constitutes a wide-ranging survey of the Scheme established under legislation in 2004. The Report is valuable but the text is not for the faint-hearted. Independent complaints handlers are not set up to be loved. And in this respect – as you will see – we have been successful. The Report sets out a framework for the next 5 years of operation and it contains no surprises. Only last week I read – for the first time - a piece written in 2009 in the **Education Law Journal** predicting what would be in the Report. The author was right! You may say, well then why bother to engage in such extensive consultation? The answer is that we are immeasurably stronger for engaging in the dialogue and the period of listening and reflection has been beneficial.

And I need to put on record that every single member of OIA staff and every OIA Board member has played a part in delivering this piece of work and fashioning its conclusions. The Acknowledgements page is relatively full and properly so.

- 2. Consultation is not merely talking** – it's a key part of evidence-based policy making. Thanks must go out to the hundreds of organisations and individuals who have made serious, valuable, contributions to the process. These contributions are acknowledged in the footnotes on every page.

And our commitment to a transparent approach will ensure you have access to the research material we drew on. It will appear on the new OIA website by 31 March of this year. This includes the full quantitative survey conducted for us by Kings College

London, and submissions to the Issues and Questions Paper from universities, students unions, sector groups and individuals.

- 3. The mandate works.** The headline point is this that the mandates and operations are broadly effective. There is wide consensus that the mandate works. What we got under the 2004 Act is better than whatever existed before. I also note that the Courts – and they have had a good number of opportunities - have been extremely reluctant to interfere with our own interpretation of the OIA's mandate and we take that as a positive sign. Some complainants were clearly unhappy about the Act excluding 'academic judgment' from consideration in the Scheme. This is not a realistic proposition at the present time, and I note that the Courts have been reluctant to intervene in this sphere.

So the consensus is that the existing mandate is the basis for a sensible, incremental development of the Scheme. And therefore to Ruth Deech and Mike Reddy and Norman Gowar and many others we say: the foundations that you built are solid, and we are building upon them. Thankyou.

- 4. But - The status quo is not an option.**

We don't have the luxury of saying we can stay as we are. The conditions for the operation of our Scheme are developing fast. The Scheme was set up during what will be seen to be an era of relative largesse. That era is now over. The sector is facing significant financial cuts, redundancies and cuts in services. Students are also facing significant rises in tuition fees. These must be key factors in considering our future revenue sources and in setting out what kind of service the OIA can provide.

The OIA is not afraid to share the burden of the cuts to come. But there is **a paradox**. It is an observation, not a criticism that cuts are very likely to have an impact on university service delivery. Combined with the projected rise in tuition fees, these developments will almost certainly see a continued increase in the number of complaints the OIA receives. In short, more complaints with the prospect of less resource.

The numbers are chastening. We still get comparatively few complaints - less than 0.05 per cent of enrolments. But between 2005 and 2008 the complaints we received rose by **70 per cent**. And if this growth is replicated in the next three years, we won't be able to increase routinely the number of assistant adjudicators we employ, so there will need to

be productivity gains in other ways. This means creative thinking along the lines set out in the second half of the Report.

5. We are all in this together

I set about Pathway with a distinctive consensus-building style, pointing out that we needed to avoid blaming each other (including students unions and complainants), listen carefully and see constructive ways forward. This is indeed what has happened. And we should continue along this road. The **evidence** contained in the Report will repay careful reading, reflection, and discussion. There is nothing in the Report to threaten or undermine the hard-won reputation for professionalism won by bodies like the Academic Registrar's Council (ARC) or the Association of Heads of University Administration (AHUA). The reverse is the case as you might expect from a Scheme where seven out of ten cases are found Not Justified.

But talking to and reading the expressed views of students unions and complainants there is some crucial learning for us.

First, whatever the constitutional differences between sovereign universities and independent OIA, complainants look not at the separateness but **at the overall handling of the complaint**. This is a key theme of Debora Price's Report. It makes no sense to audit the operations of the OIA in isolation from the way universities handle complaints internally. And what the evidence shows is that when complainants come to us they are already **seriously disenchanted**. They believe the handling of their complaint has taken **too long**, they believe universities do **too little to make clear what the process involves**, they are critical of the alleged **failure of universities to keep in touch** with them **to explain** (for example) **reasons for delays**. And they are clear that there is **too little transparency** in the process so that it is often only once the OIA begins a review that they see key documents relating to their case.

6. The Change Strategy – the Pathway

It follows from the logic of the evidence that none of the Report's Recommendations will require changes to the law. And only some of them will require changes to the Scheme Rules by the OIA Board. The Board has already signed up to all these changes.

What this means is that implementation will be relatively speedy and has already begun. We began the implementation of the Quick Wins during 2009, even before the publication of the Report because they are all common-sense developments which are entirely non-contentious.

The road ahead is to continue on the journey of **making OIA outward-facing, user friendly, impartial, proportionate and authoritative in decision-making , efficient and effective. And to be even more effective we have to diminish the gap between the expectations of users about what they think we should be doing and what we can and will actually do.**

Turning to the Recommendations themselves

7. Mandates and Clarity of Purpose

In endorsing the existing mandates, we set out the need for some clarifications and incremental developments. As far as **clarifications** go,

- We have no ambition to adjudicate on **academic judgements**, but using guidance from Court decisions and summarising our own experience we will attempt to set out in documentary form where the boundaries lie.
- Complainants articulate a strong preference for **mediation** even after a complaint reaches the OIA. The Court of Appeal has given the OIA broad discretion to decide upon the nature and extent of reviews we undertake in individual cases. We will continue to use this to offer mediation as part of our flexible approach, though we are clear we are primarily an adjudication service.
- And because we discovered some lack of understanding amongst complainants about the core role of the OIA we will build into our Strategic Plans a revised **Communications Strategy** setting out our role and function and the legitimate expectation of Scheme users.

As far as **developing the mandate** is concerned:

- We found broad support to extend the Scheme to **Further Education Colleges running their own Foundation Degrees** and we will pursue this with a second round of consultation.

- We also found broad support for allowing **private universities** to join the Scheme providing public institutions don't subsidise their membership. That is accepted without consultation and these bodies can apply to join the Scheme almost immediately as so-called Non Qualifying Institutions.
- We welcome the wide consensus that we should leave **university admissions** to some other lucky organisation. That proposal is dead in the water.

8. Independence and Transparency

These are key issues and inform almost all the Recommendations in one way or another.

Universities and students unions assert overwhelmingly that the OIA is wholly independent. However, **complainants** views are dependent upon the outcome of the review which they bring to the OIA.

The majority of disappointed complainants say the OIA is on the side of the university, and a lot of them say this because they don't believe that universities comply with OIA decisions and Recommendations. Even successful complainants are not always satisfied with the remedies provided by the OIA. And some students unions point out that some students are edgy about an organisation funded entirely by university subscriptions.

So – what do we do ? There is here a **tension between subjective and objective views**. Our role is to continue to ensure that we exemplify independent action in our role as the Office of the Independent Adjudicator. And **at the same time** to address the subjective opinion of complainants - not necessarily by changing the rules and procedures but by exposing them to greater public scrutiny.

We have few proposals to change the Rules to promote greater independence, though we do think it would be useful to have an additional student voice on the Board. But to get at perceptions, both public and complainant, we have included a package of Recommendations:

- A second round of consultation about **how to** (not whether to) **increase transparency**, including the option of publishing summaries of Formal Decisions.

- A **feasibility study** on incorporating OIA into organisations covered by the **Freedom of Information Act**. Universities are covered by these provisions – should the OIA be?;
- **Complete the Funding study** to discover if there is a viable alternative to the current arrangements. (factor in the current fiscal crisis in HE)
- Compliance and remedies studies. We will **revisit the current arrangements we have for disseminating compliance patterns**. The clear view here is that neither the university nor the OIA does enough to inform complainants about the steps taken to implement Recommendations associated with Formal Decisions. As I have said before there is reputational damage for us both universities and the OIA in this.
- And separate but related we will **review our remedies and compensation policy** to see if we can make it more predictable and proportionate to the detriments experienced.

9. User Perspective and Flexibility

Finally, we have a great deal of evidence from complainants and universities about how we can improve the user perspective and flexibility of the Scheme. There are 5 Quick Wins in this area and 8 Recommendations, almost none of which will be seen as controversial. We commit ourselves to finishing off **developing and clarifying** a range of policies and practices including **vexatious complaints, Completion of Procedures Letters, disability policy and practice**. We will look carefully (and with a cautious eye) at the overwhelming complainant demand to be able to talk in person to an OIA casehandler rather than relying on a paper process. And we will change the Scheme Rules to require universities to compile and send to us annually an annual return of the number of Completion of Procedures letters issued. This is entirely in line with the spirit of the QAA Code of Practice and it contextualises the number of complaints we receive following the issue of the COP letter.

There is much more I could say. But the report sets out the detail and I commend it to you. At this point I would be very happy to take questions.