

MEMORANDUM OF UNDERSTANDING BETWEEN OIA AND HEFCW –  
SEPTEMBER 2016

## **Section 1 Purpose and Objectives**

The purpose of this Memorandum of Understanding (MoU) is to set out how the Office for the Independent Adjudicator for Higher Education (the OIA) and the Higher Education Funding Council for Wales (HEFCW) will work together and share information in order to meet their respective responsibilities with respect to Higher Education (HE) in Wales. It sets down the principles underpinning the interaction between the two organisations and provides guidance on the exchange of information between them.

It is intended to promote:

- clarity about respective roles and responsibilities
- effective working, information sharing and communication between us; and
- liaison in the development of any guidance for the sector.

## **Section 2 Our roles**

The organisations recognise, and have regard for, their respective roles and responsibilities and recognise the independence of their remits.

### **A. OIA**

The OIA is a Company Limited by Guarantee and is governed by its Memorandum and Articles of Association. It is also a registered Charity.

The OIA Scheme was designated under the Higher Education Act 2004 ('2004 Act') which established an independent Scheme to adjudicate on student complaints against universities in England and Wales without charge to complainants. The OIA, which had run a voluntary Scheme from March 2004, became Designated Operator of the student complaints scheme in January 2005. The Consumer Rights Act 2015 amended the 2004 Act to extend the OIA's jurisdiction to providers offering HE courses designated for student support funding, and providers with degree awarding powers. Governing bodies of qualifying HE providers are required to comply with the Scheme Rules.

The OIA has the duties of Designated Operator under the 2004 Act to publish the Scheme and supply relevant information to the appropriate UK and Welsh Assembly Government Ministers. It is also a Registered Charity, under the supervision of the Charity Commission.

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Under the Scheme, which is funded by annual member subscriptions together with a case fee element, the OIA has a wide remit to consider an "act or omission" by an HE provider, brought by a student or former student. Complaints must not relate to academic judgment, nor does the OIA consider complaints about admissions, employment-related issues or matters that have been or are being considered by a Court. Generally, a complainant must first have exhausted the HE provider's internal processes before bringing a complaint.

The OIA is the ADR Entity for Higher Education in England and Wales, appointed by the Chartered Trading Standards Institute on 7 July 2015.

### **B. HEFCW**

HEFCW was established in 1992 under the terms of the Further and Higher Education Act 1992, confirmed by the Education Act 2002. HEFCW is responsible for distributing funds for teaching, research and related activities at eight universities, and for teaching activities at the Open University in Wales. HEFCW also funds HE courses at further education colleges. HEFCW is also responsible under the Education (School Teachers' Qualifications) (Wales) Regulations 2004 and the Education Act 2005 for the accreditation of Universities and Colleges in Wales that provide initial teacher training for school teachers and for commissioning research to improve the standards of teachers and teacher training.

HEFCW also has a regulatory role in respect of those institutions that are regulated under the Higher Education (Wales) Act 2015. Regulated institutions are those HE institutions, further education (FE) colleges and other HE providers with an approved Fee and Access Plan. HEFCW's role under the Higher Education (Wales) Act 2015 will, amongst other aspects, be to ensure that only institutions that are financially viable, well managed and that provide education of adequate quality can enter the regulatory system and become regulated institutions. HEFCW will then monitor compliance by all regulated institutions with: their Fee and Access Plans (including Fee Limits); the requirements in respect of the quality of education; and HEFCW's Financial Management Code. HEFCW will intervene only where necessary and reasonable to ensure that the students, the regulated institution and the reputation of the wider HE sector are protected from: the charging of excess fees; provision of inadequate quality or provision likely to become inadequate; unacceptable fee and access plan delivery; and poor financial management and governance.

HEFCW's intervention powers under the Higher Education (Wales) Act 2015 are set out in a published Statement of Intervention. Potential interventions in respect of non-compliance with provisions of the Higher Education (Wales) Act 2015 by regulated institutions include the issue of Notices and Directions, which are

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enforceable by injunction. For significant cases of non-compliance HEFCW may issue a Notice regarding refusal to approve a new Fee and Access Plan and in the most serious cases a Notice of withdrawal of an existing Fee and Access Plan. However, HEFCW will normally seek to work with institutions in the first instance, wherever appropriate, to address issues through dialogue and the provision of advice or support where necessary.

### **Section 3 Working together**

#### **A. Sharing of Information**

The OIA and HEFCW will identify the areas where their complementary roles and independent functions inter-relate, on an on-going basis, and agree areas where it is appropriate to share information and contribute to the respective work of the other organisation. The working relationship between the OIA and HEFCW will be characterised by regular on-going contact and open exchange of information, through both formal and informal meetings. The arrangements will be kept under review by the named contact points.

The nature of information shared under this MoU will include, although is not limited to:

- information that HEFCW has that may assist the OIA in undertaking a review of complaints by individual students or groups of students;
- information that HEFCW has about systemic issues which may assist the OIA in undertaking a review of complaints;
- information that HEFCW has that may assist the OIA in administering the membership of the OIA Scheme;
- information relevant to concerns about standards and quality, or the charging of fees in excess of those set out in the relevant provider's Fee and Access Plan with HEFCW, which arise in complaints considered by the OIA;
- summary information gathered through the OIA scheme which identifies broad themes and concerns about quality and standards from across the HEFCW regulated HE sector in Wales or individual institutions in that sector; and
- information that the OIA has, including through complaints referred to the OIA, that may have implications for, or assist with, HEFCW exercising its regulatory functions.

Neither the OIA nor HEFCW will disclose information received from the other to any other person or body without first consulting the disclosing party. Both organisations will ensure that any disclosure of information under the terms of this MoU is carried out in a manner that is efficient, proportionate and fully in compliance with the Human Rights Act 1998, Freedom of Information Act 2000 (applicable to HEFCW only) and the Data Protection Act 1998, where applicable.

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In the event that HEFCW exercises its intervention powers during the course of an OIA review of an individual complaint or complaints, the organisations will seek to ensure, where possible, that the intervention by HEFCW does not delay the OIA's review of the complaint(s). HEFCW will also seek to avoid unnecessary duplication, although, as the circumstances that trigger HEFCW intervention may be different to those that trigger OIA involvement, HEFCW may need to act in parallel with the OIA. HEFCW will liaise closely with the OIA in such circumstances.

**B. Sector developments, consultation with sector and external communications**

Where appropriate, the OIA and HEFCW will:

- inform one another as soon as practicable on relevant developments within their areas of responsibility, where possible prior to release of any reports, press releases, speeches or policies;
- exchange information that may be reasonably useful to the other, subject to the imperatives of mandates, necessary confidentiality constraints and safeguards;
- invite each other to relevant events hosted by one and of interest to both; and
- liaise, involve and keep each other informed as necessary on drafting key documents relevant to the other's functions.

Subject to general public interest, the Freedom of Information Act (applicable to HEFCW only), and the Data Protection Act, and other constraints (e.g. commercial confidentiality), the exchanges of information under sections A and/or B of this MoU may be confidential.

**C. Monitoring and points of contact**

Both organisations will monitor the working arrangements contained in this MoU. An annual review will be carried out and this will examine all aspects of the MoU in order to identify any areas for improvement and best practice. Representatives of the OIA and HEFCW will meet when necessary, and there will be at least one formal policy meeting per year.

In order to ensure that issues are handled at the appropriate level and that developing policy considerations are taken fully into account, each organisation has established designated points of contact. Where they consider it appropriate, designated points of contact may delegate ongoing liaison to members of their staff.

The OIA and HEFCW will work to ensure that relevant staff in their respective organisations are aware of the content of this MoU and the responsibilities it places on each individual member of staff. Access to the information shared by OIA and HEFCW will only be granted to those who have a business need. Each organisation

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will respect and take appropriate steps to protect the confidential nature of documents and information that the other may provide.

**Section 4 General**

It is intended that the arrangements in this MoU should apply generally. However, it is recognised that some circumstances will require special handling and nothing prevents the organisations from making exceptional arrangements to meet specific and urgent needs in relation to a particular case or cases.

Nothing in this MoU is intended to create a legally binding obligation or to confer legal rights on either party.

Both the OIA and HEFCW will place a copy of this MoU on their respective websites.

**Signed**



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Ben Elger  
Chief Operating Officer - OIA



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David Blaney  
Chief Executive - HEFCW

**Points of contact**

The following are the designated points of contact:

OIA: Charlotte Corrish ([charlotte.corrish@oiahe.org.uk](mailto:charlotte.corrish@oiahe.org.uk))  
HEFCW: Ewen Brierley ([ewen.brierley@hefcw.ac.uk](mailto:ewen.brierley@hefcw.ac.uk))

This MoU was approved in September 2016 and will be reviewed following one full year of operation in September 2017.