



**THE OFFICE OF THE
INDEPENDENT
ADJUDICATOR FOR
HIGHER EDUCATION**

resolving student complaints

Annual Report 2004

www.oiahe.org.uk



Annual Report 2004

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“We have been impressed with the care that universities take over student problems. We intend, in partnership with institutions and students, to settle fairly and efficiently those complaints that cannot be resolved internally and to publicise good practice. Our success in our first year of operation has shown that this can be achieved without the need for lawyers and litigation.” (OIA Press Release on its designation by the Secretary for Education & Skills, 9 December 2004)

This is the Annual Report of the Independent Adjudicator for Higher Education - Dame Ruth Deech



**Independent Adjudicator -
Dame Ruth Deech**



**Deputy Adjudicator and Chief Executive -
Michael Reddy**



SUMMARY

"We are determined to give students a greater voice in regard to the quality of their higher education." (Rt. Hon. Charles Clarke PC, Education & Skills Secretary)

- On 9 December 2004 the then Education and Skills Secretary, Charles Clarke, designated the Office of the Independent Adjudicator for Higher Education (OIA) as the independent reviewer of student complaints under the powers of the Higher Education Act 2004. The Welsh Assembly did so in relation to Wales on 21 December 2004. From March to December 2004 the OIA established itself and operated a transitional scheme, which higher education institutions (HEIs) were invited to join on a voluntary basis. The great majority did so.
- The Visitation system of review of HEIs' actions in relation to students came to an end. It had served well but was perceived in recent years to lack the independence, clarity and efficiency required in an era of extensive higher education recruitment and the opening of new institutions.
- The OIA's start up costs were met by the Department for Education and Skills (see Annex 3). From 2005 HEIs will have a legal obligation to pay subscriptions to the scheme.
- The OIA has undertaken an extensive programme of action to make students and HEIs aware of our existence and remit. This includes visits to major university regions, conferences, articles in student journals, leaflets, an active website, liaison with relevant bodies and a helpdesk.
- In the transitional year we received about 300 enquiries and 120 application forms. We commenced investigation in the 86 eligible complaints and completed 19 by the end of the year under review. 50% were found justified to some extent.
- The Rules of the statutory Scheme were finalised at the end of 2004 after consultation with HEIs, the National Union of Students and other relevant organisations.
- We have learned that where lawyers are engaged by HEIs or complainants, issues become more adversarial and protracted. We are advising that there is normally no need to seek legal representation in order to pursue a complaint under our Scheme.
- Some HEIs are taking a long time to process complaints and should reconsider their regulations and practices in order to ensure the speedy resolution which is so vital to students.

I HOW THE OIA BEGAN

This is the second annual report of the OIA, which opened for business on 29 March 2004, and covers the period from its beginnings to 31 December 2004. The first report on the period up to September 2004 is available on our website - www.oiahe.org.uk On 9 December 2004 the then Education and Skills Secretary, Charles Clarke, formally designated the OIA with effect from 1 January 2005. The Welsh Assembly also did so. On that date the OIA, which had been operating on a voluntary basis in 2004, acquired statutory backing, and a new chapter opened.

Why a new Scheme?

The roots of the OIA, however, lie in the Visitorial system, which governed the resolution of student complaints and appeals and whose origins lie in medieval times. It stood the test of time. While well-trying and acceptable in itself, the Visitor's jurisdiction was coming to be regarded as deficient in applying modern standards of openness and human rights to the resolution of complaints. The existence of "new" universities, the extension of higher education from a privileged few in the 1950s and 1960s to over 35% of school leavers, and change in attitudes towards the functions of higher education made urgent the introduction of a universal scheme to guarantee a fair hearing and resolution to those students who remained dissatisfied with decisions of their higher education institutions.

Unquestionably there should be the possibility of independent review for the settlement of student complaints. This principle of independence is now almost universally accepted across the public sector. For historical reasons, the availability of independent review varied across the HEIs of England and Wales. There is nothing wrong with some distinctions between the operations of different universities and colleges but equity calls for parity of service for all students, wherever they happen to be studying. English and Welsh universities are internationally attractive. The recruitment and retention of students from overseas are not only desirable intellectual aims in themselves but also important commercial factors with reputational risk. Overseas students commit themselves to significant amounts of fees in order to study here and deserve, as do home and EU students, an independent review of their complaints, should they occur. However HEIs should pursue every opportunity to resolve complaints themselves.

Some HEIs reacted with caution to the establishment of the OIA, fearing that there would be another regulator to contend with in the already well-regulated field of higher education, and that their links with their Visitors, greatly valued, would be affected. They have been largely reassured by learning first, that the OIA aims to save HEIs and students from expensive and protracted legal battles, whilst leaving individual HEIs free to design their own complaints systems (with the guidance of the Quality Assurance Agency Code of Practice in this field); and second, that the Visitor remains as the titular head of the HEI. In an analogous situation, the Visitor lost most of his or her role in relation to employment disputes in the Education Act 1988, but Visitors have remained an important part of university life. We noted that during the transitional year Visitors themselves were content to turn to the OIA for advice on petitions that had been lodged with them. The Visitorial system had become too similar to a court-based dispute, with similar levels of costs and confrontation, and was clearly a burden to individual Visitors. The Privy Council (acting for HM the Queen in her

Visitatorial capacity) and the Department for Constitutional Affairs (acting for the Lord Chancellor) were better equipped to handle the resolution of those complaints, and had made significant improvements to the system, but even there the delays were considerable. Those HEIs that did not have a Visitor had no recourse beyond the institution save to the courts. They welcomed the provision for the first time of an independent system of review for all students at all HEIs.

The Aims of the OIA

It is important for users of the scheme to appreciate its purpose and ethos. We are not set up to punish or regulate HEIs. Our aim is to resolve those student complaints that cannot be sorted out by the HEI itself, in an efficient, transparent and fair manner. In the last resort, we are an alternative to expensive and time-consuming litigation, so both students and HEIs will benefit. The scheme is free to students, with HEIs paying a modest amount to use our services. But as with all ombudsman-type schemes we do need a spirit of openness and co-operation from the parties in order to maximise our effectiveness. An added bonus of the scheme is that we will be making good practice recommendations. Several academic registrars have told us that they really welcome this aspect of the scheme, as interpreting and applying institutional rules and regulations can be a lonely job. The opportunity to learn from other HEIs through the OIA will be helpful. It has already presented itself in the forum of conferences and seminars that we have organised or attended.

The OIA has been sensitive to the need of students for a speedy, economic and efficient end to their disputes with HEIs. Six months may not seem very long to an HEI but students' needs are driven by the cycle of the academic year and the urgency of returning or registering elsewhere by September in any given year. The OIA is also mindful of its part in preserving the integrity of academic judgment and the respect in which English and Welsh education is held all over the world. Not only is academic judgment outside our remit, but we also take care to avoid "commercial" attitudes. It is true that the student has a contract with the university, formed by terms in the prospectus and on registration, but students are not simply "customers". They are learners, who have to prove themselves worthy of the qualification they seek. Just as staff have very clear obligations to their students, so do students have obligations to their teachers and other staff and to the maintenance of academic standards. The contract between the student and the HEI where he or she is enrolled is a very special one, because the outcome cannot be guaranteed. The contract has been likened, wrongly in our view, to the contract entered into by the holidaymaker with the package holiday company. On the basis of a prospectus, the argument runs, the holidaymaker (student) chooses a destination and relies on the promises of facilities, stimulating experiences and a happy conclusion. The analogy is misconceived because the holiday contract is a commercial one with appropriate costing and the deficiencies are objectively assessable in general. The student contract, by way of contrast, is one where there are obligations on both sides and successful interaction and application are crucial to the result. It is more like the arrangement entered into by a person who joins a health club: in return for the fee, the club will provide adequate facilities and assistance but the desired outcome is achieved, if at all, by the hard work and regular attendance of the member. Nevertheless, the pressure of modern university life mean that sometimes things go wrong and not all staff live up to the obligations imposed on them by the

undertaking of student welfare and education. It is essential to have a review system that ensures that these important obligations to the public and to the student population are carried out satisfactorily.

The OIA has accordingly taken the view that the preferred satisfactory resolution for an aggrieved student involved in an academic appeal is the opportunity to resit the disputed examination and to be given the best possible chance to demonstrate his or her worth. It is not the place of the OIA to recommend that a student be awarded a particular degree or classification because that power remains with the universities to be exercised by their academic judgment.

We believe we have made a successful start in gaining the confidence of the students and the HEI staff whom we serve. This we do by accessibility, by communication and by the provision of assistance but above all by the acceptability and fairness of our decisions, which we strive to achieve. Our decisions are not statutorily binding on HEIs but by working to command their respect, and the respect of the student complainants for our decisions, we should not need further backing by law.

It has been a fascinating year, filled with insights into the workings of the higher education sector and the lives of students. It has been a privilege to play our part in continuing to secure the reputation and progress of the great institutions of higher learning and it has been enormously satisfying to achieve resolutions of problems that might otherwise distract HEIs and students from their proper pursuits. We have been impressed with the care taken by HEIs over the handling of students' complaints and by the good sense and helpfulness of student representatives.

Our Objectives

Bearing in mind this background, we have set our objectives as follows:

- a) We aim to resolve speedily and fairly those student complaints that cannot be settled by the HEI itself, and to do so in a cost effective manner;
- b) We aim to promote a less legalistic approach to dispute resolution in higher education;
- c) We aim to share information about how HEIs should handle complaints and what constitutes good practice;
- d) We aim to be accessible to both HEIs and students and to keep them informed about our work on a regular basis;
- e) We aim to treat all complainants and enquirers fairly and with respect, and in a positive spirit of support for good relations between all sectors of higher education;

- f) We aim to promote a good experience of education for all students at HEIs and to preserve the high academic standards and integrity of the institutions;
- g) We aim to maintain a system that is fair to all and accountable to the public.

Measurements of our success in achieving these aims may be seen in the annexes to this report.

Because the volume of incoming complaints is unpredictable in the early years of the scheme, fixing subscriptions sufficiently in advance for the information of universities is problematic. It is understood that HEIs need to fix their budgets well in advance, but we cannot accurately predict the case load and therefore the number of staff needed to process it. The first year of statutory operation will be one of unusually low costs because it has been mostly rent free and there will still be a carryover of a part of the DfES start-up grant. It is inevitable that there will be a rise in subscriptions of more than inflationary level in 2006.

II REVIEW OF THE YEAR

Raising Awareness

The OIA is new and probably unique in the world, although there exist abroad individual campus ombudsmen and associations such as the European Network of Ombudsmen in Higher Education, the University and College Ombuds Association of the USA, the Canadian Association of University and College Ombudspersons and Ombuds and Deans of Students in Higher Education Australasia Association. Accordingly, the OIA attaches importance to the maintenance of constructive relationships not only with the HE sector organisations but with others from which it can learn, for example the British and Irish Ombudsman Association, the Privy Council, the European Network of Ombudsmen in Higher Education and OxCheps. It was the policy of the OIA in its first year of operation to make every effort to acquaint the HE sector and student organisations with its existence and functions. To this end all members of staff have travelled to conferences and to major university cities in England and Wales, to present the details of the new scheme to audiences of HE administrators, lawyers and student union officials. These visits have included (or are planned to include) Birmingham, Bournemouth, Bristol, Cambridge, Cardiff, Chelmsford, Coventry, Lancaster, Leeds, Leicester, London, Manchester, Newport, Oxford, Reading, Sheffield, and Southampton. Conferences addressed or attended included Universities and Colleges Education Law Network (now unfortunately wound up), the Association of University Administrators, the Academic Registrars Council, the Association of Heads of University Administration, the Committee of University Chairmen, the National Union of Students, National Postgraduate Committee, the Council for International Education, the Standing Conference of Principals, the British and Irish Ombudsman Association, Universities UK, the European Network of Ombudsmen in Higher Education, the UK Council for Graduate Education and the Association of Managers in Students' Unions, as well as meetings with the DfES and the Privy Council. The OIA has accepted invitations to address audiences at seminars arranged by solicitors' firms in the interests of communicating information about its work, while avoiding any link with or recommendation of any particular firm.

It is also the intention of the OIA to host its own seminars, affording administrators and students the opportunity to share best practice and common problems; information is also available on our website. Financial constraints have limited much wider dissemination of the work of the OIA, but it is expected that this effort will continue with especial importance attached to placing information in the hands of freshers and student union representatives. We have a strategy to keep national education correspondents briefed on our work and public relations advice has been taken. Articles on the work of the scheme have been distributed to student journals and placed on the website, which is constantly under review. All literature can be downloaded from the website. We have invited all HEIs to provide a link to this office at the appropriate place on their own websites. There is a helpdesk – that is, our administrative staff endeavour to give every assistance to enquirers short of advising on individual cases, and we are pleased to note that several cases have settled after telephone advice given here without going as far as reaching full complaint status.

Establishing The Office

Over 100 HEIs chose to join the OIA scheme in its transitional year and the University of Glasgow volunteered to join although the Scottish universities are not statutorily included. Those that did not join cited, in the main, legal reasons such as incompatibility of the statutes of the HEI in question with OIA requirements, or insurance issues.

The setting up of our office and the establishment of our business procedures were substantially completed by the end of 2004. The office is fully furnished and equipped for 12 staff. We have purchased appropriate software systems including a proprietary system for complaints handling. It has performed well and enables the OIA to record all complaints and enquiries and to produce reports and statistics as necessary. The premises, opposite Reading station, have proved satisfactory and readily accessible. We have sufficient space to cope with current projections for complaints handling.

The staff complement in 2004 was: Independent Adjudicator (part-time); Deputy Adjudicator and Chief Executive (full time); five Assistant Adjudicators (2 full time, 3 part-time); an administrative officer; a liaison officer. We also had access to the services of an independent higher education consultant. All the adjudicators are legally qualified or have relevant complaints handling experience. While this complement sufficed for the year 2004, it is unlikely to remain sufficient for very long. Even without a rise in the number of complaints, many applications cite multiple grounds, and are drawn out by requests for extension of time in replying or by the use of lawyers, even though we have signalled that this is unnecessary. Plans are afoot to recruit additional case handlers and extra office assistance. All have participated in training on equal opportunities and race relations, education and administrative law, mediation, public relations and higher education issues. The office has invested in relevant textbooks, journals, reports and legal online services.

III HOW WE WORK

Initial Contact

There is a constant stream of email and telephone enquiries. Staff will give general but not specific advice on eligibility and complaints handling processes. Initial investigations establish whether the HEI's internal procedures have been completed and the requisite Completion of Procedures letter obtained from the HEI signalling completion of the internal procedures, recording the outcome and indicating the possibility of further recourse to the OIA. Student enquiries may or may not involve a "complaint". "Applications" are enquiries for which we have received a scheme application form. "Complaints" are applications we consider on the face of it come within our jurisdiction. During the 9 months of the transitional scheme, we received over 300 enquiries from students, of which approximately one-third related to academic appeals and examination results. The next largest category related to contractual matters, such as complaints about teaching or supervision, or facilities.

Statistics

We received 120 Scheme Application Forms of which two-thirds progressed to becoming full complaints. Of these, 35 were referred to us by a Visitor (where our remit was to advise the Visitor). Most applications were processed within two weeks.

We commenced investigation into 86 complaints and managed to complete 19 by the end of the year, leaving us with work-in-progress of 64 complaints. The time taken from acceptance of the application as valid to completion averaged 109 days. We are quite pleased with this result, although we expect the average time to increase as a result of later closure of more complex cases.

50% of complaints were found to be justified to some extent. We were also instrumental in settling a number of complaints which did not progress to a full investigation. Compensation ranged from £50 to £400 which should not be taken as indicative of longer term levels. It is too early to draw any conclusions. See Annex 7 for more details.

Eligibility

The time limits on bringing a complaint (in general 3 months from the date of the Completion of Procedures letter) have to be checked. In a complex case it may be that some but not all of the grounds of complaint have been considered by the HEI. A complaint may appear on the face of it to be limited to academic judgment or admissions, neither of which is within our remit. The complainant needs to establish that he or she is (or was) indeed a registered student. Once eligibility on the face of it is established, sometimes after the exchange of correspondence with the potential complainant, a Scheme Application Form is completed. This records amongst other things the consent of the complainant to the release of information provided by him or her to the HEI, the grounds of complaint, the representative (if any) of the complainant and the remedy or remedies sought.

Early Settlement

We do not always carry out a full investigation. Sometimes we will try to resolve a complaint through a preliminary investigation or by conciliating the parties.

Casehandling

Each case is allocated to an assistant adjudicator or casehandler who writes to the complainant and to the HEI setting out his or her understanding of the grounds of complaint and asking for representations to be made by the HEI in response to the allegations of the complainant. These representations are in turn forwarded to the complainant for further comment. There may be other exchanges of correspondence and requests for clarification or further information. Although the Office has the power to conduct oral hearings where necessary, none have so far been found to be required. In every exchange of correspondence a 2-4 week time limit for reply is set, but there are frequent requests for extension by either side, especially in relation to the summer vacation. Where reasonable these extensions have been granted, albeit that the conclusion of the case is thereby extended, but it is not regarded as reasonable to grant an extension simply in order to allow time for the securing of publicly funded legal help, given that lawyers are not necessary for the pursuit of a complaint. Some students are represented by student union representatives, or by a parent, and the policy of the Office is to correspond with either the complainant or his or her representative but not with both. Likewise, one point of contact within each HEI is sought.

A draft decision is sent to both parties for comment on factual accuracy before the final decision is delivered. Where the review has been undertaken at the request of a Visitor of an HEI, a Letter of Advice is submitted to the Visitor. The Visitor is free to accept or reject the Advice. One Letter of Advice submitted in 2004 was not wholly followed by the Privy Council acting on behalf of the Visitor. This is explained by the different remits, and hence perspectives, of the Visitation system (as administered in many cases by the Privy Council and the Department for Constitutional Affairs) and that of the OIA. The Visitor's jurisdiction was not wholly fixed but it was largely confined to the review of the reasonableness of the decision of the ultimate appeal body of the HEI and whether the rules of natural justice had been applied in the HEI's processes. Although compensation was awarded to a student by the Visitor in at least one publicised case, this was regarded as unusual. By virtue of the statutory basis of the OIA, our remit will be clearer and broader. Section 12 of the Higher Education Act 2004 gives the OIA the power to look at any act or omission of an HEI and the rules of the Scheme (see Annex 6) include compensation without limit amongst the remedies that may be recommended by the OIA. While it is not normally the practice of the OIA to investigate a complaint from scratch, given that it has already been investigated by the HEI (sometimes several times), nevertheless some degree of investigation is carried out to establish the reasonableness of the decision as a whole. The decision of the HEI against which the complainant appeals may be compared to good practice generally at other HEIs, although we are not looking for a uniform approach.

There have been no cases of refusal to accept recommendations made by the OIA in the year under review. All stages of the case handling are recorded on the complaints handling system.

The number of complaints received and the number of staff in the Office have allowed for general discussion of more difficult cases in an effort to develop policy and appropriate practices. While the cost per complaint in 2004 may seem high, initial calculations take no account of the fundamental issues tackled at the outset. As the work settles into a pattern, efficiency gains are made and we will spend less time giving advice to HEIs and to students about the scheme in general. Much time was also spent on the initial recruitment of staff, consultation with the relevant organisations, drafting the rules of the scheme and the explanatory literature, and determining policy in this new field.

Casework Issues

A digest of some of the decisions of 2004 is available in the next chapter of this Report. Some conclusions may be drawn from them.

- Because this is a new scheme and at the outset there was little awareness of its nature, adjudicators have had to spend considerable time in corresponding with HEIs and complainants and their lawyers on the issues of eligibility, time limits and procedural issues, rather than on the merits of a complaint. With increased experience, a more robust attitude towards eligibility will be taken by the Office.
- In complaints where lawyers were engaged by HEIs and complainants, issues became more adversarial and protracted. The lengthening of time scales in such cases (reflected in performance figures) ought not to reflect adversely on the OIA. We have given the message that seeking legal representation is not always in the best interests of students and that the OIA process should not be compared with legal proceedings from the perspective of representation. Likewise, in relation to HEIs, we prefer to deal with their own representatives and not their lawyers.
- When requested, we have advised HEIs that it is for them to decide on the nature and stages of internal complaints procedures. If those internal procedures culminate in a special court or tribunal of the university to hear the appeal by the student, this is acceptable, if sometimes unnecessarily complex. However, we intend to keep our approach to this issue under review. A university binding arbitration, however, would not be acceptable because this would prevent the complainant from approaching the OIA, a freedom enshrined in law. Finality may be achieved, and complainants prevented from going to court if an offer made by the HEI to the complainant, based on a recommendation made by the OIA to that effect, is accepted by the complainant in full and final satisfaction of the claim.

- We noted that no further education students engaged in franchised or validated higher education studies have used the scheme so far. It may be that more needs to be done by validating HEIs and the appropriate student unions to make those students aware of their right to use the scheme. The OIA's remit extends to acts and omissions of the HEI. So we can receive complaints relating to an HEI-validated course at further education colleges which relate to issues for which the HEI is responsible, that is, educational issues. The contract between the HEI and the FE college should set out the division of responsibilities and the channels of complaint. Appropriate complaints relating to courses a further education college will of course have to be taken through the HEI's internal procedures before becoming eligible.
- We have had to overcome the reluctance of some HEIs to set out the possibility of recourse to the OIA in the literature available to students, on their websites and, most importantly, in the Completion of Procedures letter. Failure to do so may in itself be a ground of complaint. We have recommended to all HEIs that they include in their student literature a link to the OIA website or provision of the address.
- Universities need to make clear to their students what their complaints procedures are, at what point they are embarked on and completed, and whether there is a difference (and if so, how to make the correct choice) between procedures for routine complaints, for appeals against disciplinary measure and appeals against academic assessment. While we encourage HEIs to settle complaints at an early stage, goodwill and informality on the part of an HEI faced with a complaint may lead to months of delay before a student is made to use the formal procedures, and so valuable time may be lost. Provided there is a proper structure we welcome the use of mediators and "campus ombudsmen".
- The Freedom of Information Act 2000, the Data Protection Act 1998, confidentiality and the provision of documentation have thrown up some complex issues for the OIA and its complainants and HEIs. Significant amounts of time and money have been spent by us and by HEIs in assessing the effect of these statutes. Counsel's advice was taken. The OIA assures the parties of confidentiality vis à vis the outside world, but cannot maintain confidentiality between the parties because each side needs to know the allegations made by the other. Legally privileged documents need not be submitted but all other relevant documents should be, with names of extraneous parties blanked out as necessary. It has been questioned whether the Data Protection Act prevents HEIs from providing the OIA with information about the complainant. This is not the case because the complainant signs the Scheme Application Form consenting to such release. It is appreciated that confidentiality and privilege issues are not always straightforward and in very limited circumstances we are prepared to receive information in confidence, although the basic principle must be that each side is entitled to see the same documentation. In return, we expect HEIs to provide us with all the information we need to enable us to resolve the complaint. Adverse inferences may be drawn if the HEI or the complainant seeks to withhold relevant documentation. From 1 January 2005 HEIs have a statutory obligation to provide us with relevant information.

- The impact of the Human Rights Act 1998 on student complaints and university procedures generally remains unclear. The right to education enshrined in the First Protocol Article 2, and the prohibition of discrimination (Article 14) are most likely to be relevant to admissions questions, which the Office does not handle. Articles 9 (freedom of thought, conscience and religion) and 10 (freedom of expression, already covered by legislation specific to universities) have not so far been issues for us in the areas under review. Article 6 (right to a fair trial) provides that “*in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly . . .*” It is unclear whether students’ issues are “civil rights and obligations” and whether a public hearing needs to be oral. A failure to achieve a degree was found not to concern a civil right in *R (Varma) v HRH The Duke of Kent* [2004] EWHC 1705; [2004] ECR 616. A narrow interpretation of the applicability of Article 6 was adopted in *R (Thompson) v Law Society* [2004] 2 All E.R. 113. From this judgment we concluded that even if students’ issues are within Article 6, which they might be held to be if, for example, an adverse decision by a university could impact on a planned professional future, the OIA is nonetheless human rights compliant. This is because of the recognition in the *Thompson* case that the requirements were met if an oral hearing was available, as an exception, if fairness required one, for example, to resolve a core disputed issue of fact. This reflects the OIA’s practice. The judgment in that case also made it clear that the procedural requirements of Article 6 may be met by taking into account the whole process of a complaint – the internal university procedures, the consideration by the OIA, possible judicial review by the courts – and that the discrete elements of human rights fairness may be found to be present across that whole range, without being required to be present at every single stage. Thus the higher standards of Article 6, if deemed applicable, may be met by all the components of the spectrum of remedies open to a student who is prepared to seek them all.
- It has been argued that the Visitation system was defective in failing to comply with the principles of natural justice. We have considered carefully what is actually required from HEIs by way of legal principles in dealing with student complaints and disciplinary appeals. Natural justice entails that universities have a duty to act fairly towards students in cases of disciplinary action or appeal. This means that the student must, at the least, be given adequate notice of the allegation against him or her, an adequate hearing (not necessarily oral) and that the appeal body must be unbiased. We have come across instances of university appeal panels being chaired by the very professor against whom an allegation was made; or of students being given only a day or two’s notice that a hearing is to be held.
- The prospectus is an area that may create difficulties in the relationship between student and HEI. It is a contractual relationship and assertions in the prospectus form the initial basis of the contract (which may be extended on registration). HEIs naturally wish to set out the full range of courses and facilities in an attractive manner, but there is a long lead time in the production of a prospectus. Moreover, the practice of a student taking a gap year may mean that the information he or she relied on is several years old before they commence their courses. In the rapidly evolving context of higher education, promised facilities may prove not to be available in subsequent years. Reasonable disclaimers are useful but HEIs should also make appropriate efforts to keep the

information up to date, especially for deferred entry students. They should explain that regulations and educational offerings may change while the student is on course.

Particular issues that have arisen for determination relate to eligibility, compensation and awareness of the scheme. Not all complaints are eligible, and this needs to be explained to potential complainants. The HEIs have had to be urged to issue Completion of Procedures letters in order to determine the date on which those procedures have indeed been completed, and in which they should refer to the possibility of application to the OIA. Monetary compensation was recommended in some cases. We are not bound by the courts' approach to damages but have taken it into account, along with the practices in ombudsmen schemes. Inconvenience, stress and disappointment may be recognised, but in relation to claimed loss of income, a student must prove that loss and mitigate it. Other remedies, such as a re-hearing, are often more appropriate. We have worked hard to spread awareness of the scheme to institutions and students; where lawyers are hired, they too need to be aware of it and how it works.

Our remit is new and wide and there are no comparators. This makes our work fascinating and innovative but difficult. We attempt to reach fair and acceptable solutions while establishing groundbreaking rules for the future.

IV CASE SUMMARIES

CASE 1

A was a postgraduate student at the University of ZZ. A admitted plagiarism in a piece of coursework. He claimed extenuating circumstances:- he had had to work long hours in order to finance his studies, which had left him with too little time to complete the coursework in question and, as a result, he had copied a fellow student's work. The University found him guilty of a major offence and as a penalty required him to retake the module and pay the fees for it again. A appealed to the University against the payment of fees and his appeal was dismissed. A complained to the OIA which found A's complaint **not justified**: the plagiarism had been correctly categorised as a major offence within the University's regulations and the penalty imposed was fair and reasonable.

CASE 2

B was a final year BA student at the University of YY. He was accused of plagiarism by copying the work of a fellow student. B admitted plagiarism and gave evidence of extenuating circumstances relating to family conditions. He was given a zero mark for the work in question. The University decided that B should be permitted to repeat his final year as if from scratch. B complained through the internal procedures of the University, but his complaints were dismissed. B then complained to the OIA on several grounds, including that the University had failed to follow its own procedures in dealing with the allegation of plagiarism. The University acknowledged that the procedures adopted in the early stages of dealing with the plagiarism allegation did not conform to those set out in its Regulations, despite being notified by a student union representative at the time that inappropriate and prolonged departures were occurring. The OIA found B's complaint to be **justified** in part, in that the University had, as it admitted, failed to follow its own procedures in its initial handling of the allegation of plagiarism against him, and that he had been materially inconvenienced as a result. The OIA **recommended** that the University offer a payment of £50 to B in respect of the aspect of his complaint that was justified.

CASE 3

C was a second-year student on a BA course at the University of XX. A practical placement was a required part of the course. C's performance on the placement was considered unsatisfactory and the placement was suspended. She was offered the opportunity to repeat it so that, if it were to be satisfactorily completed, she could progress to the third year of the course. C appealed unsuccessfully against this decision through the internal procedures of the University of XX. C complained to the OIA about the handling of her placement and the accuracy of the marking of some coursework. The OIA found C's complaint **not justified**: the placement decisions were reasonable and proper. The available evidence did not support C's claims about the process of marking her coursework and it was noted that the OIA has no remit to consider matters of academic judgment.

CASE 4

D was a student at the University of WW. He was informed by the University that he had not reached the required standard to proceed to the next year of the course. D submitted a formal appeal against this decision, citing mitigating circumstances in relation to his performance. The University accepted the mitigating circumstances and in a letter informed him that he was to be given another opportunity to rejoin the course. This letter gave no details of any conditions to be imposed upon D before he could resume. It was only after several months of protracted negotiations that the position became clear and D decided that he could not fulfil the conditions imposed. D complained to the OIA that he had not been given a full and clear response to the appeal and that the University had no right to impose conditions on his return to the course after he had won his appeal. The OIA found the complaint **justified in part**. It found that the University, as a matter of academic judgment, had the right to impose conditions upon D before allowing him to rejoin the course. However, it found that such conditions should have been made fully clear in the original decision letter. If that had been the case, and if D had been unhappy with such conditions, he would have been able to avail himself of the next stages of the appeals procedure. The OIA **recommended** that the University allow D to re-engage with the appeals procedure and offer D £100 as compensation.

CASE 5

E was a postgraduate student at the University of VV. She complained that she had been forced to accept a topic for research which was inappropriate and adversely affected her performance; that her marks were wrongly calculated; that supervision of her dissertation was inadequate; and that she was treated badly by members of staff. Her complaint to the University had been dismissed and she complained to the OIA. All four parts of her complaint were found to be **not justified** for lack of evidence or because they lay within the academic judgment of the University or because the issues had not been raised at the relevant time.

CASE 6

F was a student at the University of UU. He complained that the University would not allow him to progress to the 4th year (honours level) of the course, although he was able to graduate with a general degree after three years. F underwent an assessment that established that he suffered from dyslexia. F complained that the University's refusal to allow him to enter the 4th year of his course was unfair because it discriminated against him on the grounds of his disability; it applied stricter criteria to him than to others progressing to the 4th year; and it had breached its own internal appeals procedures. His appeal to the University was dismissed. The OIA found his complaint **not justified**. The University had fulfilled the requirements of the relevant disability legislation in providing F with special assistance, but there was no requirement to award a student higher examination marks because he is disabled. The application of criteria was fair and reasonable and the appeal process had been properly conducted.

CASE 7

G was a student at the University of TT. She was awarded an Upper Second class degree. She appealed, unsuccessfully, to the University against this classification and then to the OIA on the following grounds: that the University had discriminated against her in that she had not been allowed to take a module that others in similar circumstances had been allowed to take; that the University had failed to take account of extenuating circumstances when classifying her degree; that the timing of examinations had been unreasonable; and that it had failed to comply with its own internal appeal procedures. The OIA cannot look at issues of academic judgment. Nevertheless it found that the complaint was **justified in part**. The University had treated G inequitably in denying her an option that was allowed to others; there was confusion surrounding the question whether or not extenuating circumstances could be taken into account in deciding on the degree; the reasons given by the University in rejecting her complaint were unsubstantiated, but the University did not act improperly in relation to the timing of examinations. None of these were grounds for reconsidering the classification of G's degree. The OIA **recommended** that the University should consider redrafting the regulations on extenuating circumstances to remove any ambiguity and pay G £400 compensation.

CASE 8

H was a BSc student at the University of SS. She was awarded an Upper Second class degree in 2002 but was dissatisfied with the result. She appealed successfully to the University's Academic Appeal Panel on the grounds that there had been a breach of assessment regulations in relation to one module and that the standards of supervision in relation to another module were defective. On referral back of her case to the Assessment Board, she was offered the chance to retake one of the modules as if for the first time. She rejected this offer as she was no longer in a position to do so. She complained to the OIA that it had taken 10 months for her university appeal to be heard, and that the remedy offered was inadequate given that the university had been at fault. She sought an upgrade of her degree to a First, or compensation. The OIA found the complaint **justified**. Her appeal had been lodged in December and referred to an internal appeals panel in April, but it did not meet until October and gave its decision the following December. The remedy offered was inadequate in view of the time that had elapsed, whereas it might have been possible for the university to have offered H the option of a viva at an earlier stage. It was not for the OIA to change a degree classification, which lies within the academic judgment of the university, but an offer of £3000 by the university as compensation was **recommended** and made.

CASE 9

J was a part-time postgraduate student at the University of RR who had failed 3 modules three times. As a result the university required that he be withdrawn from the course. J submitted a claim for extenuating circumstances to be taken into account, claiming that the primary cause for his failures were exceptional and unexpected changes to his jobs, which affected his work. He was unable to sleep and concentrate. He was also suffering from stress due to a house move and the build up of his studies. J complained to the OIA that the university had not properly considered the

evidence he provided regarding his circumstances. The complaint was found **not justified**, as the regulations made it clear that the student was responsible for providing full information regarding their circumstances and J had failed to do so. The university had properly considered the evidence and applied its regulations and had found the evidence to be insufficient to support his claim.

CASE 10

K was an undergraduate at the University of SS. The HEI had sold its halls of residence to a private finance initiative company before he took up his place. After a few weeks K quit his studies at the HEI and vacated the room in the hall of residence for which he had signed a licence agreement with the company. The HEI refunded his tuition fees. The company re-let his room in the hall of residence but refused to refund any rent. It said it was not obliged to do so under the terms of the student licences. The HEI denied any responsibility. K's complaint to the OIA was found **justified**. The representations made by the HEI in relation to ownership and responsibility for the halls of residence were ambiguous in the prospectus; the rent was paid to the HEI; the HEI had assumed some responsibility for the letting process in promotional material inviting students to reserve a room, and allowing itself to be held out as being in association with the company; furthermore the HEI should not have put students in the position of having to enter into unfair licences. Its own previous practice allowed refunds in certain cases and at its discretion, whereas there were no parallel clauses in the company licence. It was **recommended** that the HEI refund to K the amount equivalent to rent paid during the period when the room was re-let, minus the deposit and an administration fee.

Letters of advice to the Visitor

Six letters of advice were provided to Visitors on which they could base their decisions. The situations giving rise to those complaints were not dissimilar to those described above.

V ACCOUNTABILITY OF THE OIA

There are two ways in which we are accountable. One is directly – to the Board and ultimately to the Secretary of State and the Welsh Assembly who could use the powers of the Higher Education Act 2004 to remove our designation as the approved scheme. The other is indirectly – that is, our decisions are constrained by the possibility of judicial review and other forms of relationship to the court system.

The Board of the OIA

In 2004 the Board met three times and received a report from the Independent Adjudicator and/or the Deputy Adjudicator on each occasion. The Office appreciates the interest and support of the Board members, all of whom have visited the offices and become acquainted with our work. The Board members at any time in 2004 were:

Professor Norman Gowar (chairman), formerly Principal, Royal Holloway College
*Mr. J. A Burse*y, Registrar, University of Bath
Mrs. L. Casella, Head of Vice-Chancellor's Office, Cardiff University
Sir Geoffrey Chipperfield, Committee of University Chairmen
Dr. Geoffrey Copland, Vice-Chancellor and Rector, University of Westminster
Mr. Mark Emerton, Criminal Cases Review Commissioner
Ms Hannah Essex, Vice President Education, National Union of Students
Mr. Malcolm Faulkner, Chairman, University of Central Lancashire
Mr. Tony Grayson, Registrar, Liverpool Hope College
Ms Sophie Holmes, Director of Research and Projects, National Union of Students
Mr. Gareth Lewis, Secretary, Higher Education Wales
Professor Paul Light, Principal, University College Winchester
Mrs. Maxine Penlington, Secretary and Registrar, University of Central England in Birmingham
Professor Alasdair Smith, Vice-Chancellor, University of Sussex
Mr. Hugh Smith, Consultant, Tetragon HR
Mr. Chris Weavers, Vice President Education, National Union of Students

Secretary, *David Anderson-Evans*

Additional independent members are being recruited.

If a dissatisfied complainant wishes to complain about the work of the Office, it has been decided that in the interests of achieving independence of review, the complaint will be channelled through the Secretary to the Board to be considered by an appropriate external individual on a case-by-case basis.

The OIA has also continued to maintain constructive relations with the Department for Education and Skills, which oversaw the setting up of the Office.

The Courts

A complainant may not bring a complaint to the OIA if it has already been considered by the courts. If however a student is dissatisfied with the outcome of a complaint decided by the OIA he or she can go to court, either to seek redress from the HEI or possibly to seek judicial review of the OIA's decision. The experience of most ombudsmen schemes is that complainants do not do so. The courts may be reluctant to entertain complaints from students against HEIs in the light of recent cases supporting the use of ombudsman and adjudication schemes, where they exist, rather than courts to deal with complaints about maladministration (*Anufrijeva v Southwark LBC* [2003] EWCA Civ 1406.)

A dissatisfied complainant unsuccessfully sought judicial review of a decision by the OIA. Permission was not granted and costs were awarded to the OIA. The judge found no arguable grounds for criticising the “full and careful reasons” provided for its decision by the OIA. The full extent to which judicial review may be asserted over our decisions remains to be seen. There is also the question whether a decision of the OIA might be enforced by the successful complainant seeking a court order against the HEI were it not to implement the recommendations.

We look forward to the next year of our challenging and exciting jurisdiction and to continuing the establishment of a system of review that is fair to all parties and accountable to the public. Every one of us has an interest in the guarantee of a system of higher education that is just, efficient and of the highest quality.

Annex 1

STATUTORY BACKGROUND TO THE OIA

The history of the establishment of the OIA falls into four distinct phases.

By the mid 1990s, it was foreseen that there would be specific effects on higher education from the forthcoming introduction into English law of the European Convention on Human Rights and from the change to a system of mass ongoing education almost as of right. The Nolan Committee's second report was published on 16 May 1996 (*Standards in Public Life – Local Public Spending Bodies*, Cm 3270-1). It proposed that all HEIs should have arrangements for the independent review, when all internal avenues were exhausted, of students' appeals and complaints (recommendation 9). The Committee of Vice-Chancellors and Principals (CVCP), as then was (now Universities UK (UUK)) appointed a working group to advise it on the response to this recommendation. This working group, chaired by Professor C Booth and Professor G Zellick, issued a report *"Independent review of student appeals and complaints"* in the joint names of CVCP and SCOP (the Standing Conference of Principals). The report canvassed the merits of 6 options: - the involvement of external persons, the Visitor, the unofficial 'Visitor', an institutional Ombudsman, a panel of independent persons and arbitration. The Nolan Committee in its fourth report published in November 1997 commented on the interim report of that group

"Each institution should therefore have a system which is among those put forward by the CVCP report."

This suggestion was developed further by the Dearing Report (*Report of the National Committee of Inquiry into Higher Education, 1997*). Chapter 15.57-59 of the report said:

"Inevitably, there will be occasions when students complain to an institution, for example, complaints about academic judgments of their work or the quality of their experience. It is essential for good governance and achievement of the first, second and fourth purposes of the Code, that all complaints are dealt with fairly, transparently and in a timely way.

We were told that complaints from students are likely to increase, particularly as assessment criteria become more explicit and student expectations and financial commitments increase. We noted the evidence of increasing disputes between institutions and their students, about academic and non-academic matters, including litigation, and concerns from staff and students about the way in which some cases have been handled.

A working party set up by the CVCP has undertaken some detailed work, focusing on those complaints from students which do not involve academic judgments. We have not sought to duplicate its careful efforts. Our chief concern is that students' complaints are – and are seen to be – taken seriously. When the internal procedures within an institution are exhausted, the student should have access to an independent individual not involved in the original decision, who can review the way the case has been handled and, in non-academic matters, the decision that has been taken. Where the complaint is particularly serious, the independent individual should be drawn from outside the institution. These procedures need to be accessible, widely understood by staff and students and operated equitably and in a timely manner. They are not intended to involve disproportionate costs or staff time for institutions. We support the use of reconciliation and possibly formal

arbitration. We would also urge that institutions report on the use made of the procedures from time to time in their annual report. If such procedures are adopted throughout the sector, we think an “ombuds”-style function is not required. We urge institutions to review their current procedures in the light of the CVCP working party report and our report.”

Recommendation 60 of the Dearing Report summarised this thinking.:

“We recommend to institutions that, over the next 2 years, they review and, if necessary, amend their arrangements for handling complaints from students, to ensure that they reflect the principles of natural justice; they are transparent and timely; they include procedures for reconciliation and arbitration; they include an independent, external element; and they are managed by a senior member of staff.”

It was acted on very shortly thereafter by the Quality Assurance Agency (QAA), which issued a Code of Practice for the Assurance of Academic Quality and Standards in Higher Education, section 5 of which dealt with Academic Appeals and Student Complaints on Academic Matters. The OIA has had frequent occasion to advert to QAA principles in dealing with procedural issues arising in complaints.

The second stage of development of the proposal came with the White Paper, *The Future of Higher Education*, Cm 5735 of 2003, which laid the foundations for the Higher Education Act 2004. Consultation had sharpened the focus of the proposals for a new approach to student complaints. The White Paper report said in para. 4.11-12:

“Reforms to give students a greater voice must include providing them with a fair, open, and transparent means of redress when things go wrong, a safeguard that will be especially important in a freer system. Last autumn, the sector was consulted on the establishment of an independent review of student complaints. The consultation revealed that there was substantial support from HEIs for an independent adjudicator to hear student complaints, and recognition that ultimately legislation would be needed to underpin whatever arrangements were put in place. We will therefore legislate for the establishment of an independent adjudicator in the forthcoming higher education bill, but have asked the sector to press ahead with establishing a voluntary independent adjudicator in the meantime.”

The third stage was the establishment of the Office of the Independent Adjudicator for Higher Education as a company limited by guarantee. The company was incorporated on 7 July 2003 and met for the first time on 1 August 2003. Professor Norman Gowar, former Principal of Royal Holloway College, University of London, was elected the first chairman. The Board may have a maximum of 16 members. In order to establish its independence, independent members are selected following Nolan principles and added to the membership nominated by the stakeholders, UUK, CUC (Committee of University Chairmen), SCOP (Standing Conference of Principals), AHUA (Association of Heads of University Administration), NUS (National Union of Students) and HEW (Higher Education Wales). The Board's functions are supervisory, approving budgets and subscriptions, ensuring the independence of the adjudicators, approving overall policy, and

publishing an annual report. It will not be involved with individual cases. Further details are given in chapter V, the Accountability of the OIA. The Department for Education and Skills funded the OIA directly during its initial period of operation, up to March 2005, and made a grant to cover start up costs. In order to ensure good value for money, a satisfactory transport situation and a suitable recruitment field, offices were found in Reading close to the station.

The development of the scheme was completed by the enactment of Part 2 of the Higher Education Act, which contains general principles for the establishment of a student complaints review scheme. It was to be designated as such by the Secretary of State for Education and Skills provided it met certain criteria, but otherwise was granted considerable discretion to develop the workings of the scheme and its ambit. The Act ends the role of the Visitor in dealing with complaints from students in the higher education sector. It allowed the Secretary of State and the Welsh Assembly to approve a scheme for an Office of the Independent Adjudicator. It requires HEIs (Higher Education Institutions) to use the scheme and pay for it. It does not empower the OIA to make binding decisions but rather to make recommendations back to the institutions. The student if still not satisfied after the final decision of the HEI would not be denied access to the courts, either in place of recourse to the OIA or after its decision, although it is expected that this will be a limited judicial review. By virtue of the Higher Education Act 2004 HEIs are obliged to comply with the provisions of the OIA scheme. The OIA has a duty to report on the extent to which its recommendations are followed (Schedule 3, para. 6(2)(c)). In the period covered by this Report, all our recommendations have been complied with.

Once the Higher Education Act 2004 had been enacted, preparations commenced to achieve for the OIA the status of designated operator under section 13. During the summer of 2004 all 147 participating HEIs in England and Wales were consulted on the new draft rules, which built on the experience gained in the operation of the Rules of the transitional scheme. The National Union of Students and the National Postgraduate Committee were also invited to comment. A response rate of 39% was achieved. (See Annex 5.) The input from HEIs and the NUS overall has been constructive and satisfactory, bearing in mind that earlier transitional rules had also been subject to consultation. In particular, the new rules clarified that issues relating to admissions to an HEI were not to be included and that there would normally be a ban on complaints relating to issues arising more than 3 years before the application, subject to discretion.

The OIA then demonstrated to the DfES through documentation that it was complying with all the Conditions listed in Schedule 2 of the Act. These actions were undertaken in relation to England and Wales separately. At this stage the subscription base for HEIs was also settled, on a per capita basis. HEIs were required to pay a subscription to the OIA based on the Higher Education Statistical Agency figures for higher and further education students. The initial levels were set at a few hundred pounds for the smallest institutions to just under £10,000 for the largest ones. The scale appears below:

Under 500 students:	£ 150
500 – 1500	£ 310
1501 – 6000	£1650
6001 – 12000	£3280
12001 – 30000	£8240
30000 up.....	£9790

On 9 December 2004 the Education and Skills Secretary Charles Clarke wrote to the Chairman of the OIA formally designating the OIA with effect from 1 January 2005. He said:

“We are determined to give students a greater voice in regard to the quality of their higher education. Institutions have worked hard to establish good internal complaints procedures but occasionally complaints cannot be satisfactorily resolved. The OIA will provide students with a fair, open and transparent means of redress when things go wrong. I urge institutions to ensure that students are made aware of their rights to go to the OIA as an avenue of redress once internal procedures have been exhausted.”

Jane Davidson, Minister for Education and Lifelong Learning in Wales, announced formal designation by the Welsh Assembly on 22 December 2004.

Annex 2

PARTICIPATING HEIS IN THE TRANSITIONAL SCHEME

Anglia Polytechnic University	Glamorgan, University of
Arts Institute at Bournemouth, The	Glasgow, The University of
Arts London, University of the	Gloucestershire, University of
Bath, University of	Goldsmiths College
Birkbeck College	Greenwich, University of
Birmingham College of Food, Tourism & Creative Studies	Harper Adams University College
Birmingham, The University of	Hertfordshire, University of
Bolton Institute	Huddersfield, The University of
Bournemouth University	Imperial College of Science, Technology and Medicine
Bradford, University of	Institute of Education
Brighton, University of	Keele University
Bristol, University of	Kent Institute of Art and Design
Central England in Birmingham, University of	Kingston University
Central Lancashire, University of	Leeds, The University of
Chester, University College	Leicester, University of
Chichester, University College	Liverpool, University of
City University	London Metropolitan University
Coventry University	London School of Economics and Political Science
Cranfield University	London School of Hygiene and Tropical Medicine
Cumbria Institute of the Arts	London, University College
Derby, University of	London, University of
East Anglia, University of	Loughborough University
East London, University of	Luton, University of
Edge Hill College	Manchester Institute of Science & Technology, University of
Essex, University of	Manchester Metropolitan University, The
Exeter, University of	Manchester, The University of
Falmouth College of Arts	Middlesex University
Girton College Cambridge	Newman College of Higher Education

North East Wales Institute of Higher Education
 Northampton, University College
 Norwich School of Art and Design
 Nottingham Trent University, The
 Nottingham, University of
 Open University, The
 Oxford Brookes University
 Plymouth, University of
 Portsmouth, University of
 Queen Mary, University of London
 Ravensbourne College of Design and Communication
 Reading, University of
 Royal Academy of Music
 Royal Agricultural College
 Royal College of Art
 Royal College of Music
 Royal Holloway, University of London
 Royal Northern College of Music
 Royal Veterinary College, The
 Royal Welsh College of Music and Drama
 Salford, The University of
 School of Oriental and African Studies
 Sheffield Hallam University
 Sheffield, The University of
 St George's Hospital Medical School
 St Mark and St John, The College of
 St Martin's College
 St Mary's College
 Staffordshire University
 Sunderland, University of
 Surrey Institute of Art and Design, University College
 Surrey Roehampton, University of
 Surrey, University of
 Sussex, University of
 Swansea Institute of Higher Education
 Thames Valley University
 Trinity and All Saints College
 Trinity College
 Trinity College of Music
 Wales (federal), University of
 Wales Institute, Cardiff, University of
 Wales, Aberystwyth, University of
 Wales, Bangor, University of
 Wales, Newport, University of
 Wales, Swansea, University of
 Warwick, University of
 Westminster, University of
 Wimbledon School of Art
 Winchester, University College
 Worcester, University College
 Writtle College
 York St John College
 York, University of

Annex 3

OIA GRANT RECONCILIATION

Total DfES Grant Income received July 2003 - March 2005£1,000,000.00

Expenditure

Plant & Equipment	£34,191.00
Furniture & Fixtures	£34,228.00
Adjudicator Salaries & Costs.....	£377,980.00
Recruitment Expenses.....	£25,546.00
Rent and Rates	£102,235.00
Heat, Light and Power	£9,297.00
Travelling costs	£8,388.00
Telephone/Postage/Printing	£18,624.00
Office Supplies	£39,077.00
Books & Subscriptions.....	£9,124.00
IT/Web Expenses	£74,312.00
Directors' Costs.....	£3,038.00
Professional Fees.....	£125,267.00
Advisory Fees and Project Management	£105,251.00
Training	£8,928.00
Insurance	£9,970.00
Miscellaneous Expenses.....	£14,544.00

Total Expenditure by OIA.....£1,000,000.00

The Office of the Independent Adjudicator for Higher Education 2005 Business Plan

Objectives

Our key objectives during 2005 are to process complaints efficiently and in a manner which gains the confidence of HEIs and students.

Commencement of the Statutory Scheme

The OIA has been designated as the operator of the student complaints scheme by the Secretary of State and the Welsh Assembly as from 1 January 2005. So with effect from that date:

- The Visitor's jurisdiction will be abolished
- Approximately 40 additional HEIs (plus the constituent colleges of Oxford and Cambridge) will participate in the Scheme
- All qualifying higher education institutions in England and Wales must comply with our Rules
- HEIs are bound to fund the OIA

We have distributed our rules and guidance literature about the new scheme to all HEIs and our website is being updated to reflect the change.

Most HEIs and students will not have had any experience of dealing with the OIA so we have established a help desk to deal with enquiries about the new scheme.

We expect a fairly lengthy settling down period during which we will need to support HEIs and students' unions in understanding our procedures and jurisdiction.

Complaints handling

The big unknown for the OIA during 2005 will be the number of enquiries and complaints we are likely to receive. During the transitional period of nine months we received approximately 80 full complaints and dealt with several hundred enquires. But increased awareness of the Scheme and the influx of additional participating HEIs is likely to lead to a significant increase, perhaps 3-400 complaints during 2005. This clearly has implications for staffing and resources (see below).

One priority for 2005 will be to improve our efficiency in the way we handle complaints. Under current projections each investigated complaint will cost about £2000 to handle (this figure ignores

all the other work we do, of course). Over the next few years we will need to bring this figure down to less than £1500 per complaint. This should be achievable as the Scheme settles down, our policies and procedures are refined and economies of scale begin to operate.

One problem has been that casehandlers have had to spend considerable time corresponding with HEIs and complainants, and their lawyers, on eligibility and procedural issues rather than the merits of a complaint. Under the new rules and guide we will be able to take a more robust stand on these matters.

Another important issue for us will be quality control. Employing high quality staff has paid off with the Independent Adjudicator and/or Deputy Adjudicator only needing to make slight refinements to most decisions. However, for the time being we do intend to continue with the safeguard of having the Independent Adjudicator and/or the Deputy Adjudicator sign off on all decisions.

Operations

The setting up of the office and the establishment of our business processes was more or less completed by the end of 2004. The office is fully furnished and equipped for 12 staff. We have purchased various proprietary complaints handling and recording software and we expect these applications will be able to cope with our requirements in 2005, although we may need to purchase a few additional licences for new staff and acquire some add-on software. Our systems have performed very well and enable us to record all complaints and enquiries and to produce the reports and statistics that we need. So we are unlikely to incur significant capital expenditure during 2005.

Many schemes now provide a low cost telephone number for complainants to use. We may need to consider this during the year.

Premises

The Reading location is proving to be popular with both staff and visitors. Our premises are very satisfactory for our purposes, although some of the communal facilities could do with some refurbishing. During 2004 the freehold was sold to a new landlord – LaSalle London Office Fund. New managing agents have also been appointed. We have sufficient space to cope with current projections for complaints handling.

Lease

We have a break clause in our lease enabling us to terminate the lease in March 2005, subject to the payment of a penalty. This was considered necessary in case the Higher Education Bill was not enacted. Notice to terminate had to be given by 31 December 2004. We saw no reason to exercise that right.

Our twelve month rent free period starts on 1 April 2005. This means that only 6 days' rent will be payable during 2005, the rent for the twelve month period from March 2004 having been paid in advance.

Staffing

Currently we have the following staff:

Independent Adjudicator (part time)
Deputy Adjudicator
4 Assistant Adjudicators (incl. 2 part time)
Administration officer/secretary
Liaison officer/secretary

We also have access to the services of a higher education consultant and another adjudicator on an hourly basis.

Adjudicators are all legally qualified with relevant complaints handling experience.

Last year we predicted that the above staff would be able to handle 300 complaints per year. This may prove to be ambitious. We are finding that many complaints are multi-headed, and require a fairly comprehensive investigation. We are therefore budgeting for an additional casehandler during the year. We also have to replace one assistant adjudicator who will be on maternity leave. Our two administration/liason officers now spend a substantial part of their time dealing with enquiries so we are also planning to recruit a part-time office assistant who can deal with more routine tasks.

Awareness of Scheme

During 2005 we will continue our efforts to increase awareness of the Scheme amongst students, university staff and the media through our literature, seminars, attending conferences and briefing the media. We now have a flyer that we are suggesting to HEIs should be distributed as widely as possible. Where HEIs require bulk quantities we will make a small charge to cover our costs, The OIA's website will continue to be a major source of information about the Scheme. All scheme literature can be downloaded from the site and complainants will be able to complete a Scheme Application Form electronically although they will still have to send a signed copy to us.

Subscriptions

All HEIs have been sent invoices for 2005 subscriptions. Monies received from subscriptions will be held in a separate account so that grant income is utilised first. We place surplus funds in a money market account with HSBC.

Collecting subscriptions has, as expected, already imposed a fairly heavy burden on our administrative staff and we are grateful to them for coping whilst carrying on with their other activities. We anticipate that the bulk of subscriptions will be received by the end of January.

Risk management

Our main risks are (with comments):

1. Funding – HEIs are legally bound to pay our subscriptions
2. Systems – we use proven IT systems
3. Premises - we have a long term lease with 10 years remaining
4. High volume of complaints – this is probably our main area of risk, we will need to recruit additional staff and streamline our complaints handling systems if this happens
5. Recruitment difficulties - our staff are highly experienced: if they leave or we need additional staff it may not be easy to replace them
6. Disaster scenario – our IT systems are backed up every week and a back-up tape kept offsite
7. Unbudgeted legal costs arising out judicial review proceedings

The Budget

The draft 2005 budget is attached to this Business Plan. The budget figures assume subscription income of £668,480, grant income of £118,810, and bank interest of £6,000, totalling £793,290. Approximately 65% of our costs relate to salaries and advisory fees. The budget may need to be revised in the light of actual numbers of student complaints.

Financial Statements and Reports

Management accounts (on an accrual basis from 2005) will be produced quarterly. Year end financial statements accounts (on an accrual basis) will be produced by Ernest & Francis, chartered accountants. Our financial year now ends on 31 December (previously 1 April). The financial statements will be audited by James & Cowper, chartered accountants.

In addition to statutory requirements the company is obliged by its Articles of Association and rules to publish an Annual Report for each financial year. The Independent Adjudicator is required to issue her own annual report. Her first report was issued in August 2004 and the next one will be published during the first half of 2005.

Quarterly statistics will be provided to the Board with a summary appearing on our website.

Constitution of the Board

During 2004 the Articles of Association of the OIA were amended so that we are required to have a majority of independent directors. Steps are being taken by the Chairman to ensure that this is achieved early 2005.

Deputy Adjudicator, December 2004

Office of the Independent Adjudicator for Higher Education 2005 Budget

	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Totals
Staff salaries/on costs	108,312	108,206	106,269	119,019	441,806
Consultants/other staff costs	23,500	13,500	13,500	13,500	64,000
Rent/rates/service*	9,000	12,850	11,350	12,850	46,050
Professional fees	15,500	16,500	7,500	7,500	47,000
Office supplies	12,684	13,500	8,500	8,500	43,184
Telephone/postage/web/IT	14,250	9,200	6,000	6,000	35,450
Training	4,950	4,950	4,950	4,950	19,800
Misc.	14,000	7,500	7,500	14,500	43,500
Bd of Directors	3,500	3,000	3,000	3,000	12,500
Contingencies	3,000	3,000	3,000	3,000	12,000
Depreciation	7,000	7,000	7,000	7,000	28,000
Total expenditure	215,696	199,206	178,569	199,819	793,290
Subscriptions	668,480				668,480
Grant income	118,810				118,810
Net bank interest	1,300	2,500	1,600	600	6,000
Total income					793,290

* During 2005 we have a rent free period of 9 months. However, our 2005 financial statements will need to show an apportionment of rent payable between 2006 and 2009 of approx. £37,000. This is excluded from the budget together with 3 months pre-paid rent which appeared in an earlier budget on a cash accounting basis.

Annex 5

CONSULTATION REPORT

Introduction

Under the Higher Education Act 2004 the Secretary of State and the Welsh Assembly must be satisfied that, amongst other things, the OIA has consulted interested parties about the provisions of the student complaints scheme proposed by the OIA in order for it to become the designated operator. During August 2004 147 higher education institutions (including Oxford and Cambridge constituent colleges) were invited to comment on the new scheme together with the National Union of Students and the National Postgraduate Committee. 63 responses were received from HEIs – mostly by the deadline of 9 October 2004, although a few were granted additional time. This represented a response rate of 39% (if Oxbridge colleges are excluded). A full list of responding HEIs is set out in the Schedule.

Overview

Most replying institutions welcomed the new scheme, but sought clarification on certain issues. Some comments, however, related to matters which are prescribed in the Higher Education Act 2004 (“the Act”) or to policies which have been settled by the Board of the OIA after consultation with its members. For example, several HEIs suggested that students should be charged for taking a complaint to the OIA although Schedule 2 condition 8 of the Act clearly prohibits this. And some considered that decisions should be binding on students whereas it was an early policy decision that this would not be the case. Generally, however, the comments were extremely helpful. Whilst several changes will be made to the Rules most comments can be addressed in the guidance to be issued by the OIA.

Responses

It is not practicable in this Report to refer to all the comments made by responding institutions. So this report focuses on those issues that appear to us to be the most important or have been raised by the largest numbers of HEIs.

Words in italics represent the OIA’s viewpoint.

Many HEIs and the student organisations we consulted asked whether “academic judgement” could be defined to avoid uncertainty over eligibility. *Our view is that a definition would be difficult to provide, and it is better to leave the decision to the discretion of the Reviewer who will consider all the circumstances.*

A number of HEIs felt that there is a liberal use of qualifying words like “normally” in the Rules which gives the OIA too much discretion. *We take the view that if our procedures are not reasonably flexible we could face expensive and time wasting legal and other challenges to the way we apply them.*

Another concern was that the OIA's procedures do not prevent former students bringing to the OIA old complaints that did not complete internal complaint procedures. *We agree that there should be a long stop date for bringing complaints and we will amend the Rules to deal with this.*

Many HEIs thought that the OIA should not have the discretion to look at complaints which have not exhausted the internal complaints procedures of the HEI. *We have already seen examples of HEIs taking far too long to process a complaint or denying students access to the proper procedures. So we consider this provision to be a useful tool in encouraging HEIs to deal with complaints expeditiously.*

Several HEIs thought 3-4 weeks is too short a period for them to respond to the OIA's requests for representations, especially in the summer vacation. *Most complaints that come to the OIA will already have been considered in detail by the HEI, so the HEI should be in the position of having all the information readily available. Requests for extensions of time will be considered on their merits.*

A large number of queries were received as to the circumstances in which the OIA would hold hearings. Several HEIs thought that hearings should not be held at all whilst the NUS felt all students should have a right to a hearing. *We do not consider that it would be helpful to say more about hearings in the Rules, but we intend to provide some additional guidance on this subject in our guides.*

Requests were made for there to be another body HEIs can complain to if they do not agree with the OIA's decision. *This suggestion cannot be adopted because there is no provision for such a body in the Act. In limited circumstances HEIs can seek assistance from the courts.*

HEIs were concerned that they could be named and shamed in the OIA's Annual Report for non-compliance with a Recommendation without the right of reply. *If we name an HEI in the Annual Report we will normally set out the circumstances of the complaint including an explanation of the HEI's position.*

We were also asked about complaints concerning members of staff. If a complaint is made about a staff member will the HEI first be given the opportunity to deal with that complaint as a disciplinary matter? *We understand HEI's concerns here, but in most cases the HEI will have had time to deal with the staff disciplinary aspect of the complaint by the time it comes to the OIA. We see no need to amend the Rules on this ground.*

There were concerns about the OIA making a Recommendation that the parties should mediate. Who would appoint the mediator, who would pay the costs etc.? *This comment is accepted and the Rules will be amended so that mediation is merely an option available to the parties should they wish to pursue that route.*

Several HEIs proposed that OIA casehandlers should adhere to a rigid timetable for dealing with complaints. *We have an obligation under the Act (and our Rules) to deal with complaints as soon as reasonably practicable. We intend to publicise our service standards in due course, including target response times, but a rigid timetable would be unworkable.*

A number of HEIs commented that they should not have to issue a Completion of Procedures Letter after academic appeals or disciplinary hearings automatically because it will encourage students to go to the OIA as a matter of course. *Whilst we do not accept this premise we will revise the wording of COP letters in the context of appeals and disciplinary hearings to make it clear that students have limited grounds on which to have their complaint reviewed by the OIA.*

Finally, a few institutions and the NUS considered that the OIA's company secretary was not sufficiently independent to handle complaints about the way the OIA has handled a complaint. *We accept this observation. The Rules will be amended to provide for an independent director to undertake this role.*

Further guidance was also requested by HEIs on a number of other issues including compensation levels, partnership arrangements, personal representatives and subscriptions. *The OIA will be issuing additional guidance on these matters.*

List of Institutions responding to the Consultation Process

Aberystwyth, University of Wales
 Anglia Polytechnic University
 Bath, University of
 Birmingham, The University of
 Bishop Grosseteste College
 Bradford, University of
 Brunel University
 Cambridge, University of
 Cardiff University
 Cardiff, University of Wales Institute
 De Montfort University
 Derby, University of
 Durham, University of
 East Anglia, University of
 Exeter, University of
 Falmouth College of Arts
 Glasgow, The University of
 Greenwich, University of
 Hertfordshire, University of
 Institute of Education
 Keble College, Oxford
 King's College, London
 Kingston University
 Leeds Metropolitan University
 Liverpool, University of
 London School of Economics and Political Science
 London School of Hygiene and Tropical Medicine
 London, University College
 London, University of
 Luton, University of
 Manchester Metropolitan University, The
 Middlesex University
 National Postgraduate Committee
 National Union of Students
 Newcastle, The University of
 Newport, University of Wales
 North East Wales Institute of Higher Education
 Northampton, University College
 Northumbria at Newcastle, University of
 Nottingham Trent University, The
 Nottingham, University of
 Oriel College, Oxford
 Oxford Brookes University
 Oxford, University of
 Royal College of Art
 Royal College of Nursing Institute
 Royal Holloway, University of London
 School of Oriental and African Studies
 Sheffield Hallam University
 Sheffield, The University of
 St Catharine's College, Cambridge (on behalf of
 Cambridge Colleges)
 St Catherine's College, Oxford
 St Mark and St John, The College of
 St Martin's College
 St Stephen's House, Oxford
 Staffordshire University
 Sunderland, University of
 Surrey, University of
 Swansea, University of Wales
 Teesside, University of
 Warwick, University of
 Wimbledon School of Art
 Wolverhampton, The University of
 Worcester, University College
 York, University of

Annex 6

OIA TRANSITIONAL RULES 2004

These are the transitional rules ("Transitional Rules") of the student complaints scheme ("the Scheme") established by The Office of The Independent Adjudicator for Higher Education ("the Company") which will apply to all Higher Education Institutions ("HEIs") where there is no Visitor and no provision to appoint one. The Scheme is voluntary. Most, but not all, eligible HEIs are members of the Scheme. The intention is that the Transitional Rules will be superseded by further rules once the Scheme has a statutory basis. The Rules are effective from 29 March 2004.

1. Purpose

The main purpose of the Scheme is the review of unresolved complaints by complainants about acts and omissions of HEIs (where there is no Visitor and no provision to appoint one) and the making of recommendations.

2. Complaints Covered

The Scheme covers complaints about an act or omission of an HEI made by:

- 2.1 a student or former student at that HEI; or
- 2.2 a student or former student at another institution undertaking a course of study, or programme of research, leading to the grant of one of the HEI's awards.

3. Complaints Not Covered

The Scheme does not cover a complaint to the extent that:

- 3.1 it relates to a matter of academic judgment; or
- 3.2 the matter is or becomes the subject of court or tribunal proceedings which have not been stayed or was subject to such proceedings and

those proceedings have been concluded otherwise than being withdrawn or discontinued; or

- 3.3 it concerns a student employment matter; or

- 3.4 it relates to an HEI which has a Visitor or provision to appoint one.

4. Time Limits and Exhaustion of Internal Complaints Procedures

- 4.1 A complainant must have first exhausted the internal complaints procedures of the HEI complained about before bringing a complaint to the OIA. In exceptional circumstances a Reviewer may accept a complaint for review even if the internal procedures of the HEI have not been exhausted if he or she considers it appropriate to do so.

- 4.2 A complaint will not be considered by the OIA unless it is received within three months from the date upon which the internal complaints procedures were exhausted except where the Reviewer extends the time because he or she is satisfied that there is good reason to do so.

- 4.3 Complaints which exhausted an HEI's internal complaints procedures prior to 30 December 2003 will not normally be considered under the Scheme.

- 4.4 The HEI will, after the internal procedures have been exhausted, promptly issue a letter ("Completion of Procedures Letter") to the student concerned confirming that the internal complaints procedures have been so exhausted. The time limit in paragraph 4.2 will normally begin to run from the date of issue of the Completion of Procedures Letter.

5. Acceptance of Complaint

- 5.1 A complaint must be made in writing, normally using the Scheme Application Form.
- 5.2 The Reviewer will determine whether a complaint is within the jurisdiction of the Scheme, as prescribed by these Rules, and may at any time dismiss the complaint if the OIA does not have jurisdiction to review it.
- 5.3 The Reviewer may reject a complaint at any time without full consideration of the merits if, in his or her opinion, the complaint is frivolous or vexatious.

6. Review Procedures

- 6.1 The Reviewer will carry out a review of the complaint to decide whether it is justified in whole or in part.
- 6.2 The review will normally consist of a review of documentation and other information and the Reviewer will not hold an oral hearing unless in all the circumstances he or she considers that it is necessary to do so in order to resolve the complaint.
- 6.3 The normal method of dealing with a complaint will be:
 - 6.3.1 that once a complaint has been accepted a copy will be sent to the relevant HEI for their comments and the Reviewer may also require responses to specific questions raised by the Reviewer;
 - 6.3.2 the response of the HEI to the complaint will then be sent to the complainant to allow the complainant to comment on it;
 - 6.3.3 if the Reviewer considers it necessary further investigation or enquiries can be made;

6.3.4 prior to issuing his or her Formal Decision the Reviewer may issue a draft decision (and any draft recommendations) in order to give the parties the opportunity to make representations as to any material errors of fact they consider have been made.

6.4 The parties shall comply promptly with any reasonable and lawful request for information the Reviewer may make relating to the review.

6.5 The Reviewer shall not be bound by legal rules of evidence nor his or her previous decisions, nor by previous decisions of the OIA.

6.6 Notwithstanding the above the Reviewer may at any time seek to achieve a mutually acceptable settlement of a complaint (including, with the consent of the parties, through the appointment of a mediator) whenever he or she considers it appropriate.

7. The Formal Decision and any Recommendations

7.1 The Reviewer will issue his or her Formal Decision, and any Recommendations the Reviewer decides to make, to the complainant and the HEI as soon as is reasonably practicable.

7.2 The Formal Decision and any Recommendations shall be in writing and contain reasons for the Formal Decision and for any Recommendations.

7.3 In deciding whether a complaint is justified the Reviewer 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.

7.4 The Reviewer may, where the complaint is justified in whole or in part, make Recommendation(s) that the HEI does something or refrains from doing something. Those Recommendation(s) may include the following;

7.4.1 that the complaint should be referred back to the HEI for a fresh determination because its internal procedures have not been properly followed in a material way;

7.4.2 that the complaint may have merit, but it would be better considered in another forum;

7.4.3 that the payment of compensation should be made to the complainant, including, at the Reviewer's discretion, an amount for inconvenience and distress;

7.4.4 that the HEI should take a course of action that the Reviewer considers to be fair in the circumstances;

7.4.5 that, with the consent of the parties, the complaint should be referred to independent mediation for attempted resolution;

7.4.6 that the HEI should change the way it handles complaints;

7.4.7 that the HEI should change its internal procedures or regulations.

7.5 The expectation is that the HEI will accept the Formal Decision and any accompanying Recommendations in full. If the HEI does not accept the Formal Decision and any accompanying Recommendations it must inform the Reviewer in writing as soon as reasonably practicable, giving reasons for the non-acceptance, and by no later than a date specified by the Reviewer (or any extended period granted by the Reviewer to the HEI).

7.6 Where Recommendations require the HEI to take a particular course of action it is expected that they will do so within the time scale stipulated or, where no time scale is indicated, as soon as is reasonably practicable. The HEI shall, if requested, report to the Reviewer on such compliance.

7.7 The Reviewer may suspend consideration of a complaint or make a Formal Decision based on information currently available if, in the opinion of the Reviewer, a party has unreasonably delayed or has otherwise acted unreasonably.

8. *The Independent Adjudicator and Deputy Adjudicator*

The Independent Adjudicator and Deputy Adjudicator are appointed by and responsible to the Board. In determining any complaints under these Rules the Independent Adjudicator and the Deputy Adjudicator shall act independently of the Board, HEIs and complainants. The Independent Adjudicator and the Deputy Adjudicator are not officers of the Company for the purposes of the Companies Act.

9. *The Board*

The Board shall be constituted in accordance with the Articles of Association of the Company (as may be amended from time to time).

10. *Role of the Board*

10.1 The Board's role shall be to:

10.1.1 appoint, maintain and safeguard the independence of the Independent Adjudicator and the Deputy Adjudicator;

- 10.1.2 monitor the performance of the Scheme;
- 10.1.3 ensure that the Scheme is appropriately funded;
- 10.1.4 approve the Annual Budget and Business Plan;
- 10.1.5 determine the scale of case fees (if any) and subscriptions to be charged to HEIs;
- 10.1.6 carry out its statutory duties; and
- 10.1.7 review, and where appropriate, amend these Rules from time to time.
- 10.2 The Board is not involved in the review and determination of individual complaints.
- 11. Further Powers and Duties of the Independent Adjudicator and the Deputy Adjudicator**
- 11.1 The Independent Adjudicator and Deputy Adjudicator shall have the following further powers and duties:
- 11.1.1 The Independent Adjudicator shall report to the Board any non-compliance by an HEI with a Formal Decision and any Recommendations.
- 11.1.2 The Independent Adjudicator may enter into discussions and memoranda of understanding with any bodies or persons the Independent Adjudicator considers fit on matters of common interest, including the exchange of information.
- 11.1.3 The Independent Adjudicator and the Deputy Adjudicator shall attend meetings of the Board when asked to do so at reasonable notice and to provide the Board with such information as it may reasonably request .
- 11.1.4 The Deputy Adjudicator shall prepare each year a draft Annual Budget and draft Business Plan for the next financial year for presentation to the Board and prepare performance reports for the Board.
- 11.1.5 The Independent Adjudicator shall prepare each year his or her Annual Report (which shall be distinct from the annual report of the Company) on the discharge of the functions of the Independent Adjudicator and the Deputy Adjudicator during the most recently ended reporting period. The report will include information about:
- (a) complaints referred under the Scheme;
 - (b) the Decisions and Recommendations made by Reviewers;
 - (c) the extent to which Recommendations made by Reviewers have been followed (listing any HEIs which have not complied with a Recommendation);
 - (d) the way in which the operator has used the fees (if any) paid in connection with the Scheme; and
 - (e) the names of those HEIs participating in the Scheme.
- 11.1.6 The Independent Adjudicator and the Deputy Adjudicator may incur expenditure for the purposes of the functions of the Scheme, subject to and to the extent such are provided for in the then current Annual Budget or approved by the Board.
- 11.1.7 The Independent Adjudicator and the Deputy Adjudicator may recruit, appoint, train, manage and remove staff.
- 11.1.8 The Independent Adjudicator and the Deputy Adjudicator may delegate (and sub-delegate), subject, where necessary, to the approval of the Board any of their powers and duties to each other and other members of the staff of the Scheme provided that, in delegating any such powers and duties, they shall exercise all reasonable care and skill to ensure that the

delegate discharges all such powers and duties in accordance with the standards expected of themselves.

- 11.1.9 The Independent Adjudicator and the Deputy Adjudicator shall determine the terms and conditions of service/employment of the staff of the Scheme (subject to the approval of the Board in the case of their own terms and conditions).
- 11.1.10 The Independent Adjudicator may publish individual decisions and digests of complaints in anonymised form.
- 11.1.11 The Independent Adjudicator and Deputy Adjudicator may recommend systemic changes in policy or procedure relating to dispute handling by HEIs and publish such recommendations.

12. Charges and Fees

- 12.1 The Scheme will not make any charges to complainants for the consideration of their complaints.
- 12.2 Each HEI is bound to pay a total annual subscription and/or case fee, based on a published scale, for participating in the Scheme, which subscription will be determined by the Board from time to time but will not exceed the amount incurred by the Company, taking one year with another, in providing the Scheme in relation to those HEIs.

13. Interpretation

Unless the context otherwise requires the definitions and interpretations set out below shall apply to these Rules:

“Annual Budget” means each annual financial budget for the Company for the relevant accounting period

“Annual Report” means each annual report on the discharge and functions of the Independent Adjudicator and Deputy Adjudicator in accordance with paragraph 11.1.5

“Board” means the board of directors of the Company

“Business Plan” means each annual business plan for the Company for the relevant accounting period

“Companies Act” means the Companies Act 1985

“complaint” means a complaint in accordance with paragraphs 2 and 3

“complainant” means a student or a former student who is entitled to bring a complaint under the Scheme

“Formal Decision” means a final decision issued by a Reviewer following a review under these Rules

“Higher Education Institution” or “HEI” means any of the following institutions in England or Wales

(a) a university (whether or not receiving financial support under section 65 of the Further and Higher Education 1992) (“1992 Act”) whose entitlement to grant awards is conferred or confirmed by an Act of Parliament, a Royal Charter or an order under section 76 of the 1992 Act;

(b) a constituent college, school or hall or other institution of a university falling within (a) above;

(c) an institution conducted by a higher education corporation, as defined by section 90(1) of the 1992 Act;

(d) a designated institution, as defined by section 72(3) of the 1992 Act or such other higher education institution in the United Kingdom which has joined the Scheme with the consent of the Board

“Recommendation” means a recommendation, which accompanies a Formal Decision

“Reviewer” means the Independent Adjudicator or the Deputy Adjudicator or such other person to whom the review of a complaint has been delegated

“Scheme Application Form” means an application form in a format approved by the OIA for making a complaint under the Scheme

Where the word “it” is used in relation to a party it shall include “he” or “she” as the context requires.

A plural word includes the singular and vice versa.

A reference to a statute in these Rules shall include a reference to that statute as may be modified, amended, re-enacted or supplemented from time to time.

14. *Amendments to the Rules*

These Rules may be amended from time to time in accordance with paragraph 10.1.7.

15. *Law and Jurisdiction*

These Rules shall be governed by and interpreted according to the law of England and Wales.

Annex 6

TRANSITIONAL PROCEDURES OF THE OIA 2004 WHERE THERE IS A VISITOR

This document describes the Procedures of the student complaints scheme ("the Scheme") established by the Office of the Independent Adjudicator for Higher Education ("the Company") which will apply to Higher Education Institutions ("HEIs") where there is a Visitor or provision to appoint one. Where an HEI has a Visitor the Visitor will continue to deal with student complaints. However, the Visitor may choose to request the advice of the OIA regarding the resolution of a complaint by the Visitor. The Procedures set out how the OIA will deal with such requests for advice from 29 March 2004.

1. *Complaints Covered*

Where requested to advise by a Visitor, the OIA will review a complaint in order to provide a Letter of Advice to the Visitor, in respect of complaints about an act or omission of an HEI made by:

- 1.1 a student or former student at that HEI; or
- 1.2 a student or former student at another institution undertaking a course of study, or programme of research, leading to the grant of one of the HEI's awards.

2. *Complaints Not Covered*

The OIA will not advise Visitors in respect of a complaint to the extent that:

- 2.1 it relates to a matter of academic judgment; or
- 2.2 the matter is or becomes the subject of court or tribunal proceedings which have not been stayed or was subject to such proceedings and those proceedings have been concluded otherwise than being withdrawn or discontinued; or
- 2.3 it concerns a student employment matter.

3. *Acceptance of Request for Advice*

- 3.1 A request for the OIA to advise a Visitor in respect of a complaint should be made in writing by the Visitor.

3.2 Prior to the OIA commencing its review the complainant must complete a Scheme Application Form which should be available from the complainant's HEI or Students' Union or it may be downloaded from our web site (www.oiahe.org.uk) or requested from the OIA by letter or telephone.

3.3 The OIA will not be able to consider any complaints which were referred to a Visitor prior to 29 March 2004.

4. *Review Procedures*

4.1 The Reviewer will carry out a review of the complaint to advise the Visitor as to whether in the Reviewer's opinion the complaint is justified in whole or in part.

4.2 The Reviewer may reject the review of a complaint at any time without full consideration of the merits if, in his or her opinion, the complaint is frivolous or vexatious.

4.3 The review will normally consist of a review of documentation and other information.

4.4 The normal method of dealing with a request to advise a Visitor in respect of a complaint will be:

4.4.1 that once details of a complaint have been received from the Visitor with a request for the OIA to review the complaint and provide a Letter of Advice, details of the complaint will be sent to the relevant HEI for their comments and the Reviewer may also require responses to specific questions raised by the Reviewer;

4.4.2 the response of the HEI to the complaint will then be sent to the complainant to allow the complainant to comment on it;

4.4.3 if the Reviewer considers it necessary further investigation or enquiries can be made;

4.4.4 the Reviewer will issue his or her Letter of Advice to the Visitor together with any accompanying recommendations;

- 4.4.5 after receiving the Letter of Advice from the OIA the Visitor will determine the complaint as he or she considers fit;
- 4.4.6 there will be no appeal to the OIA in respect of the Visitor's decision.
- 4.5 The HEI and the complainant are expected to comply promptly with any reasonable and lawful request for information the Reviewer may make relating to the review.
- 4.6 The Reviewer shall not be bound by legal rules of evidence nor his or her previous decisions or Letters of Advice, nor by previous decisions or Letters of Advice of the OIA.

5. *The Letter of Advice and any Recommendations*

- 5.1 The Reviewer will issue his or her Letter of Advice, and details of any recommended remedy, to the Visitor as soon as is reasonably practicable.
- 5.2 The Letter of Advice and any Recommendations shall be in writing and contain reasons for the Advice and for any Recommendations.
- 5.3 In deciding whether to advise a Visitor that a complaint is justified the Reviewer 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.
- 5.4 The Reviewer may, where the complaint is justified in whole or in part, advise that the Visitor makes Recommendation(s) that the HEI does something or refrains from doing something. Those Recommendation(s) may include the following:
 - 5.4.1 that the complaint should be referred back to the HEI for a fresh determination because its internal procedures have not been properly followed in a material way;

- 5.4.2 that the complaint may have merit, but it would be better considered in another forum;
- 5.4.3 that the payment of compensation should be made to the complainant, including an amount for inconvenience and distress;
- 5.4.4 that the HEI should take a course of action that is fair in the circumstances;
- 5.4.5 that the HEI should change the way it handles complaints;
- 5.4.6 that the HEI should change its internal procedures or regulations.
- 5.5 The Reviewer may advise the Visitor to suspend consideration of a complaint or the Reviewer may provide a Letter of Advice based on information currently available if, in the opinion of the Reviewer, a party has unreasonably delayed or has otherwise acted unreasonably.

6. *The Independent Adjudicator and Deputy Adjudicator*

The Independent Adjudicator and Deputy Adjudicator are appointed by and responsible to the Board. In advising Visitors on any complaints in accordance with the Procedures, the Independent Adjudicator and the Deputy Adjudicator shall act independently of the Board, HEIs and complainants.

7. *The Board*

The Board shall be constituted in accordance with the Articles of Association of the Company (as may be amended from time to time).

8. *Role of the Board*

- 8.1 The Board's role shall be to:
 - 8.1.1 appoint, maintain and safeguard the independence of the Independent Adjudicator and the Deputy Adjudicator;

- 8.1.2 monitor the performance of the Scheme; (a) complaints referred under the Scheme;
- 8.1.3 ensure that the Scheme is appropriately funded; (b) complaints advised upon during the year;
- 8.1.4 approve the Annual Budget and Business Plan; (c) the way in which the operator has used the fees (if any) paid in connection with the Scheme; and
- 8.1.5 determine the scale of case fees (if any) and subscriptions to be charged to HEIs; (d) the names of those HEIs participating in the Scheme.
- 8.1.6 carry out its statutory duties; and
- 8.1.7 review, and where appropriate, amend the Procedures from time to time.
- 8.2 The Board is not involved in the review of individual complaints.

9. Further Powers and Duties of the Independent Adjudicator and the Deputy Adjudicator

- 9.1 The Independent Adjudicator and Deputy Adjudicator shall have the following further powers and duties:
 - 9.1.1 The Independent Adjudicator may enter into discussions and memoranda of understanding with any bodies or persons the Independent Adjudicator considers fit on matters of common interest, including the exchange of information.
 - 9.1.3 The Independent Adjudicator and the Deputy Adjudicator shall attend meetings of the Board when asked to do so at reasonable notice and to provide the Board with such information as it may reasonably request .
 - 9.1.4 The Deputy Adjudicator shall prepare each year a draft Annual Budget and draft Business Plan for the next financial year for presentation to the Board and prepare performance reports for the Board.
 - 9.1.5 The Independent Adjudicator shall prepare each year his or her Annual Report (which shall be distinct from the annual report of the Company) on the discharge of the functions of the Independent Adjudicator and the Deputy Adjudicator during the most recently ended reporting period. The report will include information about:
 - 9.1.6 The Independent Adjudicator and the Deputy Adjudicator may incur expenditure for the purposes of the functions of the Scheme, subject to and to the extent such are provided for in the then current Annual Budget or approved by the Board.
 - 9.1.7 The Independent Adjudicator and the Deputy Adjudicator may recruit, appoint, train, manage and remove staff.
 - 9.1.8 The Independent Adjudicator and the Deputy Adjudicator may delegate (and sub-delegate), subject, where necessary, to the approval of the Board any of their powers and duties to each other and other members of the staff of the Scheme provided that, in delegating any such powers and duties, they shall exercise all reasonable care and skill to ensure that the delegate discharges all such powers and duties in accordance with the standards expected of themselves.
 - 9.1.9 The Independent Adjudicator and the Deputy Adjudicator shall determine the terms and conditions of service/employment of the staff of the Scheme (subject to the approval of the Board in the case of their own terms and conditions).
 - 9.1.10 The Independent Adjudicator may publish digests of complaints in anonymised form.
 - 9.1.11 The Independent Adjudicator and Deputy Adjudicator may recommend systemic changes in policy or procedure relating to dispute handling by HEIs and publish such recommendations.

10. Charges and Fees

- 10.1 The Scheme will not make any charges to complainants for the consideration of their complaints.

- 10.2 Each HEI is bound to pay a total annual subscription and/or case fee, based on a published scale, for participating in the Scheme, which subscription will be determined by the Board from time to time but will not exceed the amount incurred by the Company, taking one year with another, in providing the Scheme in relation to those HEIs.
- (b) a constituent college, school or hall or other institution of a university falling within (a) above;
 - (c) an institution conducted by a higher education corporation, as defined by section 90(1) of the 1992 Act;
 - (d) a designated institution, as defined by section 72(3) of the 1992 Act or such other higher education institution in the United Kingdom which has joined the Scheme with the consent of the Board

Interpretation

Unless the context otherwise requires the definitions and interpretations set out below shall apply to these Procedures:

“Annual Budget” means each annual financial budget for the Company for the relevant accounting period

“Annual Report” means each annual report on the discharge and functions of the Independent Adjudicator and Deputy Adjudicator in accordance with paragraph 9.1.5

“Board” means the board of directors of the Company

“Business Plan” means each annual business plan for the Company for the relevant accounting period

“Companies Act” means the Companies Act 1985

“complaint” means a complaint in accordance with paragraphs 1 and 2

“complainant” means a student or a former student who is entitled to bring a complaint under the Scheme

“Higher Education Institution” or “HEI” means any of the following institutions in England or Wales

- (a) a university (whether or not receiving financial support under section 65 of the Further and Higher Education 1992) (“1992 Act”) whose entitlement to grant awards is conferred or confirmed by an Act of Parliament, a Royal Charter or an order under section 76 of the 1992 Act;

“Letter of Advice” means the advice provided to the Visitor by the OIA following the OIA’s review of the complaint

“Procedures” means the procedures in this document (as may be amended)

“Recommendation” means a recommendation which accompanies a Letter of Advice

“Reviewer” means the Independent Adjudicator or the Deputy Adjudicator or such other person to whom the review of a complaint has been delegated

Where the word “it” is used in relation to a party it shall include “he” or “she” as the context requires.

A plural word includes the singular and vice versa.

A reference to a statute in this Guide shall include a reference to that statute as may be modified, amended, re-enacted or supplemented from time to time.

11. Amendment to the Procedures

These Procedures may be amended from time to time in accordance with paragraph 8.1.7.

12. Law and Jurisdiction

These Procedures shall be governed by and interpreted according to the law of England and Wales.

Annex 7

OIA PERFORMANCE STATISTICS

for the period 29 March to 31 December 2004

1) Number of staff (including part-timers)

8 (7.0 FTE)

2) Total number of HEIs subscribing to scheme

(excluding Cambridge and Oxford Colleges but including Glasgow University)

147

3) Number of Student Enquiries by type

Academic appeal/Exam results/ Degree classification	110
Admissions	11
Contract	76
Disciplinary matters	6
Discrimination & Human Rights	16
Information about Scheme	21
Unspecified	36
Other	18
Plagiarism & IP	9
Welfare	5
Total	308

4) Complaints received by category

Total
86

By type:

Academic appeal/Exam results/ Degree classification	40
Contract	32
Disciplinary matters	3
Discrimination & Human Rights	1
Unspecified	0
Other	3
Plagiarism & IP	6
Welfare	1

Gender:

Female	30
Male	56

Age:

Under 25	24
Under 40	33
40 and over	29
Not known	0

Student Status:

Further Education	0
Other	4
Postgraduate	29
Undergraduate	53
Undergraduate (Franchised/Validated)	0

5) Complaints received by ethnic origin / disability

(These figures are based on optional monitoring questionnaires received)

Ethnic Origin:

White: British	27
White: Irish	2
Any other White Background	1
Mixed: White and Black Caribbean	0
Mixed: White and Asian	0
Mixed: White and Black African	0
Any other Mixed background	2
Asian or Asian British: Indian	3
Asian or Asian British: Pakistani	1
Asian or Asian British: Bangladeshi	0
Any other Asian background	1
Black or Black British: Caribbean	2
Black or Black British: African	1
Any other Black background	0
Chinese or other ethnic group: Chinese	3
Any other	0
Total	42

Disability:

Deaf or hard of hearing	1
Learning difficulties eg. dyslexia	3
Medical Condition	0
Mental Health Issues	0
Other Disability	1
Physical	2
Visually Impaired	1
Total	8

6) Number of Complaints referred by Visitor:

35

7) Complaints by performance:

Number of Complaints received	86
Number of Complaints closed	19
Work in Progress	64
Average no. of days to close Complaint in period after receipt of Scheme Application form	130
Average no. of days to close Complaint in period after admission to Scheme	109
No. of closed Complaints in period taking longer than 6 months to close	3
Number of Complaints open after 6 months at end of period	1

9) Applications by performance:

Number of Applications received	120
Number of Applications open over 3 months at end of period	0

10) Complaints by outcome:

Total:

Justified/Justified in part	8
Not justified	8
Settled	1
Withdrawn	2

NB. Student “Enquiries” may or may not involve a complaint. “Applications” are enquiries for which we have received a scheme application form. “Complaints” are applications we consider on the face of it come within our jurisdiction.

Annex 8

THE OIA STAFF



The Independent Adjudicator

Dame Ruth Deech.....DBE, MA, LL.D

Deputy Adjudicator and Chief Executive

Michael ReddyLL.B, LL.M, MBA, MCI Arb



Assistant Adjudicators / Casehandlers

Alison MacDougall....LL.B

Sarah PayneBA, PG Dip. in law, PG Dip.
in legal practice, MBA, solicitor

Susanna Reece.....BA, MSc, solicitor

Victoria WoollenBA, PG Dip. in social security law, solicitor



Consultants

Felicity Mitchell.....BA, PG Dip in law, barrister

Mike MillerBA, educational consultant

Administration Officers / Liaison Officers

Cheryl Emerton

Isobel Brown.....BSc, MA, PGCE



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