

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

resolving student complaints

Annual Report 2005

www.oiahe.org.uk

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The impact of the OIA's work in its first statutory year has been to create a forum for Higher Education Institutions and students to discuss complaints handling and disciplinary matters. Students now have a better idea of what they can expect if things go wrong and a number of HEIs have made their rules more user friendly as a result of suggestions made by the OIA. HEIs and students have become accustomed to the OIA scheme and accept the need to work with the OIA to set standards and seek new ways of resolving complaints internally.



**Independent Adjudicator -
Baroness Ruth Deech**



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



SUMMARY

- 2005 was the first full year of operation of the statutory scheme designated under the Higher Education Act 2004
- In 2005 the OIA closed 213 cases, each taking an average of 21 weeks from acceptance to decision
- All the OIA decisions and recommendations were accepted by the HEIs involved
- The availability of legal aid to dissatisfied complainants for judicial review of OIA decisions has made it harder to achieve a swift, reasonable and efficient resolution to disputes
- If HEIs were to put in place structures for the early informal settlement of disputes, or to develop schemes for mediation or for campus ombudsmen, this might prevent the escalation of disputes
- 2005 saw increased awareness of the scheme on the part of students and of HEIs and a sharp increase in the number of complaints received
- The OIA is working with its European counterparts and examining the role that complaints handling might play in the success of the Bologna process
- The OIA held a series of workshops to facilitate discussion with stakeholders on topics of current interest
- The OIA is examining and learning from the practices of student complaints handlers at universities overseas

I REVIEW OF THE YEAR

The year under review (1 January 2005 to 31 December 2005) was the first full year of operation of the statutory scheme enabled by the Higher Education Act 2004. The Office of the Independent Adjudicator (OIA) was designated as the student complaints scheme under the Act from 1 January 2005. 2004 was a valuable pilot year, in which most, but not all, universities joined up to the scheme voluntarily, albeit without having to pay a subscription.

In the 2004 Annual Report we stated our objectives as follows:

- a) We aim to resolve speedily and fairly those student complaints that cannot be settled by the higher education institution (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 performance and success in achieving these aims in 2005 may be seen in the account that follows, in the Annexes to this Report and in the summary of decisions in Chapter IV.

Objective a

In the year 2005 we closed 213 cases, each taking an average of 21 weeks from acceptance to decision. Where this period has been exceeded, it is sometimes due to vacation absences on the part of the complainant or on the part of the HEI's point of contact, and extensions of time have consequently been agreed to. Many more potential complaints were resolved by timely advice given on the telephone or in preliminary correspondence. The Office does much more than resolve formal complaints: staff have been trained to handle enquiries and very many calls result in settlement or withdrawal as a result of informal advice given in response to a query. This is an important and successful part of the work of the OIA although it may not show up in the statistics. We believe that our visits to universities and advice given to their complaints handlers have had the same effect, moving towards the ultimate goal of good informal dispute resolution within HEIs, reducing the need for recourse to the OIA.

During 2005 all of our decisions and recommendations were accepted by the HEIs involved. (At the time of writing one decision is contentious.) The OIA is obliged to report to the Board of the OIA and in the Annual Report to list any HEIs which have not complied with a recommendation in decisions involving them.

Objective b

Rapid progress in the settlement of some disputes by the OIA and the HEIs is hindered, at the moment, by the involvement of solicitors which is made easier by the availability of legal aid to student complainants, a practice on which this Report will comment further. HEIs whose appeal and complaints procedures are unduly lengthy and legalistic are vulnerable to legal challenge and delay. The OIA has noted some sets of regulations that have 6 or more levels and can take many months or even years to complete.

The volume of work (see Annex 4) has necessitated an increase in the number of staff, and this trend is likely to continue with the expansion of higher education and the introduction of higher fees, possibly stimulating more complaints. The volume of complaints may level off in the future once the parties are more accustomed to the type of outcome to be expected from the OIA. For example, the OIA is not in a position to award a higher class of degree. The OIA does not have the power, or the wish, to alter grades: the recommendation in a justified academic complaint is usually that the student be allowed another attempt at the examination in issue, or that the HEI's appeal panel re-hear the case. Nor does the OIA recommend substantial sums of compensation for loss of earnings, where claims are hypothetical or speculative. The OIA normally recommends modest sums for disappointment and loss of opportunity, although on occasion some awards have amounted to thousands rather than hundreds of pounds where firm proof of loss of earnings has been submitted. HEIs may discover that putting in place structures for the early informal settlement of disputes (including authorising certain staff to offer an apology, where appropriate), or developing schemes for mediation or campus ombudsmen may prevent the escalation of disputes.

Objective c

We brought together HEIs in a successful series of workshops (see below, p.8), and have expanded our website. All HEIs are beginning to benefit, we believe, from the discussions about best practice that emerge from our reported decisions, workshops and other presentations. We see it as an important part of our duties to facilitate consensus and exchange between those HEI officials who handle complaints.

Objective d

2005 saw increased awareness of the scheme on the part of students and of HEIs resulting in a sharp, but anticipated, increase in the number of complaints filed. Nevertheless, the OIA has continued its programme of promotion of the scheme through the distribution of literature, through its website, workshop and conference participation and visits to HEIs and higher education bodies. Every summer a new generation of students commences degree courses and takes up office as elected student officials, needing to be informed afresh about the existence and working of the OIA's scheme. We have continued to find our relations with student bodies and representatives highly worthwhile. They have been constructive in consultation, and student officers have proved

themselves excellent representatives for student complainants. HEIs have started to familiarise themselves with the requirements of the scheme (the Completion of Procedures Letter, and the provision of relevant documentation, for example), although some are more adept than others.

Objective e

Our staff have undergone training in dealing with enquirers and in discrimination and equality issues, as well as in higher education law topics, ranging from judicial review to Freedom of Information and Data Protection issues. A significant number of complaints involved disability issues and they are among the most complex. We welcome the assistance of SKILL (National Bureau for Students with Disabilities) in this area, where we try to find the right balance between the offer of appropriate assistance to disabled students and not compromising academic standards.

Objective f

We are familiarising ourselves with developments overseas, particularly in Europe, where we see guarantees of fair treatment of students as key to the success of student exchanges. Many more European students come to England and Wales for a period of study than the other way around, and we believe that this is in part due to anxieties on the part of home students about adapting to European universities, and how visiting students can be sure of an enriching experience abroad. The success of the Bologna Process is entwined with systems for handling student complaints, and we are in contact with our European counterparts, as well as with those further overseas.

Objective g

The results of our work are entirely accessible, through presentations and on the website, and we draw attention in particular to the growing number of summarised and anonymised decisions provided there. We maintain strictly the confidentiality of our complainants, despite intrusive press questioning. We stand ready to assist any HEI that wishes for it by visiting or making available to it our literature and information. Our success in meeting this and the other objectives may be assessed by the account of our work in this Report.

II WORKING WITH THE HIGHER EDUCATION SECTOR



We have placed emphasis on working with and learning from other bodies in the higher education sector, by way of meetings, training and participation in conferences. The Scottish Parliamentary Ombudsman has assumed responsibility for the resolution of complaints arising in Scottish universities; hence Glasgow University has left our scheme. We met the Scottish Parliamentary Ombudsman, Alice Brown, and her colleagues to discuss common issues, and agreed to future regular meetings. We have established a relationship with the British and Irish Ombudsman Association and with the European Network of Ombudsmen in Higher Education, at whose conferences we make presentations. This has enabled us to meet campus ombudsmen and others in similar positions, in Europe, in North America and Australia. We also meet with the Oxford Centre for Higher Education Policy Studies, the Department for Education and Skills, Universities UK, the National Union of Students, the Association of University Administrators, the Association of Heads of University Administration, the Committee of University Chairmen, the Academic Registrars Council, the Quality Assurance Agency for Higher Education and other higher education organisations, some of whom are represented on the Board of the OIA.

Particular issues that have arisen in our relationship with the universities are the form of the Completion of Procedures letter and the Scheme Application Form. Under the Rules of the scheme a complaint may not normally be brought to the OIA until all the internal complaints or appeal procedures of the university have been exhausted, and a Completion of Procedures Letter has been issued (promptly) by the HEI to the complainant confirming that this has happened. The “COP” letter is necessary also to clarify which issues have been taken through the university’s own procedures. Some complaints have many heads, while our remit is confined to those that have been examined and dealt with by the HEI in question. When a complainant raises new issues in an application to us, he or she will be told to take those new issues through the internal procedures first, and that our review is based on those listed in the COP letter and any others which have completed internal procedures. It is therefore necessary that the COP letter (a) confirms that internal procedures have been exhausted, (b) lists the issues involved and dealt with and their outcome and (c) informs the complainant of his or her right to approach the OIA and gives the appropriate information to enable contact with us within the 3-month time limit.

We have reminded HEIs that the issue of a COP letter should not be restricted by, for example, requiring that the student should notify an administrative official of the HEI that he or she wishes to file a complaint with the OIA, or that further statements and documents must be provided by the student to the HEI before the COP letter may be issued, or by inaccurately describing the powers of the OIA. When an inadequate COP letter is submitted, the OIA notifies the HEI involved and explains that every complainant, whether successful or not, who has exhausted the internal procedures, should automatically be issued with a COP letter containing the three elements described above. An accurate and helpful COP letter from the HEI will result in a more focused investigation by the OIA and reduce the need for us to explore earlier events.

Three further issues have arisen: very rarely the COP letter has turned out, after examination of other documentation submitted, to be inaccurate, causing the OIA to carry out further investigations to establish the grounds of complaint and the extent of the issues involved. We urge HEIs to ensure accuracy in order to frame the issues to be investigated. Normally a COP letter need not be issued if the complainant fails to exhaust internal procedures, typically by failing to appeal within the time limits set by the HEI’s regulations. Although it may be argued that internal procedures are in these

circumstances nevertheless “completed”, it is good policy in our view not to allow a complainant to short circuit the HEI's internal procedures by failing to take advantage of them in timely fashion and instead coming directly to the OIA, which is in effect what would occur if a COP letter were issued as soon as a complainant failed to appeal to the next stage in good time. Third, if an HEI delays unduly in issuing a COP letter, or refuses to do so, the OIA might, under our Rules, take on the complaint in any case if there is good reason to do so. We have found that students have been able to secure a COP letter more expeditiously in some circumstances by informing the HEI that they have approached the OIA and are waiting for the letter, or that the OIA might take on the complaint if it is delayed for too long.

The Scheme Application Form is the vehicle for describing the acts or omissions of the HEI complained of and the grounds of complaint. Too often the start of the OIA's investigation of the eligibility and merits of the complaint is delayed because the complainant has failed to outline the complaint on the form. Instead, the complaint attaches documentation, sometimes running to hundreds of pages, indicating that the adjudicator should deduce from the documentation what the issues and grounds of complaint are. This is time consuming: not only the review of the documentation but sometimes several exchanges of correspondence are required to ascertain and frame the issues. The OIA has decided that this degree of investigation is not called for and in future will expect the complainant to summarise on the Scheme Application Form the actions, omissions or grounds in contention. Having regard to disability on the part of the complainant or language difficulties, and using common sense, applications may be rejected if, after reasonable inquiry, no clear grounds of complaint are stated by the complainant.

In 2005 the OIA also further clarified certain aspects of its time limits. Even if a COP letter has been issued by the HEI within 3 months of receipt of the application, the OIA will not normally investigate matters occurring more than 3 years earlier. This is because the facts will have become hard to ascertain, documents will no longer exist and personnel will have moved on. Some would-be complainants have belatedly obtained from the HEI information relevant to their complaint under the Freedom of Information Act provisions and reopened it with the HEI. We have seen accounts of incidents occurring up to 30 years ago being brought forward for review, but we have not taken them on. We imagine that HEIs will also want to impose a long stop on complainants in the light of the use of the Freedom of Information Act and the Data Protection Act to acquire old material.

Complainants who may wish to use the county courts for race, sex and disability discrimination issues may find themselves out of time if they first require the OIA to investigate the complaint, even bearing in mind that the Higher Education Act grants extra time (2 months: section 19) to such complainants. If complainants wish to avail themselves of the opportunity to take their case to a court, they will need to be aware of the time limits and to consider at the outset the alternatives available to them in the time frame. Occasionally complainants apply to the OIA long after their right to go to those courts has expired. This leaves the OIA with little alternative to taking on these cases, even though it might be argued that the courts are the better forum. The approach taken by the OIA to disability and discrimination cases may differ from that of the courts and may be perceived as less suitable by the complainant.

By virtue of section 12(2) of the Higher Education Act 2004, complaints relating to matters of academic judgment are not within the remit of the OIA. The OIA has the duty to determine whether or not a particular issue is one of “academic judgment”, and may require the university to provide

information to help it make that determination. The OIA cannot leave the decision about whether or not an issue is one of academic judgment to the university, for that would amount to an unchecked power on the part of the university to block resolution of a complaint by the OIA on the ground that it was wholly concerned with academic judgment. So if there is any doubt a COP letter should be issued by the university.

OIA WORKSHOPS

Our main innovation this year, and major contact with our stakeholders, has been a series of workshops.

In the past year the OIA arranged four workshops, chaired by the Independent Adjudicator, on topics of particular interest both to the Office and to our partners. The aim of each workshop was to explore together in an informal way the chosen issue from the perspective of the HEIs and students and from that of the OIA and the law. Typically each workshop was attended by 25 delegates from HEIs, and papers were given by an OIA representative, by a lawyer and by another expert speaker. We found that places at the workshops were taken up immediately on announcement and that the demand was great, so great that some workshops were repeated. We intend to run a similar series in 2006 in order to extend participation and to bring participants up to date with the latest developments. New topics may also be added and suggestions as to them are invited. A nominal charge was made for each workshop attendance (because suitable premises had to be hired and expenses met) and one was held in Preston in response to demand for a presentation in the north of England. Numbers were limited in order to ensure full and informal discussion and questioning. Feedback forms indicated that the formula was appreciated; it will of course be improved with usage.

The first workshop was held at the University of Reading on 31 October 2005 and was entitled Designing Student Complaints and Appeals Procedures. The aim was to explore examples of good (and bad) practice in higher education and for the OIA to share its experiences so far. Presentations were made by Imogen Wiltshire (of the Union of Brunel Students) on the Student Union caseworker's perspective; by David Lawson, barrister, on Conducting Fair Hearings, and by Michael Reddy, Deputy Adjudicator on Some Examples of Good and Bad Practice.

The following topics were addressed:

- The value of student unions as sources of advice, informal resolution and representation
- The difficulty of persuading students to read the HEI regulations concerning complaints
- The need for HEIs to make sure that their procedures and a reference to the OIA can readily be accessed on their websites
- Good practice relating to full disclosure at hearings and the required standard of proof
- The role of advisers and lawyers at hearings and the need to allow parties to hear and see the same material and have the opportunity to challenge it
- That good complaints procedures should be transparent, clear, timely and accessible, observe the rules of natural justice, identify sources of guidance, next steps and response times, empower decisions on redress and keep reliable records

- A simple approach had much to recommend it with no more than two informal and two formal stages
- That there was a division between academic appeals and complaints procedures, although only one “ladder” of complaint was necessary
- Time limits laid down by HEIs should be realistic
- The need to provide a Completion of Procedures letter to the complainant automatically and with reference to the OIA
- That the HEI should have a reliable means of tracking and learning from complaints

It emerged that the most difficult concept for HEIs to deal with was the requirements of the rules of natural justice (so familiar to lawyers) that apply to complaints handling, namely, that the complainant should be made fully aware of any charge against him or her, that both parties should be heard and that judging panels should be free of bias. The word “bias” has been taken by some HEIs to mean that a procedural flaw can be found only if there is evidence of actual prejudice against the complainant on the part of a member of the panel, and the very word has a pejorative meaning. Further discussion on the meaning of bias has led to clarification of the legal meaning: “The real question is whether the fair minded observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased.” It is not malign intention or overt prejudice; it is the apparent prevention of objective judgment. So even although a particular professor, against whom an allegation has been made by the complainant, is in fact fair minded, or the allegation has been dismissed as unfounded, nevertheless the presence of the professor on a hearing panel will be deemed to be bias in law. Other factors affecting impartiality or bias are financial interests, inappropriate directions by insurers, opinions or knowledge of the people involved on the part of panel members. Nevertheless some allowance for prior knowledge on the part of panel members has to be made where it is necessary or inevitable, as will be the case within a university in relation to general knowledge about examination marking or the conduct of a course. It is not the case that mere membership of the staff of the HEI is a disqualification in itself. Another issue is failure on the part of HEIs to give complainants sufficient information. This may arise where they do not disclose the response of staff involved to complaints. It may also arise where HEIs do not give sufficient information about their decisions to enable students to formulate the grounds for their appeal. We expect all HEIs to consider how the rules of natural justice apply to their complaints and appeals procedures.

The second workshop was entitled Dealing with Plagiarism and other Disciplinary Offences and was held on 12 December 2005. Papers were given by Adrian Slater, Legal Adviser at the University of Leeds, Dr Keith Randle of the University of Hertfordshire Business School on Managing Plagiarism, Dennis Edwards, barrister, on Copying: the Law, Clarity, Consistency and Fairness, and by Michael Reddy, Deputy Adjudicator, on case studies.

The following topics were addressed:

- The inconsistent approaches to and penalties for plagiarism adopted by HEIs
- The problems of distinguishing between collusion, poor referencing and outright copying of another’s material
- The need for HEIs to train staff and students, especially international ones, in the meaning and seriousness of plagiarism; there are cultural issues in relation to different work habits adopted by international students; training should be continuous and not just at induction time

- Proportionality of outcome in relation to the offence of plagiarism: some HEIs consistently expel offenders while others never do so
- Circumstances where judicial review might be entertained, for example in relation to the clarity and reasonableness of the rules, fairness of hearings and issues of human rights
- There is clearly a great deal to be learned and much training to be implemented in this field, and more needs to be ascertained about the learning habits of overseas students and the help that they need in adapting to the British system of higher education and graduate research.

The final two workshops in the series were held in 2006 but for the sake of completeness will be covered in this Report. The third workshop was held on 6 February 2006 in Reading and repeated on 7 February at the University of Central Lancashire, Preston, to facilitate attendance from the north. It was entitled The Role of Campus Ombuds and Mediation at Higher Education Universities and Colleges. The OIA was fortunate to secure the participation of Jenna Brown, Ombuds of the University of Denver, USA, and a national expert on informal resolution on campuses. She explained how the typical American office worked – complete confidentiality without records, a one-stop service for consultation, referral and intervention – and illustrated this with a case study. Jacky Lewis, mediator trainer, spoke on Is there a Role for Campus Ombudsmen and Mediation at Higher Education Universities and Colleges in England and Wales? Dr Gordon Stirrat, Emeritus Professor and student mediator of the University of Bristol spoke on his experience of Resolving Student Complaints Through Mediation, and Michael Reddy, Deputy Adjudicator, made a presentation on Is there a Campus Ombudsman Model Suitable for the UK? He drew on experience from the US and Canada, Australia, Spain and Belgium as well as a few British universities. Some time was spent on participation in mock mediations supervised by Jacky Lewis. The aim of this workshop was to begin to explore whether alternative dispute resolution might be a suitable model to introduce in some form into British higher education. It is work in progress and no firm conclusions were reached, although pros and cons were explored. Participants seemed to leave with the feeling that they wanted to explore the issues further.

Some points emerged:

- Mediation may be especially suited to international students who wish to understand and not to lose face, but difficulty of language and cultural issues need to be appreciated
- The need for confidentiality, the independence of the mediator, the need to establish the desired outcome
- Most participants were keen to learn more and to have training, but realised that it was not always appropriate to use mediation
- Over 200 universities in the US have campus ombudsmen; 7 in Australia and some in Belgium, Holland, Spain and Switzerland; and all research universities in Canada are required to have one
- In Scotland complaints are dealt with by the Scottish Public Ombudsman
- It is probable that UK universities have individuals performing a similar role but with different titles, such as Dean or personal tutor
- Potential advantages of informal resolution are stopping the escalation of complaints, providing quicker remedies and serving as useful change agents
- Campus ombudsmen need to be independent, respect confidentiality, have the support of senior management, be accessible to students and staff, subscribe to a code of ethics and publish an annual report.

The fourth workshop was on Fitness to Practice and Student Complaints and was held on 7 March 2006 at Reading University. It considered the legal and practical aspects of dealing with fitness to practice issues at HEIs. The emphasis was on dealing with complaints and disciplinary issues and how the college or university should safeguard the interests of the student, the professional bodies and the general public. Presentations were made by David Palfreyman, Bursar of New College Oxford, on the legal issues, Stephen Murfitt, solicitor, on the regulator's perspective, and by Michael Reddy, Deputy Adjudicator, on the OIA's remit in relation to fitness to practice. Problems relating to students on medical, nursing, teaching, law, architecture, accountancy and other professional courses were analysed and the question of how to integrate professional standards and fitness to practice procedures with HEI admissions and discipline, albeit that HEIs have obligations under law and other standards that may not align with those of the professional bodies which the students aim to join. The academic background and behaviour of a particular student may be satisfactory for an HEI but may fall short of the regulator's requirements. The required ethical standards may be hard to define and apply; and it would be difficult to apply the standards to one set of students in an HEI and not to others. In fitness to practice and placement issues it was not clear whether the procedures to be applied, should something go wrong, should be the HEI's or the school/hospital's.

Points emerging were:

- The need for a forum of professional regulators and HEIs
- The need for the HEI to ensure that its courses will achieve the necessary accreditation from the professional body
- That academic regulations should make provision for expulsion of a student who is not able to meet the professional standards
- That disability discrimination provision does not prevail over the application of national standards
- That professional standards should be addressed at the start of a university course, not at the end
- That there should be fitness to practice panels in HEIs
- That contracts between HEIs, students and placement providers are essential to clarify standards, obligations and mentoring
- That because of the expense to students of late failure to meet professional standards, their early incorporation into the HEI experience is a good thing.

The OIA also convened an internal workshop on European and Scottish issues, attended by Alice Brown, Scottish Public Ombudsman and colleagues. It was addressed by Professor Tim Birtwistle, Professor of the Law and Policy of Higher Education, Leeds Law School. The OIA is anxious to explore the meaning and scope of the Bologna Process and how it might relate to student complaints. The mobility of students from one European university to another, the mutual recognition of credits, and willingness to experience another European university seem to us to depend to a large measure on a guarantee of quality of academic experience in host universities, in which the OIA will have to play a part.

We are keen that student officers and managers know as much as possible about the OIA, so we were pleased to have been able to participate in several workshops run by the National Union of Students and the Association of Managers for Students' Unions during the year.

III THE WAY WE WORK



“Ombudsmen [ignoring the difference between ombudsman and adjudicator for this purpose] offer distinct advantages. They are free, confidential and accessible and perceived by the public as independent. They offer a range of remedies, including financial redress, which may take the form of payments of money owed or compensation for quantifiable losses, losses of a non-monetary kind, “botheration” and lost opportunity . . . Although determinations made by an ombudsman are not binding, this did not present a problem in the vast majority of cases. Ombudsmen schemes also seek to promote good administration by considering the standards to be expected of public authorities and framing their decision-making accordingly, as well as providing feedback and advice to ensure that errors are not repeated”. (quote from Ann Abraham, “Ombudsmen and Administrative Justice” (2006) 63 *Amicus Curiae* 18) Substitute “adjudicator” for “ombudsmen” and “HEIs” for public authorities and this makes a great deal of sense. It puts the case well for respect for the decision of an adjudicator in the context of possible judicial review. And yet higher education is not a commodity for purchase and money is no substitute for what may have gone wrong. The academic reputation, integrity and standards of the institution bear little resemblance to the working practices of organisations commonly subjected to ombudsman jurisdiction, and more damage may be done to the HEI by one student’s complaint than by one customer’s. The OIA is still finding its rightful place in the spectrum of legal and informal methods of settling disputes in English public law, and is keenly aware of the competing interests to be balanced and the context in which it works.

Our range of remedies includes:

- apology
- specific action (e.g., a re-hearing of an appeal, a re-mark of an examination paper)
- financial redress
- following through to ensure compliance with the recommendation made
- spreading of good practice through workshops and reports on the website
- facilitation of discussion between HEI administrative officials at the relevant level.

Our investigative process has claim to being more effective and economical than the traditional court or tribunal adversarial model for settling disputes between students and HEIs. Unlike the courts, we do not usually hold hearings, although the need for them is considered in every case, nor do the parties require legal representation, and we are able to get the evidence we need. We aim to be the best and most pragmatic way of resolving complaints.

The adjudicator concept depends on acceptance by all concerned that “unless she takes leave of her senses and reaches conclusions that no reasonable [adjudicator] could ever reach, the [adjudicator] is arbiter.” (Ann Abraham, *supra*). We bear in mind of course that the context of our work is the independence of academic judgment and the high regard in which British universities are held all over the world.

The law of higher education is an intriguing growth area, not only because of its history and the role of the Visitor, but the impact on the scene of British membership of the European Union and student exchanges. Other legal areas that impact on our work are the judicial respect for alternative dispute

resolution, the Human Rights Act, the Freedom of Information and Data Protection Acts and the growth of legislation referring to higher education and international collaboration.

Thus a very wide range of interesting and novel higher education and legal issues presented themselves for determination in 2005. A variety of facts and situations was considered, ranging from violence on campus and learning disabilities to European exchanges and professional regulation. University campuses, once the reserve of the few, have become microcosms of the surrounding community. Widening participation brings its own disciplinary and social problems. University rules originally drafted for the containment of a narrower range of students have to be stretched to meet new forms of behaviour that could disrupt campus life. At the same time the OIA and the HEIs have to contend with relatively undeveloped areas of public law and contractual rights pertaining to higher education. A legacy of the relatively secret visitatorial system was that little legal precedent was available to guide students and HEIs in the area of grievances and failures.

While the OIA, HEIs and advisers are examining the legal practices of overseas educational institutions, alternative dispute resolution and ombudsmen techniques, it is also the case that issues of higher education are important to lawyers and are becoming a significant new litigation field. We are concerned at the extent to which lawyers have become involved in student complaints, for the following reasons. The OIA has made it clear in its publications and presentations that the involvement of lawyers and legal aid on behalf of complainants may exacerbate the disagreements and greatly extends the time taken to resolve the dispute. It is harder to achieve a swift, reasonable and efficient resolution in relatively minor disputes when dissatisfied complainants seek judicial review of the OIA's decisions. This approach is not only inefficient (for it is, after all, only the HEI, not the OIA, that can give the student the desired outcome) but also causes the OIA, and hence the HEIs under review, to behave more legalistically than is desirable. The OIA's own need to resort to legal advice in consequence and the additional staff time required may lead to the need for additional subscription income. There is also a misunderstanding that, under the judicial review procedure, the court can substitute its own findings and remedy in place of those in the decision reviewed: however the court can only require the decision-making body to reconsider its findings in certain limited circumstances. Above all, it is usually unnecessary for complainants to have legal representation, and our scheme is designed with that objective in mind. Judges have taken every opportunity in recent years to encourage within reasonable bounds the use of alternative dispute resolution. The OIA is a form of alternative dispute resolution, but the practice will be undermined if its decisions become the subject of court proceedings brought by disappointed applicants. At the same time we take seriously the need for this Office to act fairly and in accordance with our own Rules. Resort to litigation is almost unknown in overseas universities. The OIA has determined that it will not normally delay its decision making while the complainant awaits confirmation of legal aid, but will take account of the availability or otherwise of legal representation in its determination.

Fast track

Some complaints appear to show no arguable grounds for review. These are complaints which reveal from the outset that an HEI has appeared to comply with all its procedures in handling the complaint. Where this is so and there is no apparent unfairness, the OIA's policy is to take a fairly

robust stand and advise that there is no case to answer (Rule 6.7.1) or to cut short the investigation at a suitable and early point. But if in response to this stand the complainant comes back with a reasonable argument, the complaint will be investigated further before issuing a draft and subsequently formal decision. The aim is to develop procedure that is fair to both sides but speedy. Even where the complaint reveals little that could amount to an arguable case we have decided that the allegations should be transmitted to the university and the university's response to them to the complainant. Further exchanges are unlikely to be necessary. New scheme Rules are being drafted to reflect this.

We have worked with HEIs to clarify other legal issues that have arisen in 2005.

Disclosure of documents

HEIs have posed questions to us about the extent of disclosure of documentation relevant to a complaint (leaving aside privileged documents, which are excepted). A particular concern is over the release of documentation where it is alleged that a duty of confidentiality is owed to a third party, such as a lecturer or another student named in it. On the one hand, the OIA Rules, made under the Higher Education Act 2004, place an obligation on HEIs to disclose all relevant material; the complainant's signature on the Scheme Application Form is consent to disclosure of material affecting him or her; and the Freedom of Information and Data Protection Acts apply to HEIs and are occasionally invoked by complainants. On the other hand, some of the information in issue may refer to third parties who have their own Data Protection rights or may have been generated with an understanding of confidentiality. The OIA has developed pragmatic practices in this regard. HEIs may exceptionally redact submitted documentation to remove identification of third parties; and occasionally the OIA will not pass on information to the complainant, if inappropriate, contrary to its standard custom.

We are aware of the administrative burden of paperwork placed on universities in co-operating with us over the handling of complaints and are anxious that the reasons for this be understood. We recommend the assembly of a comprehensive file by the HEI in relation to each complaint from its inception to its internal completion, ready for transmission to the OIA if required.

Compensation

A difficult issue for the OIA, HEIs and complainants is compensation where the complaint is found to be justified. The OIA can recommend that HEIs pay compensation for stress, disappointment, financial loss and loss of opportunity to complete a course of education. Its powers are wider and different from those of the Visitor and it can also recommend compensation for loss of earnings. This is highly unlikely to be substantial unless the complainant can establish a precise loss based on a definite job offer and consequent on default by the HEI. Mere speculation about gains that might have resulted if a good degree had been awarded and a well paid job had followed does not ground compensation. Sums recommended for disappointment and similar effects are small, ranging from £50-£1000 or so, and sometimes reflect the quantum of fees paid by the complainant. Examples of sums awarded may be seen in Chapter IV, where illustrative decisions are collected.

Lump sums recommended by the OIA are not always broken down into the various heads but represent a reasonable award in the view of the OIA.

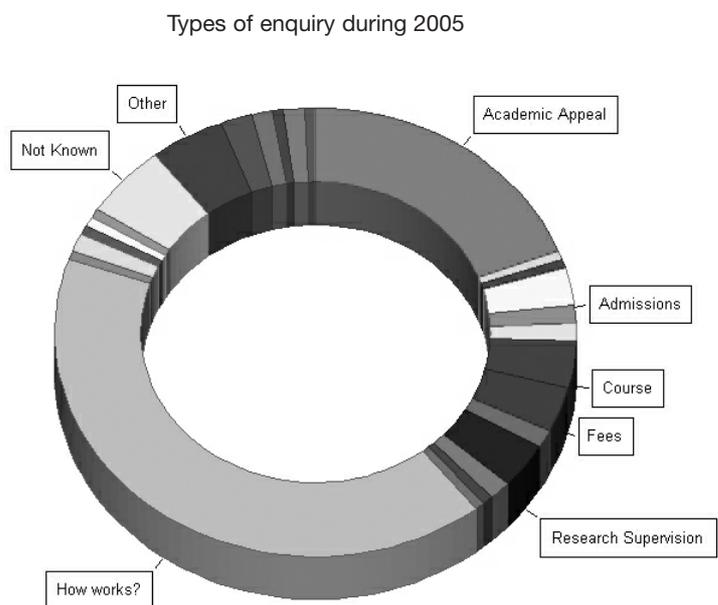
Good Procedures

The appropriateness and legality of university procedures for dealing with discipline, complaints and appeals is a topic of great important to all the stakeholders and one on which we are anxious to share information and move towards a consensus, though not necessarily uniformity.

Following the generality of legal advice, we expect, and students expect, universities to incorporate the well known principles of natural justice into their decision-making. This is nothing new, and reflects a standard widely adopted by public and even private decision makers. It is arguably a less demanding standard than that required by human rights law (in particular Art. 6 of the Convention on Human Rights, Human Rights Act 1998). Nevertheless, our interaction with HEIs has shown us that not all universities are familiar with the principles of natural justice and how they should be reflected in their decision making procedures. The concept of natural justice was explored in depth at our first workshop and its conclusions are set out on page 9. The OIA has given general advice to HEIs who are in the process of redesigning (and, we hope, simplifying) their procedures and will return to the topic of best practices in the coming year.

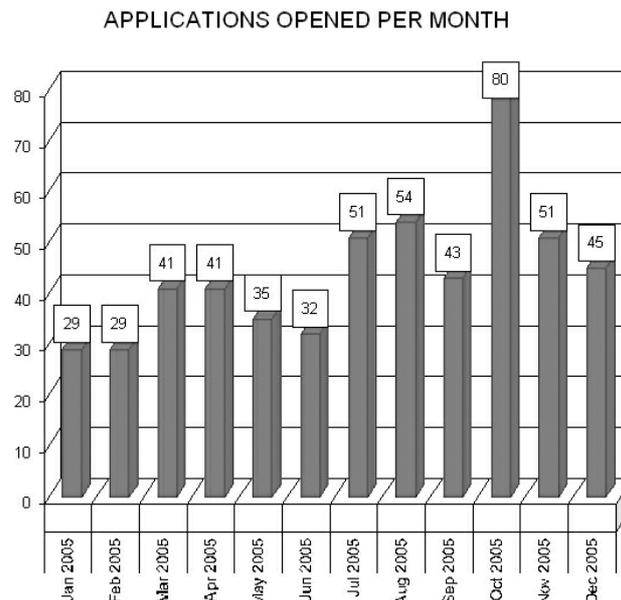
A Summary of our Statistics (see also Annex 4)

Our helpdesk dealt with over 1000 enquiries in 2005 from students, students' unions, HEIs and other interested parties. A large number of those enquiries were about how the scheme worked or whether a complaint was eligible under our rules. Many of those enquiries became full complaints later on. A breakdown of the types of enquiry we received appears below.



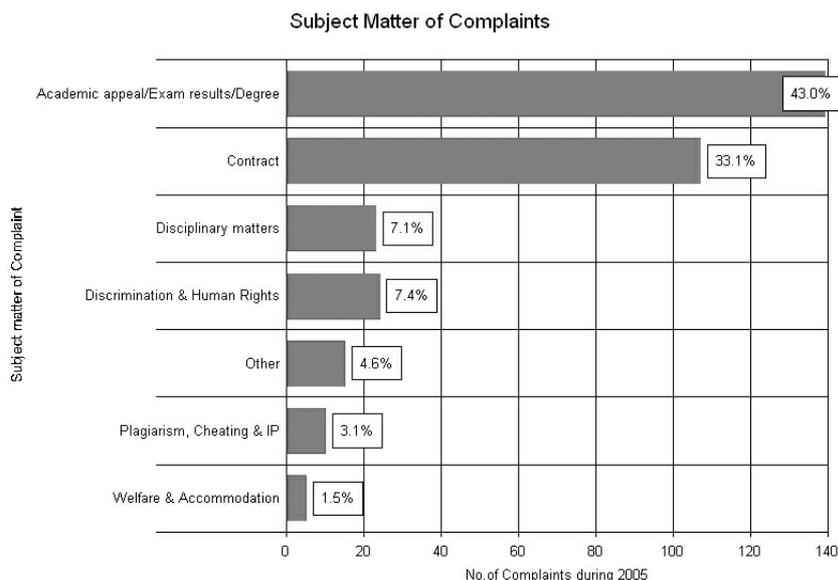
NB: key types only

We received over 500 Scheme Application Forms from students during the year. Not unexpectedly there was a significant upward trend in applications per month during the first year of the statutory scheme, as the next chart shows.



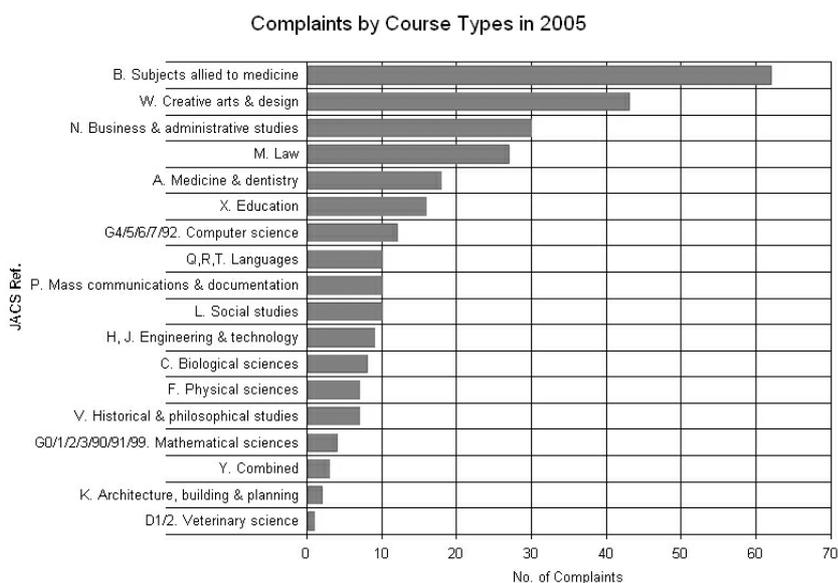
We predicted that we would receive between 300-400 eligible complaints in 2005. In fact during 2005 we determined that 322 applications were eligible complaints. This does not tell the whole story, of course, since we were still deciding whether some applications constituted eligible complaints under our rules at the end of the year and 48 applications were subsequently considered to be eligible complaints. The main reasons for finding complaints not to be eligible were because complaints were received out of time (that is, not received within 3 months of the issue of a Completion of Procedures letter or within 3 years of the substantive events) or because the internal complaints procedures of the HEI complained about had not been exhausted.

Out of the complaints we received by far the largest number were about academic appeals, assessments and grades. Whilst we cannot look at complaints about academic judgement we can look at process and maladministration issues. In most cases where HEIs had followed their procedures we saw no reason to interfere with decisions made; on the other hand we had some concerns about whether HEIs were observing natural justice when holding appeals. On several occasions we found the process to be irretrievably flawed through perceived bias or insufficient independence of panel members.



Analysing complaints by source and type revealed some interesting facts. The number of complaints received from postgraduates was not far behind those received from undergraduates. Compared with the actual ratio of the undergraduate population to the postgraduate population of students in England and Wales it would seem that postgraduate students are five times more likely to complain. Non-EU students had a slightly greater propensity to complain to the OIA than EU students but in 2005 we did not keep figures by individual nationality.

By course type, students studying “subjects allied to medicine” were the most likely to complain, followed by students studying creative arts and design, business administration and law. We received many complaints from nursing students which were usually about mitigating



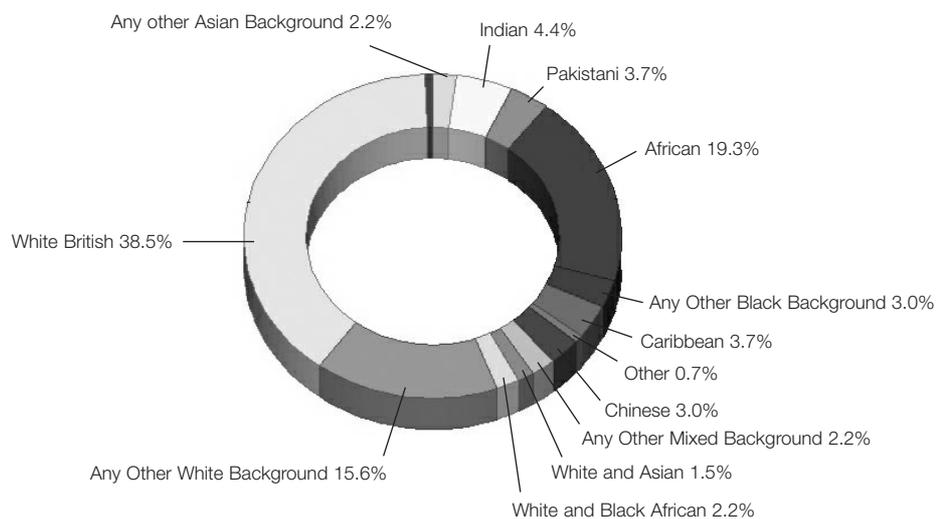
circumstances not being considered at the assessment stage or about the assessment process itself.

There were surprisingly few complaints proportionately from students taking university degree courses in further education colleges, and we concluded that this might be an issue of communication to those students of their right to use the OIA.

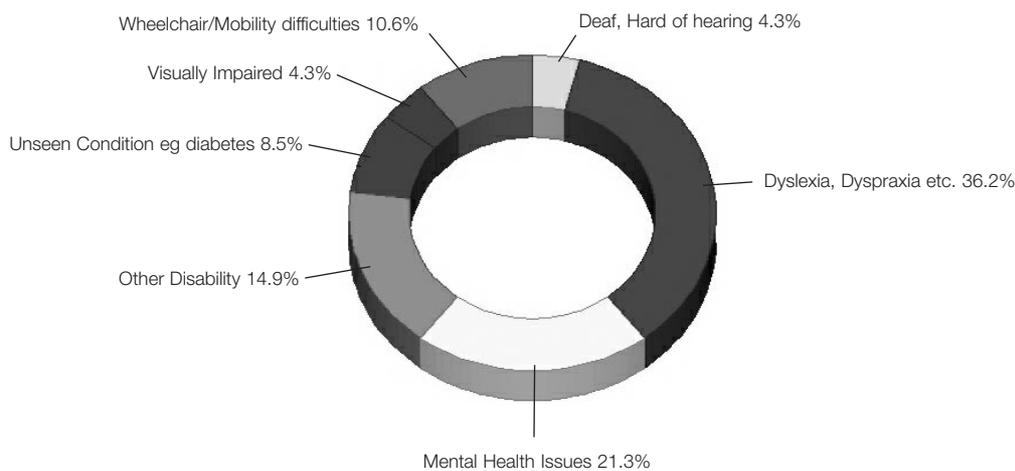
During the year we completed 213 complaints taking an average of 148 days from the date that we found the complaint to be eligible, leaving us a work in progress figure of 181 complaints as at 31 December 2005. 69 complaints were found to be justified to some extent and 9 complaints were settled prior to completion of our review. The complaints we received on the whole tended to be complex, many having passed through a number of internal processes of the HEI without resolution necessitating a detailed investigation. Nevertheless only one complaint took longer than 12 months to complete in the period. There was also a category of complaint where, on the face of it, the HEI did not appear to have done anything wrong, so we did not carry out a full investigation in those cases.

When complainants send us a scheme application form we ask them to complete and return an equal opportunities monitoring form which is held by our administrative staff. In 2005 90 students completed the form in respect of ethnic background and 31 students did so in respect of disability. The charts below show the main results.

Ethnic background complainants



Complainants with disclosed disabilities



We also sent out feedback forms to students and HEIs who had received a formal decision from us during the year. 39% of students and 37% of HEIs responded. Not surprisingly there was a very close correlation between the level of satisfaction with the OIA’s service and whether the decision was favourable to a party. However, we were pleased to see that most parties considered we had understood the complaint well and scored us highly for clarity of expression. We also picked up some helpful comments on our procedures from both sides.

IV CASE SUMMARIES



A selection of cases is summarised below. Some facts have been altered slightly in order to preserve anonymity.

ACADEMIC APPEALS

CASE 1

S complained that he had received a poor mark in one examination because the lecturer had told the class that 10 topics would be covered in the examination paper and that they would be required to answer three questions. S revised for 3 questions and discovered that one of the topics in the syllabus, which he had prepared, was not included as a question in the exam. So he used that information to attempt another question and was given a low mark for it. The University explained that the topic which S had prepared and which he considered had not been covered in the examination paper was the basis for answering another question, which he had not attempted. This complaint was found **not justified**, because it is the student's responsibility to ensure that he has revised enough information about sufficient topics to allow him some choice in the exam. If his study was too narrow, this is not the fault or responsibility of the University. S also complained that no seminars had been provided in another topic, for which 6 seminars had been scheduled. Many of the students had complained about the failure to provide the seminars as advertised. The University explained that the seminars had not been given because of staff absences, that the affected students had been advised to make representations through formal channels and that examiners had been instructed to take the failure into account when marking papers. The OIA found this complaint **justified** because the University should have arranged extra tuition for all the students affected. The University had, however, offered to allow S to resit the second exam, which was a reasonable response, and in addition the OIA recommended £300 compensation for the failure to provide adequate teaching on this course.

CASE 2

S was awarded a Lower Second Class degree and complained about the calculation of her marks and the decision not to upgrade her degree even though her marks fell within the borderline between an upper and a lower second class. S also complained that the lecturer who had marked her tort law paper was biased against her because S had made a complaint earlier in the year about the quality of the lecturer's teaching. The tort law paper in question had been referred to an external examiner as well as being marked internally. The OIA found the complaint about classification of the degree **not justified** because the University is exercising academic judgment when it sets the threshold for each class of degree and when the final degree classification is determined. It was suggested that the University should make it clear in the student handbook that it is exercising its academic judgment when it draws up the parameters for each degree classification. The complaint about bias was found **justified** on the ground that the University had not carried out a sufficiently thorough investigation of the allegation but had merely stated that there was no evidence of bias. It was recommended that the tort law paper should be reviewed by another external examiner to ensure that the mark was a fair one.

CASE 3

S arrived half-an-hour late for his engineering examination because a family member had been taken ill that day. He failed the exam. He had a discussion with his tutor, Dr X, about the result but did not submit any mitigating circumstances claim until 10 months after the examination, whereas the University's regulations specified a time limit of 7 days for submission after the examination. He claimed that Dr X had advised him not to appeal and that it was unnecessary. The appeal board that considered S's submission of mitigating circumstances found that there was no good cause for his not having submitted them much earlier, as required by the regulations. The appeal board was chaired by Dr X. S complained to the OIA that the University had not taken into account his mitigating circumstances relating to his late arrival at the examination, and that he did not appeal in time because he had received misleading information from Dr X, and as a result his degree was of a lower class than expected. The OIA found the complaint **justified**. Dr X should not have been involved in the decision-making process because of his prior involvement. It was recommended that the evidence of S's mitigating circumstances be considered afresh by a panel which did not include Dr X and that if they were accepted as affecting his performance S should be allowed a further opportunity to sit the examination.

CASE 4

S was awarded a degree with Lower Second Class honours. She appealed to the University against this classification on the ground of new evidence of extenuating circumstances that could not have been made known to the examiners before the examinations were held. Her appeal was dismissed as being groundless and she complained to the OIA that the University had given no reasons for this decision; she asked for the examination board to be reconvened to hear her appeal and give reasons. The University responded that medical evidence had been taken into account on two occasions prior to the final examinations and that the later evidence was not regarded as new. No explanation of this had been given to S or to the OIA until a very late stage in the handling of the complaint. The University had also incorrectly regarded S's appeal as being made out of time. The OIA found S's complaints **justified** and recommended that, following the suggestion of the University, there should be one further consideration of S's case by the examination board and that compensation of £50 should be paid to her for maladministration.

CASE 5

S was a student on a one-year professional course at the University. He became ill shortly after the start of the course and missed 4 months of study. He failed his final examinations in June and the re-sit in August. He re-registered on the course in September and then decided to claim that there had been extenuating circumstances relating to his earlier failed examinations. A student union officer told him that he was too late to submit a claim of extenuating circumstances in relation to the two sets of examinations at the end of his first year. He failed the examinations again at the end of the second year. Although the deadline for submitting extenuating circumstances had passed,

S claimed that he had been too unwell to submit them before the examinations in the first year and that his judgment had been affected. The OIA agreed with the University that S had been well enough to have submitted the claim of extenuating circumstances in June of his first year, given that he had been fit enough to sit the examinations. There were no valid reasons why he could not have complied with the deadline. He was not entitled to an aegrotat pass in relation to the third attempt as he was no longer ill. The complaint was **not justified**.

PROFESSIONAL PLACEMENTS

CASE 6

S was registered on the BA programme in Primary Education. She complained to the OIA that she had been discontinued from the course after one year due to concerns about her professional behaviour and that her appeal had not been handled fairly. S complained that she had had no idea that there were problems relating to her teaching practice until she was withdrawn. The University responded that she must have been aware from discussions at the school that her behaviour was regarded as unprofessional. The school staff had not at first informed the University about this on compassionate grounds but subsequently did inform the University of their serious concerns. The OIA found the complaint **justified** in part. The decision to withdraw S from teaching practice and the course was based on a professional judgment and the University was entitled to decide that S was unsuitable for teaching. However, the OIA was critical of the school's failure to notify the University that there were concerns about S's behaviour. The University's Partnership Agreement with local schools stated that schools were responsible for contacting the University if there were difficulties with a trainee, and that the University was responsible for contacting the school to check on a trainee's progress. Had the University been more proactive in monitoring S's teaching placement and ensuring that it was kept informed by the school, S would definitely have become aware earlier that there were problems with her progress.

CASE 7

S was a graduate from a non-English speaking country registered at the University to undertake a Post Graduate Certificate of Education. She had difficulties with the first school placement and agreed on remedial actions with the University. She then failed the second school placement and faced deregistration from the course. She appealed to the University unsuccessfully and then to the OIA. S complained that the support she had received on the course was inadequate and failed to take into account her special situation and needs; that the University's complaints procedures were lengthy and unprofessional; and that there was discrimination against those whose first language was not English. She sought an apology from the University. The OIA found that the support given was adequate for a postgraduate course and that her concerns had been properly addressed. However, the delays in the internal complaints process were excessive (one year) and there had been substantial procedural defects. S's complaint was found to be **justified** in part and the OIA recommended that the University should apologise to her for the delay and the defects. It

also recommended that staff should be given more training in complaints handling and that the University should consider whether its appeal process was too complex. No evidence of discrimination was found.

GRADUATE ISSUES

CASE 8

S was registered as doctoral student and given a one year Research Studentship renewable subject to satisfactory progress. Her scholarship was not extended and disagreements arose about the nature and conduct of her research topic. She complained to the OIA that the University had broken its contract with her by not allowing her to pursue the research methodology she believed she had clarified with her supervisors before taking up her place. She also complained that the University had delayed in handling her complaint and that her supervisors were inadequately qualified. The complaint about research methodology was found **not justified**. Questions of methodology are matters of academic judgment for the University and it is common practice for thesis proposals to be modified at the start of a project; S had been unwilling to accept her supervisors' advice on this. S's complaint about delay was **justified** for the proceedings had taken nearly one year, albeit that the University had apologised for this and S's fees had been waived for the year. The University had found that S's supervisors did not have experience of supervision through to successful completion of a doctorate and that a third supervisor should have been appointed. The OIA accordingly found this aspect of S's complaint **justified** and recommended compensation of £750 for the delay and the fact that her supervisors did not meet the University's expressed criteria.

CASE 9

S was registered for a PhD. She was found to have plagiarised parts of her thesis but, having regard to mitigating circumstances, was allowed to resubmit it. On resubmission, the thesis was failed. S appealed against this finding, and both internal and external reviewers appointed by the University found that there had been inadequate supervision. The University proposed no further action on the ground that there was insufficient evidence about the lack of supervision. S complained to the OIA on two grounds: first, that having followed the guidance of her supervisors, the failure must be due to unfair examination or inadequate supervision and second, that no remedy was offered by the University after an appeal that had taken a year and found in her favour. The OIA found the complaints **justified**. The reasons were that the available evidence supported the view that there had been inadequate supervision, and there had been an internal finding to that effect; therefore it was unreasonable of the University to offer no compensation or other remedy to resolve S's complaint. Moreover, the University's internal investigation of the complaint was protracted, lacked transparency and failed to keep S informed. The OIA recommended that the University pay S £2500 by way of compensation, but her additional claims for potential loss of earnings were not upheld for lack of evidence that she had the earning capacity claimed.

CASE 10

S's doctoral thesis was referred for revision after first submission; the revised thesis was submitted and examined and S was told that it was not of PhD standard and that she would be awarded only the degree of MPhil. She complained that there were procedural irregularities in the conduct of the viva and that her supervision had been misleading and inadequate. It was found that she had been warned of poor progress in the initial preparation of her thesis; and that she could not expect more than limited supervision during the period of preparation for resubmission. The presence of her supervisor during the second viva was not a procedural irregularity under the University's regulations. The examiners' decision not to award the PhD was a matter of academic judgment and one that the examiners were entitled to make. The complaint was **not justified**.

CASE 11

S was registered as a doctoral student at the University. She submitted her thesis for examination. The examiners' decision was that she had not satisfied the requirements for the award of a PhD but that she could resubmit the revised thesis for the degree of MPhil. S sought the opportunity to resubmit a revised thesis and be re-examined for the degree of PhD. In her complaint she alleged maladministration, in that the examiners lacked impartiality and experience; discrimination, in that an examiner had been aggressive and patronising towards her in the oral examination; and unfair practices, namely, failure to respect her freedom of thought and dignity and that medical evidence affecting her performance had not been properly dealt with. The OIA found the complaint **not justified** for the following reason: the conduct of the oral examination fell within the range of reasonable practice and the appointment of examiners was within the general scope of the regulations. Their suitability was a question of academic judgment over which the OIA has no remit. The appeal procedures had been properly followed.

DISCIPLINE

CASE 12

S was involved in an incident at the student union bar as a result of which he was arrested and received a police caution. The incident involved assault and the use of a weapon. The student union banned S from its licensed premises permanently. Under the University's disciplinary procedures S was expelled from the University with immediate effect. He appealed, successfully, on the ground of procedural irregularities and the appeal panel reduced the penalty to suspension from the University for one year. S complained to the OIA on the grounds that there were procedural irregularities and that the penalty was too harsh. He also complained that the student newspaper had published an article about his disciplinary hearing that was a breach of his confidentiality. The University however was not responsible for the contents of the student newspaper and had asked for the publication to be withdrawn. The OIA found that the complaint about procedural errors was **justified** (non-disclosure of documentation and CCTV evidence) but these issues had already been

appropriately dealt with by the reduction of the penalty from exclusion to suspension on internal appeal and so we made no further recommendations.

CASE 13

S, an overseas student, registered for a Master's degree at the University. At the end of the year S was found to have brought notes into the examination hall and received a reprimand and a mark of zero for the two examinations concerned. S was permitted to resit with a maximum award capped at Grade D. She appealed unsuccessfully to the University against this decision. S resat the examinations, gaining Grade D in each, and was awarded a Diploma, a lower award than the Master's degree she had sought. She complained to the OIA that the penalty of capping resits at Grade D was too severe; that the University had failed to take account of her mitigating circumstances and the specific social and economic consequences to her of the decision. S sought to be allowed to proceed to the Master's degree level. The OIA found her complaint **not justified**. The penalty applied fell within the norms recommended and was lower than it might have been under the regulations; the OIA accepted that the University had taken into account the representations concerning mitigating circumstances and had no grounds for treating S differently to other students on the basis of the potential social and economic consequences to her of failing.

CASE 14

S was a student at the University who had a room in a hall of residence there. In a student election meeting he made comments that were judged to be offensive and harassing in relation to the dean of the hall. After a disciplinary hearing, he was fined, disallowed from residing in that hall of residence in the next academic year and required to leave it at the end of term, despite having earlier been granted permission to stay on for an extra week at the end of term, for which he had paid. The Vice Chancellor reviewed the situation and upheld the exclusion from the hall at the end of term. S's appeal against the substantive penalty relating to the following year was pending. In complaining to the OIA about the exclusion from the hall for the extra week and the loss of the fee paid for that week, S was represented by a lawyer, and alleged procedural and human rights breaches by the University. The OIA found his complaint **not justified**. The Vice Chancellor had acted reasonably in his supervisory role, and not in breach of natural justice (he was not to be expected to act like a court or tribunal), and it was not unreasonable for the week's accommodation charges to be forfeited. The fact that his appeal against the week's exclusion could only be heard after the date on which it was effective was immaterial.

CASE 15

S was a postgraduate registered for an MA at the University. He was alleged to have plagiarised two coursework essays and not allowed to proceed on the course. He argued that the plagiarism was unintentional, and related to misunderstandings over methods of referencing work. The

University dismissed his appeal and he complained to the OIA. The University represented that S and all other students had been made aware of its Policy on Plagiarism, emphasising that it was a serious offence. They had been given handbooks, an introductory meeting and a seminar which included instruction on methods of referencing. They were all asked to sign a declaration that they had understood it before submitting work. S had signed a Plagiarism Declaration in relation to both pieces of work. The OIA found that the University had acted reasonably in communicating to students its policy on plagiarism and the penalties for it. S could not be excused if he had not read it or attended the information sessions. His complaint was found to be **not justified** and the penalty of withdrawal from the course was found to be reasonable.

CONTRACTUAL ISSUES

CASE 16

A number of students joined a Master's course in Physiotherapy at the University. The prospectus stated that the University intended to seek accreditation for the course from the relevant professional body and that successful graduates would be eligible to apply for professional certification. It also stated that the outcome of the University's plan could not be prejudged. In fact the course was run out, having failed to be restructured as required. The students were kept informed of these events, were offered the option of transferring to another university or a refund of fees. The possibility of transfer did not materialise, the students remained on course and eventually gained the professional certification by an alternative route. Their complaints to the University were dismissed and they complained to the OIA. They sought refund of the course fees because of the delay of 12 months in gaining professional certification and other disadvantages, including disruption, resulting from the discontinuation of the course. The OIA found that the University had taken all reasonable steps to ensure that the students were informed of the options available to them in relation to accreditation, and were offered reasonable options in relation to their future studies. The University had met the additional fees required to seek alternative certification. The complaint about the quality of the course was **justified** in part and payments of £750 to each student recommended in recognition of the inconvenience, stress and disappointment resulting from the failure to secure accreditation and the additional time required to achieve certification.

CASE 17

S was an undergraduate at the University who accepted a job offer conditional on good references and passing her degree. One day later a tutor gave a verbal reference about S to the employer, as a result of which the employer telephoned S and withdrew the offer. A written reference in similar terms was given to another potential employer. S obtained the employer's note of the verbal reference and complained to the University and then to the OIA that the reference contained information that was misleading, inaccurate and incomplete. S secured another job at a slightly better salary within 5 weeks of the withdrawal of the first offer. The University responded that it believed that the references were fair and accurate. The OIA found inaccurate and misleading

statements in both references concerning the number of resits required by S and the maximum marks she had obtained. However, the adverse comments on general academic competence and poor attendance were reasonable. The complaint was **justified** in part and the OIA recommended that the University offer S an apology for the lack of prudence and care, and compensation of £200 for the stress involved; and that there should be training for staff on the legal aspects associated with the provision of references.

CASE 18

S was a mature student in employment who registered in 1999 for a four year part time (weekend) professional course at the University. Registration as a professional was possible only if she graduated from an accredited course. S complained that the University had failed in its duty of care to her and was in breach of contract. She alleged that the course provided was inadequate, as evidenced by its failure to gain professional accreditation from the Governing Body of the profession. S also alleged that the University had failed to keep her and other students informed about the progress made towards accreditation, so that she could not decide whether or not to stay on the course; that the course was mismanaged and there was a lack of accountability for finding a solution. She complained to the OIA seeking a refund of 50% of the fees, and compensation for loss of earnings and distress and inconvenience. The course was eventually accredited. S achieved professional qualification after the University arranged an external extra course for this purpose, for which it met the expenses. After students complained in 2001, an independent reviewer had found shortcomings in the course and recommended ex gratia payments. S remained dissatisfied and complained, along with other students, to the OIA in 2004. The OIA found that there were shortcomings in the course; that the University had failed in its communication of problems to the students; and that the complaints procedure was not handled in a timely way. The complaint was **justified** and the OIA recommended payment of compensation to S totalling £9000. This consisted of £2000 for the acknowledged failings of the curriculum and educational standards provided by the University; £2000 for the distress and inconvenience caused to her by the postponed accreditation, the uncertainties relating to the outcome, the disruption to studies and the delay in complaints handling; and £5000 for the loss of an opportunity to improve earning power through professional accreditation earlier than was possible in the circumstances.

CASE 19

S registered for an undergraduate course in science at the University. He had chosen this particular course after carrying out research on the content of different degree courses on offer and chose this one because it offered modules he was particularly interested in. Upon registration he was handed a copy of the curriculum and discovered that the course content was different to that shown on the website. He complained to the OIA that the University had substantially changed the content of the course from that which was described on the website and that students were not notified of the changes until they registered on the course. He also complained that the University had not treated his complaint seriously and that he had been forced to take an unintended and

unwanted gap year. The University accepted that there had been changes but that there was a need to change the curriculum as topics developed and that most of the material was still available in a different form. The OIA agreed in its decision that the course needed to change from time to time but that there was a need to inform prospective students and in particular freshers. This was in accord with the QAA Code of Practice. The changes to the course had been agreed before registration but no effort had been made to inform upcoming students nor was the website updated until after S complained. The complaint was found **justified**. If S had been notified of the course changes a month earlier he would have had more time to make alternative arrangements for the coming year if required. Moreover, the University's response to S's complaint had been confused and inadequate. The OIA recommended that the University offer S £300 as compensation for the inconvenience suffered by him due to the University's failings.

ACCOMMODATION

CASE 20

S was a student who complained at the end of her second year about the University's Accommodation Office. She had been advised by the Office of the availability of a room with a private landlady in the vicinity. She took up this suggestion and was offered the room but two weeks later problems arose with the facilities and the landlady. She reported these problems to the Accommodation Office but was not offered any alternatives. She believed that the staff of the Office were aware of the poor condition of the rented room. The University claimed that because of S's initial urgent need for housing, she had been given advance notice of the availability of the room, which was exceptionally cheap. The University gave out information about properties for rent off campus but did not recommend or inspect the properties; the decision to rent was the student's own. Her complaint was found to be **not justified**: however, universities need to be careful about the advice and information they give to students about accommodation. There may be situations where by virtue of the representations made to a student a university incurs liability for the standard of privately-owned accommodation on its lists, whether or not it has inspected that accommodation. This did not arise in this case where no such representation had been made. The University should consider placing an appropriate disclaimer in the literature it publishes to students about private accommodation on its list.

CASE 21

S was a student at the University who accepted a room in a hall of residence from September of her first year. The hall was undergoing refurbishment until the end of November. In January she moved out and sought private accommodation. A replacement tenant was found in March. The University sought payment of residence fees amounting to £900 as agreed under the licence and withdrew certain privileges from S because of non-payment. She appealed to the University and was offered an apology and an ex gratia payment of £300 for procedural irregularities in the handling of her complaint. She remained dissatisfied with the outcome and complained to the OIA. The

grounds were that she had complained to the University in October about disruption from the refurbishment and lack of personal safety in the hall. The University rejected the criticisms on factual grounds. The OIA found the University's response to be reasonable and that the payment of £300 should be accepted, the complaint being **not justified**.

CASE 22

S was an undergraduate on a course that included a year abroad studying law at an overseas university. When he and others arrived at the overseas university, they discovered that it was far from the centre of the city; that no accommodation had been arranged for them; that their language and other preparation for a different type of university study had been inadequate; and that there was no-one available at the foreign university to assist them, nor was there any mentoring from the home university. As a result of the difficulties experienced S returned home without completing the year abroad and, feeling that he had wasted a year, transferred to another university. He complained to the OIA that he had been ill prepared for the year abroad, that the University information about the overseas university was misleading and asked for return of his fees for the year. The complaint was found **justified**, and it was recommended that the fees be returned and that the University reform its procedures and preparation for the year abroad.

DISABILITY

CASE 23

S, a student with bipolar disorder, registered for a one-year graduate course and was allocated a place in university accommodation. He made the University aware of his disorder and arrangements were made for his support. There were complaints from other students in the hall of residence about S's disruptive behaviour but S did not respond to several invitations from the University to meetings to discuss the situation. Attempts by the University to secure a psychiatric assessment of S were unsuccessful because S refused permission for details to be disclosed to the University. Eventually a disciplinary hearing took place which S attended for part of the time, with the result that he was expelled from the University with immediate effect. He had no alternative accommodation. His appeal, which he did not attend, was rejected. He complained to the OIA that it was inappropriate for the University to use its disciplinary processes against a student who was known to be seriously unwell, when alternative medical procedures were available. The OIA found that the University's decision to pursue disciplinary processes to conclusion against S without his participation was unreasonable. The complaint was **justified** because the University was aware of the mental health difficulties of S and the impact that its actions might have on him. Less formal alternative procedures which could have offered the same outcome were available for use but their use had not been properly considered. The OIA was, nevertheless, aware that the University was faced with a difficult situation and had a duty of care to all its students. It was recommended that the University offer S £2000 in recognition of the additional stress caused by pursuing disciplinary proceedings to their conclusion in place of alternative medical ones; and that the University should

review its procedures in the light of the appropriateness of pursuing disciplinary or health-related action; and that the University should consider an application, if made by S, to be readmitted to the University under the terms of its Mental Health Protocols. Wider complaints by S's solicitors relating to disability discrimination were not taken on as they were pursued in the courts.

CASE 24

S, who had been diagnosed as dyslexic, was an undergraduate at the University. In her third year, having been granted an extension of a deadline relating to the third resit of a module, she was due to submit a piece of work to her department at 9.30 am in the morning of a particular day; in fact, the work was handed in during the afternoon. The examination board awarded the work a mark of zero because it had been handed in late and terminated her studies. The University dismissed her appeal. S complained to the OIA that exclusion from her degree course was a disproportionate response to handing in work late; and that her dyslexia may have had some bearing on her understanding of deadlines. The OIA found the complaint **justified**. S had in fact attempted to hand in the work early in the morning but finding no one to receive it, had returned later. Furthermore, S was not told of the consequences of late submission nor of her right to make representations about its proportionality, and it did not appear that sufficient account had been taken of the dyslexia. The OIA recommended that S be given two months in which to submit the work and that the University pay compensation of £400 for the inconvenience and stress caused to her.

CASE 25

S was an undergraduate on a four-year course at the University. He suffered from a serious illness and was also dyslexic. As part of his course, one year was spent at a university overseas. S was awarded a Lower Second Class degree and appealed to the University against that classification on the ground that his illness had been insufficiently taken into account and that the overseas university had not made the necessary allowances for his dyslexia. He was unsuccessful and complained to the OIA on those grounds, and also that there was a procedural irregularity in the University's hearing of his appeal in that very short notice of an appeal hearing had been given to him. The OIA found his complaint **not justified**. The University had made full allowances for the illness and had given the proper support for dyslexia. The overseas university had not accepted the diagnosis of dyslexia. In those circumstances the onus was on S to seek support from the home university, which he had not done. The short notice of the appeal hearing did not materially disadvantage S, who had not informed the University that he wished to find legal representation before it took place. Nevertheless the University should ensure that reasonable notice was given to appellants in future.

V ACCOUNTABILITY OF THE OIA



As we said in the Annual Report for 2004, 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 way 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 2005 the Board met 4 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 Office and become acquainted with our work, through induction courses and by presentations from casehandlers. The Board members of 2004 have been augmented by the addition of independent (that is, not connected with any sector of higher education) members in 2005. The membership at any time in 2005 was:

Sir Geoffrey Chipperfield (resigned 1.6.05)
Dr Geoffrey Copland
Mr Malcolm Faulkner (appointed 1.6.05)
Professor Norman Gowar (independent)
Mr Gareth Lewis
Professor Paul Light (resigned 1.9.05)
Mrs Maxine Penlington
Ms Hannah Essex (resigned 1.9.05)
Mr Hugh Smith (independent)
Mr Mark Emerton (independent)
Ms Cecilia Wells (independent, appointed 10.3.05)
Mr Christopher Eadie (independent, appointed 10.3.05)
Ms Sophie Holmes (independent, appointed 10.3.05)
Mr Julian Nicholds (appointed 1.9.05)
Ms Heather Somerfield (appointed 1.9.05)
Ms Margaret Doyle (independent, appointed 1.11.05)

If a dissatisfied complainant wishes to complain about the way this Office has handled the complaint (as opposed to the substantive decision), it has been decided that it should first be reviewed by the Chief Executive and then, 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. Some complainants have contacted their MPs who have corresponded with us on their behalf.

The OIA has continued to maintain regular and constructive relations with the Department for Education and Skills.

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 full extent to which judicial review may be asserted over our decisions remains to be seen: on the one hand the courts express full support for the use of ombudsman-type schemes and expert bodies, rather than the courts themselves, for the investigation of specific complaints for which schemes have been designed. On the other, the extent of judicial review is wide and widening. There is also the unanswered 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 recommendation.

We look forward to the third year of our ever more challenging and exciting jurisdiction and to continuing the establishment of a system of review that is breaking new ground. We trust that the parties we deal with will be convinced of the worthwhile nature and value of our scheme for ensuring a high quality and fair system of higher education in the interests of staff, students and the public.

Baroness Ruth Deech
June 2006

Annex I

UNIVERSITIES AND HIGHER EDUCATION COLLEGES COVERED BY THE SCHEME

England

Anglia Ruskin University
Arts Institute at Bournemouth, The
Arts London, University of the
Aston University
Bath Spa University
Bath, University of
Birkbeck College
Birmingham College of Food, Tourism & Creative Studies
Birmingham, The University of
Bishop Grosseteste College
Bolton, The University of
Bournemouth University
Bradford, University of
Brighton, University of
Bristol, University of
Brunel University
Buckingham, University of
Buckinghamshire Chilterns University College
Cambridge, University of (and constituent colleges)
Canterbury Christ Church University College
Central England in Birmingham, University of
Central Lancashire, University of
Central School of Speech and Drama
Chester, University of
Chichester, University College
City University
Conservatoire for Dance and Drama, The
Courtauld Institute of Art
Coventry University
Cranfield University
Creative Arts at Canterbury, Epsom, Farnham, Maidstone
and Rochester, University College for the
Cumbria Institute of the Arts
Dartington College of Arts
De Montfort University
Derby, University of
Durham, University of
East Anglia, University of
East London, University of
Edge Hill College
Essex, University of
Exeter, University of
Falmouth, University College
Gloucestershire, University of
Goldsmiths College
Greenwich, University of
Harper Adams University College
Hertfordshire, University of
Heythrop College
Huddersfield, The University of
Hull, The University of
Imperial College of Science, Technology and Medicine
Institute of Cancer Research
Institute of Education
Keele University
Kent, The University of
King's College London
Kingston University
Lancaster, University of
Leeds College of Music
Leeds Metropolitan University
Leeds, The University of
Leicester, University of
Lincoln, University of
Liverpool Hope University College
Liverpool John Moores University
Liverpool, University of
London Business School
London Metropolitan University
London School of Economics and Political Science
London School of Hygiene and Tropical Medicine
London South Bank University
London, University College
London, University of
Loughborough University

Luton, University of
 Manchester Metropolitan University, The
 Manchester, The University of
 Middlesex University
 Newcastle, The University of
 Newman College of Higher Education
 Northampton, The University of
 Northern School of Contemporary Dance
 Northumbria at Newcastle, University of
 Norwich School of Art and Design
 Nottingham Trent University, The
 Nottingham, University of
 Open University, The
 Oxford Brookes University
 Oxford, University of (and constituent colleges)
 Plymouth, University of
 Portsmouth, University of
 Queen Mary, University of London
 Ravensbourne College of Design and Communication
 Reading, University of
 Roehampton University
 Rose Bruford College
 Royal Academy of Music
 Royal Agricultural College
 Royal College of Art
 Royal College of Music
 Royal College of Nursing Institute
 Royal Holloway, University of London
 Royal Northern College of Music
 Royal Veterinary College, The
 Salford, The University of
 School of Oriental and African Studies
 School of Pharmacy
 Sheffield Hallam University
 Sheffield, The University of
 Southampton Solent University
 Southampton, 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, University of
 Sussex, University of
 Teesside, University of
 Thames Valley University
 Trinity and All Saints College
 Trinity Laban
 Warwick, University of
 West of England, Bristol, University of the
 Westminster, University of
 Wimbledon School of Art
 Winchester, The University of
 Wolverhampton, The University of
 Worcester, University of
 Writtle College
 York St John College
 York, University of

Wales

Cardiff University
 Glamorgan, University of
 North East Wales Institute of Higher Education
 Open University, Wales
 Royal Welsh College of Music and Drama
 Swansea Institute of Higher Education
 Trinity College Carmarthen
 Wales Aberystwyth, University of
 Wales Bangor, University of
 Wales Institute Cardiff, University of
 Wales Newport, University of
 Wales Swansea, University of
 Wales, Lampeter, University of
 Wales, University of

Annex 2

BUSINESS PLAN 2006



This business plan puts forward an operational plan for the Office of the Independent Adjudicator for Higher Education (“OIA”) for 2006.

Complaints handling

In the 2005 business plan we assumed that the number of complaints during the year would be in the order of 3-400. Based on complaints figures available for the first six months of 2005 that estimate looks realistic. We consider it would be prudent to assume an increase in student complaints of about 25% for 2006, bearing in mind that we are a new organisation and an increase in complaints is likely to follow rising awareness of the scheme.

We are likely to see two opposing trends in 2006. First, there is a continuing tendency for complaints to become more complex. Our remit is very wide and we frequently operate in areas where there is little legal precedent to guide us. Issues arising in relation to disability discrimination legislation, for example, frequently require in depth investigatory work. Such complaints cannot be dealt with quickly. On the other hand we see a growing number of complaints which, on the face of it, do not reveal that the HEI has done anything materially wrong. We either reject these complaints at the outset or handle them under a fast track procedure. Nevertheless we do have to allocate resources to dealing with them.

Our processes are regularly reviewed in order to achieve efficiency gains and we will continue to do this in 2006. The great variety of complaints we receive means we will need to be innovative in the way we process them. Further attention will be paid to fast tracking procedures consistent with our enabling legislation.

We will set ourselves the following service levels for 2006:

- 90% of enquiries to be sent an initial response within 5 working days
- Average time to process Scheme Application Forms (i.e. eligibility determined) to be within 25 working days
- Average time to resolve complaints to be within 6 months

Other functions

The Office provides an advisory service to students and HEIs about the scheme and involves itself in the dissemination of good practice about complaints handling. This is a growing part of our work.

Operations

We do not envisage any significant changes to our operational systems. Our proprietary IT applications are expected to continue to meet our requirements although we expect to purchase some additional licences and software during the year. Further investment in our knowledge management systems is planned.

A certain amount of sharing of computer facilities currently takes place. We would like to be in the position of having additional networked seats in 2006.

Premises

Our premises continue to meet our needs and we are pleased that our new landlord has begun to address some of the unsatisfactory aspects of the communal areas. Our rent free period ends in March 2006, after which we will be paying rent at commercial rates. As our work expands we may need to rent additional storage space during 2006.

Staffing

During 2006, in addition to the independent adjudicator and deputy adjudicator & chief executive we plan to have 8 casehandlers and 3 administration/liaison officers, some of whom work on a part-time basis. This means recruiting one additional casehandler.

We will continue to use the services of 3 casehandler consultants and 1 higher education consultant as and when needed.

The Office subcontracts out its IT, accounting and payroll requirements.

Training

The development of our staff is of vital importance to the running of the Office. During 2006 we will focus on equality and cultural issues training.

Communications

We will continue to liaise and consult with our stakeholders - with HEIs, student organisations and the DfES. Also with other bodies operating in the higher education sector and the ombudsman world.

During 2006, in addition to making presentations about the scheme at conferences and seminars, the Independent Adjudicator and Deputy Adjudicator intend to focus on disseminating examples of good practice in student complaints handling.

We will also continue to seek feedback about the scheme through our interactive website and satisfaction surveys.

Subscriptions

We are forecasting that total subscriptions for 2006 will need to increase by approximately 40%. In May 2005 all HEIs received a letter explaining the reasons for the increase – essentially due to the exhaustion of our grant and rent free period. The Board also has under consideration the question of whether certain non-HEIs should be allowed to participate in the scheme given that the Higher Education Act 2004 made provision for this possibility.

The Budget

The main changes in the budget over the 2005 budget are the increase in staffing costs and the payment of rent. In 2006, for the first time, the costs of running the Office will be borne entirely by subscriptions.

Michael Reddy
Deputy Adjudicator & Chief Executive
October 2005

Office of the Independent Adjudicator for Higher Education 2006 Budget

	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Totals
Staff salaries/on costs	127,664	132,381	132,381	132,989	525,415
Consultants/other staff costs	23,050	20,550	20,550	20,550	84,700
Rent/rates/service charge*	7,250	26,780	26,780	26,780	87,590
Professional fees	12,400	11,900	8,900	7,400	40,600
Office supplies	14,500	14,500	11,000	12,000	52,000
Telephone/postage/web/IT	14,200	5,600	6,800	6,300	32,900
Training	5,000	5,000	5,000	5,000	20,000
Misc.	19,800	21,495	12,600	14,000	67,895
Bd of Directors	3,500	3,800	1,000	6,300	14,600
Contingencies	-	-	-	10,000	10,000
Depreciation	9,000	9,000	9,000	9,000	36,000
<u>Total expenditure</u>	<u>236,364</u>	<u>251,006</u>	<u>234,011</u>	<u>250,319</u>	<u>971,700</u>
Brought forward	15,000				15,000
Subscriptions	920,000				920,000
Grant income	-	-	-	-	-
Deferred capital grant	30,000				30,000
Net bank interest	1,400	2,800	1,800	700	6,700
<u>Total income</u>					<u>971,700</u>

* Rent based on actual payments due

Oct 2005

Annex 3

OIA RULES

These are the rules ("Rules") of the student complaints scheme ("the Scheme") established by the Office of the Independent Adjudicator for Higher Education ("the Company"). The Company is designated as the operator of the Scheme in accordance with the Higher Education Act 2004. The Rules supersede any transitional rules of the OIA which may have been applicable to any Higher Education Institution ("HEI"). The Rules are effective from the Effective Date.

The governing bodies of all qualifying HEIs in England and Wales have a statutory obligation to comply with the Rules. Governing bodies should ensure that their procedures and regulations are compatible with the Rules.

1. Purpose

The main purpose of the Scheme is the review of unresolved complaints by students about acts and omissions of HEIs 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 at that HEI; or
- 2.2 a 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 concerns admission to an HEI;
- 3.2 it relates to a matter of academic judgment;
- 3.3 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 by being withdrawn or discontinued;

- 3.4 it concerns a student employment matter;
- 3.5 in the opinion of the Reviewer the matter complained about does not materially affect the complainant as a student;
- 3.6 it is being dealt with (or has been dealt with) under any transitional rules of the OIA, or
- 3.7 it is made by the personal representatives of a student and the OIA had not received a Scheme Application Form during the student's lifetime.

4. Time Limits and 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 complaints 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 of 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 The HEI will, after the internal complaints procedures have been exhausted, promptly issue a letter ("Completion of Procedures Letter") to the student concerned confirming that those 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.
- 4.4 The OIA reserves the right to reject a complaint where the Completion of Procedures Letter is issued more than three years after the substantive event(s) complained about.

5. Acceptance of Complaint

- 5.1 A complaint must be made in writing, normally by completing 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.
- 6.3 The normal method of dealing with a complaint will be as follows:
 - 6.3.1 once a complaint has been accepted the Reviewer will send a copy to the relevant HEI for its comments and the Reviewer may also require the HEI to respond to specific questions and requests for information;
 - 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 will be made;
 - 6.3.4 prior to issuing a Formal Decision the Reviewer will (unless the Reviewer considers it unnecessary to do so) 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 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.
- 6.7 The Reviewer may terminate or suspend consideration of a complaint, and/or make a Formal Decision based on information currently available, as he or she considers appropriate, if it appears to the Reviewer that,
 - 6.7.1 the HEI has satisfactorily dealt with the complaint;
 - 6.7.2 the complaint would be better considered in another forum;
 - 6.7.3 there are proceedings taking place within the HEI or elsewhere which may be relevant to the complaint; or
 - 6.7.4 a party has unreasonably delayed or has otherwise acted unreasonably.

7. The Formal Decision and any Recommendations

- 7.1 The Reviewer will issue a 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 should do something or refrain from doing something. Those Recommendation(s) may include, but not be limited to, 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 would be better considered in another forum;
- 7.4.3 that compensation should be paid 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 the HEI should change the way it handles complaints;
- 7.4.6 that the HEI should change its internal procedures or regulations.
- 7.5 The OIA expects the HEI to comply with the Formal Decision and any accompanying Recommendations in full, and in a prompt manner.
- 7.6 Where Recommendations require the HEI to take a particular course of action it should 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 Any non-compliance by an HEI with a Recommendation will be reported to the Board and publicised in the Annual Report.

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, subject to the provisions of the Act.
- 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*

The Independent Adjudicator and Deputy Adjudicator shall have the following further powers and duties:

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| <p>11.1 The Independent Adjudicator shall report to the Board any non-compliance by an HEI with a Formal Decision and any Recommendations and, at his/her discretion, the Independent Adjudicator may report to the Board any non compliance by an HEI with any other recommendations or requests made by a Reviewer.</p> <p>11.2 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.</p> <p>11.3 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.</p> <p>11.4 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.</p> <p>11.5 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:</p> <p>(a) complaints referred under the Scheme;</p> <p>(b) the Decisions and Recommendations made by Reviewers;</p> | <p>(c) the extent to which Recommendations made by Reviewers have been followed (listing any HEIs which have not complied with a Recommendation);</p> <p>(d) the way in which the operator has used the fees (if any) paid in connection with the Scheme; and</p> <p>(e) the names of those HEIs participating in the Scheme.</p> <p>11.6 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.</p> <p>11.7 The Independent Adjudicator and the Deputy Adjudicator may recruit, appoint, train, manage and remove staff.</p> <p>11.8 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.</p> <p>11.9 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).</p> <p>11.10 The Independent Adjudicator may publish individual decisions and digests of complaints in anonymised form and statistical information.</p> <p>11.11 The Independent Adjudicator and Deputy Adjudicator may recommend systemic changes in policy or procedure arising from complaints and publish such recommendations.</p> <p>11.12 The Independent Adjudicator and Deputy Adjudicator may make recommendations from time to time to HEIs for the promotion of the Scheme to students.</p> |
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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. Any fees and subscriptions payable under the Scheme by qualifying institutions under the Act shall 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:

“Act” means Higher Education Act 2004

“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 the Deputy Adjudicator in accordance with paragraph 11.5

“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 and includes part of a complaint

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

“court or tribunal” excludes those courts or tribunals which are internal to an HEI or are established pursuant to the powers of an HEI

“Effective Date” means the date specified by the Secretary of State on which the OIA becomes the designated operator of the Scheme for England in respect of HEIs in England and the date specified by the Welsh Assembly on which the OIA becomes the designated operator of the Scheme for Wales in respect of HEIs in Wales

“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 Act 1992) (“the 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

“internal complaints procedures” means those complaints and appeals procedures of an HEI which concern students and for the avoidance of doubt, include, but not by way of limitation, procedures concerning student complaints, academic appeals, disciplinary matters and breaches of codes of conduct and regulations

“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

“student” means a student who is or was registered at the HEI complained about (or in the circumstances described in paragraph 2.2 is or was registered at that other institution)

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

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

OIA Subscriptions for 2005

Figures based on full time and part time higher education and further education students at higher education institutions, according to 2002/3 HESA figures.

	Band	Fee
Less than 500 students	A	£150
501 to 1,500 students.....	B	£310
1,501 to 6,000 students.....	C	£1,650
6,001 to 12,000 students.....	D	£3,280
12,001 to 20,000 students.....	E	£5,450
20,001 to 30,000 students.....	F	£8,240
More than 30,000 students.....	G	£9,790

Annex 4

OIA PERFORMANCE STATISTICS 2005



1) Number of staff (including part-timers)

16 (12.70 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	324
Admissions	12
Contract	234
Disciplinary matters	635
Discrimination & Human Rights	65
Information about Scheme	126
Unspecified	42
Other	63
Plagiarism & IP	23
Welfare	18
Total	942

4) Scheme Application Forms Received

Outcome:

Eligible	370
Settled/withdrawn	16
Eligibility being reviewed	34
Not eligible	111
Number of Applications open 3 -6 months at end of period	19
Number of Applications open over 6 months at end of period	1
Total	531

5) Complaints received by category

Total **322**

By type:

Academic appeal/Exam results/	
Degree classification	135
Contract	107
Disciplinary matters	22
Discrimination & Human Rights	25
Unspecified	2
Other	16
Plagiarism & IP	10
Welfare	5

Gender:

Female	159
Male	163

Age:

Under 25	94
Under 40	142
40 and over	77
Not known	9

Student Status:

Further Education	0
Other	22
Postgraduate	138
Undergraduate	160
Undergraduate (Franchised/Validated)	2

Nationality:

Home/EU	227
Non-EU	45
Not known	50

6) *Complaints by performance*

Number of Complaints received	322
Number of Complaints closed	213
Work in Progress	181
Average no. of days to close Complaint in period after receipt of Scheme Application form	172
Average no. of days to close Complaint in period after admission to Scheme	148
No. of closed Complaints in period taking 6 -12 months to close after admission	59
No. of closed Complaints in period taking longer than 12 months to close after admission	1
Number of Complaints open 6-12 months from admission at end of period	14
Number of Complaints open after 12 months from admission at end of period	0

7) *Complaints by outcome*

<i>Total:</i>	
Justified/Justified in part	69
Not justified	125
Settled	9
Withdrawn	10
Total compensation	£260,290

8) *Justified complaints by type*

Academic appeal/Exam results/Degree classification	17
Contract	39
Disciplinary matters	3
Discrimination & Human Rights	5
Other	4
Plagiarism & IP	0
Welfare	1

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 5

THE OIA STAFF



The Independent Adjudicator

Baroness Ruth Deech.....DBE, MA, Hon LL.D

Deputy Adjudicator and Chief Executive

Michael Reddy.....LL.B, LL.M, MBA, MCI Arb, accredited mediator, barrister (non-practising)

Senior Assistant Adjudicator

Susanna ReeceBA, MSc, solicitor (non-practising)

Assistant Adjudicators / Casehandlers

Fiona Draper.....LL.B

Louise Hague.....LL.B

Siobhan Hohls.....BSocSci, LL.B, Attorney admitted under the rules of the High Court of South Africa (non-practising)

Alison MacDougallLL.B

Helen Walton.....ATCL, BA, LL.B, Barrister and Solicitor of the High Court of New Zealand (non-practising)

Victoria Woollen.....BA, PG Dip. in Social Security law, solicitor (non-practising)

Assistant Casehandlers

Katie Dean.....BSc, CPE, LPC

Charlene Thompson.....LL.B

Consultants

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

Sarah PayneBA, MBA, solicitor (non-practising)

Kay ShepherdBA, solicitor (non-practising)

Liaison Manager / Casehandler

Isobel BrownBSc, MA, PGCE

Administration Officers / Liaison Officers

Claire Elliot.....BA

Cheryl Emerton

Raj Kelair.....BA, MSc

Jan Pearce

As at June 2006

Fifth Floor, Thames Tower, Station Road, Reading RG1 1LX

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