THE OIA’S APPROACH TO REMEDIES AND REDRESS

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Introduction

The Office of the Independent Adjudicator for Higher Education (OIA) provides an independent, transparent Scheme under the Higher Education Act 2004. We review student complaints against individual higher education providers.

Further information about the OIA can be found on our website where you can also find a list of all providers.

This leaflet sets out the OIA’s general approach to remedies and redress where we have found a complaint to be Justified or Partly Justified. Please also refer to the Rules of the OIA Scheme. If there is any conflict between this leaflet and the Rules, then the Rules take priority.

We can provide our literature in different formats. Please contact us if you have any questions regarding this or our complaints process.

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What does the OIA do?

The OIA reviews complaints by students about anything their higher education provider has done or failed to do. Provided the complaint is one we can review, we will decide whether the complaint is Justified, Partly Justified or Not Justified. Before bringing a complaint to the OIA, students must normally first complete the provider’s internal processes and obtain a ‘Completion of Procedures Letter’.

Our normal approach to reviewing complaints is to consider whether or not the provider properly applied its regulations and followed its procedures and whether or not a decision made by the provider was reasonable (Rule 13.4, OIA Scheme Rules). We will also take into account any steps taken by the provider to resolve the student’s concerns.

Where we consider a complaint to be Justified or Partly Justified our decisions will usually include Recommendations. The Recommendations that we can make are wide-ranging. They include Recommendations aimed at providing redress for the individual student as well as Good Practice Recommendations which, for example, ask the provider to take action to improve procedures, review unfair regulations or provide staff training.

Where we make Recommendations, both parties will be given the opportunity to comment on the practicality of these before we confirm our Recommendations.

Compliance with OIA Recommendations

The OIA expects providers to comply with our Recommendations in full and in a prompt manner. A timescale for compliance with the Recommendation will normally be indicated in the appendix to the Complaint Outcome, which will also set out the evidence the provider is required to produce to satisfy the OIA that compliance has occurred. Compliance is carefully monitored by the OIA, and the Independent Adjudicator is required by our Rules to report any non-compliance by a provider to the OIA’s Board and to publish it in the OIA’s Annual Report.
Suggestions and Observations

The OIA will sometimes also make Suggestions or Observations that fall short of a full Recommendation. These may point to failures of good practice and propose possible solutions without requiring a provider to report back formally on compliance, although we will usually ask the provider to let us know what action, if any, has been taken. Suggestions and Observations are normally used in decisions which are found to be Not Justified and/or where there has been no material disadvantage to the student as a result of what the provider has done or has failed to do.

The OIA’s approach to Remedies

The OIA is not limited in the remedies it can provide and students should make it clear on the OIA Complaint Form, or in correspondence with the OIA, what remedies they are seeking even if those remedies are not mentioned on this page. We will consider any reasonable remedy proposed by either the student or the provider; however, it is important for students to be realistic about what they are asking for. Our aim is to provide practical remedies wherever possible; financial redress is considered where another remedy is not available or is considered insufficient. Our remedies are designed to help resolve students’ concerns, not to punish a provider or its staff.

Although students have 12 months from the date of the Completion of Procedures Letter to bring a complaint to the OIA, students should try to submit a complaint form as soon as possible because the longer that a student waits before bringing a complaint, the less likely it is that a practical remedy will be possible.

If the provider offered a remedy before the student brought a complaint to the OIA or does so as part of any settlement discussion, we will normally consider whether the offer was reasonable as part of our review.

Depending on the circumstances of the case, we might recommend or suggest that the provider repeats its offer, or we might recommend a different remedy. It’s important to note that, if we recommend that the provider offers financial compensation, the amount we recommend might be higher or lower than the provider’s earlier offer.
Practical Remedies

Where we recommend that the provider takes some action for the benefit of the student, we will try, wherever possible, to ensure that the proposed remedy returns the student to the position that they would have been in had the circumstances not occurred. This may mean that we recommend a practical remedy in conjunction with one or more of the other remedies outlined below. For example, we may recommend that the student is given another assessment opportunity, perhaps with additional support, or we may ask the provider to hold a fresh appeal panel hearing. In appropriate cases, we may also recommend that a student’s work is re-marked.

However, under our Rules, we are not able to make Recommendations asking a provider to change its academic judgment (see the section on academic judgment).

We will not make Recommendations that are punitive, or that require the provider to pay a penalty or fine. Our Recommendations are directed at the provider, so we will not normally recommend that a member of staff should do something or apologise or that a provider take action in relation to a member of staff.

The OIA can:

- Refer a matter back to a provider for reconsideration.
- Request a provider to obtain promised accreditation for a course.
- Ask a provider to provide a fresh assessment opportunity.
- Request that work is re-marked.
- Recommend a review of provider policies/procedures and staff training.
- Ask a provider to apologise to a student.
- Give a student the opportunity to return to a course.
- Offer mediation between a provider and a student.

We cannot:

- Interfere with the academic judgment of a provider.
- Require a person to do, or refrain from doing, anything.

We will not normally:

- Make punitive Recommendations.
- Make Recommendations directed at a particular member of staff.
What is academic judgment and why does it affect the remedy I am seeking?

Academic judgment is a judgment that is made about a matter where only the opinion of an academic expert is sufficient.

The Higher Education Act 2004 specifically states that we cannot look at academic judgment. Rule 5.2 in our Scheme Rules states that we cannot consider a complaint to the extent that it relates to a matter of academic judgment. For example, we cannot put ourselves in the position of the examiners in order to re-mark work or pass comment on the marks given to the student. However, we can look at whether the HE provider has correctly followed its own procedures, for example, its assessment, marking and moderation procedures, and whether there was any unfairness or bias in the decision-making process the HE provider followed.

A decision about assessment, a degree classification, fitness to practise, research methodology, or course content or outcomes will normally involve academic judgment. The following areas do not involve academic judgment: decisions about the fairness of procedures, whether they have been correctly interpreted, what the facts are, how a provider has communicated with the student, whether an opinion has been expressed outside the area of an academic’s competence, the way the evidence has been considered, whether there is evidence of bias or maladministration.

In addition, we will not normally interfere with professional judgment. Professional judgment is a decision about professional standards that only an experienced professional can make. When reviewing a complaint involving matters of professional judgment we will look at whether the higher education provider has followed correct and fair procedures and reached a reasonable decision, but we will give great weight to the decision of the panel or individuals who have made an assessment based on professional judgment.

The OIA would seldom, if ever, recommend that a provider change a student’s degree classification or declare that a student is fit to practise. Similarly, we cannot re-mark work or pass comment on marks given. We may, however, if we find the complaint to be Justified or Partly Justified and consider it appropriate to do so, recommend that a provider reconsiders such matters.
Apology

Where appropriate, we will recommend that the provider offers the student an apology or an explanation for the shortcomings we have identified in our decision.

We will normally recommend an apology where we have upheld a complaint and this is what the student has requested. We may also recommend an apology where it has not been specifically requested but where we consider that the circumstances make this appropriate (for example, where we consider it may be helpful to mend an ongoing relationship).

The OIA recognises that apologies are most effective when given voluntarily and at an early stage in the provider’s internal complaints process. An awareness of when an apology may successfully resolve a complaint can provide both the student and the provider with an immediate, satisfactory outcome.

In order to be meaningful an apology should:

- Be made promptly.
- Acknowledge the failure.
- Accept responsibility for it.
- Explain clearly why the failure happened.
- Express sincere regret for any resulting injustice or hardship.
- Set out the action taken to remedy the matters complained about.

In the context of an OIA Recommendation, an apology does not amount to an admission of liability in the legal sense or a sign of weakness. On the contrary, apologies are recommended in order that a provider can acknowledge, and take responsibility for, an issue in order to diffuse a heated situation and reassure students that their concerns have been heard.
Financial Remedies

The aim of OIA Recommendations is to return students to the position they were in before the circumstances of their complaint. In appropriate cases, the OIA may also recommend a financial payment. Such a payment is usually only recommended when other remedies are unavailable, inappropriate or do not sufficiently compensate the student. OIA Recommendations for financial compensation represent our judgment about what we consider to be fair and reasonable in all the circumstances of an individual student’s complaint.

When considering whether financial compensation is appropriate, the OIA may take into account:

- Any reasonable steps which have or have not been taken by the student and/or the provider to minimise their financial loss or the impact of the issues arising from the complaint.
- Whether the provider has already made a reasonable offer to resolve the complaint.
- Prior awards of compensation made by the OIA, where relevant.
- Awards made by other relevant decision-making bodies.

The OIA will also consider the impact of the student’s own actions, conduct or behaviour in assessing compensation for distress and inconvenience. This may include consideration of the following issues:

- The student’s contribution to the issues that have given rise to the complaint or to the duration of the complaint.
- Whether the student has unreasonably refused or rejected an option that was available or offered by the provider.
- Whether the delays in resolving a matter may have been partly caused by the student.

Actual Financial Loss

The OIA may make Recommendations for actual financial losses or a lost opportunity. However the student must be able to prove an actual financial loss.

Where we recommend a refund of fees, we will normally recommend that the provider return the money to the source it came from e.g. the Student Loans Company.
The OIA’s approach to remedies and redress

Proof of Loss

The OIA is unable to compensate hypothetical or speculative financial losses or lost opportunities. In appropriate cases, the OIA will require students to submit documentary proof of actual loss incurred. For example:

- Expenses the student has had to pay or money they have lost as a result of any provider failings identified by the OIA.
- Any ‘loss of opportunity’ e.g. to complete a placement, apply for a bursary or to seek paid employment where this arises from an act or omission of the provider.

The evidence required to prove such a loss may include a letter confirming a job offer or that, a student’s salary would have been higher had they obtained a specific qualification. Where the student’s claim relates to a lost opportunity e.g. to complete a course of study or to be offered a bursary, it must be possible to quantify the loss and establish the student’s chances of obtaining what has been lost. So, for example, if the student says she has lost the opportunity to apply for a bursary, she would need to be able to provide evidence of the value of the bursary and her prospects of obtaining it.

When we recommend compensation for future loss of earnings, we will discount the loss to take into account the fact that the student will be receiving that compensation as a lump sum, gross, rather than in future years and subject to tax and National Insurance deductions.

We do not normally make Recommendations for living expenses because whether a student was studying or not they would have to pay for general living expenses such as food and accommodation. We may however make Recommendations for specific expenses such as thesis binding and academic gown hire, or where the student can demonstrate that they had to pay more for accommodation than they otherwise would have done.

Legal Fees

We will not normally recommend that a provider contributes to a student’s legal costs associated with bringing a complaint to the OIA. This is because the OIA Scheme is intended as an informal alternative to the courts and it is not necessary for a student to have legal representation in order to bring a complaint. If a provider’s procedures are unduly complex and a student has needed to seek legal advice/ assistance to navigate through those procedures, we may recommend that the provider reimburse a student for some or all of those costs.
Can the provider set off student debts against compensation recommended by the OIA?

Sometimes, the student owes tuition fees to the provider, or has some other outstanding financial liability to the provider. If the student has accepted that tuition fees are owing, or if the OIA has determined that they are, then it may well be reasonable for the provider to deduct the outstanding fees from any compensation recommended by the OIA. However, if the student disputes the debt, or if it relates to something which is entirely unconnected to the student’s complaint to the OIA, then it is not generally appropriate to do so.

The provider will have an opportunity to ask whether it can set off a debt against recommended compensation when it comments on the practicalities of the Recommendations made in the Complaint Outcome. If appropriate, the OIA can then ask the student whether or not there is a dispute about the debt.
The OIA’s approach to remedies and redress

Compensation for distress and inconvenience

The OIA may also consider whether it is appropriate to recommend a payment for distress and inconvenience. Such a payment may be recommended in addition to or instead of other practical or financial remedies. This may be, for example, where the student has been disadvantaged as a result of the provider’s delay, or where the provider had an opportunity to resolve a complaint but failed to take it. We may also recommend compensation for a student’s disappointment where for example, the student has not been able to complete their chosen course at their chosen provider.

We consider each case on its own individual facts but have developed some indicative bands setting out our general approach to this type of compensation. We set out below some of the factors that we may consider when deciding the level of distress and/or inconvenience and the amount of compensation to recommend. The bands are not intended to set out hard-and-fast rules about either the circumstances in which the OIA will recommend a distress and inconvenience payment or the amounts that will be appropriate when the OIA recommends this type of compensation.

<table>
<thead>
<tr>
<th>Level of distress and inconvenience</th>
<th>Recommended compensation</th>
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<tbody>
<tr>
<td>Moderate</td>
<td>Up to £500</td>
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<tr>
<td>Substantial</td>
<td>Between £501 and £2,000</td>
</tr>
<tr>
<td>Severe</td>
<td>Between £2,001 and £5,000</td>
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We may recommend payments over £5000 in exceptional circumstances.

Bands for awards for distress and inconvenience

Moderate:

- An act or omission of the provider caused some distress and inconvenience in the short term (e.g. less than 6 months).
- Minor maladministration, mishandling or unreasonable handling of the complaint by the provider which has caused additional unwarranted distress and inconvenience.
- Unreasonable or avoidable substantial delays (e.g. over 6 months) which are likely to have caused some distress and inconvenience.
- Moderate delays (i.e. less than 6 months) or other procedural irregularities where there is evidence to suggest the student suffered material disadvantage.
- The provider’s decision in respect of the substantive element of the student’s complaint was not reasonable and resulted in some distress and inconvenience.
Substantial:

- An act or omission of the provider caused some distress and inconvenience in the long term (e.g. more than 6 months).
- Procedural flaws which led to inconvenience and distress but did not affect the outcome.
- Evidence of circumstance giving rise to a reasonable perception of bias during the internal procedures.
- Substantial maladministration which resulted in material disadvantage to the student.
- Substantial mishandling of the complaint which resulted in or caused unreasonable or avoidable substantial delay (e.g. over 6 months) where there is evidence to suggest the student suffered material disadvantage.
- The provider reached an unreasonable decision (e.g. it dismissed a complaint when it should not have) but there is no direct academic consequence for the student.
- The provider’s decision in respect of the substantive element of the student’s complaint was not reasonable and resulted in substantial distress and inconvenience.

Severe:

- The provider has failed to consider its responsibilities under relevant discrimination legislation or, where there is credible evidence to suggest that the provider did not have regard to disability provisions or applicable legislation.
- The provider’s decision in respect of the substantive element of the student’s complaint was not reasonable and resulted in severe distress and inconvenience.
- Procedural flaws which, if they had not occurred, may have resulted in a different outcome.
- Cogent and contemporaneous evidence to suggest that as a result of the provider’s acts or omissions the student suffered from ill health.
- Major maladministration, procedural flaws, delays or other breaches of natural justice in a provider’s internal process resulting in material disadvantage to the student.
- Serious interference or bias during the provider’s internal consideration of a complaint or appeal.
- Serious and unexplained delays leading to injustice.
- Where there has been a clear material disadvantage to a student, but a practical remedy is inappropriate or impossible.

*Note: each aspect of a Justified complaint may be considered separately when assessing the level of award, enabling compensation to be accumulated across bands where appropriate.*
Factors the OIA considers in deciding whether to recommend a distress and inconvenience payment and which band is applicable

There are no hard-and-fast rules about the amounts that will be appropriate in recommending distress and inconvenience payments. They will depend on the circumstances of each individual case, which might include:

- Whether the provider’s handling of the student’s concerns has caused the student additional distress and inconvenience beyond that which would ordinarily be caused whilst raising a complaint or appeal.
- The extent of the inconvenience to the student.
- The severity of any distress and the nature of any supporting evidence.
- The vulnerability of the student.
- Whether the student raised the issue of injury to feeling or distress at the time of lodging the complaint/appeal or during the internal process.
- The period over which the problem occurred – the more lengthy and protracted the process, the higher the potential award.
- The number and nature of the provider’s acts or omissions that have led to the complaint being considered Justified or Partly Justified.
- Whether the provider has taken steps to try to address or reduce any actual or potential distress and inconvenience to the student.
- Whether the provider is likely to be in breach of other legal provisions, for example the Consumer Rights Act 2015.
- The status of the person(s) at the provider who were found to have caused distress and inconvenience to the student.
- Whether the provider had an opportunity to resolve a complaint but failed to take it.
- Whether an element of compensation should be payable in recognition of the time, trouble and minor costs incurred by the student in pursuing the complaint. Such payments will only usually be appropriate where the facts of the case show that time, trouble and minor costs experienced by the student were more than would routinely be required for pursuing a complaint. Examples of such cases include instances where the provider had an opportunity to resolve a complaint but failed to take it, or where information is disclosed during the course of an OIA review that was not made available to the student earlier and which, if known, could have resolved a complaint sooner. In all but the most exceptional cases, time and trouble payments will be in the moderate category.
It may sometimes be appropriate to recommend a payment for distress and inconvenience where an appeal was wrongly considered and needs to be reconsidered. However, this will depend on the circumstances of the case, for example, the seriousness of any procedural irregularity, the prospect of success of the re-heard appeal, any delays on the part of the provider, and whether the provider missed an opportunity to reconsider the case at an earlier time.

**Delay**

When considering distress and inconvenience Recommendations for delay, with reference to the Good Practice Framework where appropriate, the OIA will consider:

- The length of the delay.
- Whether the student raised the issue of delay within their complaint to the provider and/or the OIA.
- Whether there is evidence of actual disadvantage resulting or arising from the delay.
- Whether the provider kept the student informed during any period of delay.
- The reasonableness of the delay (e.g. was the complaint to the provider particularly complex or the representations from the student unusually long and detailed).
- Whether the delays in resolving a matter may have been partly caused by the student.
- The level of chasing done by the student and the provider’s response to the chasing.
The following cases illustrate the types of remedies we can offer and how the OIA’s approach to remedies is applied in practice. There are more examples of the types of remedies we can offer elsewhere on our website.

Case example 1
We decided a provider had not fully considered a student’s complaint about the failure of the course to offer all of the vocational opportunities outlined in the prospectus. We recommended the provider refer the complaint to a Complaints Panel for full review, apologise to the student and pay financial compensation of £750 for the distress and inconvenience caused by the deficiencies identified in relation to the provider’s investigation of her complaint. The compensation did not relate to any failings in the course itself; that was a matter for the Complaints Panel to consider.

Case example 2
We decided that a complaint by a student about the way her work had been marked was Justified. The student had failed the assessment. There were a number of errors in the way the provider had assessed the work, including providing conflicting information about whether the assessment had been externally moderated. We recommended that the work be re-marked and moderated by independent members of staff who had not previously been involved. As a result of the re-marking, the student passed the assessment.

Case example 3
A student complained to the OIA after being withdrawn from his course. We decided that the provider had not applied its attendance regulations or complaints processes correctly, and had not demonstrated that it had taken account of the student’s disability. We recommended a partial reimbursement of fees and accommodation costs totaling more than £12,000 because it was no longer possible for the student to resume his studies.

Case example 4
In a case where the provider had not been clear whether a student’s mark had been affected by his going over the assignment word limit, we concluded that the complaint was Partly Justified. We recommended that the provider should re-mark the work, following the correct assessment criteria. The work was re-marked by two assessors and referred to the External Examiner.
Case example 5
A student complained about a provider’s failure to consider his extenuating circumstances, which related to a diagnosis of disability which was made during the appeal process. The provider had a blanket policy of not permitting appeals based on retrospective evidence and had not looked at the individual merits of the student’s case. We did not consider that approach to be reasonable and concluded that the complaint was Partly Justified. We recommended that the provider reconsider the student’s appeal and change its regulations to consider each case on its individual merits.

Case example 6
A student complained to the OIA about the outcome of his academic appeal. He said that there was a procedural irregularity in the conduct of the appeal, and that there were significant delays in the provider’s consideration of the appeal. We concluded that there was a technical procedural irregularity in the conduct of the appeal, but that the outcome of the appeal would inevitably have been the same. However we concluded that the delays to the appeal were unreasonable, and that the provider had not kept the student informed. We recommended compensation of £500 for the distress and inconvenience caused by the unreasonable delays.

Case example 7
A PGCE student complained about a provider’s decision not to send her complaint for a hearing by a Complaints Panel. We concluded that the complaint was Justified because there was insufficient evidence documenting how the provider had managed the arrangement of placements for the student, and the student’s case therefore required further consideration. We concluded that the provider’s failure to act on her complaint in a timely manner resulted in her having to extend her studies from one to two years. We were also critical of the way that the provider handled the student’s complaints and considered this caused the student a significant degree of frustration, distress and inconvenience. We recommended that the provider pay the student £10,750 in compensation for the delay in the student being able to complete her course and seek employment. That sum was based on the student’s actual starting salary when she did complete the course, discounted to take account of Income Tax, National Insurance and possible pension contributions, and the fact that the student may not have obtained employment immediately. We recommended a further £2,000 for distress and inconvenience. We also recommended that the provider review its Student Complaints Procedure.