

## Guidance Note

# OIA Scheme Rules - April 2018

### Introduction

Our Rules set out what we do and who can complain, and the time limits for submitting a complaint. There are some complaints which we cannot look at, and some complaints which we will not normally look at. The Rules also allow us to terminate or suspend consideration of a complaint in certain circumstances.

This Guidance Note explains what some of the terms we use in our Rules mean and how we apply our Rules. It gives some examples to show how we decide what we can and cannot look at.

The Guidance Note should be read together with the Rules. Words and phrases which are in **bold** are quoted from the Rules. If there is any conflict between this Guidance Note and the Rules then the Rules take priority.

The Guidance Note includes some information about our review process. You can find [further information about our processes](#) on our website.

### The student complaints scheme

1. The Higher Education Act 2004 required that a scheme should be established for reviewing student complaints. The Act sets out the conditions which the scheme has to meet, and the higher education providers which the scheme covers.
2. In January 2005, the Secretary of State for Education and the Welsh Assembly designated the Office of the Independent Adjudicator for Higher Education as the operator of the student complaints scheme for England and Wales. The scheme which the OIA set up and runs is defined in the OIA's Rules.
3. Since 2005 the Higher Education Act has been amended so that more higher education providers have become members of the OIA.
4. The OIA's Rules have also been amended on several occasions. You can find [previous versions of the Rules](#) on our website.
5. The current Rules come into effect on 1 April 2018 and apply to any complaint we receive on or after that date. If we received the complaint form before 1 April 2018 the **Rules which applied when we received it** apply to that complaint.

### What we do (Rule 1)

6. **We review** student complaints independently, impartially and transparently, and use our learning from complaints to help improve policies and practices in higher education. Our main focus will often be the final decision of the higher education provider; we won't normally start a brand new investigation. For more information about our review process, [see paragraphs 39-42](#).
7. Our **reviewers** are in three case-handling teams. Our Casework Support Team deals with enquiries and the early stages of our process once we receive a complaint. Case-handlers in our Assessment and Resolution Team and Adjudication Team carry out our reviews. All of our case-handlers and case-handling managers have the knowledge, skills, training and support they need to deal with the cases allocated to them. We have a process to prevent case-handlers reviewing complaints about higher education providers that they have a

close connection with. For example, case-handlers will not review complaints about higher education providers where they have studied or worked.

8. You can find more information on our website about the work we do to share learning from complaints and promote [good practice](#).

## Who can complain? (Rule 2)

9. **Students and former students** can complain to us. A student is someone who is or was **registered** at a **higher education provider** ([paragraphs 15-27](#)). If there is a doubt about whether the person making the complaint is or was a registered student, we will decide by looking at the higher education provider's regulations. Someone who is or was **studying** for one of the higher education provider's awards is also a **student**. Section 12 of the Higher Education Act 2004 says the student must be or have been "undertaking a course of study, or programme of research, leading to the grant of one of the qualifying institution's awards" ([paragraph 12](#)).
10. The term "student" can include trainees and apprentices. For example, a trainee teacher at a School Centred Initial Teacher Training (SCITT) provider can complain to us about matters which the SCITT is responsible for. If they are studying for a Postgraduate Certificate of Education (PGCE) or masters-level credits, they may also be able to complain about the higher education provider which awards the PGCE or credits. An apprenticeship is a job, so someone on a higher education apprenticeship will be employed as an apprentice but will also be a "student". If the apprenticeship involves a higher education qualification which is delivered, awarded or assessed by a higher education provider, then the apprentice can complain about what the higher education provider has done.
11. A student or former student can bring a complaint to us about **anything their higher education provider has done or failed to do**, provided the complaint is one we can review (see Rule 5, and Complaints we can and cannot review, [paragraphs 28-33](#)).
12. The Higher Education Act 2004 (Section 12) says that the scheme covers complaints made by "a person as a student or former student" or "as a student or former student at another institution ... undertaking a course of study, or programme of research, leading to the grant of one of the qualifying institution's awards."
  - 12.1. That means that the person's complaint must relate to the fact that they are or were a student at a higher education provider. The complaint may be about the provider where they are or were studying, or the provider which grants the award for which they are or were studying. We may decide not to review a complaint which is about something that does not affect the person making the complaint as a student. We generally look at this broadly, and accept complaints which relate to student life and the outcome of the student's studies. For example, we have considered complaints about references for former students, and where awards have been withdrawn because the student has been accused of plagiarism or other misconduct some time after graduation.
  - 12.2. Some complaints about higher education providers may have no bearing on student life or may not be in any way connected with study. For example, we decided not to accept a complaint about a provider's voluntary legal advice centre declining to take on a student's case against a private landlord; about a provider's finance department pursuing an undisputed fee debt against a former student who had left her course some years before; and about the theft of a bicycle from a provider's bike rack.
  - 12.3. We may also conclude that what the higher education provider has done has not affected the outcome of the student's studies. For example, a marking issue may have no effect on the degree classification, or a procedural irregularity in an appeal may have been put right at a later stage of the procedure.
13. Students can only complain about **some providers** if they are or were on a **higher education course**, and their complaint is about their experience on that higher education course. This is relevant to complaints about higher education providers that fall within paragraphs (da), (e), (ea) and (f) of the definition of a qualifying institution (see "**qualifying institution**", [paragraph 16](#)). These [providers are identified on our website](#). For these purposes, a "higher education" course is a course of any description mentioned in Schedule 6 to

the Education Reform Act 1988 and which also meets the academic standards as they are described in the Framework for Higher Education Qualifications (FHEQ) for England, Wales and Northern Ireland at Level 4 or higher. We will normally be guided by the provider's own assessment of the level of the course(s) in question and will take into account any information provided by or to regulatory and quality assurance bodies. We will not normally carry out our own assessment of whether or not a course is 'higher education'. If there is any doubt about whether a course is higher education we will normally treat it as higher education for our purposes. This definition applies where the complaint is about events which took place on or after 1 April 2018. For complaints about events which took place before 1 April 2018, the definition in our [glossary](#) applies.

14. We cannot accept a complaint from someone who is not a student (or former student).
  - 14.1. Usually, the best person to bring a complaint to us is the student themselves: they understand their situation better than anyone else. But a student may appoint another person to represent them in their complaint for example a students' union representative, provided they give us clear permission to communicate with the representative. The student must make sure that their **representative** knows enough about their complaint, understands their wishes, can act in their best interests, and will be able to keep them fully informed throughout the process. Where a representative is appointed, we will normally correspond only with that person until our review is concluded.
  - 14.2. If a group of students has a complaint about the same issues, they may appoint one of their group to represent the whole group.
  - 14.3. Our processes are informal and it is not usually necessary to use a lawyer. Often when lawyers are involved the process can take longer and become legalistic.
  - 14.4. We cannot review a complaint concerning a student who has died unless the Complaint Form was received before their death. The Higher Education Act 2004 (section 12) says that a complaint must be "*made by a person...as a student or former student*". That means that the student themselves must make the complaint to us. This is because we need to be sure that the student intended to pursue their complaint. If a student's **personal representatives** ask us to, we can continue with a review of a student's complaint after they have died, but only if we received the student's Complaint Form during their lifetime.

## Higher education providers (Rules 3, 5 and 18)

15. We use the term "higher education provider" to refer to any body which is a member of the OIA. You can find a [list of higher education providers](#) that are members of the OIA on our website.
16. A higher education provider which is a "**qualifying institution**" is automatically a member of the OIA. "Qualifying institution" is a term which is defined in **section 11 of the Higher Education Act 2004**:

### **11 Qualifying institutions**

*In this Part "qualifying institution" means any of the following institutions —*

*(a) a university in England or Wales (whether or not receiving financial support under section 65 of the Further and Higher Education Act 1992 ("the 1992 Act") or section 39 or 93 of the Higher Education and Research Act 2017 ("the 2017 Act")) whose entitlement to grant awards is conferred or confirmed by—*

*(i) an Act of Parliament,*

*(ii) a Royal Charter, or*

*(iii) an order under section 76 of the 1992 Act or section 42 or 45 of the 2017 Act ;*

*(b) a constituent college, school or hall or other institution in England or Wales of a university falling within paragraph (a);*

*(c) an institution in England or Wales conducted by a higher education corporation;*

*(d) an institution in Wales which is a designated institution, as defined by section 72(3) of the 1992 Act.*

*(da) an institution in England which is a registered higher education provider as defined by section 85 of the 2017 Act (other than one within paragraph (a), (b), (c) or (d) of this section)*

*(e) an institution in England or Wales (other than one within any of the preceding paragraphs of this section) which provides higher education courses which are designated for the purposes of section 22 of the Teaching and Higher Education Act 1998 by or under regulations under that section;*

*(ea) an institution in England (other than one within any of the preceding paragraphs of this section) which provides higher education courses leading to the grant of an award by or on behalf of—*

*(i) another institution in England within another paragraph of this section, or*

*(ii) the Office for Students where the grant is authorised by regulations under section 51(1) of the 2017 Act;*

*(f) an institution in England or Wales (other than one within another paragraph of this section) whose entitlement to grant awards is conferred by an order under section 76(1) of the 1992 Act or section 42 or 45 of the 2017 Act.*

17. We cannot review a complaint unless the higher education provider is a member on the date **we receive the student's Complaint Form**.
18. We will not look at complaints which arose before the higher education provider became a qualifying institution, and member of the OIA. Sometimes a student's complaint relates to events which occurred before and continued after the higher education provider became a member. For example, a student is studying at a college which became a member of the OIA on 1 April 2018. In October 2018, the student complains about bullying by his course tutor which, he says, started in January 2017 and continued through 2018. In those cases, the events which occurred before the provider became a member are likely to be relevant background which we will take into account when considering the complaint about events which occurred after membership began.
19. If a higher education provider stops being a qualifying institution, for example because it stops running higher education courses, it will carry on being a member of the OIA for a period of **12 months after it stopped being a qualifying institution**. The 12 month period, runs from the day on which the higher education provider stops being a qualifying institution and, during this "transitional period", the higher education provider is known as a **transitional institution**. For example, a higher education provider which stops being a qualifying institution on 1 July 2018, will carry on being a member of the OIA until 30 June 2019. Transitional institutions are identified in our [list of members](#) on our website.
20. We cannot look at a complaint about a transitional institution unless the complaint relates to events which occurred before the institution became a transitional institution. So, in the example given in [paragraph 19](#), we could only review complaints about events which took place before 1 July 2018.
21. A transitional institution may become a qualifying institution again, for example if it starts offering higher education courses again. We will be able to consider complaints about events which occurred after the provider became a qualifying institution again. For example, a higher education provider stops being a qualifying institution on 1 July 2018. On 1 January 2019, it becomes a qualifying institution again. We could consider complaints about events which occurred before 1 July 2018 and on or after 1 January 2019.
22. Any body in England or Wales which is not a "qualifying institution", **may apply to become a member of the OIA** if it meets our **conditions for joining**. The body must be delivering higher education courses or awarding higher education qualifications. For these purposes, a "higher education" course is a course of any description mentioned in Schedule 6 to the Education Reform Act 1988 and which also meets the academic standards as they are described in the Framework for Higher Education Qualifications (FHEQ) for England, Wales and Northern Ireland at Level 4 or higher. We will normally be guided by the body's own assessment of the level of the course(s) in question and will take into account any information provided by or to regulatory and quality assurance bodies. We will not normally carry out our own assessment of whether or not a course is "higher education".

23. The application to become a member must be approved by the OIA's Board (see **Board**, [paragraph 50](#)). We may publish additional Rules to apply to bodies which have joined the OIA in this way. We may agree with the body which courses, and students, membership of the OIA will relate to. You can find out more about the [procedure for applying to become a member](#), and any additional Rules which apply, on our website.
24. Students may complain about what a higher education provider has done, or failed to do. They may complain about the higher education provider at which they are studying. In some cases, a student is studying at one higher education provider for an award which is conferred or granted by another provider (see paragraphs [9](#), [12](#) and [13](#)).
25. If both providers are members of the OIA, then the student may be able to make a complaint about either provider, depending on which provider is responsible for the matters which the student is complaining about. You can find further information about when providers should issue a Completion of Procedures Letter in our [Guidance on Completion of Procedures Letters](#). Where more than one higher education provider is involved, our starting point is to look at the agreement between the providers to decide where responsibility lies for the matters which the student is complaining about. We will consider how the higher education provider dealt with the student's complaint or academic appeal, and whether it fulfilled its responsibilities under the agreement between the providers. Further information about our approach can be found in [The Good Practice Framework: handling complaints and academic appeals - delivering learning opportunities with others](#).
26. Generally we cannot look at complaints about students' unions. However, we can consider a complaint relating to a students' union where the union is part of the legal entity of the higher education provider, or the complaint concerns the provider's obligations in respect of its students' union.
27. Similarly, we cannot generally look at complaints about companies associated with a higher education provider, but which are separate legal entities. This would include, for example, a finance company providing credit for tuition fees, or a company providing student accommodation. We cannot look at complaints about placement providers such as schools or hospitals, or the employers of apprentices, unless they are members of the OIA. However, we can look at whether the higher education provider has fulfilled its obligations to its students in the arrangements it makes with these outside bodies.

## **Complaints we can and cannot review (Rules 4 and 5) (see also paragraphs 14.4 and 17-21)**

28. We can look at "qualifying complaints", a term which is defined in the Higher Education Act 2004 (Section 12). The complaint must be about an "act or omission of a qualifying institution", that is, something the higher education provider has done or failed to do. The person must be bringing the complaint as a student or former student (see **student and former student**, [paragraphs 9-14](#)) and the higher education provider must be a member of the OIA (see **higher education provider**, [paragraphs 15-27](#)).

### **29. Admission**

- 29.1. We cannot look at a complaint from a person whose application for study is rejected or badly handled. (That person would also not be able to complain to us because they were not a registered student at the higher education provider.) However, we will normally review a complaint from a student who, having registered at the higher education provider, is required to leave because of some irregularity in their application for admission. We may also review complaints from registered students about the information given by higher education providers to prospective students prior to admission.
- 29.2. We may review a complaint from a former student who has either withdrawn from a programme of study or has been required to leave and who later applies for re-admission to the same higher education provider. In deciding whether we can review such a complaint we will consider whether or not there is a sufficient connection or relationship between the student's complaint about their application for re-admission, and the circumstances surrounding the student's withdrawal or exclusion from the higher education provider.



- 29.3. If a student is already at a higher education provider but is applying to join another course or to transfer to PhD status, we will look at the provider's procedures to decide whether the complaint is about admission.

### **30. Academic judgment**

- 30.1. Section 12 of the Higher Education Act 2004 says that a complaint is not a 'qualifying complaint to the extent that it relates to matters of academic judgment'.
- 30.2. Academic judgment is not any judgment made by an academic; it is a judgment that is made about a matter where the opinion of an academic expert is essential. So for example a judgment about marks awarded, degree classification, research methodology, whether feedback is correct or adequate, and the content or outcomes of a course will normally involve academic judgment.
- 30.3. We consider that the following areas do not involve academic judgment: decisions about the fairness of procedures and whether they have been correctly interpreted and applied, how a higher education provider has communicated with the student, whether an academic has expressed an opinion outside the areas of their academic competence, what the facts of a complaint are and the way evidence has been considered, and whether there is evidence of bias or maladministration.
- 30.4. Decisions about whether a student's work contains plagiarism and the extent of that plagiarism will normally involve academic judgment, but that judgment must be evidence based.
- 30.5. Decisions about whether a student has reached the necessary professional standards and is fit to practise involve professional judgment. 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.

### **31. Student employment**

- 31.1. We cannot consider a complaint from an employee of a higher education provider about their employment.
- 31.2. A student may be employed by the higher education provider as well as being a student, for example where a postgraduate student is also employed by the higher education provider, as a lecturer or demonstrator or as a warden in a hall of residence. We can only look at the aspects of a complaint which relate to the person's experience as a student.
- 31.3. In the case of apprentices, and trainees on School Direct (salaried) initial teacher training courses, we will consider which aspects of the complaint related to the apprentice's or trainee's employment and which aspects related to the training course.

### **32. Legal proceedings**

- 32.1. We cannot consider matters which have already been decided by the courts. We cannot consider complaints where the matter is or becomes the subject of court or tribunal proceedings which have not been stayed (adjourned or put on hold). If any part of the complaint is being dealt with in the courts or by another body then the student and the higher education provider should tell us.
- 32.2. We may ask to see the claim form and any defence filed in order to decide whether the legal proceedings relate to the same subject matter. If the legal proceedings have been stayed or adjourned by the court, we may ask to see the relevant court order.
- 32.3. If a student has applied for permission to bring a judicial review claim against the higher education provider and has been refused permission, we would normally consider that those proceedings have been concluded and we would not look at the student's complaint. However, we may accept the complaint if the judge has refused the student permission to bring the judicial review claim because the OIA is an 'alternative remedy' available to the student. We would only accept such a complaint for review if the judge has not reached conclusions on the merits of the case.

### 33. **Alternative dispute resolution body**

The OIA is recognised by the Chartered Trading Standards Institute (CTSI) as a consumer Alternative Dispute Resolution (ADR) body. We will not review a complaint which has already been considered by another ADR body. A [list of ADR bodies](#) can be found on our website.

## **Complaints we may decide not to review (Rule 6)**

34. We may decide not to review a complaint if we believe it has **no serious purpose, or is intended to cause disruption or annoyance, or if the student is seeking an unrealistic remedy**. The following are examples of the type of complaint which we may decide not to review under this Rule:

- 34.1. We have considered the same complaint previously, and we have decided not to reopen our review.
- 34.2. The complaint is about something which a fair-minded person would consider to be trivial.
- 34.3. The student is pursuing the complaint in a way that is having a negative effect on our staff or our work.
- 34.4. The complaint is designed to cause disruption or annoyance.
- 34.5. The student is asking for a remedy which lacks any serious purpose or value.

35. We may decide not to review a complaint if we believe reviewing it might **seriously damage our ability to run our processes effectively** (or seriously impair the effective operation of the OIA Scheme). For example:

- 35.1. The complaint relates to events which took place over a significant period of time (more than three years) and involves a very high volume of documentation.
- 35.2. A different forum is better equipped to consider the matter: for example, complaints about data protection issues will normally be better considered by the Information Commissioner's Office.
- 35.3. There are other proceedings taking place within the higher education provider or elsewhere which are relevant to the complaint. For example, a student complains to us about an academic appeal and they want to be given a further resit opportunity. The student is also the subject of separate disciplinary proceedings which might result in their exclusion. If they are excluded then they would not be able to take advantage of a further resit opportunity. There would be no point in conducting a review of the academic appeal before the results of the disciplinary proceedings are known.

## **Completing the higher education provider's internal processes (Rule 7)**

36. We normally expect students to follow their higher education provider's internal procedures to their conclusion before complaining to us. This gives the higher education provider the opportunity to investigate and, where appropriate, put things right.

- 36.1. The term internal procedures includes: student complaints, academic appeals, academic and non-academic disciplinary, fitness to practise, fitness for study, and breaches of codes of conduct and regulations.
- 36.2. At the conclusion of any of these internal procedures, when there is no further avenue for the student within the higher education provider, the provider should send the student, or the student may request, a **Completion of Procedures Letter**. You can find further information about when providers should issue a Completion of Procedures Letter in our [Guidance on Completion of Procedures Letters](#).
- 36.3. We may decide to review a complaint in **exceptional circumstances** even though the student has not been through the higher education provider's internal processes. We may consider doing this where there has been undue delay by the provider in progressing the complaint and there appears to be no prospect of early resolution, where we believe the higher education provider might be obstructing the complaint, or where there is nothing to be gained by progressing with the internal processes. In such a case we would need to be satisfied that the student had taken reasonable steps to progress the complaint. We might also accept a complaint where no Completion of Procedures Letter has been issued, where the higher education provider has unreasonably delayed in issuing a Completion of

Procedures Letter, or has refused to do so, after the procedures have been completed. Again, we would expect the student to have pursued the matter first with the provider.

- 36.4. There are circumstances where a higher education provider might issue a Completion of Procedures Letter even though its procedures have not been completed. For example, the student has not taken their complaint or appeal to the next stage, despite being clearly signposted to it, or has attempted to escalate the complaint or appeal after the higher education provider's deadline for doing so has expired. In those cases, our review focuses on whether it was reasonable for the provider to refuse to proceed further with the student's complaint or appeal. Normally we would not consider the issues raised in the complaint or appeal. Our [Guidance Note regarding Completion of Procedures Letters](#) provides more detailed information about this.
- 36.5. Students sometimes raise issues in their Complaint Form which are not addressed in the higher education provider's Completion of Procedures Letter. In those cases we will check which issues the student raised in their complaint or appeal to the higher education provider before we decide whether we should look at the matters raised with us. However, where a student wishes to complain about the way in which a higher education provider handled a complaint or appeal, or delays in that process, we do not expect the student to have to go through an additional internal procedure before bringing that complaint to us. We will normally consider whether a higher education provider has followed its procedures when reviewing a complaint whether or not the student has raised a concern about this.
- 36.6. In exceptional circumstances, we might decide that it would be pragmatic to deal with issues which the student has raised as part of a wider complaint to us, but which the student did not raise with the higher education provider. We will explain to the higher education provider why we have decided to review those secondary issues as well as the substantive issues which it has considered.

## Time limits (Rule 8)

37. Students have a maximum of **12 months** to bring their complaint to the OIA.
  - 37.1. We encourage students to bring their complaint as soon as possible after the conclusion of the higher education provider's processes. This is because the more time that has passed since the events giving rise to a complaint, the more difficult it is likely to be for us to review that complaint. In addition, the passage of time can also affect what can be done to put things right if we find the complaint to be Justified or Partly Justified. For example, some courses may have completion deadlines, or a higher education provider may no longer offer a course. In situations like these, we could not recommend that the student is reinstated on their course even if we found their complaint Justified.
  - 37.2. Our [Guidance Note about Completion of Procedure Letters](#) says that a Completion of Procedures Letter should state the date by which we must **receive the Complaint Form**. For example, if the Completion of Procedures Letter is dated 7 September, the Completion of Procedures Letter must state that we must receive the complaint on or before 7 September the following year.
  - 37.3. We will not accept a complaint which is received more than 12 months after the date of the Completion of Procedures Letter. We can offer the student help with completing the Complaint Form, and we may accept the complaint in another format if the student is not able to complete the Complaint Form for reasons related to a disability.

## Initial consideration of the complaint (Rule 10)

38. We normally ask students to complete a **Complaint Form** which sets out their complaint and what they would like to happen to put things right. The Complaint Form also asks for information about the higher education provider and the course the student was on. You can find information about the [Complaint Form](#) on our website.
  - 38.1. We can offer the student help with completing the Complaint Form, and we may accept the complaint in another format if the student is not able to complete the Complaint Form for reasons related to a disability.



- 38.2. It is for us to decide whether a complaint is something we can look at and we consider each complaint on its individual merits. If a higher education provider thinks that the complaint is not something we can look at, it should explain this in its Completion of Procedures Letter. We will take those comments into account.
- 38.3. Where we decide to review a complaint which we would not normally look at, we will explain our reasons to both the student and the provider.
- 38.4. We will normally decide whether we can look at a complaint when we have received a Complaint Form from the student but we may need to ask for some further information. Sometimes we can look at part of a complaint but not all of the issues raised. We will tell the student and the higher education provider what we can and cannot look at within three weeks of receiving the Complaint Form or any further information we have requested. If we decide that we cannot look at a complaint we will tell the student and the higher education provider this, usually in writing, and we will normally explain the reasons for our decision.
- 38.5. Sometimes it does not become clear until we have begun our review that some aspects of the complaint fall outside our Rules. For example, part of the complaint might relate to academic judgment or an employment issue. In these cases we will explain this in our Complaint Outcome.
- 38.6. If the student or the higher education provider thinks we have made the wrong decision about whether we can or cannot review a complaint they may ask us to **reconsider our decision**. The student or higher education provider should contact the case-handler within 14 days explaining why they disagree with our decision. The decision will then be considered by a different **reviewer**. The reviewer will write to the student and the higher education provider setting out their decision and the reasons for it.
- 38.7. If we decide that we can review some parts of the complaint but not others and the student tells us that they disagree with our decision, we may set out our final decision in our **Complaint Outcome**.

## Review process (Rules 9, 11, 12 and 13)

39. In certain cases and if appropriate we may try to **settle** a complaint.
- 39.1. Settlement is the informal resolution of a complaint brought to us. This means that the complaint is resolved without the need for a full review. We may try to settle a complaint at any stage in our review process. Sometimes we will invite the higher education provider to make an offer to the student. The offer will normally be 'in full and final settlement' of all the issues raised, which means that the student would not be able to take further action in relation to the same issues.
- 39.2. Often a complaint can be settled on the basis that the provider offers to re-run a stage of its complaints or appeals procedures because it has come to light that the higher education provider did not follow the correct procedure.
- 39.3. We will always give the student and the higher education provider time to consider the proposed settlement before they decide whether to accept it.
- 39.4. If the provider makes what the OIA considers to be a reasonable offer to settle the complaint and the student does not accept it, we may decide to terminate our review on the basis that the provider has made a reasonable offer to settle the complaint.
- 39.5. In some cases we may suggest that the complaint should be referred to an external **mediator** to help the student and the higher education provider to come to an agreement. We might do this where the student and the higher education provider agree about what has gone wrong, but cannot agree on how to put it right, or where we have found the complaint to be Justified or Partly Justified and we believe mediation would help to work out how best to put things right. Mediation can be particularly helpful when the student intends to return to their studies. You can find [more information about mediation](#) on our website.

40. We generally review complaints by looking at the documents that the student and the higher education provider give us.
- 40.1. Once we have received the student's Complaint Form, we ask the higher education provider for their response to the complaint and we ask for any other documents we need. We share the information the student gives us with the higher education provider, and we share the information the higher education provider gives us with the student.
  - 40.2. Usually the student and the higher education provider send us information in writing. This is helpful to us because it is easy to share that information with the other party. If there is any reason why the student might find it difficult to put information in writing we can take the information over the telephone or by video conferencing (eg Skype).
  - 40.3. We do not normally hold a **meeting** with the student or the higher education provider to discuss the complaint. We will do so if the student has particular difficulties with communication and a meeting would help us to understand the complaint.
  - 40.4. A **hearing** is more formal than a meeting: both parties have the opportunity to argue their case in front of the decision maker. We will not normally hold a hearing unless we decide it is necessary to help us reach a decision on the complaint.
  - 40.5. When we ask for information we will set a **deadline** for the response. The deadline will normally be 14 or 28 days but that will depend on how much information we are asking for. We will say what the deadline is when we make the request.
  - 40.6. We try to be flexible and if the student or the higher education provider cannot meet the deadline we have set they can ask for an **extension**, where possible before the deadline has passed. We normally expect the person asking for the extension to explain why they need it. If a student is having difficulties meeting a deadline because they are very busy or are not well we may suggest that they appoint a representative to help them, for example a student union representative.
  - 40.7. The Higher Education Act 2004, places a duty on higher education providers to comply with 'obligations' imposed by the OIA. This includes reasonable requests for information relating to the review of a student's complaint. If the provider **does not provide information requested** we may report the provider to our Board, and may publish information about it. We have a [process for reporting this](#).
41. When we have decided that we have **all of the information relevant to the complaint** (that is, our complaint file is complete) we will contact the student and the higher education provider to tell them this. It is up to the person reviewing the complaint to decide when they have all the information they need to make a decision on the complaint. The person reviewing the complaint also decides what, if any, questions they need to ask about the student's complaint.
42. When we have all the information we need we will write a **Complaint Outcome**. This will set out our decision on the complaint and the reasons for it. We will decide whether the higher education provider properly applied its regulations and followed its procedures, whether those regulations and procedures were themselves fair, and whether or not the higher education provider's decision in the student's case was reasonable.
- 42.1. When we decide a complaint we will say that it is **Justified, Partly Justified or Not Justified**. If we have upheld all of the points the student has raised and no suitable remedy has been given or offered to the student, we will conclude that the complaint is Justified. If we have upheld most of the points the student has raised, or decide that a remedy given or offered is not adequate, we will conclude that the complaint is Partly Justified. If we do not uphold any part of the student's complaint, or if we conclude that the higher education provider has given or offered the student a suitable remedy for what has gone wrong, we will conclude that it is Not Justified.

- 42.2. If we have found the complaint to be **Justified** or **Partly Justified** we will also set out any **Recommendations** we intend to make and the reasons for them in an appendix to the Complaint Outcome (see Recommendations, [paragraph 43](#)).
- 42.3. We may also record in a Complaint Outcome the details of a settlement or the outcome of mediation, or confirm that a complaint has been withdrawn or terminated.
- 42.4. We will normally send the Complaint Outcome to the student and the higher education provider within 90 days of deciding that we have all the information we need. If a complaint is highly complex it might take us longer to complete our review than normal. A complaint might be **highly complex** because there are several parts to it, there is a large amount of documentation, we decide that we need to hold a hearing or refer the complaint to mediation, or it is linked to another case and the review has to be put on hold to await the outcome. We will explain to the student and the higher education complaint why we have decided the complaint is highly complex and will tell them how long we think our review is likely to take.

## Recommendations (Rule 14)

43. Where we decide that a complaint is Justified or Partly Justified, we will normally make Recommendations to the higher education provider. The Recommendations that we can make are wide-ranging and examples of the sort of Recommendation we can make are set out in Rule 14.3.
  - 43.1. Some of our Recommendations are designed to put things right for the individual student. The aim of these Recommendations is to return the student to the position they were in before the circumstances of their complaint occurred. You can find more information about [our approach to remedies and redress](#) on our website.
  - 43.2. Other Recommendations are designed to help the higher education provider to improve to its processes or practices. For example, we might recommend that the provider should change its procedures, review unfair regulations, or provide staff training. We call these 'Good Practice Recommendations'.
  - 43.3. In some cases we might recommend that the complaint, or part of the complaint, should be considered in **another forum**. For example, a student might complain to us that their higher education provider has disclosed personal information about them to someone. We might decide that the complaint about the disclosure should be referred to the Information Commissioner.
  - 43.4. When we intend to make Recommendations we will send our proposed Recommendations to the student and the higher education provider with our Complaint Outcome. They each have the opportunity to comment on the practicality of the proposed Recommendations. For example, the higher education provider should tell us whether or not the timeframe we have proposed for changing its regulations will allow the relevant Committees to confirm those changes.
  - 43.5. We will set a deadline for commenting on the proposed Recommendations which will usually be 14 days, but we may **extend the time for commenting on the proposed Recommendations** when appropriate ([paragraph 40.6](#)).
  - 43.6. When the deadline has passed, we will consider any comments which have been made and then write to the student and the higher education provider confirming our Recommendations or making new or amended Recommendations. We may also decide to continue with our review ([paragraph 45](#)).
  - 43.7. We expect higher education providers to comply with our Recommendations within the timeframe we have set, and to tell us when they have complied and what they have done. If the provider **does not comply with our Recommendations** we will report the provider to our Board, and we will publish information about it for example in our Annual Report. We have [a process for reporting this](#).
  - 43.8. The student may decide not to accept the Recommendations. In that case we would still expect the higher education provider to comply with any Good Practice Recommendations we have made.

- 43.9. We normally recommend that any offer the higher education provider makes to the student to settle a complaint is in “full and final settlement” of the complaint, or the matters we have considered. That means that if the student accepts the offer they would not normally be able to pursue legal action about the same issues. They would have to show, for example, that the subject of the legal action was different to the subject of the complaint, or that they were unduly pressured into accepting the offer.
- 43.10. If we have decided that the complaint (or part of it) is Not Justified, we may make **suggestions** to the higher education provider to improve its processes, review its regulations, or to repeat an offer it has made to the student.

## Conclusion of the review (Rule 15)

44. Our review process comes to an end when we decide that we cannot look at a complaint, we terminate the complaint, the complaint is settled, we issue a Complaint Outcome, or we confirm our Recommendations if we have made any.
- 44.1. If we decide we cannot look at a complaint the student or the higher education provider can ask us to **reconsider our decision** (paragraph 38.7).
- 44.2. If we decide to terminate a complaint the student can ask us to **reconsider our decision** (paragraph 47).
45. Once we have issued our Complaint Outcome the student or the higher education provider can ask us to reopen our review of the complaint.
- 45.1. If we have decided that the complaint is Justified or Partly Justified and have proposed Recommendations, then the student or higher education provider can ask us to **continue with our review** instead of confirming our Recommendations and closing the case. They should ask us to continue with the review when they comment on the proposed Recommendations. It is important for the student and the higher education provider to comment on the proposed Recommendations even if there is a request to continue with the review.
- 45.2. We will normally consider a request to reopen our review provided that it is made within 28 days of the issue of the Complaint Outcome (if the complaint is Not Justified), or the date we confirm the Recommendations (if the complaint is Partly Justified or Justified).
- 45.3. We will reopen our review, or continue with the review, if the student or higher education provider persuades us that there is **new evidence** which they could not reasonably have given us at an earlier date and which could make a difference to the outcome of the review. They will need to explain why it was not possible to give us that evidence before the Complaint Outcome was issued. It is unlikely that we would consider at this late stage new medical evidence which the student says is relevant to his or her complaint. However, we may consider evidence which the higher education provider had but which it did not disclose to the student.
- 45.4. We will reopen our review, or continue with the review, if the student or higher education provider persuades us that there might be **an error in the Complaint Outcome which has or might have seriously affected the outcome**. The error needs to be serious enough to be likely to make a difference to the decision (whether the complaint is Justified, Partly Justified or Not Justified, or has been terminated) or to the Recommendations we have made or are proposing to make.
- 45.5. If we decide not to reopen or continue with our review we will explain our decision.
- 45.6. If we have upheld a complaint and made Recommendations, and the higher education provider has complied with those Recommendations, then we will take that into account if we reopen our review. If the provider has made an offer to the student in line with our Recommendations and the student has accepted that offer then it is very unlikely that we would agree to reopen the review. The student may be asked to repay any financial award to the higher education provider before the review could continue.

## Terminating or suspending the review (Rule 16)

46. There are a number of situations in which we may terminate or suspend consideration of a complaint. This can be at any stage of the review process.
- 46.1. Sometimes it becomes apparent only during the course of a review that a complaint (or part of a complaint) is not something we can look at. For example, it becomes clear that the complaint is about an admissions issue, or relates to a matter of academic judgment, or the student has issued legal proceedings against the higher education provider. In those cases we may need to terminate the review.
  - 46.2. Where the higher education provider has offered the student the remedy they were asking for, we may decide that that the provider has **satisfactorily dealt with the complaint**, even though the student may not be happy with the provider's conclusions on the main issues raised.
  - 46.3. We encourage higher education providers to try to settle complaints whenever possible ([paragraph 39](#)). Where we decide that the higher education provider has made a **reasonable offer to settle** the complaint and the student has refused it, we may ask the provider to repeat the offer or hold it open for a reasonable period of time.
  - 46.4. Sometimes in the course of our review, a higher education provider makes an offer to reconsider the matter under its procedures and we decide that is what our recommendation is likely to be if we were to find the complaint to be Justified. In that case, we might decide to terminate our review of the complaint. When the higher education provider has reconsidered the matter, it should issue another Completion of Procedures Letter. If the student is still unhappy after the provider has reconsidered the matter, they can complain to us about the outcome of that process.
  - 46.5. We may terminate or suspend our review of a complaint if the student or their appointed **representative** does not provide information requested by us within a reasonable time, or causes unreasonable delays to our review
  - 46.6. We will terminate our review if the student does not respond to our correspondence. We will warn the student before we terminate the review. If we close a complaint in these circumstances, we will consider reopening it if the student later asks us to do so and can provide a good reason why they did not keep in touch with us.
  - 46.7. Our [policy on behaviour](#) can be found on our website. The policy sets out the kinds of actions and behaviour that may have a negative effect on our staff or our work, and what we will do in these circumstances. The policy applies to everyone who interacts or communicates with the OIA, including students, their representatives and higher education providers. If a student or their representative continues to behave in a way which is affecting our staff or our work, we may decide to have no further contact with them, which may mean that we terminate our review of the complaint.
  - 46.8. Where we terminate the complaint because of something the student's representative has done or not done, we will tell the student. We will consider reopening our review if the student decides to deal with the complaint in person, or to appoint another representative.
  - 46.9. We normally use email to contact students and higher education providers. It is important for the student to keep in touch with us and to let us know if they change their contact details. We will try to contact the student by email, post and telephone before deciding to suspend or terminate our review. We will terminate our review if our correspondence to the student is returned to us by the Post Office and we are unable to contact the student by other means.
  - 46.10. Very rarely, a student's representative will act in a way that is not in the student's best interests, or will mislead us or the student. For example, the representative might refuse to put forward an offer which the provider has made to the student; or the representative appears to be following their own agenda rather than presenting the student's complaint. That will make it difficult or impossible for us to review the complaint. If we decide to suspend or terminate our review on these grounds, we will consider reopening our review if the student decides to deal with the complaint in person, or to appoint another representative.



## Reconsidering our decision to suspend or terminate the review (Rule 16)

47. If we decide to terminate or suspend our review and the student thinks we have made the wrong decision, they may ask us to **reconsider our decision**. The student should contact the case-handler within 14 days explaining why they disagree with our decision.

The decision to suspend or terminate the review will then be considered by a different **reviewer**. The reviewer will write to the student and the higher education provider setting out their decision and the reasons for it.

## Withdrawing the complaint (Rule 16)

48. If the student decides that they no longer wish to pursue their complaint they may withdraw their complaint at any time. The student can withdraw their complaint by writing to us, by email, or by phone. We will write to the student and to the higher education provider to confirm that we have closed our file because the student has withdrawn the complaint.

## Charges and fees (Rule 17)

49. Students do not have to pay a fee to bring a complaint to us.

Section 15(3) of the Higher Education Act 2004 says that higher education providers are obliged to pay fees to the OIA. Higher education providers must pay an **annual subscription**. A provider may also have to pay a **case related element** which is calculated from the number of complaints we receive about the provider. The annual subscription and case related elements are based on a **published scale**. You can find more information about the [subscription and case related element](#) on our website.

## The Board (Rule 19)

50. The OIA is overseen by an independent Board. The duties of the Board include a duty to preserve the independence of the Scheme and of the role of the Independent Adjudicator. You can find more information about the [OIA's Board](#) on our website.

## The Independent Adjudicator (Rule 20)

51. Information about our [Independent Adjudicator and our case-handling staff](#) can be found on our website.

## Publishing and sharing information (Rule 21)

52. We publish case studies and other information about complaints and good practice in a number of ways.

53. Every year we publish an [Annual Report](#) which includes information about complaints we have received and the decisions and recommendations we have made, whether higher education providers have complied with our recommendations, and our good practice work.

54. We also publish information ([Annual Statements](#)) about each higher education provider's record in handling complaints and appeals for the previous calendar year including information about the outcome of complaints we have received. This helps to increase students' confidence in complaints handling processes and allows providers to look at their own record alongside that of similar providers.

55. We also publish case studies and summaries of complaints from time to time. We may identify the higher education provider if we decide that is in the **Public Interest**. Our guidance on the criteria we apply when [selecting cases for publication](#), and the process we follow, can be found on our website. The case studies and summaries we publish will not identify the student.

56. The OIA is part of the regulatory framework for higher education in the UK. We are independent of Government and regulators such as the Office for Students, the Quality Assurance Agency, and the Higher Education Funding Council for Wales. However, we exchange information with other bodies about higher education providers and about complaints. The information we share will not identify the student unless we

have the student's consent to identify them. We have entered into [formal information sharing arrangements](#) with some other higher education sector bodies.

57. To help us to do our work we ask higher education providers to give us relevant statistical data and information about the complaints and appeals they receive. We will consult with providers before we ask for data or information we have not asked for before. We will explain why it will help us and discuss how and when to collect it.

**April 2018**