



THE OFFICE OF THE
INDEPENDENT
ADJUDICATOR FOR
HIGHER EDUCATION

resolving student complaints

Annual Report 2006

www.oiahe.org.uk



Annual Report 2006

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In 2006 the Scheme of Independent Adjudication for Higher Education has become more widely known and the resolution of student complaints has assumed an important position in university administration and strategy, in the development of higher education law and in the fostering of European exchanges. The quality of teaching and learning in universities is at the heart of our work and is a topic of vital interest in the growth of higher education.

“Thanks for the timely, professional and courteous manner with which the OIA has treated his complaint: it has been something of a revelation” (letter from the parent of a complainant)

“I would like to thank you profusely for all the attention and response given to me regarding my complaint. I am very delighted that an institution like the OIA is there to help and support people like me.” (letter from a student)



Independent Adjudicator -
Baroness Ruth Deech



Deputy Adjudicator and Chief Executive -
Michael Reddy

SUMMARY

- Around 1000 decisions have been issued by the OIA since it started work.
- Applications to the OIA rose by 11% to 588.
- Eligible complaints rose by 44% to 465
- 381 cases were closed in 2006.
- A new set of Rules of the Scheme was issued.
- The premises were expanded and more staff joined.
- Workshops helped to develop and share good practice in complaints handling in universities.
- The resolution of student complaints has become a significant issue in university administration, in legal practice and in European exchanges.

The year under review (1 January to 31 December 2006) was the second full year of operation of the statutory scheme enabled by the Higher Education Act 2004. The Office of the Independent Adjudicator for Higher Education (OIA) was designated as the student complaints scheme under the Act with effect from 1 January 2005. We were pleased to note this year that not only has the Scheme become more widely known, but also that the resolution of students' complaints has become a significant issue in university administration, in legal practice and the development of education law, in teaching quality and student experience assessment, in European exchanges and in national higher education policy.

In the 2004 and 2005 Annual Reports 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 (university) 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 universities should handle complaints and what constitutes good practice;
- d) We aim to be accessible to both universities 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 universities 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.

These objectives remain as relevant in 2006 as they were in the earlier years of the operation of the Scheme.

Objective a

In the year 2006 we closed 381 cases, each taking an average of 24 weeks from acceptance to decision. This shows an increase of 78% in the output, and we are satisfied with the success of the Office in meeting its target of completion in an average of six months. The number of applications received in 2006 (not all of which proved to be eligible for handling under the Scheme) rose by 11% - from 531 in 2005 to 588, while eligible complaints increased by 44% to 465. Full time and part time staff numbers were increased accordingly. Staff have coped with a larger number of requests for presentations at conferences and visits to universities; they also continue to respond to large numbers of telephone and email enquiries (over 900 in 2006), and in this way have assisted in early resolution of disputes in the universities. Staff occasionally have to deal with students who are upset and have been trained to handle these situations.

The stream of complaints that was expected to arise from the industrial action by the Association of University Teachers / NATFHE (subsequently the merged University and College Union) staff in the spring of 2006 did not materialise: only a very small number of complaints raised issues related to the industrial action. In general it was the impression of the Office that universities did their best to minimise the disruptive effect on students by following the advice given to them by Universities UK. As far as we can tell we have not seen increased numbers of complaints that appear to stem from



changing attitudes to higher education arising from the increase in tuition fees which commenced in the autumn of 2006, but they may yet be in the pipeline.

During 2006 all our decisions and recommendations were accepted by the universities involved. In one case implementation was delayed until the commencement of further legal action by the successful complainant, which resulted in a consent order and agreed terms of settlement between the university and the student. In another case implementation of the decision was held up until the Vice Chancellor of the university concerned had been notified of the problem. Both situations had been brought to the Board of the OIA. We do not foresee that acceptance of our decisions by universities will be problematic, and concluded from the first case mentioned above that our decisions might be made indirectly legally enforceable. As stated in the Rules of the Scheme, cases of failure to implement our decisions will be reported to the Board of the OIA. They will also be listed in the Annual Report.

Objective b

The OIA remains determined to promote a less legalistic approach to dispute resolution in higher education. In pursuit of this aim the Office has defended, and will continue to defend, claims by disappointed complainants to the courts for permission to judicially review our decisions. In our 2005 Report we commented on our concern over the availability of legal aid to student complainants. We remain concerned at the cost of legal proceedings into which we have been drawn, in our belief quite inappropriately. These costs will ultimately be reflected in the level of subscriptions paid to us by universities. We therefore think it is proper for us to raise concerns about additional litigation even if, at the outset, the OIA itself incurs legal costs in seeking to clarify its legal position through a court decision. The legal issue is whether our decisions are reviewable by the courts. So far no court has questioned the quality of our decision making.

We have continued in our workshops and conference presentations to urge universities to adopt simpler procedures for resolving disputes and to avoid reliance on lawyers if possible.

Objective c

Our workshops have established themselves as a successful and useful component in the dissemination of information about good practice and in enabling university administrators and student advisers to meet others who deal with student complaints and share common concerns. Our workshops are all fully subscribed almost immediately upon announcement. We are fortunate in having secured additional office space on the floor above our main office, which has proved to be a good meeting venue. The results of the workshop discussions are presented below at Chapter II.

Objective d

We have continued our policy of accepting invitations to make presentations and meet universities and other bodies wherever possible. Special attention is given to relations with the National Union of Students and assisting in their training programmes. We have upgraded our website and included extra information signposted for students. We issued revised Rules of the Scheme in 2006 and will issue a revised Guide to the Scheme in 2007.

We made presentations to, *inter alia*, the Academic Registrars' Council, Universities UK, the Association of University Administrators, the Oxford and Reading Judges, a number of student experience and plagiarism seminars and legal conferences. We have liaised with the Quality Assurance Agency, the Higher Education Policy Institute, the Learning and Skills Council, the Equality Challenge Unit and the Scottish Public Services Ombudsman. We had a valuable meeting with the Office for Fair Access to discuss student bursaries. Their work with universities to extend access complements ours in the need to consider issues that may arise from the advertising, offer, continuation and paying out of bursaries. We are alerting universities to the need, as we see it, to draft regulations as soon as possible to cover eventualities: for example, whether a bursary may be set off against debt or room rent owed by a student; whether continuation depends on need or on good performance, and so on. We have also corresponded with the Quality Assurance Agency about the operation of the Complaints and Appeals Section of their Code of Good Practice for universities; and we met with the Agency in their offices in Gloucester.

The OIA staff have been addressed and informed by presentations from members of universities on topics such as financing the universities, the student contract, good practice in postgraduate schools and the definition of plagiarism. The Deputy Adjudicator and the Independent Adjudicator have given keynote speeches and interviews to a range of newspapers, television and radio programmes.

We visited our colleagues at the Edinburgh offices of the Scottish Public Services Ombudsman. Although the SPSO deals in the main with services other than education, we were able to exchange useful information about the handling of student complaints and found many similarities in the types of issues faced.

Objective e

Our staff have kept up to date with new disability discrimination legislation, and developments in freedom of information, data protection and discrimination laws. The OIA has taken significant amounts of legal advice from counsel on these issues, from the Equality Challenge Unit and from student representatives. We note that while discrimination and harassment issues rarely feature in complaints, disability remains a major factor. We have found some universities uncertain about the nature of the duties placed on them by the legislation. Essentially, there is insufficient understanding about where responsibility lies for ascertaining disability, and what adjustments are required. The OIA Senior Assistant Adjudicator specialises in equality issues.

Objective f

We have made appropriate input into the many current debates on the quality of the student experience. We met NUS representatives and others to discuss the new Housing Codes and how they will affect students.

We have paid special attention to discerning the needs of overseas students. Complaints from non-EU students form a slightly higher proportion of our complaints than their presence in the student body warrants. We have learned a great deal from meetings and exchanges with our counterparts in Europe, North America and Australia. We have agreed to host the 2008 Conference of the European Network of Ombudsmen in Higher Education in London. Our aims in hosting the

conference are to publicise the work of the OIA by inviting national policy makers and delegates from all English and Welsh universities and other bodies with an interest in complaint resolution; to enable overseas complaints handlers to share information with British universities, and to emphasise the need for quality assurance and student redress in the progress of the Bologna process.

Objective g

We have continued to provide anonymised summaries of our decisions on our website and in this Report (Chapter IV), and to cooperate as fully as possible with researchers and enquirers. Our website provides all the necessary information and full guides to using the Scheme, as well as a downloadable application form. We have made considerable headway in providing information about the Scheme to each successive generation of students, and we are always prepared to hold tailored meetings with universities to assist in their understanding of the way we work, and to secure their cooperation. The test of fairness is how we are perceived, and that is reflected in this Report.

Industrial action

Industrial action by university lecturers was called in 2006. It seems that universities took practical measures to minimise the disruption that was suffered by students, and followed the useful advice given by Universities UK.

In the handful of complaints where the action short of a strike featured, the OIA's approach was, as in other cases, to ask whether the decisions taken by the university were reasonable in the circumstances. In the event of future similar industrial action, it is hoped that lessons will have been learned.

Disability issues

As access to universities has widened, it is only to be expected that, mirroring the general population, more students with disabilities will be present in the universities. The disability most commonly raised in complaints to the OIA is dyslexia. In common with other disabilities, the difficult issues for universities are: the stage at which the disability is recognised, who should take responsibility for identifying it, and the extent of the reasonable adjustments to be made, as required under the provisions of the Disability Discrimination Act 1995, as amended by the Special Educational Needs and Disability Act 2001. The new Disability Equality Duty came into effect in December 2006, and with it a Code of Practice and guidance for universities on drawing up a Disability Equality Scheme. This Code will be taken account of by the OIA in considering whether a university took reasonable steps in all the circumstances. New regulations made under the Disability Discrimination Act came into force in September 2006. The justification for different treatment that was called "academic standards" changed to "competence standards", and the burden of proof was reversed. Under the amended law, the universities are required to plan ahead for the needs of disabled students and to be proactive in encouraging disclosure of disability. The OIA is taking this into consideration and encouraging universities to familiarise themselves with the new laws.

Workshops

We continued our series of workshops for university administrators and student advisers. Two of them were introductory courses for those new to the handling of complaints. The workshop on *Academic Appeals – Procedure and Fairness* was repeated, due to demand. Chaired by the Independent Adjudicator, there were on each occasion about 25 participants, and they were addressed by the Deputy Adjudicator, by Imogen Wiltshire (then Advice & Representation Manager, Union of Brunel Students) from the students' union perspective, and by David Gay, Deputy Director (Academic) and Clerk to Council, Buckinghamshire Chilterns University College. Topics addressed included the handling of claims for mitigating circumstances, the Completion of Procedures letter required to be issued by the university before a student may apply to the OIA, and the application of the principles of natural justice to the procedures. Points emerging were:

- the appropriateness of mediators and informal processes: more so for non-academic issues although it was evident that some academic issues also were settled informally, where the propriety of the process had been the issue
- to what extent can a record be kept of mitigating circumstances in individual cases, so that examination boards can look back to precedents? It seemed that although the practice of



- record keeping was fairly widespread, each mitigating circumstances case was treated on its own merits
- the importance of acting upon successful appeals: the relationship between an appeal panel and an examination board is normally such that the board remains free to determine the final result even if there is a successful appeal and the case is referred back for reconsideration. Following Quality Assurance Agency precepts, there needs to be the power to overturn decisions after a successful appeal. Nevertheless examination boards may validly reject mitigating circumstances as having no effect on the final classification even if an appeal board has found those same circumstances to be relevant and valid
 - mitigating circumstances are widely regarded as relevant only to the penalty and not to the fact of plagiarism
 - it is good practice to give students information during an appeal about what they need to do to progress to the next stage, and the time limits for doing so. Deadlines need to be well advertised and preferably indicated on the relevant forms
 - the need for a concerted approach to cultural/religious issues raised in mitigating circumstances
 - the OIA's treatment of decisions about the effect of mitigating circumstances as questions of academic judgment. They might also be ones of medical judgment
 - the need to manage expectations of students who raise mitigating circumstances retrospectively
 - where a student has submitted an appeal out of time, there is no need for the university to issue a Completion of Procedures letter: the OIA should not be used to enable a student to bypass the final stage of internal procedures. However, the OIA might look at a case where the university has been too inflexible
 - the fairness or otherwise of flexibility in deadlines, both for students and universities
 - delay in resolving complaints internally remains an issue: eighteen months to two years is an unacceptably long time for a university to spend on an appeal
 - not all universities issue helpful and timely Completion of Procedures letters. They should be clear about what was considered internally and what the outcomes were. They should not lead the student to believe that there is an appeal to the OIA: it is a *review* scheme
 - universities are entitled to require certain types of evidence, for example, medical, of mitigating circumstances and their effect.

Another workshop was entitled *Designing Student Complaints and Appeals Procedures*. This workshop was addressed by the Deputy Adjudicator and by Mandi Barron, Assistant Registrar, University of Bournemouth. This workshop addressed the structuring of internal procedures. Issues arising included:

- it was good practice for a university to have an annual report recording the yearly experience of complaints handling, outcomes and lessons learned
- the need to document the relationship between a university, a student and a professional placement provider (for example, a hospital or school), to clarify where responsibility lay for acting on defects and handling complaints
- the onus of proof and whether to apply the standard of “a balance of probabilities” or “beyond reasonable doubt” in cases of cheating. There was some agreement that the more serious the allegation, the higher the standard of proof should be
- the need for more resources to devote to training staff in complaints handling and mediation, and in dealing with angry and upset students



- the importance of universities obtaining legal advice about data protection and freedom of information obligations
- the importance of having administrators ready to handle complaints throughout university vacation periods
- the need to keep students informed about changes in university regulations while on course, such changes frequently being required by new laws applying to higher education
- that most universities felt the need to keep complaints and appeals procedures separate but that there needed to be mechanisms in place to address overlaps

A third workshop in early 2007 was devoted to *Handling Academic Misconduct*. It is reported here because of its immediate interest. This workshop focused on plagiarism, a topical and complex element of academic misconduct. It was addressed by Dr Vera Bermingham, Director of Law Programmes, Kingston University, by Adrian Slater, Legal Adviser, Leeds University, by the Deputy Adjudicator and chaired by the Independent Adjudicator. The OIA's perspective on this topic has been a procedural one – were the proper procedures followed and was the sanction reasonable in all the circumstances – and has not usually been concerned with the establishment of plagiarism, a matter for the university to determine. Points that emerged were:

- the importance of early training for students, who should be made aware of what plagiarism is and the penalties attaching to it
- the need to train staff, with the emphasis on consistency of treatment of offenders within departments and across the university. Staff should be encouraged to report evidence of plagiarism, no matter how pressured they may be
- penalties should be proportionate to the level of plagiarism detected. Perceptions of major and minor offences varied across the sector
- difficulties of detection of plagiarism because essays can be written to order by commercial organisations
- the place of mitigating circumstances relating to the penalty

As the OIA Scheme matures, new issues arise for clarification and development in our relationship with the universities. New Rules of the Scheme were brought into force in 2006 after consultation with the sector, building on practical experience with the earlier version of the Rules. They are reproduced in Annex 3.

The working relationship with the universities has developed in three areas.

Cooperation with universities

Where there appeared to be failures of communication or misunderstanding about the requirements of the Scheme, the OIA has met with relevant officials, of several universities. There are plans to hold meetings with regional groupings of universities.

Litigation and lawyers

Both universities and the OIA are adversely affected by the involvement of courts and lawyers in complaints. At the time of writing, two dissatisfied complainants have gained permission from the court for judicial review of the disputed decisions. This slows down the resolution of the claim, sought by both sides. Much time has been spent, and external and internal resources committed to obtaining legal advice and preparing for challenges faced by the OIA. There is express judicial and governmental support for informal and expert means of dispute settlement, but the efficacy of schemes such as the OIA is undermined if decisions can be challenged at law by unsuccessful complainants. In the end, the additional legal costs will be borne by the universities, and the aim of the OIA, to resolve disputes as cheaply and quickly as possible, may be impeded. If a student does not accept the determination of a complaint under the Scheme, he or she is free to seek a remedy from the university by going to the courts. It is wasteful duplication to challenge the findings of the OIA. It is to be hoped that the courts will not “second guess” the Scheme by making further orders but will, as is customary, leave decisions to specialised organisations set up for the specific purpose.

Universities have for their part too faced action in the county courts by students whose complaints had been found not justified by the OIA. It is vital for judges to become familiar with the nature of the OIA Scheme and every effort will be made to bring it to their attention.

Good working practices

We have reviewed our practices internally in the Office and in our communications with universities. Fast track procedures for complaints that on the face of them are unjustified have been revised. Fortnightly staff meetings are held to discuss decisions, legal developments and working practices.

The OIA has continued to share with universities its findings. For example, good complaints handling should be more of a priority than it seems to be for most universities. Sometimes there is a lack of understanding on the part of university administrators and lecturers of the principles of natural justice and how they apply to appeals or disciplinary hearings. The OIA has seen cases where a student is clearly entitled to raise allegations of bias or lack of independence in relation to panel members. Examples include a chairman of a complaints panel considering a complaint to which he

was a party, and an appeal panel considering a complaint with the insurer's solicitors. Furthermore, academic registrars often fail to give reasons when they decide that a complaint is not eligible to be put to an appeal panel.

In plagiarism cases, the OIA has noticed that there are a few universities where penalties seem to be more severe than is general in the sector.

Complaints procedures often seem to be drawn up in an excessively legalistic manner and are difficult for students to understand. The OIA sees no reason why internal procedures should have more than two informal and two formal stages. There is some confusion over whether an alleged failure of service, which could impact on grades, such as poor supervision, should be dealt with as an academic appeal or as a complaint or both, and in what sequence.

Mediation appears to be little used, but some universities are considering introducing campus ombudsmen to resolve complaints. The OIA supports this in principle but draws attention to the status of the role: the OIA would welcome a code of ethics to be developed in this regard (as is the case in the USA and Canada) to ensure their independence and impartiality.

Students are not always clear about sources of help and the internal procedures that apply to their complaint. The Student Handbook distributed at the start of the course may not be detailed enough and it is important to place the up to date regulations on the website of the university in an accessible place.

The OIA has seen a number of cases where a complaint is upheld but no redress is offered, or the university takes too long to implement remedial action. There is some reluctance to offer apologies, which, if given at an early stage, may often suffice to bring a dispute to an end. Universities would find it valuable to monitor, evaluate and review internal complaints, for example, by means of an annual report on them.

A summary of our statistics (see also Annex 4)

Our help desk dealt with over 900 enquiries in 2006. The vast majority of enquiries were from students wanting to know more about how the scheme works or whether a complaint was eligible under our rules. At least 15% of those enquiries became full complaints later on. A breakdown of the types of enquiry we received appears below.

Types of Enquiry

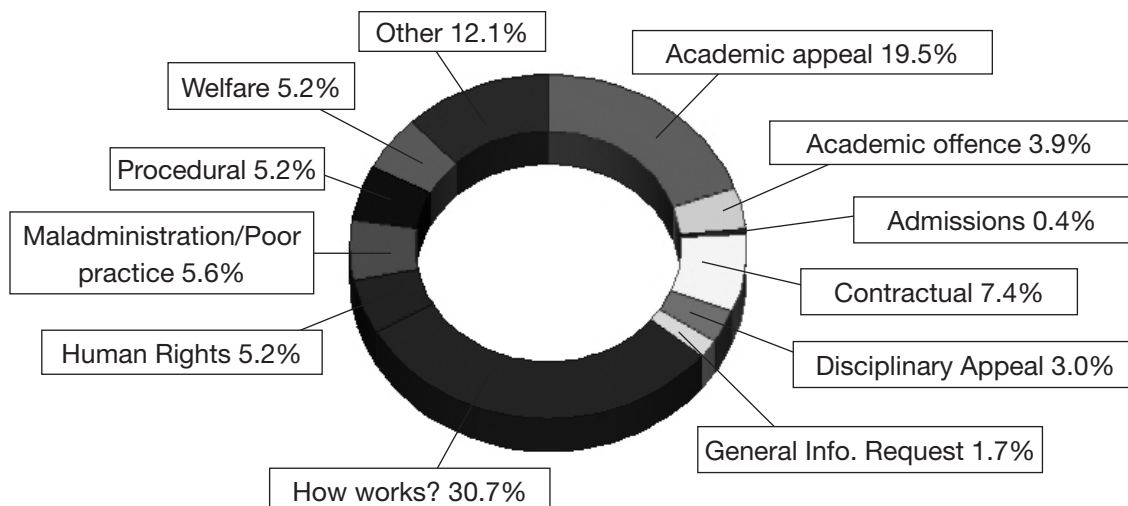


Chart 1

We received 588 Scheme Application Forms from students during the year, an increase of 11% over 2005.

Applications received per year 2004-6

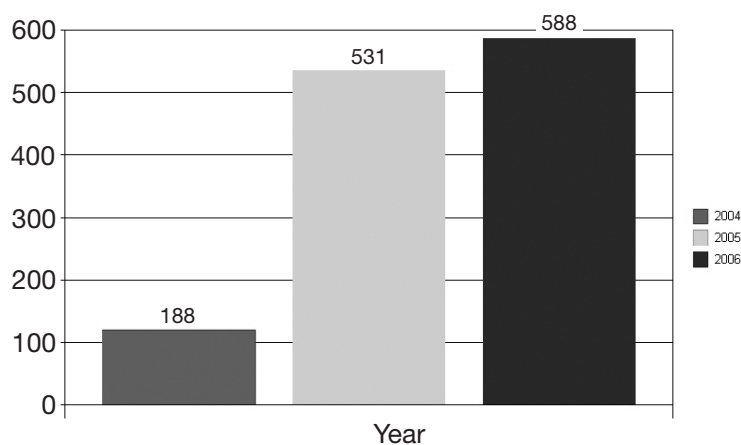


Chart 2

Not all applications we receive become eligible complaints. Overall we rejected approximately 17% of applications. Like last year the main reasons were because applications 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), because the internal complaints procedures of the university complained about had not been exhausted or because applications were purely about academic judgement.

We failed to meet our target of processing applications within 25 working days by four days last year mainly due to the significant growth in the Offices work load and a number of cases involving protracted correspondence about eligibility. We took on 465 complaints during 2006 representing an increase of 44% over 2005.

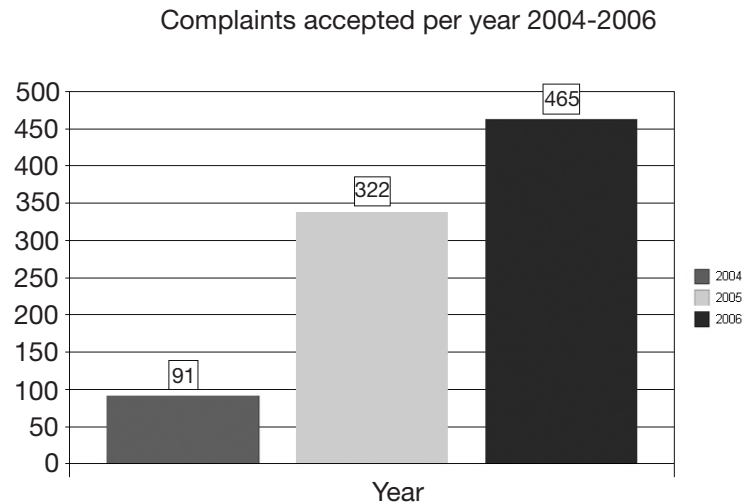


Chart 3

The reason why the increase in complaints was much larger than the increase in Scheme Application Forms received is primarily due to the various lagging effects of the time it takes to process applications, as can be seen from the next two charts.

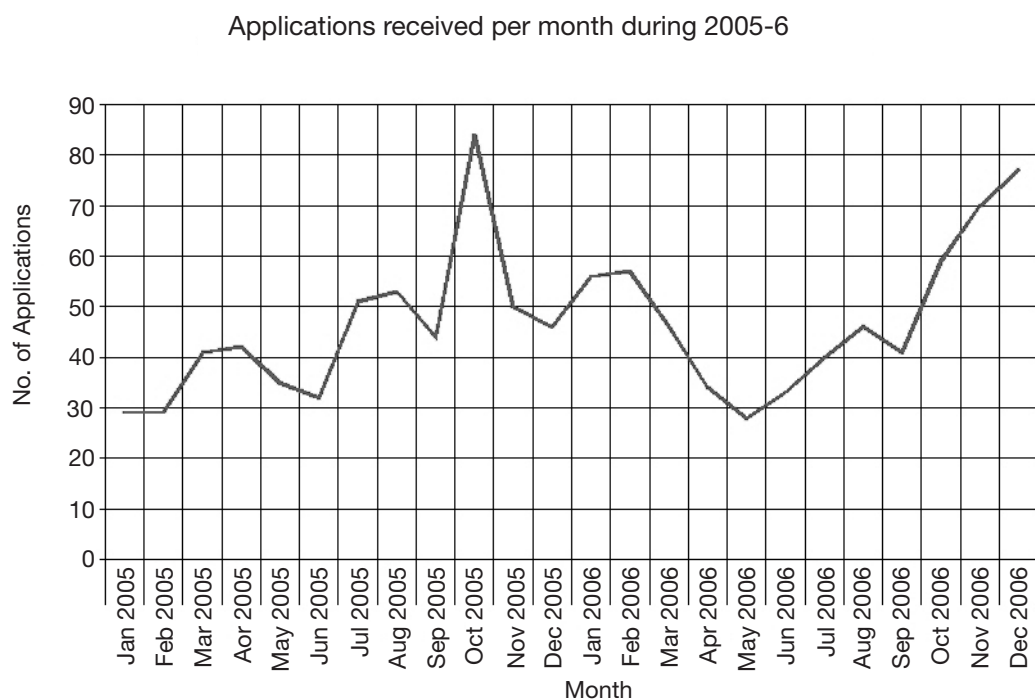


Chart 4

Complaints accepted per month during 2005-6

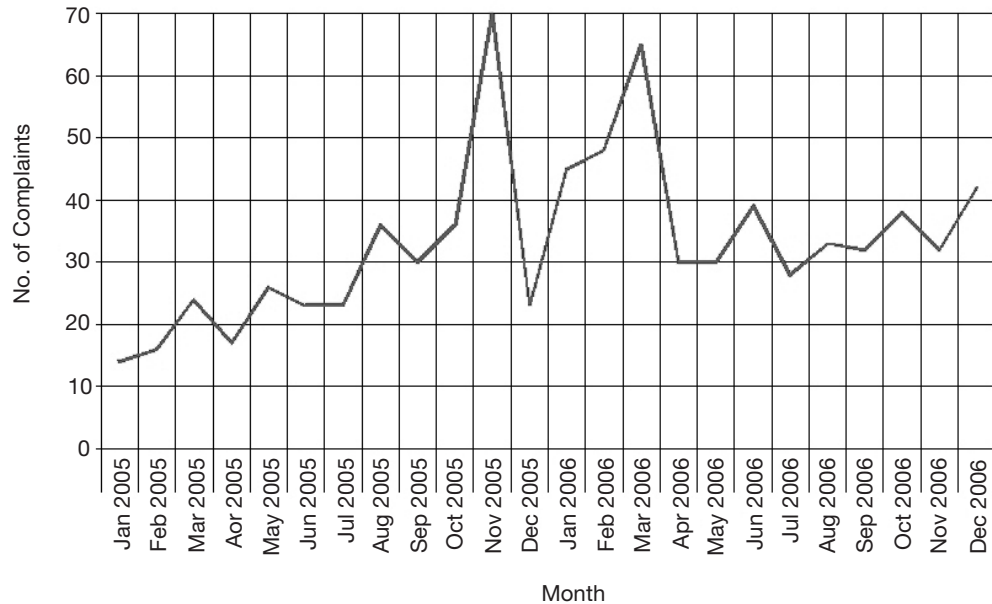


Chart 5

In 2006 an even higher percentage of complaints (63%) related to academic appeals, assessments and grades, than the previous year. The following charts provide further information about the complaints we received.

Subject matter of Complaints 2006

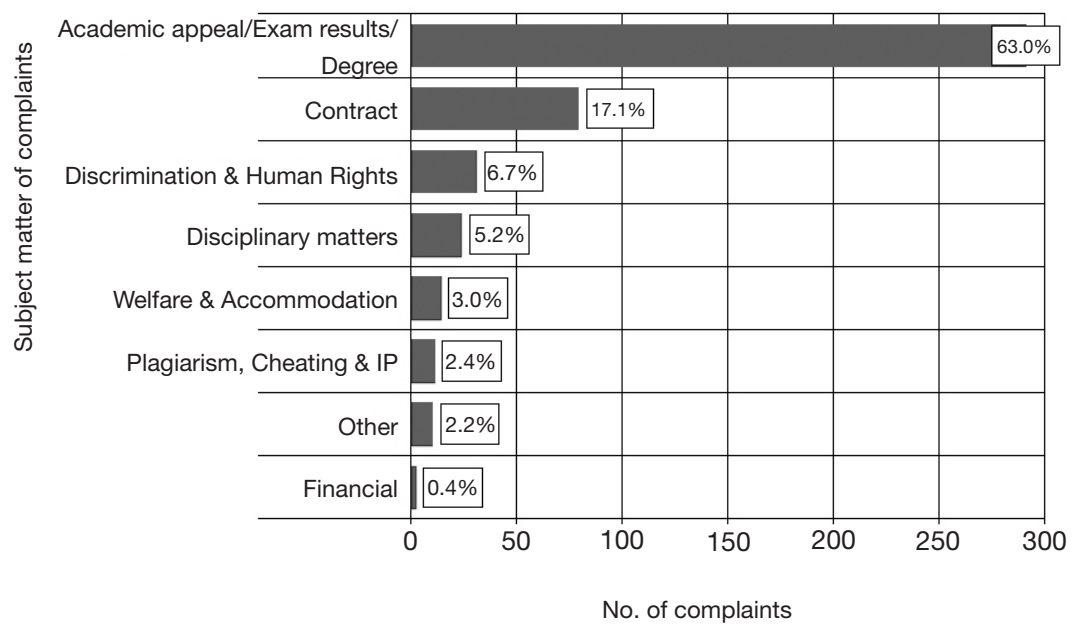


Chart 6

Complaints by Course Types

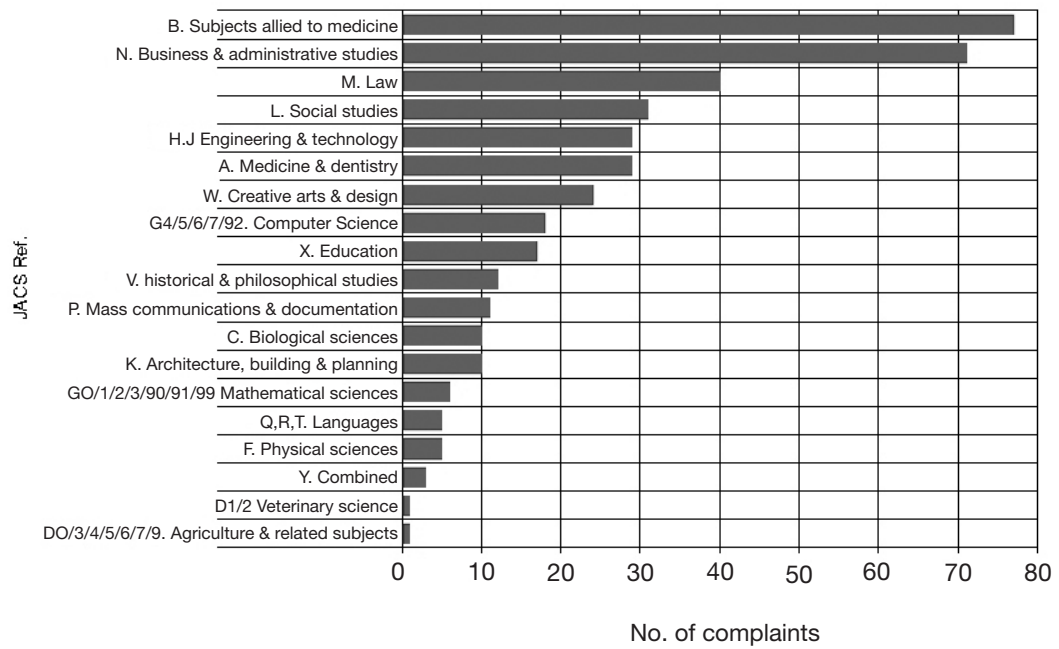


Chart 7

Complaints by age group

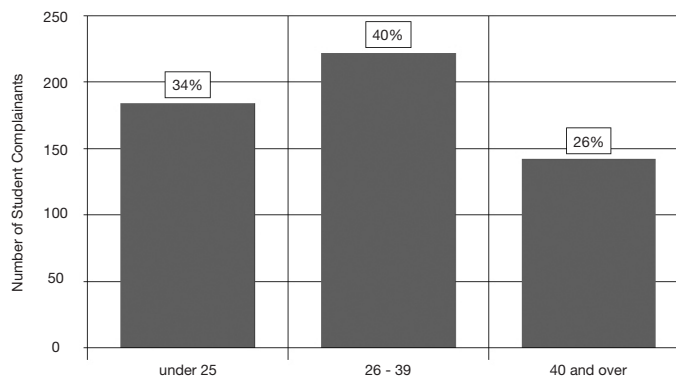


Chart 8

Complaints by student status

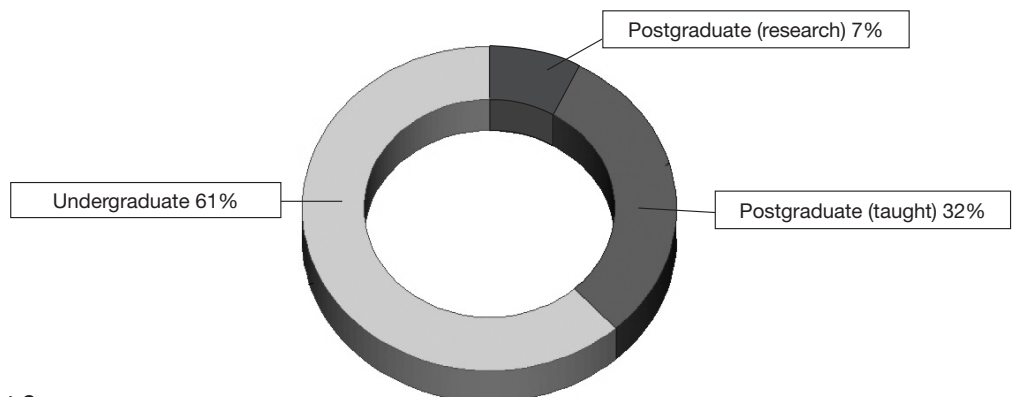


Chart 9

Complaints by nationality

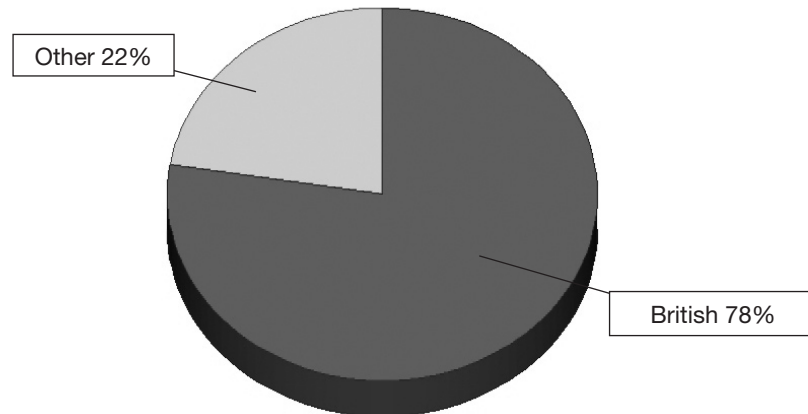


Chart 10

During the year we completed 389 complaints taking an average of 169 days from the date that we found the complaint to be eligible, leaving us a work in progress figure of 257 complaints as at 31 December 2006. 26 complaints took longer than 12 months to complete in the period. As the scheme matures it is inevitable that some complex complaints will take some time to resolve. At the end of 2006 we had 42 complaints which had been with the OIA for over a year. 29 of these complaints are the subject of settlement negotiations between one university and a group of students. Approximately 25% of complaints were the subject of our fast-track procedure in 2006. 27% of complaints were found to be justified to some extent or were otherwise settled.

Outcome of Complaints

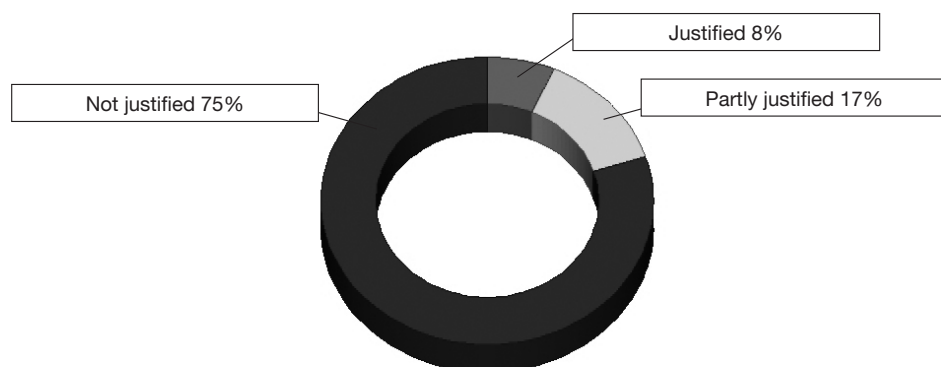


Chart 11

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 2006 160 students completed the form in respect of their ethnic background and 35 students did so in respect of a disability. The charts below show the main results.

Ethnic background of complainants

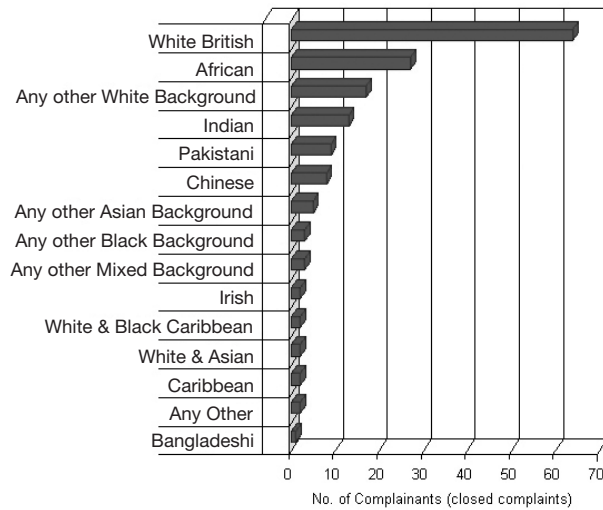


Chart 12

Complainants with disclosed disabilities

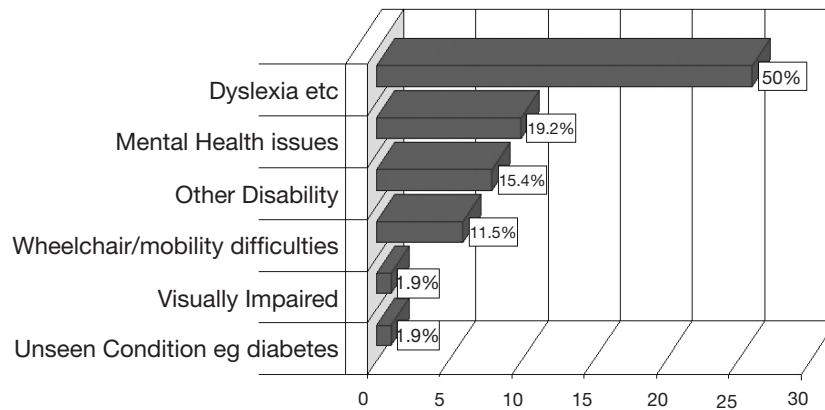


Chart 13

We also sent out feedback forms to students and universities who had received a formal decision from us during the year. 58 students responded. We received 104 responses from universities. The information we receive from these forms helps us review the efficiency of our processes. Although the degree of satisfaction is closely linked to whether or not we uphold a complaint, it is clear that the areas of most concern to both universities and students are the time it takes us to complete a complaint and the extent to which we keep parties informed of the progress of the complaint. To avoid “feedback fatigue” it is likely we will adopt a different form of feedback mechanism for universities in 2007.

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

ACADEMIC APPEALS

CASE 1

S was awarded a lower Second class degree and queried the way in which the classification was reached. After some discussions with university officials, he appealed against the award on the ground of irregularity in the process by which his final degree classification was reached. The university did not uphold his appeal and he complained to the OIA. It was noted that there were two university regulations governing his case. One provided that the award of the class of Honours would depend on students' marks being aggregated by averaging marks for the best six courses at various stages: this placed him just in the upper Second class. Another regulation dealt with borderline cases of marks falling within 2% of the required level, but here a different measurement was used, namely, the overall average. Applying the latter regulation the student was judged to be in the lower Second class. The OIA determined that this issue was not one of academic judgment but of the proper application of regulations. The apparent inconsistency between the regulations operated to S's disadvantage because he was treated as a borderline candidate under one but would have been an upper Second under the other. The complaint was found **justified** and the university was asked to consider again the appropriate classification of S's degree.

CASE 2

In the final year of S's course the university introduced revised regulations for the calculation of degree classifications. The new regulations stated that it was not envisaged that any revision would disadvantage students in the conferment of awards. S was awarded a lower Second. She complained that under the old regulations she would have been awarded an upper Second and that, despite the assurance, she had been disadvantaged by the new method of calculation. Under the old regulations the best credits counted, whereas under the new ones the full spread of grades was considered. She complained to the OIA after internal procedures of the university had been exhausted without success. The OIA found that the university had the power to change its regulations during the academic year and that the degree was properly determined as a lower Second. But the complaint was found to be **justified** to the extent that the new regulations were misleading in suggesting to students that they would not be disadvantaged by their introduction. It was recommended that the university pay £150 to S in recognition of this maladministration.

CASE 3

S complained about the mark given for an essay submitted in his second year and about adverse comments made in its assessment. The examiner had commented that it was rather brief, although the length of the essay fell within the required word limit; another comment referred to lack of focus. In response to his complaint to the university the essay was re-marked, but the result did not lift the mark out of the lower Second range. S complained to the OIA about the wording of the instructions given in relation to the essay: the phrasing relating to length and that there were no instructions to students to state which question they had chosen to answer. The university contended that these were issues of academic judgment. The OIA considered only whether there was any material



defect in the procedural process and in the written instructions issued to students. The complaint was found to be **not justified** because the question of quality (academic judgment) had prevailed over quantity in the assessment; and procedural issues had not led to loss of marks.

GRADUATE ISSUES

CASE 4

S was registered as a postgraduate student studying for a PhD for 7 years, when she withdrew. She complained that her supervisor had not encouraged her, had not warned her that her work was not up to standard, had supervised inadequately and not at all when on sabbatical; that annual appraisals had not been carried out and that numerous extensions had been given to the deadline for her submission of the thesis, without appropriate inquiry into her progress, and that the university had not supported her at the time of withdrawal. The university offered S £500 compensation, which she rejected and then complained to the OIA. The OIA found that S had not complained about her supervision until shortly before withdrawal and that it was adequate, but that the supervisor should have been critical and that the need for numerous extensions should have been questioned at the time. S was also at fault in having written almost nothing and taking no steps to ensure that her difficulties were being addressed. The complaint was **justified**: the OIA recommended that the university offer £1000 to S and improve its appraisal and complaints procedures.

CASE 5

S's doctoral studies were terminated by the university after 15 months' study, following an annual review and the submission of a revised proposal. S complained to the university about the defects in the annual review and about the quality of his supervision. S complained that the supervision must have been inadequate because of his failure despite implementing the feedback. The university dismissed his complaint about the annual review on the ground that no procedural irregularity had been shown and it was an attempt to question the academic judgment of the assessors. The OIA agreed with this when considering S's complaint and found that the judgment that S's work was not of doctoral standard was a question of academic judgment and outside the remit of the OIA Scheme. S's complaint about his supervisor was also dismissed by the university. Critical comments about S, to which S took objection, were found to be not inappropriate but were a record of the reasons which had hampered the student's progress with the doctoral work. The OIA decided the complaint was **not justified**.

CASE 6

S was a science student whose funding was provided by the university. She was asked to agree that her funding should be switched to a project with which her supervisor was involved. S complained to the university about the change in the nature of her work and that she had been left without supervision for some months during the switch. As a result of her complaint, the university extended her registration and funding, and she accepted that this was adequate. She complained to the OIA about delays in the university's handling of her complaint. The OIA found that insufficient discussions had taken place with S to ascertain whether the funding switch would be appropriate to her particular research topic and what the changes in her role would be. The internal appeal took

more than a year to resolve, which was too long. The complaint was found **justified** and the OIA recommended that the university offer £100 to S in recognition of the delay.

FITNESS TO PRACTISE

CASE 7

S was studying medicine at the university. Doubts were raised about his behaviour and a Fitness to Practise Panel was convened to examine the issue. It decided that S was fit to practise and should be allowed to continue his medical studies. S complained to the university and subsequently to the OIA. His grounds were: that the Panel should not have been convened because the evidence regarding his behaviour was insufficient; that documentation to be used at the Panel hearing was not distributed in good time; that it was not clear whether his health or his conduct was at issue; and that he had been required to have a mental health assessment through referral by his GP to a psychiatrist and that this process would have had an adverse effect on his records. He had obtained an independent report and wished to be refunded the costs of doing so. The OIA agreed with the university that the university acted reasonably on the evidence in convening a Fitness to Practise Panel, bearing in mind its duty to ensure that the public is not harmed as a result of a student qualifying as a doctor. There were delays in disclosing documentation but they did not have a material effect on S, and the university went on to revise its procedures in this regard. The university was not responsible for S's expenses in obtaining a private mental health assessment. The complaint was **not justified**.

DISCIPLINARY ISSUES

CASE 8

S was fined £60 and expelled from his hall of residence after a violent incident in which he was involved. The university dismissed his appeal and he complained to the OIA. His grounds of complaint were that the decision to expel him was unfair and disproportionate to the incident. He had been given only a few days' notice to find alternative accommodation and no serious injury had been caused, nor had criminal charges been brought. The OIA found that legal methods exist for eviction and that they should have been used, but that since the vacation started immediately after the expulsion and S would normally have returned home, he had not been materially affected. The penalty was within the range of sanctions permitted by the regulations and was appropriate for an assault. It was also found that the university appeal hearing was improperly conducted because written evidence was not disclosed either to the chairman or to S and that the principles of natural justice were breached. S was not materially disadvantaged by the procedural defects and no compensation or rehearing was justified, but it was **recommended** by the OIA that the university undertake considerable revisions to its procedures.

CASE 9

S, a graduate student, was suspended from his studies in December 2004 and accused of several breaches of student disciplinary regulations. In September 2005 the Disciplinary Panel of the university recommended that S be expelled, and this finding was finally confirmed by the university

in June 2006. Between December 2004 and July 2006 S made several complaints to the university about personnel; he was informed that consideration of the complaints was to be deferred until the conclusion of his appeal against expulsion. S complained to the OIA about the university's decision to defer the operation of the student complaints procedure until after the conclusion of the disciplinary proceedings against S. S alleged that the Vice Chancellor had no power to delay the complaints procedure and that the delay amounted to a breach of the rules of natural justice. The OIA decided that although there was no specific power in the regulations for the Vice Chancellor to suspend the operation of the complaints procedure, his general responsibilities for governance included the power to defer, and to decide which procedure should take precedence in the event of an apparent conflict between them. It would be unwise for a university to leave itself open to an abuse of process by allowing a student alleged to be in breach of its disciplinary rules to bring complaints to frustrate or delay the application of those rules, and therefore it was reasonable to complete the disciplinary proceedings against S first. The complaint was therefore **not justified** although it was suggested that the university might wish to review its procedures to make it clear which procedure would take precedence where there is the possibility of conflict or overlap between them.

CASE 10

S was President of the Students' Union and invited members of an extremist organisation to visit the campus. A week before the meeting, the Vice Chancellor asked S to cancel the meeting for fear of disorder. S refused on the grounds that she had been mandated to issue the invitation by the students and in the interests of freedom of speech. S was suspended from the university until she apologised and was also disciplined. No appeal was permitted. S complained to the OIA on the grounds that she had been unfairly disciplined and that the university was in breach of its statutory duty because it did not have a Code of Practice on Freedom of Speech. The complaint was found **justified**. The university had not implemented its duty under s.43 of the Education (No. 2) Act 1986 to issue and keep up to date a code of practice setting out the procedures to be followed in the organisation of meetings. Such a Code would have defined the circumstances in which the university could ban meetings. The law imposed a duty on the university, not on S, to take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured. The university had not provided evidence that the meeting would have led to a risk of disorder or that it might have infringed other statutory obligations. The university did not comply with its procedures or act fairly when penalising S. It was recommended that the university pay £750 to S by way of compensation and remove the penalty from her records.

CASE 11

S was expelled from the university and her credits deleted because she had plagiarised. She appealed on the ground of procedural irregularity and that the penalty was excessive, but her appeal was rejected, and she complained to the OIA. She alleged that the plagiarised material was a very small part of her thesis, that it occurred because of poor referencing and was a first offence. Her complaint was found to be **justified**. The appeal panel that had dismissed her appeal did not meet in person as required, but acted on a circulation of papers and did so even before receiving all of S's documentation. The extent of the plagiarism should have been taken into account and a full range of penalties considered, not just expulsion. The OIA condemns plagiarism but its view is that the degree of culpability can vary significantly depending on the extent of the plagiarism, whether

it was a first offence, whether intentional or reckless, the steps taken by the university to make students aware of the rules and the personal circumstances of the student. The OIA considers it good practice for a university to have penalties that are proportionate to the offence, bearing in mind that expulsion of a student can lead to extreme hardship. A university that applies a very limited range of penalties for a wide spectrum of situations or applies its rules in a restrictive way may be criticised. It was **recommended** that the appeal panel reconsider S's appeal at a formal hearing, and that the university should review its rules.

CONTRACTUAL ISSUES

CASE 12

S was registered on a one-year course which was advertised as offering 6 tutorials and 24 assignments with feedback. By the end of the year he had received 2 tutorials and feedback on 20 assignments, despite protracted complaints about delay. His first tutor resigned, the second was temporary and the third was appointed towards the end of the course and was, S alleged, hostile towards him. S claimed reimbursement of fees. His complaint was rejected by the university but he was offered an *ex gratia* payment of £100 in view of the disruptions suffered during the course. S complained to the OIA. The complaint was found to be **justified**. The university had ignored S's legitimate concerns about the third tutor and had not provided the promised tuition. It was recommended that the university pay S £500 and apologise to him.

CASE 13

S complained that he had been affected by the industrial action taken by the AUT (as it was then) and had not received feedback on his work during the final four months of his final year. This increased his anxiety and contributed to his depression; he sought to be awarded an upper Second in place of the lower Second class degree awarded. The university stated that although the feedback had not been provided, it had mitigated the effect of the industrial action and secured the marking of examinations and coursework and graduation had taken place on time. Moreover S's best marks were awarded on pieces of work undertaken during the period of industrial action. The OIA found the complaint **not justified**. The university's decision to focus on mitigating the effect of the industrial action on final examinations was reasonable in the circumstances and it acted to ensure that the general effect of the action upon students was properly considered. S had not claimed mitigating circumstances nor submitted a medical certificate relating to the effect of the industrial action on him.

CASE 15

S was affected by the AUT industrial action during the final few months of his course. Results which would normally have been posted in July were not released until September, and the transcript was delayed until October. S complained that as a result of the delays in awarding his degree (a lower Second) and then in hearing his appeal based on mitigating circumstances arising from the industrial action, he was unable to start a professional course. As a result his employers gave him a lower starting salary than he would have received had he been able to commence the professional qualification course. The university rejected his appeal and he complained to

the OIA. The complaint was found **justified** partly, because there was unreasonable delay in the conduct of the appeal. However, the complaint about the effect of the industrial action was not justified because S himself could have made more effort to overcome the delay in receiving official documentation, for example by presenting his transcript of marks to the professional body in lieu of a degree certificate.

CASE 15

S registered for a one-year taught graduate course, which finished 6 months late. The university admitted that 95% of the promised tuition for the course was not given. S sought return of half the tuition fees paid and asked that the university should pay for the additional student loan he had had to take out because the course had been extended. Some of the other students on the course had settled similar complaints with the university for a sum amounting to approximately 25% of the fees, but S complained that this was insufficient. He felt that he had not acquired the skills promised by the course, even though he had passed the examinations, and that his living costs had increased because of the failings. The complaint was found to be **justified**. The OIA recommended that the university refund to S 75% of the fees, plus 50% of the additional loan that had been taken out and £500 for the inconvenience suffered. This totalled £4500. It was not considered acceptable for the university to avoid a full refund by reference to administrative and facilities costs, and its actions were in part responsible for the increased debt that S incurred.

CASE 16

S transferred from one university to another to complete an undergraduate degree. The second university advised her incorrectly about her transferable credits and the amount of further study that was necessary, with the result that she was unable to complete her degree in the timescale anticipated. The university belatedly required her to take further courses but she was informed of this at a time when she had expected to graduate and when it was too late to enable her to enrol in the next academic year to complete the requirements. She was unable to complete her degree until two years after she had expected to graduate. The university admitted that S had been given the wrong advice and offered to waive fees for the remaining period of study that was necessary. It was also recognised that the university had no mechanism for identifying such problems during the student's period of study. The complaint was found **justified**, and the OIA recommended that the university repeat its offer of a fee waiver for the outstanding courses and pay £1500 to S in recognition of the inconvenience and delay suffered.

ACCOMMODATION ISSUES

CASE 17

S claimed a reduction in her rent for university accommodation for 10 months because of its defects. She alleged lighting and heating problems; disruptive repairs; that the university inspected the premises at inconvenient times without notice; that a cleaning charge was levied without an

opportunity to challenge it; and that it was an unfair contract term to hold her to the full year's rent if she moved out. S did not detail the alleged defects on the inventory form when she first moved in. The university disputed the defects and claimed that the other actions were justified by the terms of the accommodation contract. The complaint to the OIA was found to be **not justified**: the university had acted within the terms of the accommodation contract and its actions were reasonable, albeit that best practice should involve routine maintenance work being carried out in vacation periods to avoid disruption. The rental term was not unfair as it provided for release from rent once a replacement tenant had been found. However there were some defects in the internal complaints handling procedures for which the sum of £30 was recommended by way of compensation to S.

DISABILITY ISSUES

CASE 18

S had been assessed as dyslexic and it was recommended that he should have a reader in examinations and 25% extra time. S failed two units at the end of his second year and his studies were discontinued by the university. He appealed on the ground of extenuating circumstances and that the university had failed to make reasonable adjustments for his disability by omitting to provide a reader for one of the failed examinations. His appeal was rejected and he complained to the OIA. The Special Educational Needs and Disability Act 2001 was taken into account by the OIA in consideration of the complaint. S alleged that in his 3 attempts at one of the failed papers he had been denied a reader because it was a multiple choice examination. He had been assigned an invigilator to whom he was allowed to address questions, but not an active reader. The OIA held the complaint to be **justified**. The university may have discriminated against S on the grounds of his disability by not making all the necessary reasonable adjustments as recommended in the dyslexia assessment and by not providing a reader in the failed examination. The university's procedures for appointing readers for dyslexic students were inconsistent, not clearly communicated to students and not adequately documented. It was recommended that there should be a fresh hearing of S's appeal, that the university pay S £200 and issue a written apology.

CASE 19

S registered for a one-year Masters course which entailed submission of a project at the end of the year. There was believed to be a four-year deadline for submission. Shortly before the due date at the end of the first year, she was seriously injured in an accident. Three extensions for completion of the project were granted, but it was not submitted, and four years after registration she was discontinued by the university. S did not receive the letters informing her of this. After receiving special permission to make further attempts, and after reliance on the Disability Discrimination Act, S was failed by the university 10 years after registration for not having submitted her project. She complained to the OIA that she had not been warned about the four-year rule and that the university had failed to respond to her requests under the Disability Discrimination Act. She sought to be awarded the degree. The complaint was taken up by the OIA only when the Disability Rights Commission ceased to pursue it, as that was the alternative forum. The complaint was found to be **not justified**. In the event the four-year deadline did not apply to full time students and the university was entitled to treat any failure to submit the project by an agreed deadline as a fail. It was not reasonable for S to assume that she could delay submission indefinitely without specific

written agreement to this from the university. Under the disability legislation applying at the time, it was unlawful for a university to treat a disabled student less favourably than a non-disabled student for a reason relating to that student's disability, unless it could be shown to be justified; less favourable treatment was justified if it was necessary to maintain academic standards. The university had been willing to take into account the disabilities of the student, although she had not explained how the accident was continuing to affect her studies. The university had made reasonable adjustments by extending the date for submission but there was no duty on it to waive academic requirements to accommodate a disabled student. The degree that S sought could not be awarded without successful submission of the project.

CASE 20

S suffered from a severe physical disability, which worsened shortly after he registered on his undergraduate course. Since he had missed a substantial part of the course, the university suggested that he repeat the first year without further payment of fees. S chose instead to complete the first year in a condensed period and move on to the second year and continued with the work requirements. S complained that the university discriminated against him in his attempt to do so, by failing to provide academic support and appropriate replacement work to make up for what he had missed. He complained that the university was in breach of its obligations under the Special Education Needs and Disability Act 2001, because it treated him as if he were a student who had failed first attempts at coursework and examinations instead of making special provision. The complaint was found to be **justified**. S had not been provided with the same level of support as would have been available to a student attempting the work for the first time during term time at the set date. Reference to the university's Disability Unit was inappropriate when academic adjustments were required from academic staff to help S complete the year, rather than the support offered by the Unit. The university had failed to investigate S's allegations that he had been bullied and neglected. It had shown no reason why it could not make reasonable adjustments in relation to the catch up work in terms of length and subject, provided that academic standards were maintained. It should have taken guidance on this issue. The university did not follow its own procedures in rejecting the option of conciliation facilitated by the Disability Conciliation Service, a process that could have benefited the university. It was recommended that the university pay S £600 in recognition of the distress caused to him during the period of discrimination and during the lengthy complaints process.



The OIA is accountable to its Board and ultimately to the Secretary of State and the Welsh Assembly under the Higher Education Act 2004. In 2006 the Board members were:

Independent Directors

Ms Margaret Doyle (appointed November 2005)
Mr Christopher Eadie (appointed March 2005)
Mr Mark Emerton (appointed September 2004)
Professor Norman Gowar, chair (appointed August 2003)
Ms Sophie Holmes (appointed March 2005)
Mr Hugh Smith, deputy chair (appointed September 2004)
Dr Cecilia Wells OBE (appointed March 2005)

Nominated Directors

Dr Geoffrey Copland (appointed August 2003)
Mr Malcolm Faulkner (appointed June 2005)
Mr Gareth Lewis (appointed August 2003)
Mr Julian Nicholds (resigned June 2006)
Miss Maxine Penlington (appointed August 2003)
Ms Heather Somerfield (appointed September 2005)
Mr Wes Streeting (appointed July 2006)
Dr Sofija Opacic attended one meeting of the board as an alternate director for Mr Streeting

Secretary

Mr Michael Miller (appointed May 2006)

The Board met four times in 2006 and received reports from the Independent Adjudicator and the Deputy Adjudicator on each occasion. New members received formal induction. There is a majority of independent (ie not connected with the higher education sector) members. The Board has a role to play in determining how to deal with complaints by dissatisfied complainants concerning the way in which the OIA treated the complaint (that is, procedure, not outcome). In 2006 the Board set up three subcommittees: Audit, Finance & Remuneration. A fourth, Nominations, will start work in 2007.

External Accountability

The OIA has responded to a number of letters from MPs who wrote on behalf of student constituents. It has met regularly with the Department for Education and Skills.

We look forward to the fourth year of our growing and complex jurisdiction and to continuing involvement in the important and fascinating development of the law of higher education. The OIA's work has given it unique insights into the world of higher education at a time when it is expanding and changing radically.

Annex 1

UNIVERSITIES AND HIGHER EDUCATION COLLEGES COVERED BY THE SCHEME



England

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

The Office of the Independent Adjudicator for Higher Education is now in its second year of operating the statutory student complaints scheme. This business plan provides an operational plan for the third year – 1 January to 31 December 2007. Our main objectives for the year will be:

1. To resolve student complaints as efficiently as possible, consistent with our statutory duties
2. To continue our work on disseminating good practice about complaints and appeals
3. To improve communications about the Scheme

The key aspects of the plan are that:

- We have assumed that new student complaints will increase by 15%
- Service level targets will remain unchanged
- Individual subscriptions to increase by 36%
- The number of participating institutions will remain the same

Complaints handling

In the 2006 business plan we assumed that the number of complaints during the year would increase by 25% (that is, to at least 375). That estimate looks realistic at the current time. We consider it would be prudent to assume further growth in student complaints for 2007. We are assuming an increase of around 15%. There are a number of regulatory changes taking place in higher education which we expect will have an upward effect on the volume of complaints we receive. For example:

- 2007 will be the first full year when full time undergraduate students will be obliged to pay increased tuition fees in England
- There may be some uncertainty for students as a result of student bursary arrangements agreed by universities with OFFA (in England)
- The new Universities UK Code of Practice for University Managed Student Accommodation provides for students to bring complaints about university provided accommodation to the OIA
- Equality and diversity legislation (especially disability legislation) will have an increasing impact on universities

There is also growing media awareness of student issues and student finances in general which may result in more complaints to the OIA.

Our service level targets for 2006 were:

- 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



We are likely to meet the first two targets but we may have difficulty in meeting the last target. This is due to a number of factors including the complexity of complaints, the involvement of lawyers or insurers in some cases, and delays in providing information by institutions and students for various reasons (some quite understandable). Legally aided attempts to judicially review the OIA continue to impact upon our efficiency. Because it is difficult to predict the number of complaints in any period there has also been a lag in recruiting new casehandlers to deal with the growing number of complaints ready for adjudication. So bearing in mind these factors we do not consider it would be prudent to seek to improve upon those target levels for 2007. However, we will continue to explore ways of increasing our efficiency, especially the turnaround time for issuing our Adjudications. To this end we will require additional casehandling staff and support staff in 2007.

Assuming that approximately 75% of our 2007 budget will relate to casehandling work our unit cost per adjudication is likely to be in the region of £2000 - £2500. We consider this compares very favourably with the cost of litigation or arbitration. But we are not complacent. One of our longer term objectives will be to bring this unit cost down.

Other activities

The Office provides an advisory service to students and higher education institutions ("HEIs") about the scheme and involves itself in the dissemination of good practice about complaints handling. We organise workshops and seminars for our members and their representatives. Our workshop programme for 2007 is likely to show an expansion over 2006. We also intend, in 2007, to continue our practice of encouraging universities to resolve complaints at an early stage and to ensure that students are informed about the OIA.

The OIA is an associate member of the British and Irish Ombudsman Association. We actively participate in events organised by the Association and we look forward to the 2007 BIOA Conference.

Our Rules

The rule changes made in September 2006 should enable us to achieve a more proportionate allocation of resources based on the type of investigation required. Some complaints clearly do not merit a lengthy investigation whilst there are others that require substantial investigatory work. In 2007 we will expect institutions to prepare a case file in respect of each complaint ready for the OIA, should we call for it. This is good practice and should help speed up our decision making.

Under the rule changes the Board will also have wider powers to deal with that small minority of universities which are not co-operating with the OIA in the way we would expect.

Operations

Our proprietary IT applications should continue to meet our requirements in 2007 although we expect to increase the number of networked seats we operate. Especial attention is being paid to security issues relating to our systems.

Premises

During the latter part of 2006 we acquired additional office space in the building we occupy. This was needed not only to provide more room for our casehandlers but also for additional facilities for training and support services. The additional rent for this space will be payable from the end of 2006. In 2007 we expect our premises costs to nearly double as a result of the additional space and the ending of our rent free period on our existing space in April 2006.

Staffing

During the latter part of 2006 we recruited a number of additional casehandlers. This will be reflected in our 2007 budget for staffing costs. Additionally we expect to increase our staff numbers by around 15% in 2007. We plan to be able to access up to 20 experienced casehandlers in 2007. The Office has been able to recruit the casehandlers it needs, but we have found that it is necessary to have a mix of full-time and part-time staff in order to achieve the quality that we require. Our casehandlers are either legally qualified or have complaints handling experience.

The Office intends to continue its policy of subcontracting out its IT, accounting and payroll requirements.

Equality issues

In 2006 we appointed a senior member of staff to oversee all complaints involving diversity and equality issues. This is an important and complex area, so we consider it vital that we adopt an informed and consistent approach. Further initiatives are likely in 2007. Regular training is provided to all new and existing staff on equality issues.

Communications

During 2007 we will seek to upgrade our communications with our stakeholders through a more structured programme. Apart from speaking at our members' conferences and running workshops for our members' representatives we are planning other vehicles for providing and obtaining feedback.

Our web site provides a great deal of information about the history and work of the OIA, including a selection of case studies. Nevertheless there is always room for improvement. During 2007 we plan to run a students' page where we can devote more space to issues of concern to students.

Strategic risks

The audit committee will continue to investigate and monitor strategic risks affecting the Office.

Corporate governance

The role of the Board includes the safeguarding of the independence of the Scheme, ensuring that it is appropriately funded and monitoring the performance of the Scheme. So it vital that we have appropriate corporate governance mechanisms in place. The Board has established several committees to assist it including an audit committee, a finance committee and a remuneration committee. During 2007 it is expected that these committees will have a growing role to play in achieving good corporate governance. Furthermore at the request of the chairman additional resources will be devoted to director development.

Subscriptions

We are forecasting that total subscriptions for 2007 will need to increase by approximately 36% per institution (although a few institutions will need to pay more as a result of moving to a higher subscription band). This reflects not only the additional resources to cover the expected growth in complaints but also the inevitable growth in the complexity of managing the scheme. As usual we have based our calculations on the latest HESA statistics (2004/5), and have assumed that the number of participating institutions will remain unchanged. Currently there are no plans to introduce case fees.

The Budget

The main differences in the budget compared with the 2006 budget are the increase in staffing costs (as explained above), additional IT support costs, recruitment costs for a senior appointment and the payment of extra rent.

Michael Reddy

Deputy Adjudicator & Chief Executive

October 2006

Office of the Independent Adjudicator for Higher Education 2007 Budget

	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Totals
	£	£	£	£	£
Staff salaries/on costs	189,038	189,038	197,037	197,037	772,150
Casehandler consultants /other staff	26,950	26,950	26,950	26,950	107,800
Rent/rates/service*	40,000	40,000	40,000	40,000	160,000
Professional fees	12,250	12,250	12,250	12,250	49,000
Office supplies	13,750	13,750	13,750	3,750	55,000
Telephone/postage/web/IT	11,250	11,250	11,250	11,250	45,000
Training	4,500	4,500	4,500	4,500	18,000
Misc.	14,407	14,407	14,408	14,408	57,630
Bd of Directors	3,650	3,650	3,650	3,650	14,600
Contingencies	15,000	15,000	15,000	15,000	60,000
Depreciation	11,250	11,250	11,250	11,250	45,000
Total expenditure	342,045	342,045	350,045	350,045	1,384,180
Brought forward	55,000				55,000
Subscriptions	1,317,180				1,317,180
Deferred capital grant	7,500	7,500	7,500	7,500	30,000
Misc. Income	3,750	3,750	3,750	3,750	15,000
Net bank interest	5,000	6,000	4,000	2,000	17,000
Carry forward				-50,000	-50,000
Total income					1,384,180

* Rent based on actual payments due

October 2006

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 ("Act"). The Rules supersede all previous rules of the OIA and are effective from 1 September 2006 and shall apply to all complaints received by the OIA from that date.

The governing bodies of all qualifying universities in England and Wales have a statutory obligation under the Act 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 universities and the making of recommendations.

2. Complaints Covered

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

- 2.1 a student at that university; 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 universities awards.

3. Complaints Not Covered

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

- 3.1 it concerns admission to an university;
- 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 previous 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 university 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 university have not been exhausted if he or she considers it appropriate to do so.
- 4.2 The OIA will not normally consider a complaint unless it is received within three months from the date upon which the internal complaints procedures were exhausted except where the Reviewer extends the time because he or she is satisfied that there is good reason to do so.
- 4.3 The university 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 issuing of Completion of Procedures Letters shall be in accordance with guidance published by the OIA from time to time.
- 4.5 The OIA will not normally consider 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 process for dealing with a complaint will be as follows:
 - 6.3.1 Once a complaint has been accepted the Reviewer will send a copy of the complaint to the university for its information;
 - 6.3.2 The Reviewer will decide what further information (if any) he or she needs for his/her review; this may include a requirement that the university provides a copy of the information that it considered at the final stage of its internal complaints procedures (and any related records) and at any time the Reviewer may require the parties to answer specific questions and/or provide additional information;
 - 6.3.3 The nature and extent of the review will be at the sole discretion of the Reviewer and the review may or may not include matters that a court or tribunal would consider.

- 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 The Reviewer may decide to issue a Formal Decision at any time where he or she considers that he/she has sufficient information or it is otherwise appropriate to do so.
- 6.7 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.
- 6.8 The Reviewer may terminate or suspend consideration of a complaint, as he or she considers appropriate, if it appears to the Reviewer that,
 - 6.8.1 the university has satisfactorily dealt with the complaint;
 - 6.8.2 the complaint would be better considered in another forum;
 - 6.8.3 there are proceedings taking place within the university or elsewhere which may be relevant to the complaint; or
 - 6.8.4 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 university 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 university properly applied its regulations and followed its procedures, and whether or not a decision made by the university 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 university 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 university 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 university should take a course of action that the Reviewer considers to be fair in the circumstances;
 - 7.4.5 that the university should change the way it handles complaints;
 - 7.4.6 that the university should change its internal procedures or regulations.
- 7.5 The OIA expects the university to comply with the Formal Decision and any accompanying Recommendations in full, and in a prompt manner.
- 7.6 Where Recommendations require the university 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 university shall, if requested, report to the Reviewer on such compliance.
- 7.7 Any non-compliance by an university 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, universities 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;
 - 10.1.7 consider whether, and if so how, non-compliance by an university with any Recommendation or other recommendation or request of the Independent Adjudicator or Deputy Adjudicator referred to the Board under paragraph 11.1 should be dealt with (subject to paragraph 7.7); and
 - 10.1.8 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:

- 11.1 The Independent Adjudicator (a) shall report to the Board any non-compliance by an university with a Formal Decision and any Recommendations and (b) may report to the Board any non-compliance by an university with any other recommendations or requests made by a Reviewer.
- 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.
- 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.
- 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.
- 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:
 - (a) complaints referred under the Scheme;
 - (b) the Decisions and Recommendations made by Reviewers;
 - (c) the extent to which Recommendations made by Reviewers have been followed (listing any universities which have not complied with a Recommendation);
 - (d) the way in which the operator has used the fees (if any) paid in connection with the Scheme; and
 - (e) the names of those universities participating in the Scheme.
- 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.
- 11.7 The Independent Adjudicator and the Deputy Adjudicator may recruit, appoint, train, manage and remove staff.
- 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.
- 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).
- 11.10 The Independent Adjudicator may publish individual decisions and digests of complaints in anonymised form and statistical information.
- 11.11 The Independent Adjudicator and Deputy Adjudicator may recommend systemic changes in policy or procedure arising from complaints and publish such recommendations.
- 11.12 The Independent Adjudicator and Deputy Adjudicator may make recommendations from time to time to universities for the promotion of the Scheme to students.

12. Charges and Fees

- 12.1 The Scheme will not make any charges to complainants for the consideration of their complaints.
- 12.2 Each university 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 universities.

13. *Non-qualifying Institutions*

From time to time the OIA may publish additional rules which shall apply to Non-qualifying Institutions which have joined the Scheme with the consent of the Board.

14. *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 university or are established pursuant to the powers of an university

“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 a Non-qualifying Institution which has joined the Scheme with the consent of the Board

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

“Non-qualifying Institution” means a higher education institution which is not a qualifying institution in accordance with Part 2 of the Act

“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 university 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.

15. *Amendments to the Rules*

These Rules may be amended from time to time in accordance with paragraph 10.1.8.

16. *Law*

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

OIA Subscriptions for 2006

Figures based on full time and part time higher education and further education students at higher education institutions, according to 2003/4 HESA statistics.

	Band	Fee
Less than 500 students.....	A.....	£210
501 to 1,500 students.....	B.....	£430
1,501 to 6,000 students.....	C.....	£2,310
6,001 to 12,000 students.....	D.....	£4,590
12,001 to 20,000 students	E.....	£7,630
20,001 to 30,000 students	F.....	£11,540
30,001 to 50,000 students.....	G	£13,710
More than 50,000 students	H.....	£25,930

1) Number of staff (including part-timers)

25 (15.50 FTE)

2) Total number of universities subscribing to scheme (excluding Cambridge and Oxford Colleges)

146 (147)

3) Number of Student Enquiries by type

Academic appeal/Exam results/	
Degree classification	362
Admissions	10
Contract	139
Disciplinary matters	41
Discrimination & Human Rights	40
Information about Scheme	162
Financial	32
Other	71
Plagiarism & IP	14
Welfare	23
Total	897
<i>(Total for 2005)</i>	<i>942</i>

4) Scheme Application Forms Received

Outcome:

Eligible	435
Settled/withdrawn	11
Eligibility being reviewed	51
Not eligible	91
Number of Applications open over 6 months at end of period	0
Total	588
<i>(Total for 2005)</i>	<i>531</i>

5) Complaints received by category

Total	465
<i>(Total for 2005)</i>	<i>322</i>

By type*:

Academic appeal/Exam results/	
Degree classification	292
Contract	81
Disciplinary matters	24
Discrimination & Human Rights	31
Financial	2
Other	10
Plagiarism & IP	11
Welfare	14

Gender:

Female	208
Male	257

Age:

Under 25	161
25 - 39	180
40 and over	114
Not known	10

Student Status:

Further Education	2
Other	22
Postgraduate	171
Undergraduate	268
Franchised/Validated	2

Nationality:

Home/EU	346
Non-EU	87
Not known	32

6) Complaints by performance

Number of Complaints received	465 (322)
Number of Complaints closed	389 (213)
Work in Progress	257 (181)
Average no. of days to close Complaint in period after admission to Scheme	169 (148)
No. of closed Complaints in period taking longer than 12 months to close after admission	26 (1)
Number of Complaints open after 12 months from admission at end of period	42 (inc.29 (0) being settled)

7) *Complaints by outcome*

Total:

Justified/Justified in part	88 (69)
Not justified	270 (125)
Settled	13 (9)
Withdrawn	18 (10)
Total compensation	£32,527
<i>(Total for 2005</i>	<i>£260,290)</i>

8) *Justified complaints by type*

Academic appeal/Exam results/ Degree classification	42 (17)
Contract	25 (39)
Disciplinary matters	5 (3)
Discrimination & Human Rights	6 (5)
Other	6 (4)
Plagiarism & IP	1 (0)
Welfare	3 (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.

Figures in brackets are for 2005, where appropriate.

* Many complaints can be classified under more than one category. Generally we apply the category which we consider to be the most relevant to the key head of complaint.

The Independent Adjudicator

Ruth Deech - DBE, MA, Hon LL.D

Deputy Adjudicator & Chief Executive

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

Senior Assistant Adjudicator

Susanna Reece - BA, MSc, solicitor (non-practising)

Adjudication staff

Isobel Brown (Liaison Manager) - BSc, MA, PGCE

Katie Carter - BMus, DMS

Katie Dean - BSc, PG Dip in Law, LPC

Sheila Deibel - BA, Solicitor (non-practising)

Fiona Draper - LL.B, Solicitor (non-practising)

Tony Drew - BSc, CQSW

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

Craig Knowles - BA, LL.B, Barrister and Solicitor of the High Court of New Zealand (non-practising)

Anne Lee - LL.B, solicitor (non-practising)

Alison MacDougall - LL.B

Felicity Mitchell - BA, PG Dip in law, barrister

Jo Nuckley - BA, MPhil

Kay Shepherd - BA, solicitor (non-practising)

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

***Patricia Witts** **Dr Witts's qualifications are shown incorrectly in the printed version of this report.*
- LL.B, PhD, solicitor (non-practising)

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

Administration Staff

Diane Andrews

Teresa Broad

Cheryl Emerton (Administration Officer)

Sandra Reader

Deborah Thompson - BA

Charlotte Wootton (Liaison Officer) - BA

Fifth Floor, Thames Tower, Station Road, Reading RG1 1LX
Tel: 0118 959 9813 Fax: 0118 9559099 email: enquiries@oiahe.org.uk www.oiahe.org.uk