

## **RULES**

These are the rules (“Rules”) of the student complaints scheme (“the Scheme”) established by The Office of The Independent Adjudicator for Higher Education (“the Company”). The Company is designated as the operator of the Scheme in accordance with the Higher Education Act 2004 (“Act”). The Rules supersede all previous rules of the OIA and are effective from 1 May 2008. Complaints received by the OIA prior to this date will be dealt with under the rules prevailing at the time.

The governing bodies of all qualifying Higher Education Institutions (HEIs) 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 HEIs and the making of recommendations.

### **2. Complaints Covered**

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

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

### **3. Complaints Not Covered**

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

- 3.1 it concerns admission to an HEI;
- 3.2 it relates to a matter of academic judgment;
- 3.3 the matter complained about is the subject of court or tribunal proceedings and those proceedings have been concluded, or the matter is the subject of court or tribunal proceedings and those proceedings have not been stayed;
- 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 the matter complained about is being dealt with (or has been dealt with) under these or 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 Exhaustion of Internal Complaints Procedures**

- 4.1 A complainant must have first exhausted the internal complaints procedures of the HEI complained about before bringing a complaint to the OIA. In exceptional circumstances a Reviewer may accept a complaint for review even if the internal complaints procedures of the HEI 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 HEI will, after the internal complaints procedures have been exhausted, promptly issue a letter (“Completion of Procedures Letter”) to the student concerned confirming that those procedures have been so exhausted. The time limit in paragraph 4.2 will normally begin to run from the date of issue of the Completion of Procedures Letter.
- 4.4 The 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 it considers that the substantive event(s) complained about occurred more than three years before the Scheme Application Form is received by the OIA.

### **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 send a copy of the complaint to the HEI for its information.
- 5.3 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.

- 5.4 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 Once a complaint has been accepted the Reviewer will carry out a review of the complaint to decide whether it is justified, partly justified or not justified.
- 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 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.
- 6.4 The normal review process for dealing with a complaint will be as follows:
- 6.4.1 The Reviewer will decide what further information (if any) he or she needs for his/her review; this may include a requirement that the HEI 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.
- 6.4.2 Prior to issuing a Formal Decision the Reviewer will (unless the Reviewer considers it unnecessary to do so) issue a draft or preliminary decision (and any draft/preliminary Recommendations).
- 6.4.3 Where a draft decision is issued the parties will be given the opportunity to make limited representations as to any material errors of fact they consider have been made and whether the draft Recommendations are practicable.
- 6.5 The parties shall comply promptly with any reasonable and lawful request for information the Reviewer may make relating to the review.
- 6.6 The Reviewer shall not be bound by legal rules of evidence nor by previous decisions of the OIA.
- 6.7 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.
- 6.8 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.
- 6.9 The Reviewer may terminate or suspend consideration of a complaint, as he or she considers appropriate, if it appears to the Reviewer that,
- 6.9.1 the HEI has satisfactorily dealt with the complaint;
- 6.9.2 the complaint would be better considered in another forum;
- 6.9.3 there are proceedings taking place within the HEI or elsewhere which may be relevant to the complaint;
- 6.9.4 a party has unreasonably delayed or has otherwise acted unreasonably; or
- 6.9.5 there are other good reasons for doing so.

## 7. The Formal Decision and any Recommendations

- 7.1 The Reviewer will issue a Formal Decision, and any Recommendations the Reviewer decides to make, to the complainant and the HEI as soon as is reasonably practicable.
- 7.2 The Formal Decision and any Recommendations shall be in writing and contain reasons for the Formal Decision and for any Recommendations.
- 7.3 In deciding whether a complaint is justified the Reviewer may consider whether or not the HEI properly applied its regulations and followed its procedures and whether or not a decision made by the HEI was reasonable in all the circumstances.
- 7.4 The Reviewer may, where the complaint is justified in whole or in part, make Recommendation(s) that the HEI should do something or refrain from doing something. Those Recommendation(s) may include, but not be limited to, the following:
- 7.4.1 that the complaint should be referred back to the HEI for a fresh determination because its internal procedures have not been properly followed in a material way;
- 7.4.2 that the complaint would be better considered in another forum;
- 7.4.3 that compensation should be paid to the complainant, including, at the Reviewer's discretion, an amount for inconvenience and distress;
- 7.4.4 that the HEI should take a course of action that the Reviewer considers to be fair in the circumstances;
- 7.4.5 that the HEI should change the way it handles complaints;
- 7.4.6 that the HEI should change its internal procedures or regulations.
- 7.5 The OIA expects the HEI to comply with the Formal Decision and any accompanying Recommendations in full, and in a prompt manner.
- 7.6 Where Recommendations require the HEI to take a particular course of action it should do so within the time scale stipulated or, where no time scale is indicated, as soon as is reasonably practicable. The HEI shall, if requested, report to the Reviewer on such compliance.
- 7.7 Any non-compliance by an HEI with a Recommendation will be reported to the Board and publicised in the Annual Report.

## 8. The Independent Adjudicator

The Independent Adjudicator is appointed by and responsible to the Board. In determining any complaints under these Rules the Independent Adjudicator shall act independently of the Board, HEIs and complainants. The Independent Adjudicator is not an officer 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

The OIA and its property and affairs shall be under the control and direction of the Board. The Board shall carry on and conduct its affairs in accordance with any relevant statutory provisions for the time being in force, and any relevant orders or regulations made thereunder and in accordance with the Memorandum and Articles of Association of the OIA and in particular but without restriction on the generality of the foregoing shall be responsible for:

- 10.1 Observing the objects of the OIA set out in clause 3.1 of its Memorandum of Association which shall include but shall not be limited to the planning, development and application of the Scheme.
  - 10.2 Preserving the independence of the Scheme and the role of the Independent Adjudicator.
  - 10.3 The appointment and removal of the Independent Adjudicator provided that all such appointments or removals are conducted in a manner which recognises the independence of the Independent Adjudicator.
  - 10.4 The determination of the powers and remit of the Independent Adjudicator.
  - 10.5 The oversight of the performance and effectiveness of the Independent Adjudicator and the Scheme.
  - 10.6 Ensuring the funding of the Scheme and managing risks facing the OIA.
  - 10.7 Approving annual estimates of income and expenditure.
  - 10.8 Determining the level of subscriptions payable each year by HEIs and Non-qualifying Institutions which have joined the Scheme with the consent of the Board.
  - 10.9 The determination of the pay and conditions of service of the Independent Adjudicator.
  - 10.10 Setting a framework for the pay and conditions of service of staff of the OIA other than the Independent Adjudicator.
  - 10.11 The determination of policy in relation to premises used by the OIA.
  - 10.12 Considering whether, and if so how, non-compliance by an HEI with any Recommendation or other recommendation or request of the Independent Adjudicator referred to the Board under paragraph 11.1 should be dealt with (subject to paragraph 7.7).
  - 10.13 Reviewing, and where appropriate, amending these Rules from time to time, subject to the provisions of the Act.
- The Board is not involved in the review and determination of individual complaints.

## 11. Further Powers and Duties of the Independent Adjudicator

The Independent 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 HEI with a Formal Decision and any Recommendations and (b) may report to the Board any non-compliance by an HEI 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 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 Independent 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 during the most recently ended reporting period.

The report will include information about:

  - (a) complaints referred under the Scheme;
  - (b) the Decisions and Recommendations made by Reviewers;
  - (c) the extent to which Recommendations made by Reviewers have been followed (listing any HEIs which have not complied with a Recommendation);
  - (d) the way in which the OIA has used the fees (if any) paid in connection with the Scheme; and
  - (e) the names of those HEIs participating in the Scheme.
- 11.6 The Independent 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 may recruit, appoint, train, manage and remove staff.
- 11.8 The Independent Adjudicator may delegate, subject where necessary to the approval of the Board, any of his/her powers to the Deputy Adjudicator and other members of the staff of the Scheme provided that, in delegating and such powers and duties, he/she 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 himself/herself.

- 11.9 The Independent 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 the terms and conditions of the Independent Adjudicator).
- 11.10 The Independent Adjudicator may publish individual decisions and digests of complaints in anonymised form and statistical information.
- 11.11 The Independent Adjudicator may recommend systemic changes in policy or procedure arising from complaints and publish such recommendations.
- 11.12 The Independent Adjudicator may make recommendations from time to time to HEIs 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 HEI is bound to pay a total annual subscription and/or case fee, based on a published scale, for participating in the Scheme, which subscription will be determined by the Board from time to time. Any fees and subscriptions payable under the Scheme by qualifying institutions under the Act shall not exceed the amount incurred by the Company, taking one year with another, in providing the Scheme in relation to those HEIs.

## 13. 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 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 of 1985 and 2006

**“complaint”** means a complaint in accordance with paragraphs 2 and 3 and includes part of a complaint

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

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

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

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

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

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

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

(d) a designated institution, as defined by section 72(3) of the 1992 Act,

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

**“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 HEI complained about (or in the circumstances described in paragraph 2.2 is or was registered at that other institution)

A plural word includes the singular and vice versa.

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

## 15. Amendments to the Rules

These Rules may be amended from time to time in accordance with paragraph 10.13.

## 16. Law

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