



office of the  
independent  
adjudicator

**Office of the Independent Adjudicator for Higher Education**  
**Student Complaints Scheme (the "Scheme")**  
**Protocol relating to the admission of Non-Qualifying Institutions to the Scheme**

**Background**

In accordance with the Higher Education Act 2004 (the "**Act**"), The Office of the Independent Adjudicator for Higher Education, a company limited by guarantee, incorporated under the Companies Acts 1985 to 2006 (the "**OIA**"), is designated as the operator of the Scheme.

Pursuant to the provisions of the Act, the Scheme applies to all Higher Education Institutions (as defined in the rules of the Scheme) and which are therefore required to participate in the Scheme, whose main purpose is the review of unresolved complaints by students admitted to their degree courses, about acts and omissions of such Higher Education Institutions.

The Act also granted the designated operator, being the OIA, the power to extend the Scheme to Non- Qualifying Institutions (meaning a Higher Education Provider which is not a qualifying institution in accordance with Part 2 of the Act). Non-Qualifying Institutions (or "**NQIs**") include private institutions/universities and Further Education Colleges and where the Scheme is extended to an NQI, it will accordingly extend to unresolved complaints by students admitted to their Higher Education courses, about acts and omissions of such NQIs.

This Protocol sets out the terms upon which NQIs may apply to join, and may be admitted to membership of the Scheme as NQIs, and sets out the terms and conditions applicable to such membership.

A copy of the current rules of the Scheme is attached to this Protocol. The designated operator, being the OIA, is permitted by the Act and by such rules to publish from time to time additional rules which shall apply to NQIs which have joined the Scheme with the consent of the OIA's board of directors, on such terms as it sees fit.

This Protocol includes additional rules as are referred to in paragraph 13 of the current Scheme rules. Following the Board's approval of this Protocol, the Scheme rules, will have effect as supplemented by the additional rules set out in this Protocol. In this Protocol "**the Rules**" means the Scheme rules as supplemented by the additional rules set out in this Protocol.

## 1. Interpretation

- 1.2 Terms not defined in this Protocol shall have the meanings respectively assigned to them in the Rules.
- 1.3 In this Protocol:
  - 1.2.1 a plural word includes the singular and vice versa;
  - 1.2.2 a reference to a statute shall include a reference to that statute as may be modified, amended, re-enacted or supplemented from time to time; and
  - 1.2.3 references to paragraphs or schedules are to the corresponding paragraphs or schedules of this Protocol.

## 2. Application Process for NQIS

- 2.1 An NQI may apply to the OIA to become a member of the Scheme (an "**Application**") on the terms set out in this Protocol.
- 2.2 An Application made by an applicant ("**Applicant Institution**" or "**Applicant**") shall be accompanied by evidence to the satisfaction of the OIA that the Applicant Institution:
  - 2.2.1 has degree awarding powers (including taught, research or foundation degree awarding powers) granted pursuant to, or under, a Royal Charter, Act of Parliament or order of the Privy Council or ; or
  - 2.2.2 delivers or awards a course designated for student finance support as set in regulations made under the s22 and 42(6) of the Teaching and Learning Act 1998; or
  - 2.2.3 is designated to receive direct funding from the Higher Education Funding Council or the Department of Business Innovation and Skills; or
  - 2.2.4 is subject to either Institutional Review, Audit of Collaborative Provision or Integrated Quality and Enhancement Review by the Quality Assurance Agency; or
  - 2.2.5 is an institution offering qualifications in accordance with levels 4, 5, 6, 7 or 8 of The framework for HE qualifications in England, Wales and Northern Ireland
  - 2.2.6 and has provided to the satisfaction of the OIA such other information about its constitution, financial position, academic and other activities operated or controlled by it, and all matters relating to the admission of students to, and the carrying on of, courses leading to the award of a degree, the testing and examination of students in connection with such courses and the provision of accommodation, lodging, leisure, sports, welfare and other arrangements for the use or benefit of students, in all cases as the OIA may require, including but not limited to, information relating to the internal complaints procedures of the Applicant Institution.
  - 2.2.7 The OIA will agree details of which courses and students will be eligible under the OIA Rules on an individual basis. The NQI is to provide details of those courses and students it would like included.
- 2.3 An Applicant Institution must complete the application form, a prescribed form of which is attached to this Protocol (the "**Application Form**"), in connection with its Application.

- 2.4 The Applicant Institution shall provide the OIA with documents and details relating to its corporate structure and constitution, including a group structure chart showing all companies including its subsidiaries, parent companies and subsidiaries of parent companies which are within the Applicant Institution's corporate group (as determined by the OIA). The Applicant Institution will provide the information referred to in **paragraph 2.2.6** and such other information, including as prescribed in the Application Form, as the OIA may require, in relation to any company in the Applicant Institution's corporate group.
- 2.5 Unless otherwise stated in the Application Form or directed by the OIA, any information required in respect of the Applicant Institution in connection with its Application must also be provided in respect of all companies in the Applicant Institution's corporate group.
- 2.6 The Board will consider the Application together with the documentation required to be provided in connection with it. Following the Board's enquiries of the Applicant Institution and its receipt and review of all information required in connection with the Application, the Board shall decide whether or not to accept an Applicant Institution as a member of the Scheme.
- 2.7 In all cases the Board has discretion to decide whether or not to accept an Applicant Institution as a member of the Scheme, such discretion being exercised on a consistent basis having regard to circumstances deemed by the OIA to be relevant.
- 2.8 If the Board rejects an Application, that Applicant Institution has the right request a review against the decision subject to and upon the terms set out in the review process detailed in Part One of **Schedule 1**.
- 2.9 The OIA reserves the right from time to time to alter the terms and conditions of this **paragraph 2** and the Application Form as it sees fit. Any such alteration shall have effect in relation to Applications validly made after the date of alteration.

### **3. Terms of NQI Membership**

- 3.1 NQIs who are members of the Scheme ("**NQI Members**") shall at all times continue to satisfy each of the conditions set out in **paragraphs 2.2.1 to 2.2.5** [and otherwise shall behave in all respects in such a way that, were its Application under consideration at the relevant time, the conditions for its membership of the Scheme would be satisfied].
- 3.2 Each NQI Member shall pay:
- 3.2.1 the OIA's annual membership subscription fee on admission as an NQI Member;
  - 3.2.2 the OIA's annual membership subscription fee for each year of its admission as an NQI Member, in advance, in respect of the following year; and
  - 3.2.3 each case fee levied by the OIA on the NQI Member, upon receipt of an invoice, and such fees, which may be reviewed and changed on an annual basis by the OIA, are set out in **Schedule 2**.
- 3.3 An NQI Member shall comply with all the Rules.
- 3.4 Each NQI Member shall permit the OIA to monitor its ongoing compliance with the Rules. As part of such monitoring, each NQI Member agrees to allow the OIA:

- 3.4.1 access to any documents the OIA requires, including but not limited to:
- a) details of the NQI Member's internal complaints processes; and
  - b) statistics showing the number of internal complaints received and dealt with by the NQI Member in any specified period; and
- 3.4.2 to conduct site visits of the NQI Member.
- 3.5 The OIA expects an NQI Member to comply with each Formal Decision which applies to it and any accompanying Recommendations in full and in a timely manner.
- 3.6 An NQI Member shall not be permitted to withdraw from the Scheme without giving at least six month's written notice to the Secretary of the OIA's Board. Despite the giving of a withdrawal notice, an NQI Member shall continue thereafter to comply with the Rules in respect of any outstanding complaints from students against the NQI Member which have been accepted by or (subject to later acceptance) lodged with the OIA at the time the withdrawal notice takes effect.
- 3.7 An NQI Member shall submit to the OIA, certified copies of its audited annual accounts within six months after the end of the period to which they relate and shall submit to the OIA as soon as practicable following demand, such additional financial information which the Board may require.
- 3.8 Each NQI Member shall comply with any other provisions published or notified by the OIA, that the OIA considers necessary for the purposes of administering the Scheme.

#### **4. Termination and Suspension of NQI Membership**

- 4.1 The Board may withdraw or suspend the membership of an NQI Member of the Scheme at any time in any of the following circumstances:
- 4.1.1 the NQI Member being in breach of the Rules which breach, the OIA deems to be sufficiently serious to amount to a material breach;
  - 4.1.2 the refusal by an NQI Member to provide such information to the OIA which it deems necessary for the purpose of administering the Scheme;
  - 4.1.3 a material breach of law (including statute, order or regulation) by the NQI Member which the OIA deems serious enough to warrant such NQI Member's suspension or termination;
  - 4.1.4 the appointment of an administrative receiver or manager in respect of the assets of the NQI Member or a company in the NQI Member's corporate group;
  - 4.1.5 the presentation of a petition or an order for the winding up of the NQI Member or a company in the NQI Member's corporate group;
  - 4.1.6 the presentation of a petition or an order for the administration of the NQI Member or a company in the NQI Member's corporate group;
  - 4.1.7 the insolvency, within the meaning of section 123 Insolvency Act 1986, of the NQI Member or a company in the NQI Member's corporate group;
  - 4.1.8 the entry by the NQI Member or a company in the NQI Member's corporate group into a voluntary arrangement or scheme with its creditors;

- 4.1.9 the entry by the NQI Member or a company in the NQI Member's corporate group into any analogous procedure as described in **paragraphs** 4.1.4 - 4.1.8 above, outside of England and Wales;
- 4.1.10 the making of a recommendation by the Quality Assurance Agency not to renew, or to impose pre-conditions to the renewal of, the NQI Member's degree awarding powers;
- 4.1.11 the making of a decision of the Privy Council not to renew, or to impose pre-conditions to the renewal of, the NQI Member's degree awarding powers; and
- 4.1.12 the occurrence of any other event, or the OIA becoming aware of any other reason, which the OIA thinks is material enough to warrant the NQI Member ceasing to participate in the Scheme on a temporary or on a permanent basis.

4.2 Where the Board suspends or terminates membership, it shall give the NQI Member written notice of the reasons for its decision.

4.3 In the case of the Board suspending membership, the NQI Member will be given notice of what it must do and the period in which such action must be completed, to enable the OIA to make a final decision on whether or not to permit the NQI Member to remain a member of the Scheme.

4.4 In the event that the Board suspends membership, and to the extent that it is reasonably practicable for the OIA to do so, any complaint by a student of an NQI Member prior to that NQI Member's suspension, and which is accepted by the OIA under the Scheme, will continue to be subject to the Scheme. During the period of suspension of an NQI Member, the Board will, as far as it is reasonably practicable, continue to apply the provisions of the Scheme in the case of any complaint by a student of an NQI Member under the Scheme which is accepted by the OIA under the Scheme, during the NQI Member's period of suspension.

4.5 In the event that the Board terminates membership of an NQI Member, to the extent that it is reasonably practicable for the OIA to do so, any complaint by a student of an NQI Member prior to that NQI Member's termination will continue to be subject to the Scheme despite such termination of the NQI Member's membership in the Scheme.

4.6 Upon the termination of membership (but not suspension unless it is followed by termination), an NQI Member has the right to request a review of the decision of the Board subject to and upon the terms of the appeals process detailed in Part Two of **Schedule 1**.

## **5. Powers of the OIA**

5.1 The OIA has power from time to time to make such changes as it deems necessary to the terms or conditions of this Protocol or otherwise on which an NQI may apply to become an NQI Member and/or which govern or apply to the membership of NQIs in the Scheme.

## **6. Protocol Status**

- 6.1 This Protocol is supplemental to the Scheme's current rules. From the date of the Board's approval of this Protocol, the Scheme rules in force immediately before such date shall take effect as amended by this Protocol. All of the Scheme's current rules apply to NQI Members as they do to other Higher Education Institutions, save for rule 12 of the Scheme's current rules which shall not apply to NQI Members. NQI Members shall instead comply with the provisions of **paragraph 3.2** and **Schedule 2**.

### **Schedule One**

#### **Part One**

#### **Review Process – Rejection of an Application**

##### **1. Rejection of an Application**

- 1.1 If the Board rejects an Application, the Applicant has the right to seek review of the decision subject to and upon the terms set out in Part One of this **Schedule**.
- 1.2 Following the rejection of an Application, the OIA will give notice in writing to the rejected Applicant setting out the reasons for such rejection and informing the Applicant that it has the right to have the decision reviewed.

##### **2. Making a Complaint**

- 2.1 If the Applicant decides that it wants the decision reviewed, it must give the OIA written notice within one month of receipt of its rejected Application, setting out the reasons for the complaint and asking the OIA to review the decision (an "**Application Review**").
- 2.2 The OIA will pass all Application Reviews to the Independent Adjudicator.

##### **3. Review Application**

- 3.1 Upon receipt of an Application Review the Independent Adjudicator will carry out an initial review of the complaint.
- 3.2 The Independent Adjudicator may delegate the initial review to the staff of the OIA, provided that the staff to whom such review is delegated, are not members of the Board and were not involved in the Application.
- 3.3 Following the initial review of the complaint, the Independent Adjudicator will constitute a review panel for the purposes of making a report and recommendation on the Application Review.

#### **4. Review by Panel**

- 4.1 The review panel will comprise:
  - 4.1.1 a representative of the Board chosen by the Chair of the Board; and
  - 4.1.2 two independent persons, being persons appointed by the Independent Adjudicator who are experienced and well regarded in the higher education sector, are not members of the Board and have not been involved in the Application (the "**Independent Persons**"),  
(the "**Panel**")
- 4.2 For the purposes of the Panel, the Independent Adjudicator may be an Independent Person if the Board votes to request him/her so to act and if (s)he agrees.
- 4.3 The Panel will review the Application and the reasons given for its rejection and the Application Review and the reasons given for the Application Review and will provide a written report setting out the results of their review which will be delivered to the Independent Adjudicator as soon as practicable. The Panel's report will include a recommendation, with their reasons, either to accept or reject the Application Review.
- 4.4 The Independent Adjudicator will present the review to the Board.
- 4.5 The Board will consider and deliberate the Panel's report and its proposals. The Board will give due weight to the Panel's report and to the Panel's recommendation, but shall make its decision whether to accept or reject the Application Review independently and may also, if it thinks fit take other factors into account in making such decision.
- 4.6 The decision of the Board shall be final and binding on the Applicant Institution.
- 4.7 There shall be no further review of a decision on a Review Application.

### **Part Two**

#### **Review Process – Termination of NQI Membership**

##### **1. Termination of NQI Membership**

- 1.1 If the OIA terminates an NQI Member's membership of the Scheme, that NQI Member has the right to seek review of the decision subject to and upon the terms set out in Part Two of this **Schedule**.
- 1.2 Following the termination of an NQI Member's membership, the OIA will give notice in writing to the NQI Member setting out the reasons for such termination and informing the NQI Member that it has the right to have the decision reviewed

##### **2. Making a Complaint**

- 2.1 If the NQI Member decides that it wants the decision reviewed, it must give the OIA written notice within one month of its termination from the Scheme, setting out the reasons for the complaint and asking the OIA to review the decision (a "**Membership Review**").

2.2 The OIA will pass all Membership Reviews to the Independent Adjudicator.

### **3. Review Application**

3.1 Upon receipt of a Membership Review the Independent Adjudicator will carry out an initial review of the complaint.

3.2 The Independent Adjudicator may delegate the initial review to the staff of the OIA, provided that the staff to whom such review is delegated, are not members of the Board and were not involved in the decision to terminate an NQI Member's membership of the Scheme.

3.3 Following the initial review of the complaint, the Independent Adjudicator will constitute a review panel for the purposes of making a report and recommendation on the Membership Review.

### **4. Review by Panel**

4.1 The review panel will comprise:

4.1.1 a representative of the Board chosen by the Chair of the Board; and

4.1.2 two Independent Persons (as defined in Part One of **Schedule I**),  
(the "**Panel**").

4.2 For the purposes of the Panel, the Independent Adjudicator may be an Independent Person if the Board votes to request him so to act and if (s)he agrees.

4.3 The Panel will review the notice referred to in **paragraph 1.2** above and the Membership Review and the reasons given for making it, and will provide a written report setting out the results of their review which will be delivered to the Independent Adjudicator as soon as practicable. The Panel's report will include a recommendation, with their reasons, either to accept or reject the Membership Review Application.

4.4 The Independent Adjudicator will present the review to the Board.

4.5 The Board will consider and deliberate the Panel's report and its proposals. The Board will give due weight to the Panel's report and to the Panel's recommendation, but shall make its decision whether to accept or reject the Membership Review Application independently and may also, if it thinks fit take other factors into account in making such decision.

4.6 The decision of the Board shall be final and binding on the NQI Member.

4.7 There shall be no further review of a decision concerning Review Application.



## **Schedule Two**

### **1. Membership Subscriptions and joining date**

- 1.1 Each NQI Member shall pay a membership subscription to join the Scheme which will be reviewed on an annual basis.
- 1.2 The subscription fee will be divided into two parts, including an annual core subscription and a case fee.
- 1.3 The annual core subscription and case fees shall be based on scales published annually, which will be determined from time to time. This amount will be reduced proportionately where the Board agrees to membership commencing during the course of a calendar year.
- 1.4 The annual core subscription will cover a review of all OIA Complaint Forms to determine whether or not the complaint is eligible under the Rules. It will also cover the right to access OIA workshops (fees for individual workshops will still apply) and any material disseminated by the OIA in the course of the year.
- 1.5 The annual core subscription is payable (i) immediately upon joining the Scheme, and (ii) in respect of any further amounts of annual core subscription upon invoice.
- 1.6 The case fee will be payable by the relevant NQI Member when the OIA determines the kind of review to be undertaken and has notified the NQI.
- 1.7 In the event of a class action application involving more than one student, the OIA has the right to determine the fee in the light of the amount of work to be undertaken.
- 1.8 The OIA reserves the right to review the membership subscription and case fees annually.
- 1.9 There is no right for an NQI Member to appeal against the size of a core subscription fee or case fee.
- 1.10 The OIA will not normally consider a complaint where it considers that the substantive event(s) complained about occurred before the NQI joined the OIA Scheme.