



office of the
independent
adjudicator

OIA's Response to the Higher Education White Paper: Students at the Heart of the System - June 2011

This response to the White Paper is made in the context of the publication of the Technical Consultation Paper (on which OIA will make a response in due course) and our forthcoming (October 2011) Pathway 3 Consultation responding to the request in 3.25-3.26 of the Higher Education White Paper.

Introduction

1. The Office of the Independent Adjudicator (OIA) is the independent body for reviewing student complaints in Higher Education in England and Wales. The OIA Scheme was designated under the Higher Education Act 2004. The Scheme ran from March 2004 and began operating under statute in January 2005. Qualifying Institutions under the Act currently include all Higher Education Institutions in England and Wales; each is required to join the OIA Scheme. The mandates of the OIA derive from legislation, Judicial Review, and the OIA Scheme Rules. The OIA is a not-for-profit Company Limited By Guarantee. The OIA has also recently become a Registered Charity, under the supervision of The Charity Commission.
2. Since 2005 the OIA has reviewed more than 5,000 student complaints. The OIA has built a reputation for impartial, authoritative adjudication of student complaints. It also has an outstanding record of success in defending its decisions in Judicial Review applications.

Response

3. The OIA supports the proposals outlined in the Government's Higher Education White Paper concerning the OIA for the reasons set out below:

Executive Summary Paragraph 12 - "We will protect the independence of the Office of the Independent Adjudicator (OIA) so students continue to have recourse to a formal independent mechanism for unresolved complaints."

4. The OIA welcomes this confirmation and protection of its independence and the recognition of its importance as a recourse for students in the Higher Education system.

"3.3. We have been supporting the work of the Student Charter Group, which was jointly chaired by Janet Beer (Vice-Chancellor of Oxford Brookes University) and Aaron Porter (President of the National Union of Students). We endorse the Group's recommendation that each institution should have a Student Charter or similar high level statement, to set

out the mutual expectations of universities and students. We will review the extent to which charters are adopted and in light of this, consider whether they should be made mandatory in the future.”

5. The OIA unambiguously supports the development of Student Charters which will be an important information tool available to students. OIA Formal Decisions will take account of the content of Student Charters in coming to a view about the reasonableness of university behaviour.

“3.19 We propose a genuinely risk-based approach . . .”

“3.20 We will ask HEFCE to consult on the criteria against which overall risk should be assessed and the frequency of review, with a review to achieving very substantial deregulatory change for institutions that can demonstrate low risk. We will explore how the need for and frequency of scheduled institutional reviews will depend on an objective set of criteria. HEFCE will also consult on a set of ad hoc triggers which would prompt QAA to carry out a full or partial review when this was not otherwise expected. These might include, for example, exchanges of information with the Office of the Independent Adjudicator (OIA), the QAA’s recently strengthened systems for investigating concerns about standards and quality and standards in higher education, or intelligence gathered from across the sector.”

6. The OIA welcomes confirmation of its integration into a joined up Higher Education Regulatory Framework and the importance of an exchange of information and dialogue with its regulatory partners HEFCE, QAA and OFFA. We do not object to HEFCE assuming the role of ‘lead regulator’, though we consider its designation as ‘consumer champion for students’¹ will require detailed planning regarding role allocation if a duplication of roles is to be avoided.
7. The suggestion that exchanges of information with QAA about an individual OIA case could precipitate a QAA institutional review illustrates the potential benefits of a joined-up regulatory system in which the different partners retain their independence.
8. In the context of the Technical Consultation, the OIA believes there is a need for further clarification on the Regulatory Framework. In particular, greater clarity is needed to establish the role of HEFCE in relation to group complaints and collective interest cases² to ensure this does not replicate OIA functions. The OIA currently reviews and makes Recommendations on complaints from groups of students as well as individuals, and any proposal that HEFCE then review and award compensation for collective interest cases creates the potential for overlap, confusion and disproportionality in the regulatory process. We are discussing these issues with the interested parties.

“3.21 In our consultation on a new regulatory framework we will ask whether HEFCE, as part of its changing role in the new system, would need additional legislative powers to

¹ Executive Summary, Paragraph 14, Students at the Heart of the System, June 2011

² 1.3.2 A New Fit-for-purpose Regulatory Framework for the Higher Education Sector, Technical Consultation, August 2011

introduce or to operate a risk based quality assurance system. We would use the forthcoming Higher Education Bill as a vehicle for introducing any such power.”

9. In light of the need to declare universities non-compliant with OIA Scheme Rules as set out in the OIA’s 2010 Annual Report, the OIA is already considering whether or not it would be appropriate to fine universities for non-compliance. Paragraph 3.21 above provides additional context to this consideration and we will address the issue in responding to the Technical Consultation paper.

“3.23 The OIA provides a necessary service of last resort for students who have exhausted their higher education institution’s procedures. We will ensure that all higher education institutions receiving public funding support, whether funding from HEFCE or funding for their students from the Student Loans Company, are members of the OIA’s Scheme.”

10. The OIA welcomes these important statements. This means that almost all private providers will need to join the Scheme as full members and the OIA believes that the creation of a ‘level playing field’ between public and private institutions is an important development to ensure that the student experience and the reputation of higher education is safeguarded.
11. The OIA notes that this requires a modified approach to OIA fees and funding as referred to in the Technical Consultation.³ The OIA will be consulting on its future funding model to prepare for the necessary change. This will build on the work already done with the inclusion of Non Qualifying Institutions into the Scheme during 2010.

“3.24 We support the OIA’s drive for increased transparency by publishing summaries of their decisions.”

12. The OIA welcomes the Government’s support for our proposals to increase transparency by publishing summaries of decisions by name of university and to write and publish an annual letter to each university setting out its record. This proposal now also has support from the sector as highlighted in our Pathway Report consultative process.

“3.25 We want the OIA to help higher education institutions resolve complaints at the earliest possible stage. Early resolution of complaints is an important goal for all parties. A lengthy process benefits no-one, it can undermine the relationship between the student and their institution and consumes resource from the student, the institution and the OIA.”

13. The OIA welcomes this statement and endorsement of the OIA’s role in the higher education sector not only to resolve complaints but also to disseminate good practice to enable complaints to be resolved earlier. The OIA currently achieves this through its well received outreach work consisting of visits, e-newsletters, workshops and seminars. The OIA has no ambition to cease being an adjudicator of last resort.

³ 2.2.5 A New Fit-for-purpose Regulatory Framework for the Higher Education Sector, Technical Consultation, August 2011

“3.26 We are therefore asking the OIA to consult the sector on future developments that will promote and deliver early resolution. These could include approaches that will minimise the number of complaints reaching the OIA, for example:

- Whether each higher education institution could provide access to a mediator, or campus ombudsman, to resolve complaints at an early stage. These could work with the OIA through regional networks;*
- Whether higher education institutions should set time targets for resolution of cases and/or provide information to students on the average time taken for formal appeals and complaints; and*
- Whether higher education institutions should adopt standards around the handling of complaints and keeping students updated on progress. This could be based on a best practice framework produced by OIA, who could then introduce a kite-marking scheme for university complaint processes.”*

14. We welcome the opportunity to consult on the above issues. We will be publishing this consultation document in early October with the consultation closing in mid-December 2011.

Reading
19 September 2011