

PN 923

**Press Notice: Court of Appeal confirms the OIA's independence from the Higher Education sector**

The Court of Appeal has dismissed the judicial review application of Mr Amandip Sandhar in *R (Sandhar) v Office of the Independent Adjudicator for Higher Education* [2011] EWCA Civ 1614, giving judgment on 21 December 2011.

Mr Sandhar challenged whether the OIA was appropriately independent to deal with students' complaints. He also challenged the approach taken by the OIA to his complaint.

**Rob Behrens, the Independent Adjudicator, commented: "This is an important judgment from the Court of Appeal. It confirms that the OIA and its staff are independent and free from bias. The Court of Appeal's comments on the OIA's approach are welcome. The OIA is committed to maintaining its independence and to providing an impartial scheme, accessible to all students".**

Mr Sandhar was studying for a medical degree when he failed two elements of his final examinations. He re-sat the two papers and failed both papers again by a narrow margin, and was then excluded from the programme. Mr Sandhar successfully appealed on grounds of mitigating circumstances. The university revoked his exclusion and permitted Mr Sandhar to repeat the year and take his final examinations a third time. Mr Sandhar chose not to do so, believing that he should be awarded the degree without taking any further examinations because of his mitigation. After completing the university's internal procedures Mr Sandhar brought his complaint to the OIA.

Following correspondence between the OIA and Mr Sandhar concerning the nature of the OIA's review, Mr Sandhar suspended his complaint, and sought to challenge the OIA's independence, on grounds of its funding model and the constitution of its Board of Directors.

In a rolled up hearing, the Court of Appeal granted permission to Mr Sandhar to apply for a judicial review claim, but dismissed the application. Giving his judgment, Lord Justice Longmore stated that the Claimant's contention concerning the constitution of the OIA's Board was wrong, because Independent Directors constituted a majority. He said that the OIA Board has "*responsibility for (inter alia) preserving the independence of the scheme and the role of the Independent Adjudicator. There is no evidence that the Board has ever failed to live up to that responsibility...*" [32]

He continued:

*"As far as funding is concerned, it is correct that the funds come from subscriptions made by the participating HEIs, as expressly envisaged by section 15 (3) of the [Higher*

Education Act 2004]... *It is clear that the wages of individual case-handlers are not paid by the university against whom the complaint is levelled but come from the funds generally available to the OIA from all HEIs.*" [33]

*In all these circumstances I just do not see how it can be said that any fair-minded and informed observer could say that there was a real possibility that the OIA in general or its Independent Adjudicator or any individual case-handler was biased in favour of the HEI under scrutiny in any particular case or lacked independence in any way. Considerable care has been taken to ensure that the case-handler should be seen to be independent of the HEI whose conduct is under challenge and there is no reason to suppose that such independence is not achieved.* [34]

Mr Sandhar also challenged the OIA's approach to his complaint, arguing that it should have expedited its review, held an oral hearing, and conducted a "full merits review". The Court rejected those arguments, and approved comments of Mr C.M.G. Ockelton sitting as a Deputy High Court Judge in *R (Budd) v Office of the Independence Adjudicator* [2010] EWHC 10556 Admin:

*"The OIA does its task properly if it continues its investigation until it is confident that it has all the material it needs in order to make a decision on the individual complaint, and then makes its decision. The exercise of a discretion in this context is simply the continuous consideration of whether any more information is needed in order to make a decision on the particular complaint."*

Lady Justice Black and Sir David Keene agreed.

## **Notes to editors**

1. To arrange an interview with the Independent Adjudicator and Chief Executive, please contact Charlotte Corrish, Policy and Communications Manager, by emailing [charlotte.corrish@oiahe.org.uk](mailto:charlotte.corrish@oiahe.org.uk) or by phone on 0118 959 9813.
2. The OIA is the designated operator of the Scheme for reviewing student complaints in England and Wales, established under the Higher Education Act 2004. All universities in England and Wales belong to the Scheme.
3. The OIA has a wide remit to review student complaints about an 'act or omission' by HEIs in England and Wales. It does not review academic judgment or admissions issues.
4. The Scheme Rules and all details related to OIA operations can be found at [www.oiahe.org.uk](http://www.oiahe.org.uk).