



office of the
independent
adjudicator

'for students in higher education'

Pathway 3

Towards early resolution
and more effective
complaints handling

October 2012

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Questions

1. Alternative Dispute Resolution

- 1a.** Please describe your experience and view of the nature and extent of existing campus ombudsman services provided by or through universities and students' unions in England and Wales.
- 1b.** Should each university provide access to a campus ombudsman to resolve complaints at an early stage?
- 1c.** How should these campus ombudsmen be appointed?
- 1d.** The OIA welcomes offers from universities/students' unions prepared to participate in a pilot scheme in which a small number of universities/students' unions sharing the same metropolitan area or region join together to appoint for a limited period, a part-time, independent office-holder, whose role is to assist in the provision of early dispute resolution between students and universities in advance of complaints being taken to a formal stage. Would your institution be prepared to join such a pilot?
- 1e.** Is there value in the creation of regional networks for campus ombudsmen, organised and supported by the OIA, to promote good practice?
- 1f.** Please describe your experience and view of the nature and extent of existing mediation services provided by or through universities and students' unions in England and Wales.
- 1g.** What is the most effective way of delivering authoritative and accessible mediation services on campus?

2. A Standard Framework of Complaints Handling Procedures

- 2a.** Should universities adopt standards around the handling of complaints and appeals and keep students up to date on handling progress?
- 2b.** If so, what standards should be specified besides timescales which are discussed in section 3 below?
- 2c.** Should this framework be set by the OIA?

3. Time Targets

- 3a.** Should universities set time targets for resolution of cases and/or provide information to students on the average time taken?
- 3b.** Do you agree there is merit in the OIA intervening in exceptional cases where these targets are not met?

4. Kite-marks

- 4a.** Should the OIA develop a kite-mark system for the accreditation of university complaints processes?

5. Funding model

- 5a.** The OIA is developing its core financial model to take account of the new 'level playing field' between public and private providers as set out in the recent White Paper. Do you agree that a model combining both a core subscription and a case-fee element is the best option?

Executive summary

Early Resolution

- The written responses to Pathway 3 show an appreciation of the requirements of early complaints resolution, and a variety of approaches throughout the sector towards this end. There is no complacency by institutions in seeking to make progress and universities recognise the importance and value of excellent handling of student complaints and appeals at early stages. However, there is no merit in limiting early resolution to one, single, new-made, organisational form of the campus ombudsman given the diversity of approaches and the record of achievement of a number of existing bodies in supporting students with complaints.**
- In part, this is because of the difficulty of grafting on to the English and Welsh university complaints handling arrangements a concept – campus ombudsman – which “is more spoken about than practised”¹ and sits uneasily with existing arrangements, notwithstanding its successful and variable deployment internationally.² There is also already an explicitly ombudsman function operating within the system at present and that is performed by the independent OIA as complaints handler of last resort.
- This is not to rule out the campus ombudsman (possibly under a different name), particularly in the limited form, as suggested in the Consultation Paper, as an aid to the early resolution of complaints before they are fully formed or formally tabled. But that development should be an option, tested in one or two pilots, not a requirement to the exclusion of other organisational forms.
- There is also an urgent need for pilots around the use of mediation in addressing student complaints. There is variable understanding across the sector about what mediation is, and the need for greater information sharing about the undoubted benefits that trained, properly resourced mediation can bring to early resolution.
- The OIA will now convene meetings with those universities and students’ unions which expressed an interest in undertaking pilots and generate a broad and consistent framework for measuring success and capture what is learnt. The focus of the pilots should be the deployment of dedicated capacity to assist in the provision of early dispute resolution between students and universities, often in advance of complaints being taken to a formal stage.

¹ Manchester Metropolitan University

² OIA, *Pathway 3 Consultation: Towards early resolution and more effective complaints handling* (October 2011) Annex

Constructing a Standard Framework

6 More than 80 per cent of all submissions agreed that a good practice framework focusing on operational complaints and appeals resolution issues is needed and would be extremely useful. This is encouraging and the OIA will now begin a process to construct a framework. The OIA will publish a draft timetable for construction before the end of the calendar year 2012.

7 The working principles for this construction will include:

- **Consultative.** The construction will be consensual, consultative, low-key and drawing on the extensive good practice which exists already. The OIA has no interest in seeking to “impose” a good practice framework on the sector. We will continue to work closely and collaboratively with relevant sector groups and institutions – including the Quality Assurance Agency (QAA), the Academic Registrars Council (ARC) and the National Union of Students (NUS) - and to disseminate any draft framework to universities and students’ unions for comment.

- **Non-Regulatory.** We note the concerns expressed in submissions that the creation of a good practice framework could communicate a regulatory intent by OIA. The OIA is not a regulator in the sense of seeking coercive powers over sovereign institutions and has no ambition to become one. However, it is also clear that the OIA is now part of an emerging risk-based regulatory framework in Higher Education and that there is common interest in universities, students’ unions, students, sector regulators and the OIA working together to develop better operational practice in addressing student complaints and academic appeals. The OIA will continue to work closely with all interested parties on the development of the framework. The framework will be

designed to complement the QAA Code of practice as it is incorporated into the new UK Quality Code for Higher Education, using the precepts of the Code of practice as building blocks for the framework which will have an operational bias. Our aim is to produce a voluntary framework and good practice indicators that all institutions are encouraged to adopt, and see value in adopting.

- **A living document.** The framework of good practice will be reviewed regularly to ensure it reflects developments in what is a fast-changing sector environment. It will be supported by the OIA, who will encourage networking, dialogue and the exchange of good practice.

Time Targets

8 There is a clear consensus that time targets in the handling of complaints and appeals in universities in England and Wales, when carefully constructed and flexibly managed, play an important role in adding transparency to process and in managing complainant expectations.

9 In addition, the OIA is able, under Scheme Rule 4.1, to review a complaint without a Completion of Procedures Letter under exceptional circumstances and has occasionally done so. The OIA will develop Guidance about the circumstances in which “exceptional circumstances” apply and then consult with sector partners. The OIA will undertake work on both these issues as part of the consultation (see above, paragraphs 6-7) on creating a good practice framework on complaints and appeals.

Kite-marks

10 Kite-marks are related sequentially to a standard framework for handling complaints and appeals. To have good practice to inform a kite-mark requires a pre-existing and agreed body of good practice for universities to follow.

About a third of submissions saw advantages in adopting a kite-mark: it gives additional transparency to complaints resolution, provides assurance to students, and incentivises better practice through voluntary adherence. However, research has shown that the content of existing external kite-marks does not necessarily fit well with operational issues related to the resolution of student complaints and appeals.

- 11 It has very recently become possible for institutions to adopt the new QAA “Quality Mark” where they have achieved positive reviews under a number of QAA review methods including Institutional Audit and Institutional Review. As the outcome of required, regulatory process, the Quality Mark is different from the voluntary nature of conventional kite-mark schemes.
- 12 In the current absence of an agreed and documented body of good practice relating to complaints and appeals, the OIA will concentrate first on the construction of the good practice framework and return to the issue of a voluntary kite-mark scheme once the good practice framework is up and running.

OIA Funding Model

- 13 The OIA has carefully considered the submissions on the development of a revised funding model. What is needed is a model in the context of significant annual increases in complaints, further predicted rises, and a growing diversity of institutions joining the Scheme. The revised model will retain, as far as possible, the simplicity and clarity of the current arrangements, but build on them incrementally to include initially a small case-related element from 2014. The current subscription-only system will be retained for 2013. During 2013, the OIA will collate data on complaints received in-year to use in calculating a supplementary invoice in early 2014 (the core subscription will be invoiced as usual in late 2013). This case-related element will initially account for, it is estimated, around 10 per cent of total OIA income, based on the modelling of previous complaint patterns which the OIA has undertaken. The core subscription will continue to be based on bands related to numbers of enrolled students. The OIA will keep the new system under very close review.

Introduction

- 14 **The OIA launched Pathway 3 – Towards early resolution and more effective complaints-handling³ in October 2011 following the Government’s request in its Higher Education White Paper (June 2011) for the OIA to consult with the sector on the following:**

“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.”⁴

- 15 Additionally, the OIA consulted about the development of its funding model in the context of the pressure a rising volume of complaints received is placing on its operational capacity. The relevance of this work was acknowledged in the Government’s Technical Consultation Paper.⁵
- 16 As part of the consultation the OIA arranged four round-table meetings open to all stakeholders in Cardiff, Newcastle, Birmingham and London. A fifth was added in Reading due to demand. The OIA also used routine attendance at, and contributions to, sector conferences to canvass views on questions raised in the Consultation Paper. The OIA received 109 written submissions to the Consultation, which closed on 16 December 2011. 74 submissions were from universities, 16 from students’ unions, 14 from sector stakeholder groups and there were 3 individual responses. We have summarised and analysed this information. Ideas which emerged through the discussions at round-table meetings have been reflected and developed in the written submissions.

3 <http://www.oiahe.org.uk/decisions-and-publications/pathway-3-consultation.aspx>

4 Department for Business Innovation & Skills (BIS), *Higher Education: Students at the Heart of the System*, Cm 8122 (June 2011) p. 38, ch. 3, para. 3.26

5 BIS, *A New, Fit-For-Purpose Regulatory Framework For The Higher Education Sector* (August 2011) p. 16, ch. 2, para. 2.2.5

PATHWAY 3

- 17 Since the consultation closed, the Government has issued its response to its consultations in which it stated:

“The role of the Office of the Independent Adjudicator (OIA) also received strong support. Many respondents agreed with the proposal to give the OIA more resources, in order to help ensure that complaints are handled quickly. The idea of campus ombudsmen and regional networks was supported by many but seen as unnecessary or inappropriate by others.”⁶

- 18 It should also be remembered that the consultation was published and responded to in the context of an anticipated Higher Education Bill and the impact this may have had on the OIA and the Higher Education Sector as a whole. Although the context has changed, it is still important to note that complaints are growing year-on-year and anticipated to increase further with the new fee regime, so the concepts and issues consulted on are still very relevant. As with all analysis, there is an element of subjectivity in the interpretation of evidence received. The quantitative data should be treated with caution since the questions were not constructed in a way designed for detailed quantitative analysis.

6 BIS, *Government response to consultations on: Students at the heart of the system; A New, Fit-For-Purpose Regulatory Framework For The Higher Education Sector* (June 2012) p. 16, ch. 2, para. 2.2.21

QUESTION 1

Early complaints resolution – the way forward

- 19 **The written submissions to Pathway 3 and conversations at round-table meetings have been evidence-based and enlightening, drawing on rich experience across English and Welsh universities. The responses show an appreciation of the requirements of early complaints resolution and a variety of approaches and range of developments throughout the sector towards this end. There is no complacency in seeking to make progress.**
- 20 In part, this is because of the difficulty of grafting on to the English and Welsh university complaints handling arrangements a concept – campus ombudsman – which “is more spoken about than practised”⁷ and sits uneasily with existing arrangements. Elements of the campus ombudsman role are already performed by existing bodies like (for example) students’ unions, and student conciliators. These institutional forms and their personnel have credible knowledge of university regulations and some element of independence from those parts of the university or university staff against whom a complaint is made.
- 21 This independence may fall short of that exhibited by campus ombudsmen operating in Europe and North America⁸ but is ordinarily sufficient to safeguard the natural justice in process essential for the protection of complainant rights. Many of these existing bodies also have personnel with authority and seniority to engender trust amongst students wishing to resolve a complaint.
- 22 There is also already an explicitly ombudsman function operating within the system at present and that is performed by the independent OIA as complaints handler of last resort. The OIA’s remit is to review complaints after the university’s internal complaints procedures has been completed and the student has been issued a Completion of Procedures Letter. This Ombudsman role for the OIA is strategically important and noted by the Government and sector stakeholders in the response to the White Paper consultation:
- “There was praise for the OIA and its endeavours, experience and expertise, underpinning a clear consensus that keeping the OIA as the sole adjudicator would help to ensure independence and objectivity in adjudications, consistency in awards and enable the OIA to identify any trends that could indicate systemic issues.”⁹*
- 23 Rather than opt for system-wide institutional re-design, the promotion of early resolution can best be achieved in two ways. First, by the OIA disseminating – through this and subsequent Consultation reports – information about

7 Manchester Metropolitan University
8 OIA, *Pathway 3 Consultation* (October 2011) Annex

9 BIS, *Government response to consultations on: Students at the heart of the system; A New, Fit-For-Purpose Regulatory Framework For The Higher Education Sector* (June 2012) p. 39

what already exists and works. Secondly, by promoting, coordinating and disseminating findings from the positive responses from universities and students' unions to our proposal for time-constrained pilots on early resolution.

- 24 This is not to rule out the campus ombudsman (possibly under a different name), particularly in the limited form, as suggested in the Consultation Paper, as an aid to the early resolution of complaints before they are fully formed or formally tabled. But that development should be an option, tested in one or two pilots, not a requirement to the exclusion of other organisational forms.

Early resolution in practice

- 25 Some submissions point out that individual universities already have a stage within their processes which fulfils the ostensible purpose of a campus ombudsman "to facilitate the resolution of complaints at an early stage".¹⁰
- 26 Forty eight respondents stated they had such arrangements in place and some submissions described these arrangements in detail. Institutions measured success in relation to the limited number of complaints reaching the formal stage of internal complaints procedures following informal processes.
- 27 It was suggested that, while such processes were not always strictly independent, they derived authority from the local knowledge about the institution and its procedures which the designated person brought. This could result in a rapid, informal response to an issue raised.
- 28 Twenty one respondents viewed the methods that universities adopted to promote early resolution as successful while five doubted the success of such methods in their own institution. Of these latter universities, two noted, self-critically, that both their general approach and the office-holders responsible for promoting early resolution of disputes

might not be sufficiently independent from the universities themselves.

- 29 Thirteen respondents, including a number of universities, asserted that university staff who are tasked with early or alternative resolution methods are indeed independent from their institution. By contrast, 11 respondents asserted that such staff are either not independent or are semi-independent.
- 30 The context here is research data from the survey of complainants to the OIA, published in 2010, which suggested that student complainants are reluctant to trust as independent a person who operates within university structures.¹¹
- 31 Thirteen submissions indicated that their universities use a form of early dispute resolution to avoid complaints escalating to formal stages. This usually involves direct, informal discussion between a designated person and students with 'issues' or the designated person holding a discussion with those staff relevant in the 'issue'. For one institution, the designated person is a graduate intern:
- "A system that we have adopted at this University with some success is through the appointment of graduate interns who meet with students in the first instance to discuss their complaint. These interns are recent graduates and therefore can show empathy and recent experience of student life."*¹²
- 32 Five institutions pointed out that many students' unions had their own student advice centre (names vary from institution to institution). A key role of a student advice centre is to provide students with information and advice about complaints and appeals procedures. Such centres are believed to be impartial as a result of separation from the university school, department, faculty or from a reporting line directly to university senior management or academic board.

10 Queen Mary, University of London

11 OIA, *Pathway 3 Consultation Towards early resolution and more effective complaints handling* (October 2011) p. 13, ch. 1, para. 1.19

12 University of Bedfordshire

- 33 In the context of these working examples of early resolution, there is some scepticism about the benefit of having a new-made campus ombudsman or whether it would add any value to current outcomes.¹³

Experience of Campus Ombudsmen

- 34 Submissions agree generally that “resolving disputes at an early stage is in the best interests of both students and the university”,¹⁴ but there was a lack of consensus about whether a campus ombudsman is a solution to this particular problem, and if so, what role a campus ombudsman should perform. International benchmarking did not assist here since ombudsman models used in universities in the United States and Europe “operate under different legal, cultural and structural conditions from England and Wales”:¹⁵

“...it would appear that there is a degree of confusion in the sector surrounding the variety of mechanisms that that are in play internationally and a number of definitions and practices relating to offices of ombudsmen, mediation and alternative dispute resolution.”¹⁶

- 35 Although 47 submissions made clear that their institutions had no direct experience of a campus ombudsman model, there is some support for the idea:

“To date, we have mainly relied on internal services, but we believe an external service, like a regional ombudsman, would benefit the parties involved in a dispute by providing an independent and rational assessment of the issues in question.”¹⁷

“In principle, the University believes the idea of a campus ombudsman to be a good one.”¹⁸

“we have not adopted the kind of Ombudsman role set out in the consultation – in other words, the Ombuds Office is not directly involved in case resolution at any stage in the process, it simply organises the resolution process. The Ombuds Office provides an extremely valuable service, and we would recommend this functionality to any university.”¹⁹

- 36 There is also a good deal of opposition:

“a member of our staff was nominated to act as ombudsman, and students were invited to contact this post holder to discuss their concerns prior to submitting a formal complaint...unfortunately students did not see the role as independent, and this was a major risk to the project.”²⁰

- 37 Outlined below are some key themes and findings emerging from the submissions. We then set out the OIA’s conclusions and recommendations on the way forward.

Access to a campus ombudsman

- 38 Only 20 per cent of all respondents were clear that each university should provide access to a campus ombudsman. Just under 30 per cent saw merit in some form of early access to a campus ombudsman but wanted further information or held reservations.

Name, Purpose and Role

- 39 The name or designation ‘campus ombudsman’ causes concern in universities, which appear to have little cultural affinity or historical engagement with the ombudsman concept and see it as unhelpfully elastic in its application:

“The term ‘ombudsman’ carries a number of different meanings both in the UK HE sector and abroad.”²¹

13 Brunel University, Loughborough University, Worcester University Students’ Union

14 University of Salford Students’ Union

15 Manchester Metropolitan University

16 Arts University College Bournemouth

17 London School of Economics and Political Science

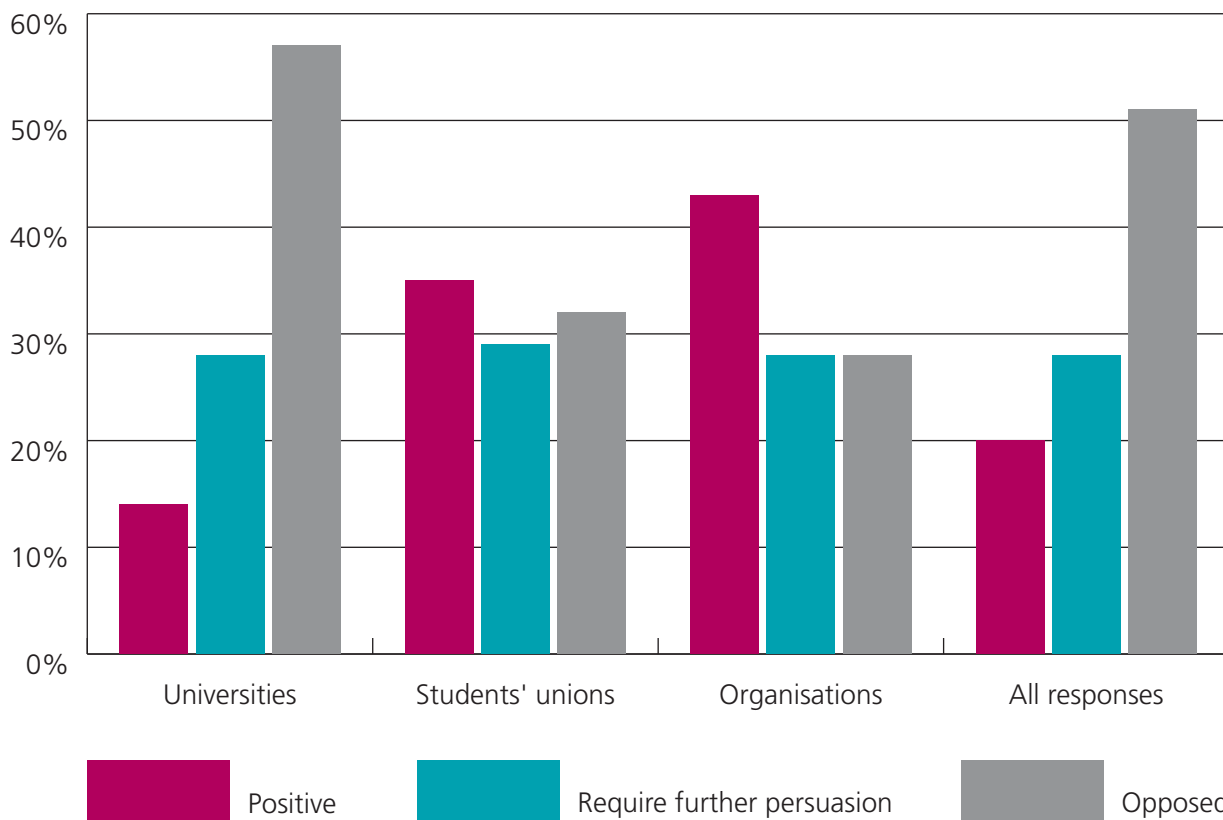
18 University of Warwick

19 Teesside University

20 University of East London

21 Manchester Metropolitan University

Figure 1, Question 1b: Should each university provide access to a campus ombudsman to resolve complaints at an early stage?



*"[I]t would appear that there is a degree of confusion in the sector surrounding the variety of mechanisms that are in play internationally and a number of definitions and practices relating to offices of ombudsmen, mediation and alternative dispute resolution."*²²

*"Our answer depends to a great extent on what is meant by 'campus ombudsman' and 'early stage'."*²³

*"The term 'Ombudsman' needs to be clarified in order to fully answer this question. There are clearly services throughout the sector which may fall into such a categorisation, but there is no consistency as to remit, appointment process, reporting lines or even job title."*²⁴

possible roles for a campus ombudsman which were believed to be capable of adding value:

*"One possible model that we would not object to might be for the OIA itself to have regional offices and on occasions to offer hearings in person, including independent mediation, in complex cases or group complaints."*²⁵

*"There might be value in a postgraduate ombudsman as the PhD experience is so different to the taught experience."*²⁶

*"We can see value in nationally agreed training for higher education mediators, and the maintenance of a list of individuals who are appropriately trained."*²⁷

40 Notwithstanding these uncertainties, a small number of submissions made suggestions for

41 The practicality of these helpful suggestions is explored below.

22 Arts University College Bournemouth

23 Oxford Brookes University

24 NUS

25 Manchester Metropolitan University

26 University of York Students' Union

27 Oxford Brookes University

Independence and the OIA as the independent ombudsman

42 The British and Irish Ombudsman Association (BIOA) – now the Ombudsman Association – drawing on its own criteria for recognition together with Cabinet Office Guidance, pointed out that independence is a central feature of an ombudsman system.²⁸ In its Criteria for the Recognition of Ombudsman Offices, independence includes (but is not restricted to): “The Ombudsman must be visibly and demonstrably independent from those whom the Ombudsman has the power to investigate.”²⁹ Campus ombudsmen routinely appointed within university structures would be unlikely to meet this criterion, or guidance relating to good governance.³⁰

43 For early resolution to have any chance of working at all, submissions accepted that the responsible official needed to be independent, but there was no consensus about how independence is to be judged or measured:

“so much of its success would depend on the appointment process and lines of reporting”³¹

“If campus ombudsmen were to be appointed, this would need to take place independently, and this independence would need to be made clear to both the staff and student body.”³²

44 Some submissions acknowledged that whilst the processes they have on campus essentially fulfil the role of a campus ombudsman, students would not necessarily view this as fully independent.³³ Certainly, the OIA is aware of a small number of university staff designated as

‘campus ombudsman’ who do commendable work but are not independent of the university in terms of appointment process, reporting lines or governance arrangements.

45 Two submissions suggested that a possible way to ensure independence was either for campus ombudsmen to be appointed by the OIA³⁴ or for the OIA to monitor and approve these appointments.³⁵

46 Many universities already do a lot of work around ensuring that their procedures have a degree of independence in them. For example, some universities appoint a different member of staff “with no prior knowledge or involvement with the complaint in question.”³⁶ Other universities ensure that complaints are dealt with by the Registry so that the process is ‘independent’ from the schools where the complaint originated.³⁷ At Bournemouth University, the General Manager of the students’ union and an appropriately non-conflicted senior member of university staff consider requests for a full hearing to ensure a degree of critical distance and ‘independence’ in the process.

47 None of the above suggestions meet the demanding standards for independent appointment and formal separation from the institution complained against referred to by BIOA. Further, the issue of how a proliferation of campus ombudsmen and the OIA would interact is central to the practicability of any development of existing arrangements. This issue was raised at the round-table meetings and is reflected in the submissions. One line of thought is that there is no need for campus ombudsmen because the OIA already performs this role:

“Since the OIA already exists as an independent arbitrator, it would appear that to implement an extra tier of arbitration in complaints processes

28 British and Irish Ombudsman Association (BIOA), and Cabinet Office, *Ombudsman Schemes – Guidance for Departments*. BIOA Criteria for use of the term Ombudsman include: independence from those who the Ombudsman has the power to investigate; accessibility; effectiveness; fairness; and public accountability, p.2, para.5

29 BIOA, *Schedule 1 to the Rules, Criteria for the Recognition of Ombudsman Offices*, pp.2-3, paras. B.1.a-g.

30 www.bioa.org.uk/docs/BIOAGovernanceGuideOct09.pdf

31 NUS

32 Coventry University

33 1994 Group

34 Queen Mary, University of London Students’ Union

35 Southampton Solent University

36 Durham University and Durham Students’ Union

37 University of Huddersfield

*would add an unhelpful layer of bureaucracy. More students are deterred from making complaints when there are more hurdles placed in the way of achieving effective resolutions.*³⁸

*"Is not the OIA the ombudsman?"*³⁹

*"there would appear to be no logic in having two independent options for redress."*⁴⁰

*"If the OIA are going to be the ultimate ombudsman what is the point in a penultimate one?"*⁴¹

*"For the small number of complaints that cannot be resolved at Oxford, we believe that the OIA provides a highly-effective ombudsman scheme."*⁴²

48 A development of this thinking is provided by the contribution from the Ombudsman Association which, again drawing on Cabinet Office Guidance, asserted that it is a cardinal principle of the Ombudsman concept that the decisions of one Ombudsman are not susceptible to moderation or adjudication by a second Ombudsman: "an Ombudsman's determination should be final and should not be able to be overturned other than by the courts or an appeal route provided for by law."⁴³ The logic of this principle is that there could be a whole tranche of student complaints addressed by campus ombudsmen which, *ipso facto*, could not be adjudicated on by the OIA. This has potential to undermine seriously the position of the OIA as the universally available route for student complainants once university processes have been exhausted.⁴⁴

49 Finally, there were a small number of submissions which expressed concern that any campus ombudsman formulation might

be perceived as a return to the "system of the university visitor",⁴⁵ and the lack of accountability, transparency and consistency associated with Visitorial arrangements.

Students' unions

50 More than 20 submissions argued that the students' union performs the role of a campus ombudsman in many respects or has the expertise to fulfil this role. It is suggested that students' unions are extremely useful in providing students with 'independent' advice and representation during informal and formal stages of complaints and appeals. In consequence, additional capacity should be invested in existing students' unions rather than creating new campus ombudsmen:

*"If a campus ombudsman was introduced to fulfil an additional advisory role, it is felt that this would be duplicating the work conducted by our own Students' Union."*⁴⁶

*"Although it is acknowledged that the Students' Union is not an impartial organisation, we believe that there would be a significant duplication in the roles and responsibilities of an ombudsman, and that there is a potential for bureaucracy to be increased unnecessarily."*⁴⁷

*"Students' Unions give advice and information to students raising complaints, this would not provide good support for the establishment of an ombudsman."*⁴⁸

An extra layer?

51 Along the same lines, but more broadly, 25 submissions expressed concern that new campus ombudsmen would cause delays⁴⁹ and add an extra layer to existing processes:⁵⁰

38 1994 Group
 39 Cardiff University
 40 Newcastle University
 41 University of Huddersfield
 42 University of Oxford
 43 BIOA
 44 OIA, *Rules of the Student Complaints Scheme*, Rule 4.1 (February 2012)

45 University of Bedfordshire
 46 Brunel University
 47 Coventry University
 48 University of Bath
 49 Coventry University
 50 Bath Spa University

*"...it is difficult to see what role a campus ombudsman could play without adding an extra layer to processes."*⁵¹

*"we cannot see that there would be any particular benefit to our students in an extra tier being added to the complaints process."*⁵²

*"A campus ombudsman position in an institution's complaint procedures would potentially add further complication to existing procedures and potentially delay referral to OIA, thus further extending the timeline for resolution."*⁵³

- 52 In this context, Manchester Metropolitan University made a perceptive contribution by pointing out that while it had no interest in creating an 'over-arching' campus ombudsman which would add an additional tier to its processes, there was room for an appointment operating as "an open access 'first aider' able to run surgeries to help nip problems in the bud."⁵⁴ The aim here is two-fold. First, to create a capacity which is "informal, easily accessible and non-adjudicatory" but which might involve mediation. And secondly, to support the students' union in strengthening its advocacy services so that students can better find their way around regulations and be equipped with necessary skills to articulate their needs.

Needs to understand individual universities

- 53 One potential drawback of a campus ombudsman system highlighted in a number of submissions is that an individual campus ombudsman – especially one shared by a number of universities – might conceivably lack knowledge of the detailed regulations and procedures of individual institutions:⁵⁵

*"A campus ombudsman would need to have a detailed understanding of the type of organisation and type of programmes of study from which the students are drawn; complaints are usually very specific to the programme offer."*⁵⁶

- 54 Whilst this may be a valid concern, it should be contextualised by two points. First, the fact that the OIA, admittedly a corporate body not an individual, currently deals with complaints from all universities in England and Wales and is able to review complaints considering different regulations and procedures. Secondly, that the relevance of the argument depends on the precise detail of how many universities for which individual campus ombudsmen would have responsibility. The narrower the span the less relevant the concern.

Regional networks

- 55 There was some support for the idea of a regional network to support individual campus ombudsmen. At the radical end of this body of thinking, an individual response submitted a detailed, principled and thoughtful submission on how the campus ombudsman idea could work effectively within universities and in harmony with the OIA.⁵⁷ He prefers the term "OIA regional adviser" to campus ombudsman and argues for the appointment of an independent person with relevant experience of universities' complaints and appeals handling to be involved, exceptionally, "at the latter stages of cases, or in extremely complicated cases."
- 56 In setting out the indicative roles for an 'OIA Regional Adviser', this line of argument comes close to describing the roles that OIA case-handlers already perform. The differences are that the Regional Adviser, *ipso facto*, would have a regular and physical presence on a small number of geographically proximate campuses, be more involved in giving policy advice to targeted university and students' union staff, and might

51 Birmingham City University

52 University of Leeds

53 University College Birmingham

54 Manchester Metropolitan University

55 Association of Managers of Student Services in Higher Education (AMOSSHE)

56 Guildhall School of Music & Drama

57 Huw Morris

even be involved in reviewing cases prior to the issuing of Completion of Procedures Letters.

57 A stimulating vision of this kind has the merit of seeking to ensure that a Regional Adviser or campus ombudsman would not be simply an additional or parallel layer placed on or side-by-side existing university processes. It also emphasises the value in policy development of creating a champion of good practice to stimulate and challenge conventional structures.

58 Nevertheless, the idea of an 'OIA regional advisor' seems to blur the distinction between sovereign universities and the independent OIA and also suggests a policy shift of the OIA away from being complaints handler of last resort envisaged in the 2004 Higher Education Act.⁵⁸

59 Many submissions agreed that if campus ombudsmen were to be created then a regional network, facilitated but not directed by the OIA, would be useful. Indeed, 62 per cent of respondents were positive about some form of regional network, but one which is not narrowly confined to campus ombudsmen and with the emphasis on sharing good practice on complaints and appeals handling generally:

*"Regional networks are normally a valuable means of sharing best practice. It would be more valuable if the networks included sharing information on all types of alternative dispute resolution adapted by universities in the consideration of student complaints."*⁵⁹

*"We welcome the sharing and promotion of good practice in dealing with student complaints but would not wish to see it confined only to the campus ombudsman concept."*⁶⁰

*"There is value in the creation of regional complaints handling networks to promote good practice, but this should be broader than just ombudsmen."*⁶¹

60 Acknowledging that there are other very useful groups for sharing good practice, the OIA is already running a series of regional meetings for open discussions and sharing of good practice as part of its Outreach Programme. The feedback from this has so far been extremely positive and this is an idea to be built on through incremental practice.

Complaints and appeals

61 A key theme running throughout responses to Question 1 is that because each university has an individual approach to complaints and appeals handling, a generic approach to the use of alternative dispute resolution derived from other sectors would not necessarily be useful.

62 As explained in the consultation paper, where the OIA refers to 'complaints' this refers to both complaints and appeals.⁶² The variety of issues that are covered by these terms were helpfully set out in one submission⁶³. The non-exhaustive list included:

- an academic appeal;
- the outcome of a disciplinary hearing (eg unfair practice, breach of disciplinary regulations);
- the outcome of a fitness-to-practise case;
- removal from the university for academic failure, non-payment of fees or fines, or not conforming to UK Border Agency requirements;
- a complaint about poor service; and
- a complaint about staff conduct (eg bullying).⁶⁴

63 Clearly, not all of these issues can be handled in identical fashion. The OIA's experience suggests that issues that have a service complaint at their

58 Higher Education Act 2004 c.8 sch 2, para 3

59 Canterbury Christ Church University

60 Cardiff University

61 Keele University

62 OIA, *Pathway 3 Consultation Towards early resolution and more effective complaints handling* (October 2011) p. 7 footnote 8

63 Huw Morris

64 Huw Morris

core are clearly more susceptible to alternative dispute resolution and negotiation than issues which have academic or fitness-to-practise issues at their core:

"...many academic appeal cases could not be resolved through mediation, for example."⁶⁵

Mediation

- 64 Drawing on the submissions, there is variable knowledge across the sector about what mediation is, and potential for much wider understanding and usage. It is clear from reported experience in universities, and from the OIA's own recent experience of using mediation in promoting early resolution once a complaint is received at the OIA, that there can be a rich dividend in making mediation available to the parties. In selected circumstances, and guided by appropriately trained and briefed personnel, mediation provides the direct engagement that nearly 80 per cent of complainants surveyed in Pathway 1 believed was missing from both university and OIA processes.⁶⁶
- 65 Some universities have a minimalist view that mediators are simply points of contact between the institution and the relevant student. By contrast, mediation procedures cited by the Improving Dispute Resolution Advisory Service for Further and Higher Education (IDRAS)⁶⁷ in 22 universities (7 of which made individual submissions) approximate more closely to the account of mediation set out in the Pathway 3 Consultation Paper. This suggested that mediation is a process where an impartial, independent third party helps parties to a dispute resolve issues on a voluntary basis and confidentially.
- 66 Of those institutions with a more developed view of mediation, some used in-house mediation, and some relied on external services. 21 universities⁶⁸ indicated that they used a form of in-house mediation. Nine of these universities indicated that they had enjoyed high success rates. Only one university mentioned that mediation processes had been unsuccessful even after having trained staff. Another university suggested that the success rate had been lower than anticipated and as a result the institution was reviewing its mediation process. These perceptions are important, albeit impressionistic.
- 67 Three universities reported a low take-up of the option of mediation. Two universities believed that this was influenced by the fact that mediators were members of staff and seen as not impartial by students. Two other universities believed mediators in their institution to be impartial notwithstanding being members of staff.
- 68 Two universities indicated that they used mediation early in their procedures and that this was useful in preventing a breakdown in relationships between staff and students. Five other universities use mediation as part of their informal stage of resolution while two others use it at both informal and formal stages.
- 69 Nine universities indicated that their mediation processes were for dealing with disputes between staff members only. One institution noted that it was looking to expand mediation to include other types of disputes after realising the benefit of using mediation to resolve staff disputes. Seven other institutions use mediation solely for disputes between students and one of these is considering expanding it to include other types of disputes.
- 70 In general, it is recognised as less likely that mediation will be appropriate or successful in cases relating to academic appeals than cases relating to service complaints or levels of supervision.⁶⁹

65 Norwich University College of the Arts

66 OIA, *The Pathway Report: Recommendations for the development of the OIA Scheme* (February 2010) p.48, figure 7

67 <http://www.idras.ac.uk/>

68 If institutions on IDRAS list were to be included, 36 universities in total have either tried using or use in-house mediation

69 Birmingham City University

- 71 A number of submissions suggested that a panel of external mediators is a sensible way to address conflict, though the experience is mixed:

“Use of a[n external] professional mediator is demanding and time intensive and other systems of early resolution can be more effective”⁷⁰

“We successfully used an external mediation service on one occasion to end a particularly protracted, complicated and costly dispute.”⁷¹

“The university has experience of using the OXCHEPS mediation service on two occasions. Both were complex cases which benefitted from the involvement of a completely external body. We would continue to use this type of service in the future, where the nature of the case seems to lend itself to this type of intervention.”⁷²

- 72 The OIA has considered practice deployed by the Pensions Ombudsman and the Employment Tribunal where before a complaint is accepted, mediation *has* to be attempted. The OIA believes that mediation should constitute voluntary engagement between the parties, and warmly encourages mediation as a focus for one or more of the pilots in the programme described below.
- 73 The OIA has itself recently appointed members of a Mediation Panel using experts appointed under fair and open competition to refer cases to at any stage for mediation where both parties agree. The use of external mediation has been largely successful in the small number of cases the OIA has used it for so far. We will build on the initiative as part of the endeavour to ensure that all cases are resolved at the earliest possible opportunity.

Pilots and case studies

- 74 30 submissions were in favour of a series of time-constrained pilots to explore how early complaints resolution might be developed in universities. The focus of the pilots would be the deployment of dedicated capacity to assist in the provision of early dispute resolution between students and universities, usually in advance of complaints being taken to a formal stage.
- 75 We were struck by the diversity of good practice manifest in initiatives to promote the early resolution of complaints. We welcome a catholic approach to the pilots in which universities focus on those areas of practice capable of accelerating early resolution, rather than a narrow concentration on the introduction of independent campus ombudsmen only.
- 76 **The OIA will now convene meetings with those universities and students’ unions which have expressed an interest in undertaking pilots and generating broadly consistent Project Plans and Key Performance Indicators against which to measure success and capture what is learned.**
- 77 An illustration of the variety of good practice in promoting early resolution of complaints is set out below.

70 Institute of Education

71 London School of Economics and Political Science

72 Plymouth University

University of Glamorgan: Student Conciliators

“The University believes that the way it is currently handling complaints does provide a relatively effective way of providing mediation services.”

The University of Glamorgan seeks to promote early resolution by deploying a small group of staff known as ‘Student Conciliators’. They are volunteers from amongst staff at an appropriately senior level who have been trained internally. Each Student Conciliator only deals with cases which are outside their own faculty/department so that they can be seen to be broadly independent. They become involved in the University’s second stage of its formal complaints procedure. This only commences when the first stage, which includes investigation of the complaint by the faculty or department against which the student has made a complaint, does not resolve the matter. The current Student Conciliator scheme has been in place for two years and of the one-third of complaints which have progressed from stage 1 to stage 2, the Conciliators have resolved two-thirds of these, resulting in only a small number progressing to stage 3 – a hearing by a Complaints Review Panel.

University of Bedfordshire: Graduate Interns

“These interns are recent graduates and therefore can show empathy and recent experience of student life.”

The University of Bedfordshire has a system of early dispute resolution run by graduate interns. The interns meet with students in the first instance to discuss their complaint. Their effort is focussed upon trying to see if the complaint can be resolved before it is tabled formally. If this cannot be achieved, the interns will then help the complainants by signposting them to the relevant complaints or appeals procedure, to whom they should direct their complaint. In addition, they will help students identify the relevant criteria for making a complaint or an appeal. This helps to ensure that the student makes their complaint or appeal on the procedurally correct basis and that they are helped to frame it in the strongest possible way.

Teesside University: Ombuds Office

“The Ombuds Office provides an extremely valuable service, and we would recommend this functionality to any University.”

Teesside University has an Ombuds Office, which acts as a clearing house for student complaints, academic appeals, academic misconduct cases, student disciplinary issues, fees and charges appeals. The Ombuds Office manages cases and operates the relevant policies and procedures including organisation of facilitation and formal meetings. The Ombuds Office is not directly involved in case resolution at any stage in the process, it simply organises the resolution process. In addition, it provides advice and guidance to students at all stages of the complaints/appeals, and also advises staff involved in the processes.

Plymouth University: *Complaint Mediation Scheme*

"Take up has not been high, but the scheme is still in its infancy; a review will be carried out once more cases have been progressed."

Plymouth University introduced an institution-based student complaint mediation scheme in 2009. Randomly selected volunteers attended two three-day training sessions. Mediators are expected to attend monthly 'gatherings' and quarterly CPD to maintain their practice. Students submitting complaints have been offered mediation routinely since October 2010. At the moment the service is only offered to those who have made a formal complaint and ideally, it is hoped that, in the future, mediation will be available at as early a stage in the complaints process as possible. It has also been suggested to the University that mediation skills training could be rolled out to other staff who may encounter situations where such skills would be valuable (e.g. Heads of School, Students' Union officers, etc).

QUESTION 2

A standard framework of complaints handling procedures

- 78 Most submissions, an overwhelming 82 per cent, are supportive of the idea of a standard framework for handling complaints and appeals developed by the OIA. Some examples of these are:

*"we should have a standard expectation of how complaints will be dealt with so that students know what to expect."*⁷³

*"Yes: The adoption of some sector standards, in line with the QAA code would be welcomed. These should however be open to incorporation within the individual institutions culture and ethos – one size will not fit all."*⁷⁴

*"This University would welcome the adoption of a standard framework, modelled on the precept-based style of the QAA's Code of practice."*⁷⁵

*"The university welcomes the proposal for a set of standards that would be applicable to the whole sector, including private providers."*⁷⁶

Flexibility

- 79 Many submissions argued that there needs to be flexibility within any framework to take into account that a degree of diversity in procedures

exists between institutions,⁷⁷ and it should not be overly prescriptive or burdensome.⁷⁸

- 80 A majority of submissions agreed that the OIA should set the framework in consultation with the institutions.⁷⁹ It was also suggested that the framework "needs to avoid being excessively rigid and over-prescriptive about detailed aspects of processes."⁸⁰ It is generally argued that the "OIA would be well-placed to establish a complaints framework in discussion with institutions."⁸¹

- 81 The issue of duplication with the QAA Code of practice and its successor document, the UK Quality Code, was raised in a number of submissions:

*"AMOSSHE recommends a model whereby OIA provides funding for a network, delivered and led by the QAA or ARC."*⁸²

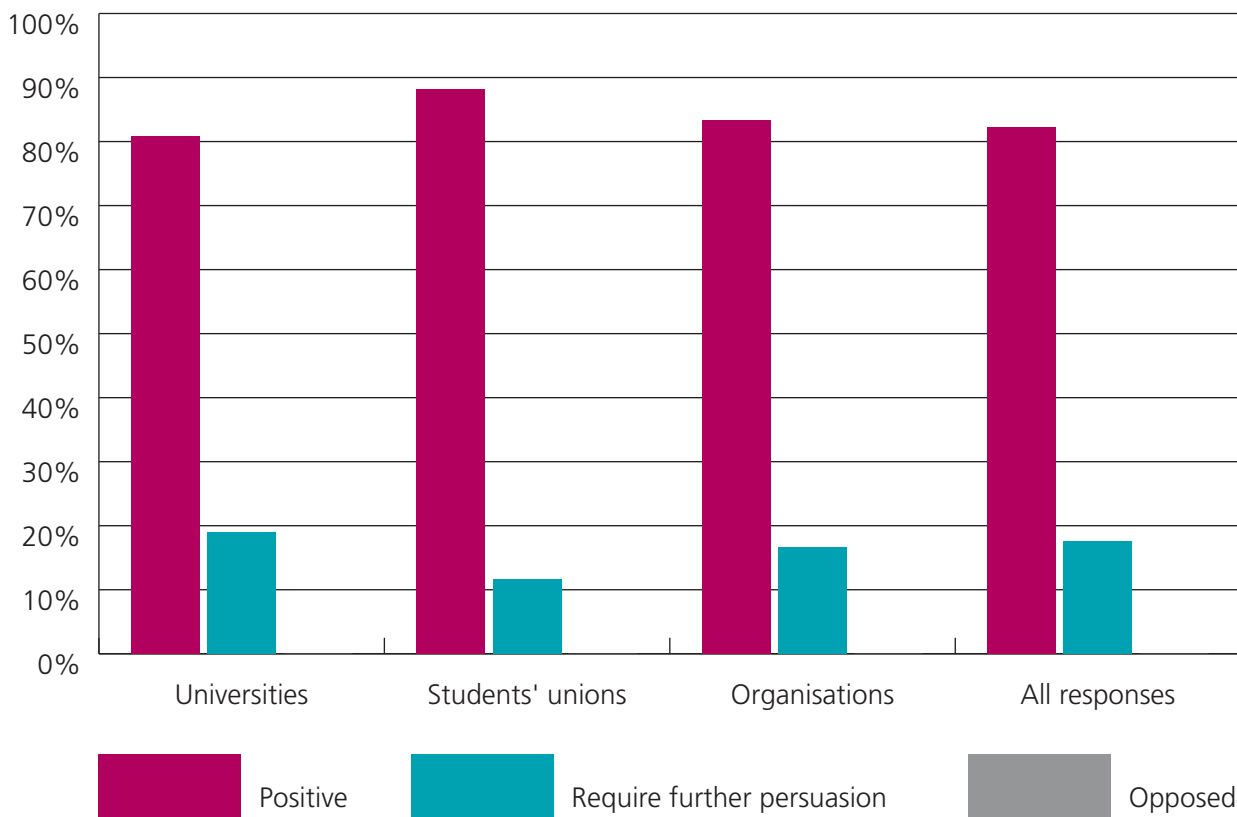
*"QAA guidance and OIA expectations already well publicised. Not sure that further regulation is necessary or adds anything."*⁸³

*"...OIA should not, however, take governance responsibilities onto itself."*⁸⁴

73 Aberystwyth University
74 University of Wolverhampton
75 University of Reading
76 University of Hertfordshire

77 Coventry University
78 St George's University of London
79 Birmingham City University
80 Loughborough University
81 Queen Mary, University of London
82 AMOSSHE
83 Cardiff Metropolitan University
84 Lancaster University

Figure 2, Question 2a: Should universities adopt standards around the handling of complaints and appeals and keep students up to date on handling progress?



*"It would be potentially messy for the OIA to be the custodian. OIA currently fulfils a valuable role of saying what is or is not acceptable on a case by case basis."*⁸⁵

*"The idea would be for the OIA and QAA to work together to strengthen the relevant section of the UK Quality Code."*⁸⁶

*"Yes - and it should replace (not duplicate or sit alongside) the relevant section of the QAA Code of practice."*⁸⁷

*"this should be cautiously approached so as to not overlap with the QAA Code of practice"*⁸⁸

82 Some submissions expressed concern about the OIA being the body to set the framework:

*"We believe this framework should continue to be set by the QAA. To substitute a framework imposed by the OIA would be an unhelpful and unwelcome extension of the OIA's role."*⁸⁹

*"We feel the ARC document is fit for purpose and we cannot see why the OIA would want to develop an alternative when this document could be relied upon to set minimum standards."*⁹⁰

83 Some suggested merit in "good practice guidance developed from the OIA's experience of handling student complaints" but that development into a specific framework would not be appropriate.⁹¹

84 In the context of ensuring a joined-up, integrated response we were pleased to receive

85 Manchester Metropolitan University
 86 Buckinghamshire New University
 87 University of Wales, Newport
 88 University of Wolverhampton Students' Union

89 University of Oxford
 90 University of Huddersfield
 91 University of Manchester

important endorsement for the creation of an operational good practice guide from QAA:

"We support the idea of developing guidance for institutions in handling complaints and appeals, although we believe that this would be most effective if focused at the operational level and building upon the principles in Section 5 [of the Code of practice], and the examples and experience of good practice drawn from the OIA itself and from institutions and the NUS. QAA would be very willing to contribute to the development of such a document by the OIA."

- 85 QAA expressed two reservations, one about the timing of the construction of a good practice framework and the other about its formulation. It also made a helpful suggestion about the content of the framework. As far as the timing is concerned:

"QAA is in the process of replacing the Academic Infrastructure (including the Code of practice) with the UK Quality Code for Higher Education (Quality Code).⁹² This Quality Code was published on 15 December 2011 and will fully replace the Academic Infrastructure as the UK-wide set of reference points for higher education providers from September 2012. The Code of practice, Section 5, on complaints and appeals will become Chapter B9 in the Quality Code. The content of the Chapter will be reviewed and, if appropriate, revised during 2012-13 academic year. We will follow the Protocol applicable to all Chapters of the Quality Code (published in June 2011), including open public consultation, and the establishment of an advisory group comprising practitioners from across higher education in the UK. We would welcome the involvement of the OIA in this process, not least through membership of the advisory group.

The timing of the introduction of the Quality Code, and the revision of Section 5, would

suggest that it would be desirable for the development of operational guidance by the OIA to take place after completion of the revision. This would ensure that the guidance is based on the most up to date reference point – applicable UK-wide – and can be informed by the feedback and examples gathered during the development and consultation process; a process which will entail full engagement with higher education providers and students."

- 86 As far as formulation is concerned:

"Question 2 [of the Pathway 3 Consultation Paper] implies a standards framework which might result in confusion for providers and students, leading to uncertainty over its relationship with QAA's Section 5, and ambiguity over how the framework would be monitored/enforced. In particular it would raise questions about its status for institutions when preparing for reviews and for QAA reviewers when conducting institutional reviews."

- 87 And as to the helpful suggestion:

"It would be helpful to students and providers for operational guidance to draw out the similarities and differences between the OIA's Scheme and QAA's Concerns Scheme,⁹³ including the relative time limits. This would assist in promoting informed decision making by students, recognising that in some instances their concern may be less about individual redress than about encouraging the institution to take remedial action to prevent repetition, or may be symptomatic of systemic failings."⁹⁴

- 88 All these concerns and suggestions are useful to note, and have influenced the OIA's thinking about the way the OIA works together with other relevant parties to ensure good practice dissemination and the consistency of approach and content. This is discussed below.

92 <http://www.qaa.ac.uk/AssuringStandardsAndQuality/quality-code/Pages/default.aspx>

93 <http://www.qaa.ac.uk/Complaints/concerns/Pages/default.aspx>

94 QAA

What should standards include?

89 A great deal of useful information was provided in the submissions about what, besides timescales, should be specified in any standard framework. These suggested areas have been collated for further consultation and use:

Clarity of information

- How complainants and their complaints should be handled: seriously, confidentially, impartially etc.⁹⁵
- Updates on timescales and the current situation.⁹⁶
- All correspondence to students should be clear, unambiguous, and in user-friendly language.⁹⁷
- Provision of advice and support for students making a complaint: clear identification of where students can go to for advice⁹⁸ and standards of behaviour expected of complainants as well as of complaints handling staff should also be specified.⁹⁹
- Feedback to students on the outcome of their complaints: clarity and comprehensiveness of written communications.¹⁰⁰
- Issue of Completion of Procedures Letters: compliance with the OIA's requirements in this respect.¹⁰¹

Transparency

- The complaints process should be transparent, straightforward and equitable¹⁰²
- Guidelines around appropriate levels of compensation¹⁰³
- Service levels, reporting on performance standards, provision of information¹⁰⁴

- Thoroughness, transparency, emphasis on informal resolution¹⁰⁵
- Guidance on the investigation process including roles and duties of participating individuals.¹⁰⁶

Independence

- Standards regarding the independence of complaint and appeal/mitigating circumstances reviewers would be very welcome.¹⁰⁷
- All procedures should meet the principles of natural justice.¹⁰⁸

90 Most of the suggested areas for good practice are non-controversial and seem to carry consent across the sector. There is, for example, much overlap between these suggestions and the content of the *NUS Charter on Institutional Complaints and Appeal Procedures* first published in May 2010, building on its survey report, *Review of Institutional Complaints and Appeals Procedures in England and Wales* (February 2009). The NUS submission to Pathway 3 argues that the NUS Charter on complaints and appeals should be adopted by each institution.¹⁰⁹

"The NUS Charter on complaints and appeals sets out 10 core standards which we feel should be adopted by each institution. ... But any process should be seen as independent and fair, should deal quickly and effectively with complaints – keeping the student informed throughout the process and with a well-resourced students' union supporting the student through the process."

95 University of Leeds

96 De Montfort University

97 Liverpool John Moores University

98 Plymouth University

99 The Open University

100 Plymouth University

101 Ibid.

102 University College Birmingham

103 University of East Anglia

104 University of Leicester

105 University of Sheffield

106 Cardiff University

107 Cambridge University Students' Union

108 Oxford Brookes University

109 NUS

91 The 10 core standards are:

- 1 Institutions should usually resolve complaints and appeals within 3 months;
- 2 Institutions should make information about their procedures easily available and accessible;
- 3 Complaints and appeals should be dealt with by someone seen as independent of the case;
- 4 Students should be supported through the processes;
- 5 Institutions should make greater use of mediation;
- 6 Students should be able to present their case in person;
- 7 Institutional procedures should have no more than three stages;
- 8 Institutions should have clear guidance tackling the perceptions that students will be disadvantaged if they make a complaint;
- 9 Institutional procedures should be reviewed at least every three years;
- 10 Institutions should report on the number and outcome of cases.¹¹⁰

Comparative approaches

- 92 There are a number of working standard frameworks in other sectors and parts of the United Kingdom. This experience is worth drawing on in constructing a standard framework for Higher Education complaints and appeals.
- 93 Regulatory bodies and complaints handlers in other sectors have established codes of good practice both to give guidance in dealing with complaints, and also to assess the complaints processes in organisations over which they have regulatory authority. While the OIA is not a regulator, it is now part of the Higher Education regulatory framework, so this comparative experience is relevant, particularly in relation to the respective roles of OIA and QAA.
- 94 OFCOM, a regulator and competition authority for the UK communications industries, has established a Code of Practice for Complaints Handling.¹¹¹ In addition to setting out good practice for dealing with complaints, OFCOM also has powers to investigate and take appropriate enforcement action if it reasonably believes that the complaints handling procedures of a communications provider were contravening the OFCOM Code. Similarly, the Financial Services Authority (FSA), has also established “detailed requirements for handling complaints”¹¹² not conceptually different from a good practice framework. Interestingly, the FSA did not delegate this responsibility to the Financial Ombudsman Service and it assesses compliance with the above-mentioned requirements in banking groups itself.¹¹³
- 95 The OIA received an important submission from the Public Services Ombudsman for Wales (PSOW)¹¹⁴ outlining a Model Concerns and Complaints policy which the Ombudsman urges public service providers in Wales to adopt

111 <http://stakeholders.ofcom.org.uk/binaries/telecoms/ga/complaints-handling-code.pdf>

112 <http://fsahandbook.info/FSA/html/handbook/DISP>

113 http://www.fsa.gov.uk/pubs/other/complaint_review.pdf

114 <http://www.ombudsman-wales.org.uk/>

within their organisations. This Model policy is supported by associated Guidance, and was formally adopted and disseminated by the Welsh Government in July 2011.¹¹⁵

- 96 The Model is process-focused and general. It has headings including “When to use this policy”, “Informal resolution”, “How to express concern or complain formally”, “Dealing with your concern”, “Investigation”, “Outcome”, “Putting Things Right”, and “Learning lessons”. The Guidance is more detailed but encourages variable interpretation: “it is recognised that organisations will need to interpret the guidance in a way which is appropriate to their own circumstances.”¹¹⁶
- 97 Practice in Scotland adopts similar principles but is different. Following a finding in the Crerar Review¹¹⁷ that complaints processes in Scottish public services were not fit-for-purpose, the Sinclair Report¹¹⁸ (July 2008) to Ministers in Scotland recommended that the Scottish Public Services Ombudsman (SPSO) should be given authority and resource to develop in consultation and then approve “standardised public service complaints handling systems which include realistic but challenging timescales.” Sinclair also recommended that the SPSO should coordinate training for complaints handlers, and develop a complaints handling network and website which issued guidance on dealing with complainants effectively.¹¹⁹
- 98 These recommendations were adopted in Part 8 of the Public Services Reform (Scotland) Act 2010. This enabled the SPSO to publish model complaints handling procedures for listed authorities including Scottish universities, whose own procedures must comply with the

statement of principles.¹²⁰ As a result, the new Complaints Standards Authority (CSA) was established by the SPSO in October 2010, to work closely with public bodies to standardise and simplify complaints handling procedures and “to help drive improvement.”¹²¹ The CSA website intends to create “a community forum” to generate discussion and sharing of good practice within and across sectors.

Constructing a Standard Framework

- 99 Given the expressed view – more than 80 per cent of all submissions – that a good practice framework is needed, the OIA will now begin a process to construct a framework. The OIA will publish a draft time-table for construction before the end of the calendar year 2012. The working principles for this construction will include:
- 100 **Consultative.** The construction will be consensual, consultative, low-key, and drawing on the extensive good practice which exists already. The OIA has no interest in seeking to ‘impose’ a good practice framework on the sector. We will continue to work closely and collaboratively with relevant sector groups and institutions – including the QAA, Academic Registrar’s Council and the National Union of Students – and to disseminate any draft framework to HEIs and students’ unions for comment.
- 101 **Not an instrument of regulation.** We note the concerns expressed above that the creation of a good practice framework could communicate a regulatory intent by OIA. The OIA is not a regulator and has no ambition to become one. The Government’s response to its own White Paper and Technical Consultation makes our position clear:

“The OIA’s response stated that it is content that it has sufficient authority to ensure that institutions comply with Formal Decisions and

115 Public Service Ombudsman for Wales, *Annual Report 2011/12, Improving Access: Delivering Improvement*, p.25

116 Complaints Wales Group, *Proposals for: 1. Model Concerns and Complaints Policy for adoption by Public services Providers in Wales 2. Guidance for Public Service Providers on Implementing the Model Concerns and Complaints Policy* (July 2011) p. 7, section 1.1

117 www.scotland.gov.uk/Publications/2007/09/25120506/

118 www.scotland.gov.uk/Resource/Doc/923/0063564.doc

119 Fit for Purpose Complaints System Action Group, *Report to Ministers* (July 2008) p.4, para. 7

120 Public Services Reform (Scotland) Act, 2010, Part 8, 16B-16E

121 www.valuingcomplaints.org.uk/about/csa/

Recommendations but if the addition of new providers gives rise to unforeseen issues, the OIA would wish to return to this issue.”¹²²

- 102 What is also clear is that the OIA is now part of an emerging risk-based regulatory framework in Higher Education and that there is common interest in universities, students’ unions, sector regulators and the OIA working together to develop better practice in addressing student complaints and academic appeals.
- 103 The OIA will continue to work closely with QAA and all interested parties on the development of the framework. The framework will be designed to complement the QAA Code of practice as it is incorporated into the new UK Quality Code for Higher Education, using the Precepts of the Code of practice¹²³ as building blocks for the framework which will have an operational bias. Our aim is to produce a voluntary framework and good practice indicators that all institutions are encouraged to adopt, and see value in adopting. We see no merit in seeking legislative backing for this initiative at this point. We know from evidence in Wales that the construction of a standard framework of good practice need not communicate regulatory intent. Communication associated with consultation and dissemination will emphasise this important point.
- 104 **A living document.** The framework of good practice will be reviewed regularly to ensure it reflects developments in what is a fast-changing sector. It will be supported by the OIA who will encourage networking, dialogue and the exchange of good practice.

122 BIS, *Government response to consultations on: Students at the heart of the system; A New, Fit-For-Purpose Regulatory Framework For The Higher Education Sector* (June 2012) p. 40

123 QAA, *Code of practice for the Assurance of Academic Quality and Standards in Higher Education, Section 5: Academic Appeals and Student Complaints on Academic Matters* (October 2007) appendix 1, pp. 26-27

QUESTION 3

Time Targets

105 The idea of time targets is not new. As suggested in the Pathway 3 Consultation Paper and now confirmed in the submissions, there is a wide-ranging consensus in the sector that time targets are wanted and needed. Indeed, the QAA Code of practice recommends that it would be helpful to have indicative timescales for each stage of the complaints and appeals process, emphasising the importance of such timescales being realistic and fair.¹²⁴

106 A clear majority of submissions (71 per cent) supported the idea of time targets and many noted that their universities already had targets in place:

“1994 Group institutions set out clear timescales within their established complaints procedures as appropriate”¹²⁵

“We agree that time targets should be set and that students should be given information on the average time taken”¹²⁶

“The Institute of Education already set out time frames for the completion of the different stages of the complaints procedure.”¹²⁷

“This is implemented at Lancaster already and is very useful in reassuring students about the process.”¹²⁸

Importance of flexibility and context with time targets

107 Some submissions highlighted potential issues and concerns about time targets which needed to be considered. One concern related to complaints about Fitness to Practise issues:¹²⁹

“The three months contained in Recommendation 13 [of the NUS Review of Institutional Complaints and Appeals Procedures in England and Wales, 2009] seems reasonable for many cases but it is unlikely that a Fitness to Practise case that went to appeal could be resolved within three months. Time targets need to be realistic in such cases in order not to raise students’ expectations inappropriately.”¹³⁰

108 A number of submissions suggested that there should be flexibility around the setting of time targets in relation to both the student and institution to allow for unexpected delays.¹³¹ Difference in complexity of cases also needed to be taken into account¹³² and it is argued

124 QAA, *Code of practice for the Assurance of Academic Quality and Standards in Higher Education, Section 5: Academic Appeals and Student Complaints on Academic Matters* (October 2007) p. 11, ch.1

125 1994 Group

126 Cardiff University

127 Institute of Education

128 Lancaster University Students’ Union

129 Coventry University

130 Birmingham City University

131 Institute of Education; University of Cumbria

132 University of Reading

there should be a distinction between different categories of complaint.¹³³

- 109 Some suggested alternatives would be to publish “the average time taken for a complaint/appeal to progress through each stage of the relevant process”¹³⁴ and the use of the wording ‘indicative times’ rather than ‘targets’.¹³⁵
- 110 Most submissions agreed that time targets do and will help to manage students’ expectations. A small number of submissions pointed out that students should also have to adhere to time targets given that sometimes it is the student’s availability which slows down the complaints process:¹³⁶

“it is also important that deadlines are applied equally to students and that there are clear timeframes in which an appeal or complaint should be submitted.”¹³⁷

OIA timeliness

- 111 Many submissions highlighted the need to treat the OIA’s time targets in the same way as it is proposed to treat time targets in universities:

“Time targets should also apply to the OIA’s own processes where appropriate, so students and institutions are fully aware of when they will be contacted.”¹³⁸

“If the OIA expects timescales, it should also adopt its own timescales for the completion of cases. This could become a model for universities”¹³⁹

“Additionally, it would be helpful if the OIA were to publish average timescales for resolution of complaints progressed to them, including the current holding time of 5 months

before a complaint is assigned to an OIA case handler.”¹⁴⁰

- 112 These points are well made. In line with Recommendation 20 in *The Pathway Report* (2010), the OIA published Key Performance Indicators (KPIs) including time targets in its *Annual Report 2011*.¹⁴¹ While the OIA closed 75 per cent more cases in 2011 than in 2010, 20 per cent of cases took more than 9 months to resolve in 2011 and the average duration of a complaint from receipt to closure was just over eight months.

OIA interventions

- 113 The majority of submissions (70 per cent) agreed that it would be appropriate for the OIA to intervene in exceptional cases.

“This would seem an appropriate role for the OIA and in keeping with its present remit.”¹⁴²

“It would be reasonable for the OIA to intervene only in exceptional cases where there is evidence that institutions are delaying processes unreasonably”¹⁴³

“Yes: In exceptional cases, as within the current operating remit of the OIA scheme. Any delay beyond the maximum permitted timescale could trigger a reference to the OIA.”¹⁴⁴

- 114 Some submissions noted that there needs to be greater clarity and definition as to what constitutes ‘exceptional’.¹⁴⁵ Many agreed that in limited/exceptional circumstances, where cases that have gone past published deadlines without reasonable explanation, the OIA should intervene.¹⁴⁶ This was also the view of the National Union of Students:

133 University of Oxford
134 University of Birmingham
135 London South Bank University
136 Teesside University
137 Southampton Solent University
138 1994 Group
139 Canterbury Christ Church University

140 University of Surrey
141 OIA, *Annual Report 2011* (June 2012) pp.18-19
142 Arts University College Bournemouth
143 Birmingham City University
144 University of Wolverhampton
145 Buckinghamshire New University
146 Loughborough University

“NUS would not want to see the OIA stepping in on a regular basis, as this would hinder the appeals process for a student, but if an institution has clearly failed to meet the test of reasonableness in terms of time taken to resolve a complaint or appeal, then there should be recourse for the student. It would make most sense for this recourse to take the form of the OIA.”¹⁴⁷

- 115 A small number of submissions are clear that they do not think the OIA should intervene when time targets are not met:

“It would be unfair to allow the OIA to have this jurisdiction until such time as they adopted a set time target approach to complaints review in all cases and consistently met those targets.”¹⁴⁸

“If the timing targets are raised in a complaint to the OIA then the OIA already often investigates those and comments and/or makes any recommendations. It would not be appropriate to formalise the ability of the OIA to intervene where targets appear not to have been met.”¹⁴⁹

“No, the principle that universities’ internal processes should have been completed should remain. Universities will need to be accountable for their performance in this area through internal and external quality assurance processes.”¹⁵⁰

- 116 However, the OIA already has the ability to intervene “in exceptional circumstances” under Rule 4.1¹⁵¹ and no additional Rule change is necessary. This point was emphasised in a number of submissions:

“Our understanding is that the OIA can already take up cases which appear to be unduly prolonged so again would not see it as problematic recognising that it would only apply in exceptional cases”¹⁵²

“AMOSSHE encourages the OIA to explore the existing discretion in OIA Scheme Rule 4.1.”¹⁵³

“We agree that there is merit in the OIA intervening in exceptional cases. We consider that the OIA’s Scheme Rules are sufficient for this purpose.”¹⁵⁴

Conclusion

- 117 There is a clear consensus that time targets in the handling of complaints and appeals in universities in England and Wales, when carefully constructed and flexibly managed, play an important role in adding transparency to process and in managing complainant expectations. The OIA is able, under Rule 4.1 to review a complaint without a Completion of Procedures Letter under exceptional circumstances and has done so.¹⁵⁵ The OIA will develop Guidance about the circumstances in which “exceptional circumstances” apply and then consult with sector partners. It should undertake both these aspects as part of the consultation (see above) on creating a good practice framework on complaints and appeals.¹⁵⁶

147 NUS

148 Canterbury Christ Church University

149 University of Cumbria

150 University of Leicester

151 OIA, *Rules of the Student Complaints Scheme* (February 2012) Rule 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.’

152 GuildHE

153 AMOSSHE

154 QAA

155 <http://system.newzapp.co.uk/GPage.asp?LID=MjY0MTAyLDA>

156 The OIA Scheme Rules have been amended recently to ensure that universities comply with Recommendation 11 of the Pathway Report 2010 to send an Annual Return of the number of Completion of Procedures Letters issued and the OIA ensures it follows up with those institutions who do not issue them correctly.

QUESTION 4

Kite marks

- 118 Kite-marks are related to the idea of a standard framework for handling complaints and appeals. As explained at one of the round-table meetings, the relationship between a standard framework and a kite-mark is sequential. To have relevant content to inform a kite-mark requires a pre-existing and agreed body of good practice for universities to follow.
- 119 Although most submissions to Pathway 3 were not in favour of the OIA itself introducing a kite-mark on complaints and appeals, 30 per cent of submissions thought that a kite-mark had distinct advantages:
- “In the new arena of £9,000 fees a kite mark could be useful in marketing a University to students and providing assurance to them. It also shows a commitment to making complaints and appeals visible to current students and a commitment to improving standards.”¹⁵⁷*
- “A kite-marking approach has much in its favour. However, the cost of such a system should be weighed against the perceived advantage.”¹⁵⁸*
- “Yes, we do think that such a scheme could be beneficial for institutions and for students.”¹⁵⁹*
- 120 It was suggested that in an era of increased fees, student charters and the Key Information Sets (‘KIS’), as well as the publication of OIA Annual Letters, it is important that potential students have as much information as possible regarding their university choice and “a kite-mark is an accessible method of doing this.”¹⁶⁰ It was also felt that kite-marks would provide an incentive for the sector to improve its practice¹⁶¹ and give quality assurance to the processes. This could give impetus to the good practice framework and be a way of rewarding hard work in this area.
- 121 Some submissions suggested that the OIA could be best placed to accredit any such kite-mark given its operational involvement with complaints and appeals.¹⁶² It was also suggested at round-table meetings that, currently, Institutional Reviews do not seriously scrutinise complaints and appeals processes and that a kite-mark might ensure that such processes are appropriately prioritised. By contrast, at some round-table meetings there was concern that OIA accreditation of a kite-mark constituted a recipe for confusion with the role of QAA.
- 122 Those (mostly universities) who did not agree that a kite-mark would be beneficial were not clear about any meaningful benefit of developing one.¹⁶³ This is particularly the case

157 Lancaster University Students’ Union

158 Mixed Economy Group

159 University of Hull

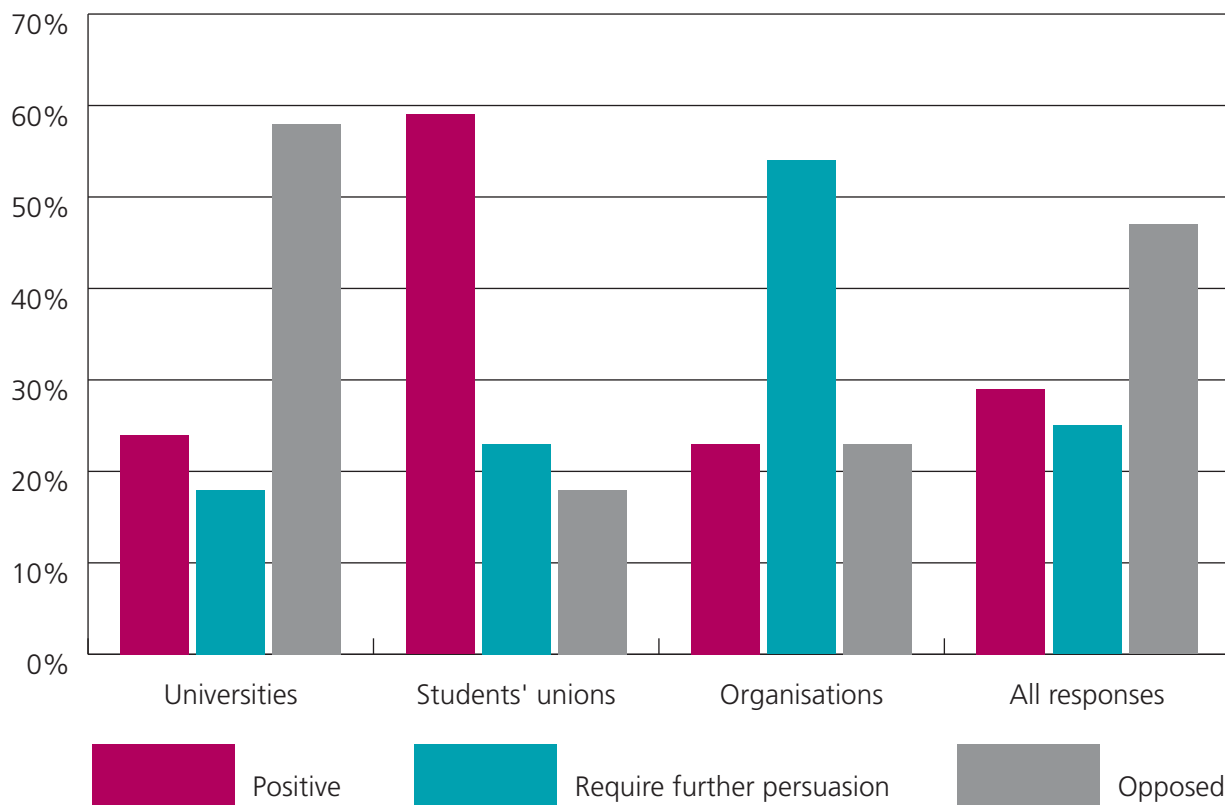
160 NUS

161 Oxford University Students’ Union

162 NUS

163 Bath Spa University

Figure 3, Question 4a: Should the OIA develop a kite mark system for the accreditation of the university complaints process?



if published timescales are adhered to.¹⁶⁴ In any event, it was not clear that students would be interested in the concept:¹⁶⁵

"We are not convinced that a kite-mark system would provide any additional benefits on top of existing accountability measures."¹⁶⁶

"All institutions are required to adhere to the QAA's guidance on appeals and complaints; it is therefore unlikely that a kite-mark would offer any real benefits to the student experience."¹⁶⁷

- 123 Some submissions saw the benefits of a kite-mark but thought that its introduction should be more of a longer term aim for the OIA.¹⁶⁸ Some agreed with the concept of a kite-mark

for complaint processes but did not feel that the OIA is the appropriate body to manage it.¹⁶⁹ OIA involvement was perceived by some as a conflict of interest or some form of 'mission creep':

"We should also be concerned that OIA is not the ideal body to award the kite-mark, given the potential for conflicts of interest, and suggest that it may better fall to another body such as QAA."¹⁷⁰

"We again fear that the OIA will be setting standards and measuring universities on performance."¹⁷¹

- 124 Adherence to QAA, it was suggested, was a kite-mark in itself,¹⁷² and even if it wasn't, substantive issues which might be contained in

164 University of Leicester

165 University of Wolverhampton Students' Union

166 1994 Group

167 Queen Mary, University of London

168 University of Cumbria

169 Oxford Brookes University

170 Arts University College Bournemouth

171 Newcastle University

172 Durham University and Durham Students' Union

a kite-mark were better addressed in the Key Information Sets (KIS).¹⁷³

Existing kite-marks

- 125 Following discussion at round table meetings and in line with the consultation document, the OIA has explored whether or not an already existing kite-mark might be adopted by the sector.
- 126 The *Customer Service Excellence* (CSE) scheme was one option mentioned in the consultation document. Although CSE takes complaints handling practice into account, its main focus is on service delivery. CSE assesses institutions seeking accreditation against its own criteria, concentrating on timeliness and quality of service.¹⁷⁴ In this context, it is unclear what the explicit value of CSE accreditation would be to the development of good practice in handling complaints and appeals. This is particularly the case given the importance in Higher Education of the sovereignty of academic judgment in relation to the substance of academic appeals.
- 127 This concern relates to generic kite-marks and is not confined to the CSE scheme. The *Matrix Standard*¹⁷⁵ is another kite-mark scheme which was suggested as a 'ready-made' alternative to the costly business of developing an HE sector-specific scheme. Where CSE focuses on service delivery, the *Matrix Standard* focuses on assessing advice and support services. It defines a service as "the information, advice, and/or guidance provided by the organisation to support individuals in their choice of career, learning, work and life goals."¹⁷⁶ As a result, it does not appear to include complaints and appeals procedures.
- 128 A rare example where a kite-mark focuses on accrediting complaints procedures is the "*HouseMark*". This is jointly owned by the

Chartered Institute of Housing (CIH) and the National Housing Federation (NHF), two not-for-profit organisations dedicated to improving housing standards. *HouseMark* is the social housing sector's provider of performance improvement services and offers benchmarking, good practice and collective procurement. The accreditation process has been established in partnership with the Housing Ombudsman Service.¹⁷⁷ Accreditation done by *HouseMark* is awarded for three years and currently costs £5,995 plus VAT for most customers.

- 129 Finally, it has very recently become possible for institutions to adopt the new QAA 'Quality-mark' where they have achieved positive reviews under a number of QAA review methods including Institutional Audit and Institutional Review.¹⁷⁸ The 'Quality-mark' has been available for use since 1 August 2012. For QAA, it has the following advantages:

*"We are committed to communicating clearly our work to a wide audience, and believe that use of the licensed QAA quality mark logo by eligible QAA subscribers will aid student choice and improve public understanding of higher education standards and quality. A licence to use the QAA logo, which is a trademark protected by law and has not previously been licensed for use by any higher education provider, will also be a benefit for eligible QAA subscribers."*¹⁷⁹

- 130 As the outcome of required, regulatory process, the Quality Mark is different from the voluntary nature of conventional kite-mark schemes.

Conclusion

- 131 The OIA notes the assertion made at the round-table meetings that QAA validation and

173 Worcester University Students' Union

174 <http://www.customerserviceexcellence.uk.com/aboutTheStandardCSE.html>

175 <http://www.matrixstandard.com/>

176 Ibid.

177 <http://www.housemark.co.uk/hm.nsf/0/0EEB3A7FDB8EC37C8025775100545EBD?opendocument>

178 QAA, *Circular Letter CL 07/12: The Quality Assurance Agency for Higher Education (QAA) Logo Licensing Scheme* (May 2012)

179 <http://www.qaa.ac.uk/AboutUs/corporate/Policies/Pages/logo-licensing.aspx>

Institutional Reviews do not currently appear to focus sufficiently on complaints and appeals processes to constitute a kite-mark capable of reassuring users about complaints and appeals processes. The QAA is revising the content of its Code of practice as it is incorporated into the new Quality Code. The OIA is committed to contributing to this revision which is scheduled to take place in 2013. Further, acting in its regulatory capacity, the QAA now offers a Quality Mark for QAA subscribers who have achieved positive results in Institutional Audits and Reviews.

- 132 The QAA Quality Mark initiative is an outcome of required regulatory action, and not necessarily a substitute for the development of a kite-mark awarded to institutions subscribing voluntarily to informed, independent scrutiny. A kite-mark for complaints and appeals processes follows sequentially from the development of a standard and agreed framework of good practice. The OIA will concentrate on the construction of the good practice framework, and return to the issue of a kite-mark once the good practice framework is up and running.

QUESTION 5

OIA funding model

- 133 Since its inception, the OIA's funding model has been subscriptions-based, using a banding system derived from enrolled student numbers provided by the Higher Education Statistics Agency (HESA). In *The Pathway Report 2010*, the OIA announced that an exploration of the viability and implications of alternative funding models was to take place, but that the existing system would remain in the interim.¹⁸⁰ The viability study was undertaken without a recommended change to the funding model. However, in September 2010, the OIA began accepting Non-Qualifying Institutions into the Scheme. Two private providers have since joined under a model of core subscriptions supplemented by case-fees.
- 134 At the time of publishing the Pathway 3 Consultation, the publication of the Higher Education White Paper and Technical Consultation provided the backdrop to the OIA revisiting its funding system, given the proposal that "all designated providers as a condition of designation for students support or Higher Education Funding Council for England (HEFCE) teaching grant, will be required to subscribe to the OIA. This will apply regardless of whether they are HEIs, FECs or alternative providers, and whether or not they have DAPs."¹⁸¹
- 135 While the current student number-based funding system has been broadly seen as fair,
- its key drawback is that the subscription for a given university may bear no relation to the work that that university generates for the OIA in terms of student complaints. Indeed, a number of universities made submissions to the first Pathway consultation pointing out that there was no financial incentive for reducing the complaints coming to the OIA through improved internal complaints handling processes.¹⁸²
- 136 The OIA's preferred, revised model has been developed in response to submissions to Pathway 3. It has also been developed in the context of two parallel occurrences: the significant annual increases in complaints received by the OIA; and a policy shift, indicated in the 2011 Higher Education White Paper, that Government policy is moving towards the creation of a level playing field in the regulation of public and private suppliers of Higher Education.
- 137 These circumstances combine to require a revised financial model. We propose to move towards a 'hybrid' model, incorporating both a core subscription and a smaller case-related element (subject to final consultation with HMRC).
- 138 The response to the Pathway 3 consultation, both in written submissions and at the round-

180 OIA, *The Pathway Report* (February 2010), p. 8, Quick Win 9

181 BIS, *A New, Fit-For-Purpose Regulatory Framework For The Higher Education Sector* (August 2011) p. 16, ch. 2, para. 2.2.4

182 Keele University, Open University, University College Birmingham

table meetings, indicated an important shift in opinion about OIA funding in the 2 years since the first Pathway consultation towards adopting a case related element in the calculation of subscriptions.

Support

- 139 A clear majority of respondents (70 per cent) were in agreement that a ‘hybrid’ model had merit. Some also listed considerations to be taken into account when designing the new system. Some of these policy ideas are highlighted below:

“The Group supports the implementation of the new ‘hybrid’ financial model based on core subscription and case fees. A system where HEIs make financial contributions to the OIA proportionate to their use of its services would be fairer than the current approach.”¹⁸³

“Very much so. We have consistently favoured this model since first consulted about reforms to the fee model in Pathway I.”¹⁸⁴

“The University acknowledges that a model combining a case fee and core subscription is an inevitable evolution of the funding model...”¹⁸⁵

“We are also supportive in principle of a financial model combining both a core subscription to the OIA and a case fee element.”¹⁸⁶

“The Open University sees merit in a core subscription plus case-fee funding model, as the case-fee element might encourage institutions to resolve complaints before they go to the OIA.”¹⁸⁷

“This is a most welcome proposal and is a fairer method of OIA subscription based on

the principle of ‘user pays’. It will provide a greater incentive, based on cost, for individual institutions to improve the efficiency and effectiveness of their procedures.”¹⁸⁸

- 140 It was notable that a significant number of respondents based their support for change on the need to be prepared for risks arising out of the anticipated ‘level playing field’. In particular this relates to the possibility that new alternate providers might have a disproportionately large number of cases requiring adjudication because of relatively untried complaints procedures.

- 141 Submissions on behalf of providers who at the time of completing their submission were anticipating being required to come into the Scheme under the proposed Higher Education legislation were also supportive of this view:

“AoC is supportive of a core and case-fee element funding structure but believes it should use the principle of proportionality in its subscription model in line with QAA for example, which is seeking to apply this principle in developing its external QA review process.”¹⁸⁹

Opposition

- 142 Whilst a clear majority of submissions were supportive of a hybrid approach there was some residual opposition from universities (16 per cent) who preferred the current model:

“Birmingham City University is not in favour of a case-fee element being charged.”¹⁹⁰

“On the whole, we are against this system to avoid cost becoming the dominant factor in our assessment of whether and how to deal with a case.”¹⁹¹

183 1994 Group

184 Canterbury Christ Church University

185 Coventry University

186 GuildHE

187 The Open University

188 University College Birmingham

189 Association of Colleges

190 Birmingham City University

191 London School of Economics and Political Science

“The core subscription model is currently preferred by this institution as a fair and transparent mechanism. It would be our preference to retain the status quo while at the same time we do recognise that costs will increase and that these must be funded from within the sector.”¹⁹²

143 Reasons for this opposition included: the need for change is argued for (in part) on the basis that new subscribers to the Scheme will result in an increase in cases handled but there are no figures available or sound evidence for this;¹⁹³ the change is for “administrative convenience rather than fairness”;¹⁹⁴ the model would not encourage effective complaints resolution and there is no evidence to suggest there is a “direct relationship between the amount of effort an institution puts into effective complaint handling/resolution and the number of complaints submitted to the OIA”;¹⁹⁵ there is no need for change because the “OIA is an excellent example of a ‘shared-service initiative’ which universities fund jointly to ensure an effective service to their students.”¹⁹⁶ It was also noted that the great advantages of the existing subscriptions system are its simplicity¹⁹⁷ and transparency.¹⁹⁸

144 There is a suggestion that if any change were to go ahead “any such modification to the funding system would need to be reviewed regularly to ensure that some universities were not penalised on account of their size/student composition/etc.”¹⁹⁹ It is also suggested that there is a “review after a period of time (12-24 months).”²⁰⁰

145 In addition, there were a sizable number of submissions urging that any change should be proportional and gradual.²⁰¹ Indeed, it

192 University of Wolverhampton

193 University College London

194 University of Bedfordshire

195 University of Manchester

196 University of Oxford

197 University of Exeter

198 Oxford University Students’ Union

199 Bath Spa University

200 St George’s University of London

201 AMOSSHE

was suggested that given the uncertainty surrounding the current Higher Education landscape, it might be sensible to await developments before making major changes.

1. Concerns about impact on universities committed to widening participation

146 While there is broad support for a hybrid model, there is some concern that this will lead to a penalisation of universities with a mission to widen participation since they could be disadvantaged in a case-related calculation by the nature of the students they recruit:

“It does not appear to be in the interests of those universities that want to have an open and accessible complaints culture or that have widening participation agendas or that operate in difficult environments”²⁰²

“It is clear from the OIA’s statistics that there are distinct demographic patterns in the make-up of complainants to the OIA, with (for example) international students, and students on professionally-qualifying programmes, more likely to complain. It follows that those institutions which have more representation in those areas are likely to generate greater numbers of OIA cases, and that this is not necessarily due to the quality of their provision or their complaints handling, but due to their mission and position within the sector.”²⁰³

2. Concerns about suppression of complaints

147 There is also a concern expressed by a minority of submissions that there could be an incentive for some universities to seek to suppress complaints to avoid paying a case related element:

“We believe that this will give institutions an incentive to attempt to reduce the number of students referring their complaints to the OIA.”

202 Manchester Metropolitan University

203 University of Sunderland

*We strongly disagree that a case-fee element provides a clear incentive for good internal complaints handling by universities.*²⁰⁴

*“However, there is a concern that institutions, particularly those with a particular widening participation mission, could potentially suppress complaints in order to avoid incurring additional costs from the OIA.”*²⁰⁵

*“It could wrongly incentivise some universities to try to keep complaints under wraps, making it difficult or complicated for students to complain, or not publicising complaints arrangements.”*²⁰⁶

*“...universities could be incentivised to reduce the number of complaints that go to the OIA.”*²⁰⁷

*“...we are concerned that in some situations this may result in HEIs seeking to dissuade students from referring to the OIA by other means...”*²⁰⁸

148 We suggest that these legitimate concerns can be minimised if we introduce a small case-related element to the funding model, rather than operating a model under which the whole charging system is based on the number of complaints.

149 The potential suppression of complaints (very different from the early resolution of complaints) is clearly an issue the OIA needs to be alert to. The OIA’s outreach strategy ensures we monitor and visit a range of universities and students’ unions including those we receive no complaints from or those who issue no Completion of Procedures Letters. This constitutes a safeguard against poor practice.

Detail of hybrid

- 150** A number of respondents, supportive of the hybrid model in principle, made suggestions about the operational detail of the model. These include:
- fee reduction where the complaint is Ineligible,²⁰⁹ a fee only for Eligible complaints;²¹⁰
 - lower fees for fast track cases²¹¹ and special case fee charges for groups of students;²¹²
 - the need for information-sharing about the basis upon which bands are allocated different ‘free’ cases;²¹³
 - refunds for a low case load;²¹⁴
 - a system whereby the following year’s fees could increase/decrease based on the number of complaints in the preceding year;²¹⁵
 - costs should be paid when a case is deemed eligible rather than on receipt;²¹⁶
 - a limit on the total fee which can be charged;²¹⁷
 - fees levied by number against the average for a group of like institutions. The OIA could identify a number of factors from its own complainant data, and use these against HESA data to produce institutional bandings;²¹⁸
 - Different banding for those institutions without professional programmes or significant numbers of postgraduates.²¹⁹

204 Birmingham City University

205 Coventry University

206 Manchester Metropolitan University

207 Oxford University Students’ Union

208 University of Manchester Students’ Union

209 Sheffield Hallam University

210 University of Liverpool

211 University of Birmingham

212 University of Nottingham Students’ Union

213 Cardiff University

214 Newcastle University

215 Royal Northern College of Music

216 Brunel University

217 The Open University

218 University of Sunderland

219 University of Cambridge

151 All these suggestions have been considered seriously in the construction of the revised model. Some respondents suggested that a case-related element should only be charged if the complaint is found Justified. Such a system would compromise the acknowledged independence of the OIA by making an explicit link between the outcome of a complaint and the funding received by the OIA. It would also mean that a significant part of the OIA's work was not covered by the case-related element.

Vexatious complainants and charging students

152 The issue of vexatious complainants, and the related issue of charging students, is a theme running through many responses.

153 The persistence of complainants is clearly an issue for universities:

*"...it is important that the OIA is sensitive to cases where students make multiple complaints or where the complaint is particularly frivolous and unwarranted"*²²⁰

*"...it is the University's experience that individual students can be responsible for making multiple complaints to the OIA which would distort the number of cases received from a particular institution."*²²¹

*"With vexatious and malicious complaints the case fee could be manipulated to penalise the University by pursuing cases that have no merit or substance."*²²²

154 Most who address this issue "support the principle that the OIA should remain free to students":²²³

"NUS believes that students should never be expected to pay to access the services of the OIA as this could deter those with a real

*complaint from accessing the service due to cost."*²²⁴

155 However, there are a very small number of respondents who believe that there should be a (small fee) for students.

*"We suggest that consideration should be given to a modest fee for complainants which would be refunded should the complaint be found to be justified."*²²⁵

*"In addition, to discourage 'vexatious complaints' (5.16) perhaps a nominal fee (£50 or £25?) could be introduced to prevent automatic applications to the OIA?"*²²⁶

*"We would suggest that students should be required to pay a small fee when they submit a complaint (e.g. £25) to deter the submission of frivolous complaints."*²²⁷

156 It is important to note that the OIA sees very few "vexatious" complaints. The Higher Education Act 2004 makes clear that a "reviewer may dismiss a qualifying complaint without consideration of the merits if the reviewer considers the complaint to be frivolous or vexatious".²²⁸

157 This is reflected in the OIA's Rules, which give the discretion to close vexatious complaints when appropriate. The OIA has a published policy on vexatious complaints which makes it clear that when deciding whether a complaint is vexatious, the "main consideration will be the issues raised in the complaint rather than the behaviour of the student bringing the complaint."²²⁹ The fact that a complainant voices disagreement with a decision or makes more than one complaint does not necessarily make him or her vexatious.²³⁰

220 1994 Group

221 Durham University and Durham Students' Union

222 University of Huddersfield

223 Universities UK (UUK)

224 NUS

225 Loughborough University

226 Royal Northern College of Music

227 University of Liverpool

228 Higher Education Act 2004, Sch. 2, para. 5

229 <http://www.oiahe.org.uk/about-us/policies/policy-on-frivolous-or-vexatious-complaints.aspx>

230 Scheme Rules 5.4, 6.9.4

158 Further, the OIA needs to be clear, again, that it is contrary to the principles and detail of both the Higher Education Act 2004²³¹ and the OIA Scheme Rules to charge complainants for making a complaint. The fact that the OIA is free to students is a core strength of the Scheme.²³² It is a key principle of the Ombudsman Association of which the OIA is now a full member, that complaint Schemes should be free to the complainant.²³³

Proposed model

159 The OIA has reviewed stakeholder submissions in this area carefully. We have attempted to reconcile clear support for a move towards a hybrid system including an element of case related payment, with calls to be cautious about the speed of change and the need to make any case-related element as simple, straightforward and transparent as possible. We recognise there will be a need to keep the system under continuous review as case volumes, the profile of institutional membership and expectations of the OIA continue to develop.

160 From 2013 a hybrid model with a small case related element will be introduced over a two year period. For 2013 the subscription only model will remain but the OIA will collate the data upon which to base a case-related element for 2014. Information on the revised model and an implementation timetable will be included within letters to Vice-Chancellors detailing subscription rates for 2013.

161 The submissions indicate an overall preference for adoption of the hybrid model. The drivers of change include fairness,²³⁴ policy considerations,²³⁵ dissatisfaction with the existing system²³⁶ and optimism that a hybrid

model will control future costs for individual universities.²³⁷

162 There are a significant number of submissions to this consultation urging caution. The OIA is urged not to be hasty in making snap judgements about private providers and the changing Higher Education landscape in general. This position has been given credence by the continuing uncertainty around alternative providers and the speed with which a level playing field will come into operation.

163 We have addressed these concerns by adopting a revised model which is transparent and capable of being introduced incrementally over a two-year period. It will be kept under rigorous review to monitor variable impact on part-time students, students on validated courses, and students at universities promoting wider access amongst others.

164 In the consultation there was general agreement that there would need to be some simple variations in the way cases are weighted for calculating case related elements. Given the need for proportionality and on-going changes to the OIA business process, the sensible division of cases appears to be between: (i) Ineligible cases; (ii) cases that are Settled or Withdrawn; and (iii) cases that are reviewed as either Justified, Partly Justified or Not Justified.

165 For the purposes of constructing the model, review cases have been allocated the value of 3 points. Settled and Withdrawn cases have been allocated 2 points, reflecting the increasing OIA emphasis on concluding cases other than by full review. Ineligible cases have been allocated the value of 1 point. Where a complaint is judged 'vexatious' by the OIA it will attract an explicit discount.

166 The concept of 'free' cases was popular in the consultation. It reflected the reality that complaints coming to the OIA are not something to be avoided at all costs or to be

231 Higher Education Act 2004, Sch. 2, para. 8

232 OIA, *The Pathway Report* (February 2010) p. 37, ch. 4, para. 4.15

233 <http://www.bioa.org.uk/docs/BIOA-Rules-New-May2011-Schedule-1.pdf>

234 Arts University College Bournemouth

235 St George's University of London

236 University of Cambridge

237 University of Sunderland

viewed as abnormal. It was therefore generally seen as appropriate that a certain number of cases (along with other OIA work relating, for example, to elements of good practice dissemination) should be covered by the core subscription fee.

- 167 The concept of 'free' cases has been converted into 'free points' for the purposes of modelling. The idea of linking the 'free' case element to payment bands and therefore to the core subscription paid suggested in the Pathway 3 consultation document²³⁸ has been retained. It is not proposed to alter the bands themselves, which retain general confidence, at this stage. However, separate discussions with HESA relating to student number definitions especially with regard to validated courses are on-going. This is as a direct result of feedback from the consultation. The variables in the model are therefore fees per point and number of 'free' points available within each band.
- 168 There was a suggestion from three universities²³⁹ as part of the Pathway 3 consultation responses, that rather than in-year case-fees there should be an adjustment made to subscriptions in the following year to take account of the case load generated by each university. This suggestion has been adopted. This will have the advantages of simplicity in terms of once-yearly billing for case-related elements.
- 169 Concerns were expressed during the consultation process about the OIA Board setting the case-related element retrospectively and in the knowledge of the impact on each university. This would be a particular concern if the proportion of the element based on cases were to grow over time.
- 170 These concerns are addressed by the OIA setting in advance both the charges relating to cases and the number of free points. This will leave

the core subscription element as the variable that could be changed in accordance with minimum income requirements as is the case now. Additionally, it will introduce an element (small at first) of volume-related charging. This combination was explored at the regional round table meeting in Wales in May 2012 and felt to have merit.

- 171 This revised system will have the advantage of being relatively simple to administer at both the OIA and universities. Invoices will continue to be issued to all universities in the autumn covering the core element of the subscription for the year to come. Additionally, a single, top-up invoice will be sent to relevant institutions in the spring of the following year, reflecting case-related charges based on the previous year. Crucially, this will avoid an adverse impact on OIA cash-flow and the resultant impact on its reserves and subscription fees. There will need to be a year of data collection before the case-related element is charged. This means that in year one (2013) subscriptions will be levied under the existing core subscription system.

238 http://oiahe.org.uk/media/39851/oia_pathway_3_consultation.pdf; ch. 5

239 Southampton Solent University, Newcastle University, Royal Northern College of Music

172 In summary, the main points of the new system will be:

- 1 A core subscription fee will be the main element. This will be invoiced as usual in the autumn, in advance of the relevant calendar year, based on the existing HESA student number-enrolled formula.
- 2 In addition, a smaller proportion of OIA income (expected to be about 10 per cent) will be raised by a case-related element based on complaints received at the OIA in the previous year.
- 3 Cases reviewed will attract “points” according to whether they are Ineligible (1 point), Settled or Withdrawn (2 points) or Reviewed to a Decision (3 points)
- 4 Universities will be allocated a number of free case points according to their subscription band.
- 5 Points beyond the free allocation will be the basis for the case-related element in the following year.
- 6 The case-related payments will be invoiced in March.
- 7 Given the need for fairness and transparency in the system and data collection, the case-related element will be levied for the first time in 2014.
- 8 The cases received by the OIA for each university in 2013 will be the basis for the case-related element of 2014 subscriptions. The “free” case allocations and cost per case will be communicated in advance (i.e. at the end of 2012).

Implementation timetable

October 2012	Letter to Vice-Chancellors and copied to Points of Contact with regard to subscription rates for 2013
2013	OIA subscription collected and data collection for case-related element begins
2014	Approximately 10 per cent of OIA income to be based on case-element element

Annex

A Survey of Campus Ombudsmen in continental Europe, North and South America, and Australia and New Zealand.

- A.1 The OIA conducted a survey of campus ombudsmen in Europe, North and South America, Australia and New Zealand. The respondents are members of the European Network for Ombudsmen in Higher Education (ENOHE). The OIA is a full member of this valuable network. The purpose of this survey was to learn about international ombudsman practices and arrangements that are in place for dealing with disputes between universities and students.
- A.2 The survey was conducted by Vytenis Jazbutis, a law student at the University of Reading, during a SEED internship at the OIA throughout the summer/autumn 2011. The survey was sent out to 75 colleagues on 25 July 2011, allowing the recipients three weeks to respond. It achieved a response rate of 20 per cent. This survey consisted of 22 questions and also asked the respondents to include their comments and suggestions for policy development. It benefited from responses from Australia, Canada, Austria, Mexico, Sweden, Spain, Germany and the Netherlands, allowing the OIA to learn about a wide variety of different international practices.
- A.3 The OIA would like to thank Professor Tim Birtwistle for his help in designing the survey, Pedro Trujillo from the University Europea de Madrid and to the ENOHE network for their valuable contributions. All responsibility for the survey's integrity and use rests with the OIA.
- A.4 The majority of respondents to the OIA survey of ENOHE campus ombudsmen indicated that their role and appointment derived from individual university statutes or standard procedures including decisions of the university board,¹ job postings,² or special committees consisting of students and staff members.³
- A.5 In Spain, the role was established by national law in which each university is required to appoint a campus ombudsman.⁴ The election procedure is democratic and transparent. A campus ombudsman is elected by the "Claustro", a democratically-elected body consisting of 300 students and staff members, with the Rector and two other high officials presiding. More than half of "Claustro" votes are needed in secret voting in order to elect an ombudsman. 25 per cent of its members need to nominate a person for election or any person may put himself or herself forward.⁵
- A.6 The variety of roles performed by campus ombudsmen across continental Europe, and North and South America, is explained to some extent by the pre-existing pattern of complaints handling in individual national jurisdictions. This includes whether or not there is a national ombudsman to have recourse to and the extent to which there are long-established formal rules for making complaints against decisions of universities.
- A.7 Where universities have only embryonic formal complaints procedures, the "classical" ombudsman model has been adopted, with ombudsmen handling formal complaints filed by students.

1 Ombudsman of Laval University, Quebec City, Canada

2 Ombudsperson of Victoria University, Australia

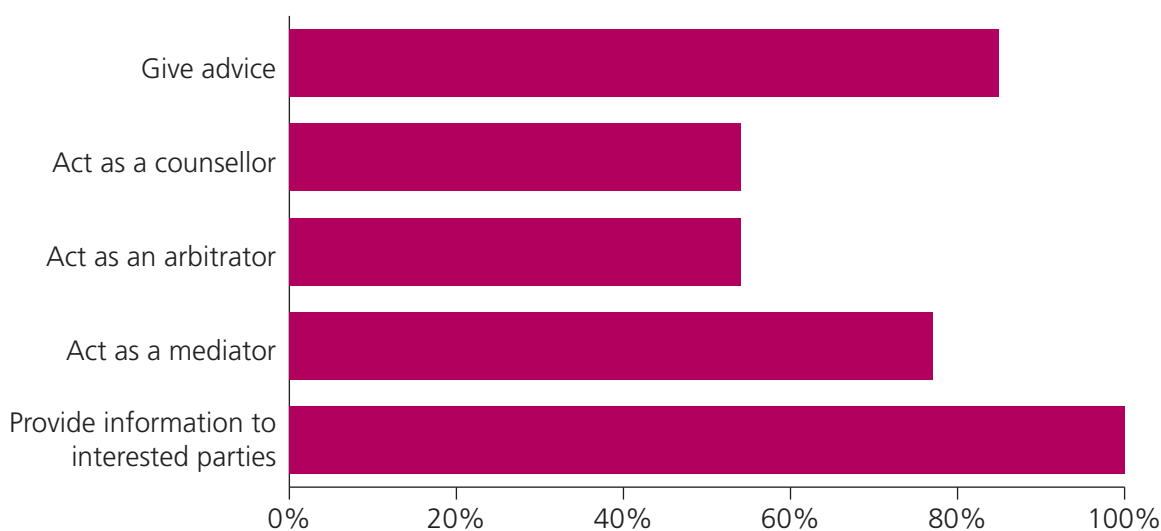
3 Ombudsperson of University of Victoria, Canada

4 English translation provided by Spanish respondents to the questionnaire to the ENOHE members

5 Ombudsman of Universidad de Cantabria, Spain; Ombudsman of Universidad Murcia, Spain; Ombudsman of University of Valladolid, Spain

- A.8 By contrast, where universities have their own internal complaints procedures, and/or where there is recourse to a national ombudsman scheme, campus ombudsmen respondents indicated that they are either not involved in their university's formal procedures or if they are, they only advise students on complaints and appeals processes, types of evidence and give feedback on their letters to universities. Here campus ombudsmen fit into the "modern" ombudsman definition.
- A.9 The OIA survey shows (Figure 1 below) that campus ombudsmen adopt a wide variety of roles in their universities. These include giving advice and information, and acting as mediators and arbitrators. The role of some campus ombudsmen extends beyond ADR and into counselling of individual students. Giving advice and providing information is clearly important. All respondents to the OIA's survey indicated that they provide information on complaints and appeals procedures. The utility of this is highlighted in situations where there is an acknowledged information and advice deficit.⁶

Figure 1 – What does your role as an ombudsman entail?



- A.10 There is also separate Australian research which indicates that more than half the respondents whose issues had been resolved said that was achieved by speaking to one or more people informally. Some interviewees stated that they decided not to pursue the formal path after receiving advice from a campus ombudsman.⁷ Three campus ombudsmen commented in response to the OIA's questionnaire that their impact could be enhanced even more by increasing awareness of their existence in the university community.⁸
- A.11 An assessment of ombudsmen's service was also conducted. The respondents (students) indicated that they valued the office for a number of reasons, including sensitivity to feelings, impartiality and adequate feedback.⁹

6 Research by NUS found that not a single students' union adviser believed that students are fully aware of complaints procedures with 13 per cent replying "not at all", and 61 per cent replying in only "slightly aware". Advisers believed that this was due to the fact that information about procedures was difficult to find. (National Union of Students, Review of Institutional Complaints & Appeals Procedures in England and Wales (NUS, February 2009 p. 11). Indeed, the OIA discovered that 60 per cent of complainants found it 'quite difficult' or 'very difficult' to find out which procedures to follow, with 8 per cent replying it was impossible. (Report of the OIA Student Survey, 2009, Figure 3)Accordingly, the QAA's Code of practice (chapter 4), the ARC's reference document (paragraph 5.1.2 and NUS' report (recommendation 1) suggest that more should be done in order to make information about complaints and appeals procedures easier to access.

7 Australian Learning & Teaching Council, *Student Grievances and Discipline Matters Project: Final Report* (ALTC, May 2009), p. 28, chapter 6, paragraph 6.2.3

8 Ombuds of University of Victoria, Canada; Laval University, Quebec City, Canada; University of Technology, Sydney, Australia

9 Ombudsperson of University of Victoria, Canada; Ombudsman of Laval University, Quebec City, Canada

- A.12 The ADR role of campus ombudsmen is also firmly rooted. The majority of respondents to the OIA's questionnaire for ENOHE members indicated that they provide mediation as a means of resolving disputes.¹⁰ Research on Campus Ombudsmen in United States Higher Education showed that nearly all of a sample of 98 use ADR and see themselves as acting as neutral facilitators to resolve disputes i.e. as a place of first resort.¹¹ The ombudsman of the University of Victoria in Canada commented that "the office receives many referrals from students (word of mouth) and from staff or faculty". More than two thirds of respondents to the OIA's questionnaire indicated that they make recommendations for their university based on their interaction with students and findings of their investigations.

10 ENOHE Questionnaire figure 1

11 Mary J. Newhart, *Ombudsmen in Higher Education: Similarities, Divergencies, and the Rise of Alternative Dispute Resolution*, (2007), chapter 4, page 48



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