

2015 Annual Open Meeting of the OIA
Speech by Rob Behrens
Independent Adjudicator and Chief Executive



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Check against delivery

Thank you for attending, and thank you to Dr Wayne Campbell and our student panel for their perspectives. Thank you also for all of your work over the last year.

This is the OIA's and my Annual Report, for which I take responsibility. But it is also in large part a reflection on progress made and challenges faced by everyone who has a role in preventing and resolving student complaints. It will be published on Thursday.

You will see from the report that the OIA is in good shape. **The classic ombudsman model** fits the temperament of higher education because it restricts the ombudsman to addressing complaints only when internal university processes have ended. This means there must be a genuine partnership between universities, students' unions, and the OIA. And there is a growing partnership which has further to grow.

I want to start at the very end of the report. This is the traditional Jewish approach to scholarship, and a reminder to the Vice-Chancellor who lamented the loss of the Archbishop of Canterbury as Visitor and asked me what denomination I was. Reform and modernisation come to us all. There is a comment on the inside back cover from a student who complained to the OIA: 'You tried your best to give me justice and I am really very thankful to you'. This is from an international student who was withdrawn from a professional course and as a consequence lost her visa sponsorship. It was a complicated case which boiled down to errors in the way course requirements were communicated and errors in the way her appeal against withdrawal - for failing to meet requirements she hadn't been told about - was handled.

In effect the student lost the best part of a year while the university dealt with the case, by which time it was no longer in a position to take her back. The OIA found her case Justified and the university complied swiftly with our recommendation of financial compensation that refunded fees and recognised distress and inconvenience.

The student was one of more than 2,000 who complained to the OIA in 2014 – we received 2,040 complaints during the year. It is fairly typical of a Justified case – errors early on, compounded by errors in the appeal process, and by the time the case reached us a lot of options were closed to the student. In 2014 we found five per cent of cases Justified – not a high percentage, but more than 100 students.

Added to the 10 per cent of Partly Justified cases and eight per cent of cases that the OIA **settled** between the student and the higher education provider, that means that more than 500 students whose complaint to the OIA led to an issue being looked at again.

The student used the word 'justice'. As the student ombudsman, the OIA seeks to make sure that students get a fair and reasonable outcome for their complaints. The

Annual Report includes many case examples that illustrate the decisions we made on 2,175 cases in 2014.

The overall number of complaints has stabilised at around 2,000 a year – perhaps 1 in 7 of what the university itself might deal with. The OIA again closed more cases than we received, and this has helped bring case handling times down – **by a whole calendar month**. This is a step in the right direction but still not fast enough. There is more to come on this front. The recent consultation on proposed Rules changes is now over – many thanks to all those who contributed - and we are further streamlining the process to reduce the handling time even more.

For me, a key achievement in 2014 was the publication, after extensive consultation, of the **Good Practice Framework** for Handling Complaints and Academic appeals. This fulfils a long-expressed desire by higher education providers and students' unions for general, **written**, guidance on which to base complaints and appeals procedures.

Crafting the consultation was a major undertaking for the steering group whose members came from the National Union of Students (NUS), the Academic Registrars' Council, the Association of Heads of University Administration, the QAA and the OIA. Two members of that group, Huw Morris who represented the ARC, and Tim Burton from the QAA, are here today.

A good number of you attended the consultation launch in April 2014. I remember it as a rare occasion on which no one wanted to ask David Willetts a question. But you did submit thoughtful written comments. This was a genuine consultation and the final document was significantly different to **and better than** the draft, in particular in setting an agreed, **overall timeframe** for the formal stages of a complaint or appeal. In addition, we made it clear that, unlike in Scotland, the Framework outlines principles and offers guidance but is **not a prescriptive set of rules** that must be followed to the letter. This is one of the advantages of exceptionalism and not being parcelled up into a generic public services ombudsman.

We have already run several workshops on implementing the Framework and have another one here, this afternoon. I have been very encouraged by the positive approach taken. In the Annual Report, four universities – Birmingham City, Sunderland, Teesside and Warwick – outline the ways they are using the framework to update the way they do things, particularly with regard to the key issues of conciliation and mediation on campus.

The Good Practice Framework is also proving a useful tool for the four or five hundred higher education providers that will join the OIA Scheme in September. I am very pleased to see a number of people who represent some of those providers here today, including John Widdowson and Madeleine King who have been immensely helpful in smoothing the transition.

2014-15 was an important year for **higher education regulation**. People with long memories will recall that the 2011 White Paper, **Students at the Heart of the System**, promised a 'level playing field' for different types of provider. The snag was that this required primary legislation and there was no political appetite for taking a bill through Parliament. So there was stalemate until a Labour Peer,

Baroness Dianne Hayter, took the initiative in proposing amendment to what is now the Consumer Rights Act 2015. From September higher education students at Further Education Colleges, alternative providers and providers of School-Centred Initial Teacher Training will be able to complain directly to the OIA on the same basis as other higher education students.

This is good but it is not without its challenges. There has been so much expansion in the sector that no one, not the Government, not the funding councils, not (yet) the OIA knows exactly who all the providers are. There is huge variation in size, in the types of courses offered, in the arrangements - where they exist - for student representation, in student background, even before we look at how complaints are dealt with. We are running workshops and offering online support. It is imperative that we do all of this without slowing down or diverting resource away from existing members and the annual case load. So the preparation is paid for by the subscription fees of the new members.

Before then, next month, the OIA expects to become the **ADR Entity** responsible for higher education complaints under the EU Directive which becomes operational in July. I pay tribute to the exemplary higher education civil servants in BIS for their skill knowledge and resourcefulness in dealing with a complicated set of arrangements. There are some practical implications for the OIA Scheme, in particular a requirement to allow students a full year to complain after they receive a Completion of Procedures letter from their provider. I can think of very few circumstances in which waiting a year will bring any benefit to the student and we will want to work with you to encourage students to act as soon as they feel able, where they decide they want the OIA to review their complaint. By taking on the role of ADR Entity the OIA has ensured that there remains only one ombudsman for higher education students in England and Wales. This is better than the confusion and additional bureaucracy involved in having a separate Entity about whom we – and in particular providers - would have been obliged to tell complainants.

Additionally, we have witnessed proposed changes to the way in which quality is verified at universities, the arrival of the concept of the public service ombudsman for England drawing together complaints services for health, housing and local government - it's good to see Donal Galligan here from the Ombudsman Association here today - and developments on the European higher education ombudsman front which I turn to now.

One of the traditional features and pleasures of our Annual Open Meeting is that I welcome my Austrian counterpart, the Austrian Student Ombudsman, Dr Josef Leidenfrost. He is here again, fresh from hosting the European higher education ombudsman summit in Innsbruck. This conference brought home to us the pressure **campus ombudsman** across Europe are under from their own universities. Unlike the OIA and our Austrian counterpart, the campus ombudsmen generally are entirely dependent on the university for resources and have no recourse to newspapers and other media when universities resist their advice. There is no simple solution for student complaints arrangements in Europe but the more I learn, the more clear I am that the sector and the OIA made a sensible decision not to go down the campus ombudsman route when we consulted on the issue in 2011.

Our scheme is far from perfect but it carries authority with users, compliance from universities, and the benefit of feedback from the experience of closing more than ten thousand cases.

I would like, now, to turn my attention to some of the main themes of the Annual Report. The first of these is **academic status** and the closely related question of how the OIA deals with matters of academic judgment.

Under the 2004 Act, we do not interfere with the academic judgement inherent in assessment and appeal. Our approach on this was endorsed by the High Court in the case of Mustafa and Queen Mary University London. We can and do look at the processes leading up to and following the use of academic judgement. We have tried on pages 18 and 19 of the Annual Report to give a flavour of where we are able to intervene. So, when a university told us that we couldn't look at a student's claim that an invigilator had distracted him because that was academic judgment, we disagreed. When a student complained that his work had not been double marked according to the Assessment and Feedback policy, and the University claimed this was a challenge to academic judgement, we found that the student was justified in his claim. Two thirds of complaints in 2014 were about issues either of academic status or academic misconduct. It would be an unacceptable and a serious weakening of our independence if these were a no-go area for the OIA.

The second is **service issues** at universities which accounted for 15 per cent of complaints closed in 2014, a big increase on 2013. These are often the complaints about discrepancies between what the university prospectus offers and what the course actually delivers; about the availability of supervision; about facilities. In my view, while there is an opportunity for this to be explained by the rise of the 'student as consumer' theme, these issues are more to do with the importance of universities delivering what they promise and keeping their word. Sometimes, this means keeping in check the promised land offered by international recruitment agents.

The third issue is the complicated and often distressing one of so-called **'lads' culture'** – brilliantly defined by the NUS as “a set of widespread attitudes and behaviours that belittle, dismiss, joke about or even seem to condone rape and sexual assault” – and cases of harassment, often fuelled by drink. We don't see many cases, though a recent NUS survey found one in four students at university had experienced unwanted sexual advances. A number of the cases that do reach us are serious and shocking. Of course these issues are not confined to universities and to students and there are no simple answers.

But when students intimidate other students, in real life or on social media, with sexual threats and innuendo; or a supervisor harasses a student, or a student reports that she is frightened to live in her accommodation because of the actions or other students, universities need to be ready with advice and a clear plan of action. There are excellent examples of good practice here. Manchester University Students Union has worked closely with the University on a 'We Get it !' campaign to promote zero tolerance to sexual harassment, by getting all involved to think about their behaviour and to sign up to a Pledge to de-mystify the issues and encourage personal responsibility for treating everyone with dignity.

I have a few colleagues here today and will shortly ask the Deputy Adjudicator, Felicity Mitchell, and Chief Operating Officer, Ben Elger, to join me for a question

and answer session. I could not do my job, and the OIA could not do its job, without their sustained, expert, support.

Before we move to questions I will make three final, brief points.

First, I learn as much from being out on the road, 110 visits to students unions and universities and still counting, as I do looking at cases in Reading. We need direct contact with scheme users to understand what is going on on campus and how thinking is developing. Equally we need to help people understand the OIA's decision in cases and to learn from them. A significant breakthrough has been the publication of far more case studies, 55 since September naming the university **on public interest grounds**. Transparency is an important part of building trust, and universities have responded well to the need to put more cases in the public domain.

Second, we need to remain vigilant, no matter where we are in the sector, in the area of regulatory change. If there is no sign of primary legislation, higher education needs a Regulatory Partnership Group which lives up to its original ideals of being a discussion forum and advisor to Government. There are big issues around including Home Office agendas around immigration and – separately – around extremism. There is also devolution, and the EU referendum.

Third, 2014 was the tenth year of the OIA's operation of the Student Complaints Scheme under the terms of the Higher Education Act. There is a very potted history on pages 28-29 of the Annual Report. The rise in complaint numbers sent a colleague hunting for the figures - 213 complaints closed in 2005; 2,175 complaints closed in 2014. Either students are getting more truculent or the environment has become more open, more accepting of complaints, more willing to learn, and more determined than ever to make sure that, when things do go wrong, students have somewhere to turn to.

At this point, in my eighth year as Independent Adjudicator, I take the advice on how to open this Women's Institute marmalade jar you see before me – "Turn slowly, and push off".

Thank you.

16 June 2015