

Guidance Note

Additional Rules for Large

Group Complaints - April 2021

Introduction

Most complaints are made to us by students who have been affected by something that happened to them as an individual. But we can also look at complaints brought to us by groups of students who have all been affected by a particular issue or event at a provider.

The additional Rules, which came into effect under Rule 16A on 19 April 2021, enable us to review complaints from large groups more efficiently whilst maintaining fairness. We expect to continue to handle most group complaints through our usual processes.

This Guidance Note explains how we apply the additional Rules. It gives more information about how we decide whether to look at a complaint from a large group under the additional Rules, and the process we follow.

The Guidance Note should be read together with the Rules and the additional Rules. Words and phrases which are in **bold** are quoted from the Rules or the additional Rules. If there is any conflict between this Guidance Note and the Rules or additional Rules then the Rules and additional Rules take priority.

Most of the Rules of the Scheme still apply to Large Group Complaints and are not affected by the additional Rules. So, for example, Rules 1, 2, 3, 4, 5 and 6, covering what we do, who can complain, higher education providers, and the complaints we can and can't review, are not affected by the additional Rules.

What is a Large Group Complaint? (Rule 16A, additional Rule 1)

1. The Large Group Complaints process is designed to manage complaints brought by groups of hundreds of students. Smaller groups are managed within our usual review process. We would not normally use the process for complaints involving fewer than 100 students. But the additional Rules do not specify a minimum number of students because that could be quite arbitrary and might be viewed as a target to be reached.
2. The complaint made by the students must all be about the same provider. Under this process we will not consider together complaints from students where the complaints are similar but are about different providers. We may consider complaints from students at different delivery providers under the Large Group Complaints process, if they all have the same complaint about an awarding provider.
3. The complaint made by the students must be about the same or very similar issues and it is likely that if the complaints are found to be Justified or Partly Justified, the same remedy would apply. An example might be a group of students all studying the same course, in the same year, and at the same provider, who have all been affected by disruption in the same way. We decide whether the complaints are sufficiently similar that they can be reviewed together under the Large Group Complaints process.
4. Sometimes an event or situation that affects a large number of students may have a different impact on some or all of those students. This means that in some cases, we may identify sub-groups within a Large Group, and we may identify different outcomes to the complaint. In some cases, we will consider students' complaints individually under our usual Rules even if the cause of the complaint is the same event as other students' complaints.

Deciding whether to use the Large Group Complaints process (Rule 16A.3) – and some early considerations

5. We decide whether to use the Large Group Complaints process, but we would not make that decision without discussing it with the provider and the students involved. That discussion may take place before we receive any complaints, because the provider, student representative body or some students have approached us, or it may take place when it becomes apparent that large numbers of students are filling in our Complaint Form. It is important to establish early on how many students want to bring a complaint to us, so that we can decide if the number of similar complaints is such that it may be appropriate to review the complaints under the Large Group Complaints process.
6. We encourage providers and student representative bodies to contact us informally and at an early stage if it appears that a large group of students may want to complain to the OIA. In some circumstances, where the provider and students agree that this could be beneficial, we may try to help them to reach an agreement about the complaint before the provider's internal processes have come to an end. Early discussion may also help us to provide appropriate signposting, for example, if students contact us before raising any of their concerns with the provider or if a student representative body is in a position to offer support. Although we encourage providers to discuss group complaints with us at an early stage, it is not a requirement of our Rules to do so.
7. Even if we talk to a provider and/or students and their representatives about a potential Large Group Complaint before any student formally brings their complaint to us by submitting a Complaint Form, we will not formally consider a complaint under our Rules and additional Rules until a student has made their complaint to us. We may make a customised Complaint Form available for students in a large group. This helps us to ask targeted questions about the complaint and remedy that students are seeking and also makes our administration more efficient. But if a student uses our standard Complaint Form to make their complaint, we will still consider whether it is a complaint that should be considered as part of the Large Group.
8. After we have decided to use the Large Group Complaint process, if fewer students than anticipated choose to bring their complaint to the OIA we may decide to review the group complaint under our usual Rules. We would explain our decision to the students who have complained to us and to the higher education provider.
9. Students in a Large Group may choose someone to represent them in their complaint to us. This may be someone who represented them as a group in the provider's internal procedures, or it may be someone different. There is guidance about [what makes a good representative](#) on our website. We strongly encourage students to seek advice and support from their student representative body where this is available, even if that body is unable to represent them directly.
10. Even where a group of students is represented by one or more individuals, each student who would like to complain to us will need to "opt in" as an individual. We will not review complaints from students within the Large Group Complaints process solely on the basis that the student was part of the group that complained to the provider.

Completing the higher education provider's internal processes (additional Rule 2)

11. Under the Large Group Complaints process, we will not review a complaint unless the provider has had the opportunity to look at the issues of the complaint first. Sometimes a provider may have considered individual complaints from all the students affected by an issue. Or, the provider may have considered a complaint made on behalf of all the students affected by an issue. But sometimes, a provider might have considered and responded to individual complaints from some but not all of the students who want to be part of a Large Group Complaint to the OIA. If a provider has reached a final position on the issues of the complaint it would not be necessary for the provider to consider an individual complaint about the same issue from other students before they joined the Large Group. This reduces the work involved for students and means

that the provider will not have to process individual complaints about the same issues from large numbers of students. We discuss the complaint with the provider before making a decision about which students may join the Large Group.

Timeframes for Large Group Complaints (additional Rule 3)

12. As the designated alternative dispute resolution (ADR) body for higher education under the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015, we are required to allow students 12 months to bring their complaint to us. This period begins when the provider issues a Completion of Procedures Letter. Under our usual Rules, even if a student could bring their complaint sooner as an individual or as part of a group, any student with a Completion of Procedures Letter has the right to wait until the end of this period to bring a complaint to us. The additional Rules do not alter this.
13. We encourage all students who would like to bring their complaint to us to do so as soon as possible. In general, where large groups of students are dissatisfied with how a provider has responded to the issue of complaint, it is likely to be beneficial to all parties to try to resolve the matter promptly. This is particularly important where the complaint could be resolved by practical measures being put in place, especially for continuing students.
14. If we decide that the Large Group Complaints process is likely to be suitable, having discussed the circumstances with the provider and the students who have contacted us, we will set a timeframe for students to submit a complaint as part of the Large Group. This will help us to establish whether the number of similar complaints is likely to constitute a Large Group, and can be considered together. The timeframe we set will not be less than four weeks.
15. We will decide on a case-by-case basis whether any complaints received from students after this timeframe but before the expiry of the 12 month deadline should be joined to a Large Group Complaint, whether they should be considered as an individual complaint, or whether the complaint is not something we can look at under our Rules. Students and providers can tell us if they think a complaint should or should not be part of a Large Group. We will not consider the same complaint from an individual student under the Large Group Complaints process and under our usual Rules.
16. Under our usual Rules, some students who complain to us about the same issue may do so at different times. Where students could have been considered as a small group but for the timing of their complaints, they usually receive very similar outcomes from us. In the same way, students who bring eligible complaints to us after the deadline we have set for the Large Group Complaint, but which could have been considered as part of that Group, are likely to receive the same outcome, and same fair remedy, to their complaint as the Group received. Where a complaint has been upheld, or the provider has made an offer to settle a Large Group Complaint, it may be fair for providers to extend the offer to other students affected by the same issue even if they have not made a complaint to the provider or to us. This is likely to be reasonable where the provider has not delivered a service, or where students in a particular cohort or group have not been treated fairly.

Complaint is not suitable for review under the Large Groups Complaints process (additional Rules 4, 5 and 6)

17. We may decide that an individual student's complaint is not suitable for review as part of a Large Group Complaint. For example, a student may explain that the focus of their complaint is different from the rest of the group, or they may have been affected differently. We will explain our decision to the student(s) involved and to the higher education provider.
18. We may still be able to review the student's complaint even if we decide not to include it in the Large Group Complaint, if the complaint is something that we can review under our Rules (see Rules 2, 3, 4, 5, 6, 7 and 8).
19. Additional Rule 6 means that if we decide that we can't review a complaint at all, then the student and the provider will still be able to ask us to reconsider that decision under Rule 10.6.

The review process (additional Rules 7, 8 and 9)

20. Under our usual Rules, once we have accepted a complaint for review, we decide how to conduct the review. Rule 11.1 says, **“When we have decided that the complaint is one which we can review, we will decide how to conduct the review and whether we need any more information.”** That Rule applies to the Large Group Complaints process.
21. Rule 12 sets out how we gather information during our review. Additional Rules 7, 8 and 9 change the way we do that. We decide what information and documents we will need, and we share information we receive with the students and the provider. We will not share information where to do so would be a breach of data protection legislation. We may share some information in anonymised or summarised form.
22. Students and providers each have opportunities to make comments and representations in addition to answering any specific questions that we have. But for the Large Group Complaints process to work, we need to be proportionate and so we won't expect every individual student to comment on all the information and documents we have shared. Although we will share all the information sent to us, we will draw attention to the information and documents that we think are relevant to our decision. We may ask students and the provider to direct their attention to specific information and documents in their responses. This would not prevent the provider or the students from drawing our attention to other information or documents that they considered important.
23. Under our usual processes for individual student complaints, we may speak to the student by telephone or video call as well as communicating in writing. In the Large Group Complaint process, we may use online video conferencing technology to hold virtual meetings to speak with large groups of students together. We will usually record these meetings and make the recording available to the students and the provider. We may also make a written summary of the meeting available. Sometimes we may decide to hold meetings with students and representatives of the provider together.

Complaint Outcomes and Recommendations (additional Rules 10 and 11)

24. Our approach to reaching a decision on a Large Group Complaint is the same as for any other complaint. In deciding whether a complaint is Justified or Partly Justified, we look at whether the provider properly applied its regulations and followed its procedures, whether the procedures themselves were reasonable and whether the provider's decision was reasonable in all the circumstances. Where applicable we take into account relevant law and guidance, such as consumer law and Competition and Markets Authority guidance. Our role is to decide whether the provider has acted reasonably and whether students have been treated fairly, which is broader than whether a provider has met its legal obligations. We make a decision about whether a provider has followed what we consider to be good practice, having regard to relevant sector guidance and our own experience of handling complaints.
25. Additional Rules 10 and 11 change the way we issue our decision under Rules 13 and 14. Rule 13.1 says, **“When we decide that we have all the information and evidence that we need to make a decision we will prepare and issue a Complaint Outcome.”** Under the Large Group Complaints process, we still make our decision once we have all the information and evidence that we need, and we tell the provider and the students about that decision and any Recommendations we are making. But we make a decision relating to the whole Group, not individual decisions for each student. Rather than sending the decision out to each student, we may give the students in the Large Group and the provider access to a document or a recording setting out the decision.
26. We have a wide discretion in deciding on the sort of Recommendations to make when we decide that a complaint is Justified or Partly Justified. Our usual approach to making Recommendations is set out in our guidance [putting things right](#). We will apply the same principles to Large Group Complaints. We can make Recommendations that a provider should do something that benefits an individual student or group of students – that might be a practical or financial remedy – and/or that it should do something to change or improve its policies or practices.

27. When we are considering the complaint, we will discuss a suitable remedy with the students and the provider before we make any Recommendations. When we intend to make practical Recommendations, for example, that the provider allows students to repeat part of their course, we will ask the students and the provider for their comments before we make our Recommendations.
28. We recognise that it would not be beneficial to either party, nor an efficient way to resolve complaints, if we made Recommendations that weren't practical. But it's not always possible to find a remedy that everyone agrees with and we will make the final decision on Recommendations in the same way as we do for other complaints.

Finding a reasonable resolution (additional Rule 12)

29. We take the same approach to trying to settle a Large Group Complaint as we do when trying to settle any other individual or group complaint: we try to reach an outcome that both parties agree to, but if it becomes clear that this wouldn't be possible or couldn't be achieved without extensive negotiations, then we reach our own decision about the outcome of the complaint and an appropriate remedy.
30. Additional Rule 12 says, **"At any stage during our review we may identify what we consider to be a reasonable resolution to the Large Group Complaint and we may decide to conclude our review on the basis that the higher education provider has agreed to implement the reasonable resolution."** This is similar to Rules 16.1.2 and 16.1.3 which say that we may terminate our review if the provider has satisfactorily dealt with the complaint or has made a reasonable offer to settle it. Additional Rule 12 means that, if we identify a reasonable remedy that fairly resolves the Large Group Complaint, and the provider agrees to implement it, we may decide to conclude our review on that basis, even if not all of the students agree to it.
31. Rules 14.6 to 14.11 apply to Large Group Complaints and we expect providers to comply with our Recommendations. Students may decide whether or not to accept the remedy we have recommended.

Reopening our review (additional Rule 13)

32. Rules 15.2 and 15.3 of the Rules of the Scheme will not apply to Large Group Complaints.
33. The Large Group Complaints process would not work if every student, and the higher education provider, could apply individually to us to reopen our review. But we would always reopen a review if it came to light that we have made an error that has seriously affected the outcome of our review. If a student or a higher education provider thinks this is the case then they can contact us to explain why, and we will consider it under our quality control processes. We encourage students and providers to raise any such concerns with us as soon as possible.

Telling students about the Large Group Complaints process (additional Rule 14)

34. Additional Rule 14 says, **"We expect higher education providers to help us with the administration of our review of Large Group Complaints. This will include giving students information about the availability of the Large Group Complaint process."**
35. Under our usual Rules, providers should issue a Completion of Procedures Letter to a student at the end the internal procedures, giving the student information about their right to complain to us. In some circumstances, where the provider has discussed the existence of a Large Group Complaint with us before the Completion of Procedures Letter is issued, we may ask the provider to include some specific information in the letter, for example, a link to a special Complaint Form for the Large Group Complaint. In other instances, the usual text will be sufficient. We will then explain the Large Group Complaints process to the students who complain to us.
36. Where some students have not completed the provider's internal procedures but could be included within a Large Group Complaint to us, we will discuss with the provider, student representative body and the students

who have complained to us, how those students can be informed about their options. Information about us should already be available in general terms to all students through a provider's published complaints procedures.

37. When something has gone wrong, it's important that students know what their options are so that they can decide whether or not to make a complaint. We may ask the provider or student representative body to send information to students who have been affected by the issue. It's likely that the provider would be able to identify students within particular groups, for example, residents of a particular accommodation block or students within a specific cohort on a particular programme. We won't put information about the (potential) existence of a Large Group Complaint at a provider into the public domain, for example, on social media.

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