



office of the  
independent  
adjudicator

Office for  
Students



**Collaboration Agreement  
between  
The Office for Students  
and  
The Office of the Independent Adjudicator**

**Introduction**

1. This Agreement sets out a framework by which the Office for Students (the OfS) and the Office of the Independent Adjudicator (the OIA) (together 'the Parties' and each respectively 'a Party') will collaborate in taking forward their respective remits. It is intended to promote:

- Effective working and communication between the two Parties.
- Clarity of understanding about our respective roles and responsibilities.

2. This Agreement is consistent with the principles of better regulation whereby the Parties, wherever possible, should be able to rely on each other's systems of oversight and assurance to minimise the accountability burden placed on providers whilst maintaining organisational independence and an appropriate and proportionate level of accountability for public funds.

3. This Agreement is not a statutory or contractual document, but both Parties agree to abide by its terms in so far as it is reasonably possible. It will cease to have effect if either Party is wound up and will not bind any successor bodies unless transfer is agreed and the agreement reissued under the name of the successor.

**Parties to the Agreement**

The Office for Students

4. The OfS was established by the Higher Education and Research Act 2017 (HERA) and its responsibilities include:

- Establishing and maintaining a register of English higher education providers
- Preparing and publishing a regulatory framework that includes initial and ongoing conditions of registration
- Granting (and revoking) degree awarding powers and university title
- Assessing the quality and standards of higher education provided by specified higher education providers
- Monitoring financial sustainability of individual providers and reporting annually on patterns and trends in financial sustainability

- Providing grants, loans and other payments to eligible higher education providers
  - Compiling and making available higher education information about providers and their courses and publishing this information
  - Providing information and advice to the Secretary of State responsible for higher education.
5. Informing these functions are the OfS's general duties to have regard to the need to:
- protect the institutional autonomy of English higher education providers
  - promote quality, and greater choice and opportunities for students, in the provision of higher education by English higher education providers
  - encourage competition between English higher education providers in connection with the provision of higher education where that competition is in the interests of students and employers, while also having regard to the benefits for students and employers resulting from collaboration between such providers
  - promote value for money in the provision of higher education by English higher education providers
  - promote equality of opportunity in connection with access to and participation in higher education provided by English higher education providers
  - use the OfS's resources in an efficient, effective and economic way.
6. The OfS also has a legal duty to follow the principles of best regulatory practice (so far as relevant), including the principles that regulatory activities should be transparent, accountable, proportionate and consistent, and targeted only at cases in which action is needed.

#### The Office of the Independent Adjudicator for Higher Education

7. The OIA is a company limited by guarantee and is governed by its memorandum and articles of association. It is also a registered charity.

8. The OIA Scheme was designated under the Higher Education Act 2004 which established an independent scheme to adjudicate on student complaints against universities in England and Wales, without charge to complainants. The OIA became designated operator of the student complaints scheme in January 2005. The OIA's remit was extended by the Consumer Rights Act 2015 to cover all providers offering HE courses designated for student support and providers with degree awarding powers. It was further extended by HERA to providers that are registered by Office for Students and those providers in England which provide higher education courses leading to the grant of an award by another OIA member provider in England (or by the OfS itself under its awarding/validation powers).

9. Governing bodies of qualifying institutions<sup>1</sup> are required to comply with the Scheme rules. “Non-qualifying institutions” may apply to join the Scheme. The OIA has the duties of the Designated Operator under the 2004 Act to publish the Scheme and supply relevant information to the appropriate UK and Welsh Assembly Government Ministers.

10. Under the Scheme, which is currently funded by annual member subscriptions based on student numbers, together with a smaller ‘case-related element’, the OIA has a wide remit to consider complaints about an ‘act or omission’ by a member provider, brought by a student or former student. The OIA will not interfere with matters of academic judgment, nor does the OIA consider complaints about admissions, employment-related issues or matters that have been, or are being, considered by a court. Generally, a complainant must have first exhausted the member provider’s internal processes before bringing a complaint to the OIA.

### **Higher Education Regulatory Frameworks**

11. The OfS’s regulatory framework was published in February 2018<sup>2</sup> but it will not come fully into force until 1 August 2019. This is because many of the OfS’s regulatory powers apply to ‘registered providers’ and the OfS will not have completed the registration process for all current providers before the beginning of the 2018-19 academic year. The secondary legislation<sup>3</sup> (2018 No. 245) that enacts the HERA 2017 also makes provision for the powers and duties of HEFCE (under the Further and Higher Education Act 1992) and the Director of Fair Access (under the Higher Education Act 2004) to be exercised by the OfS until its powers are all switched on. This means that:

- English providers previously funded and regulated by HEFCE will be funded and regulated by the OfS using the legal powers and duties of the Further and Higher Education Act 1992 and according to the terms and conditions of OfS funding published on the OfS’s website.
- English providers previously designated for student support and regulated by the Secretary of State of the Department for Education will continue to be designated and regulated by DfE under the Secretary of State’s powers. The OfS will provide advice to DfE about providers’ compliance with the conditions of designation, where applicable (<https://www.gov.uk/government/publications/specific-course-designation-alternative-higher-education-providers>).
- During this same period, the OfS will also regulate all registered providers under HERA powers in respect of:
  - a sub-set of the general ongoing conditions of registration that were applied to providers when they registered with the OfS;
  - any specific conditions of registration that were applied to a provider when it registered with the OfS.

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<sup>1</sup> As defined by the Higher Education Act 2004, as amended.

<sup>2</sup> [https://www.officeforstudents.org.uk/media/1047/ofs2018\\_01.pdf](https://www.officeforstudents.org.uk/media/1047/ofs2018_01.pdf)

<sup>3</sup> <http://www.legislation.gov.uk/ukxi/2018/245/contents/made>

12. Section 89 of HERA means all providers on the OfS register who are not already a Qualifying Institution for the purposes of the Higher Education Act 2004, will become so from the date of their registration. Qualifying Institutions are required to follow the Rules of the OIA Scheme and pay any relevant subscriptions. The OfS's regulatory framework requires providers to comply with the requirements of the OIA including subscription requirements from 1 August 2019.

### **Purpose of the Agreement**

13. Increasing diversity of the student population and providers has changed the higher education landscape and closer working relationships between regulators and other independent bodies brings many benefits, including reducing burden and promoting student interest. The Agreement sets out clear expectations of the relationship between the OIA and the OfS for the benefit of both organisations, students and other stakeholders.

14. The underlying principles of this Agreement are that the OIA and the OfS will:

- share information and intelligence in a timely and effective manner to support their respective obligations and commitments, safeguard the interests of students, and protect and enhance the reputation of higher education in England
- identify ways that we can work together in support of our responsibilities.

### **Context of the Agreement**

15. The OIA is the independent complaints handling body and provides an impartial and transparent review of unresolved student complaints and the active promotion of good practice in preventing and handling complaints. Complaints can, in some cases, suggest an underlying issue within the sector.

16. The OfS is the authoritative voice on higher education. It regulates higher education providers and publishes a list of the providers that it regulates. The OfS can provide up to date information that is helpful to the OIA.

### **Areas of joint interest and activity**

17. The OfS and the OIA have legislative remits to carry out specific functions in the higher education sector. The independence of both organisations is recognised, but they also recognise the importance of continuing dialogue for the benefit of higher education students and providers. The main area of joint interest between the OfS and the OIA is in information sharing about higher education providers.

18. The following regular information flow between the OIA and the OfS is covered by this Agreement:

- The OfS's notification to the OIA in a timely and accurate manner of the outcomes of HE gateway processes and relevant information which may assist the OIA in administering the membership of the Scheme, including registration of

providers by the OfS under HERA, details of, and changes, to sub-contractual arrangements by providers on the OfS register and relevant information where the OfS will exercise its validating function under Section 51 of HERA. For the period from 1 April 2018 to 31 July 2019, this includes specific course designation, which the OfS administers on behalf of the Department for Education – these outcomes include the DfE’s decisions on newly designated providers and de-designations.

Providers that are registered by the OfS and are not already Qualifying Institutions for the purposes of the Higher Education Act 2004 will become so from the date of registration. When a provider registers with the OfS, it will write to the provider notifying them of this. The OfS will also notify the OIA of the registration of providers (including new providers) so that it can make contact with them, where the provider is not already a member of the OIA.

- The OfS will share information that may assist the OIA in undertaking a review of complaints by a student or group of students including operational information and information about systemic issues which may have been identified.
- The OIA will share relevant information gathered through the Scheme that identifies systemic issues and broad themes and concerns about quality and standards in registered providers.
  - Where relevant this will include the numbers of complaints and outcomes of complaints where the OIA has identified systemic issues or clusters of complaints.
  - This will not include personal or identifying information about individual students.
- The OIA will share information with the OfS on request about the number of complaints that it has received about a provider through its Scheme to inform the OfS’s registration process and applications for degree awarding powers and university/university college title.
- The OIA may share information with the OfS about a provider’s non-compliance with the OIA Scheme where this indicates concerns about systemic issues.
- Both Parties will share, on an informal basis, emerging trends that are relevant to the remit of the other organisation and will notify each other, where appropriate in advance where there are likely to be significant developments or announcements which may have an impact on the other Party’s work.

## **Data Protection**

19. Both Parties will comply with all applicable requirements of the Data Protection Legislation. ‘Data Protection Legislation’ includes the Data Protection Act 1998, and from 25 May 2018, the General Data Protection Regulation (GDPR). It also includes any subsequent or successor legislation including national implementing laws, regulations and secondary legislation, as amended or updated from time to time in the UK.

20. In respect of any personal data which is shared, both parties, whether sending out or receiving information, act as Data Controllers in their own right, and not as data processors for the other party. Nothing in this agreement relieves each party of its legal obligations as a Data Controller. In the event that a party must notify the Information Commissioner's Office that a data protection breach has occurred, which concerns any personal data that has been shared, the other party should be informed.

### **Freedom of information**

21. The OfS is subject to the requirements of the Freedom of Information Act 2000 which is UK legislation pertaining to England, Wales and Northern Ireland. Where relevant, due regard will be given to the Freedom of Information (Scotland) Act 2002.

22. The OfS will consult the OIA about the disclosure of information under the Freedom Information Acts, where the information is about the OIA, or where the OIA is the identifiable source of the information.

### **Confidentiality**

23. Where information is shared between the Parties, unless it is demonstrably already in the public domain, such information is to be treated as commercial and confidential and not disclosed beyond the OfS and the OIA unless agreed in writing. Nothing in this Agreement shall prevent either the OfS or the OIA from disclosing information where this is required by law. It is possible that one Party may wish to engage with a higher education provider or other organisation as a result of the information shared by the other Party. Where this arises, the Party that has shared the information will have the opportunity to notify the provider or other organisation that it has shared the information before the other Party takes action, unless this would prejudice the Party seeking to take action.

### **Related agreements**

24. There are no related agreements, although the Parties will consider during 2018 whether a data sharing agreement would be appropriate once the OfS's regulatory framework is fully implemented from 1 August 2019.

### **Term of this Agreement**

25. This Agreement takes effect from 1 April 2018. The Agreement will continue in force until revoked in writing by either Party or superseded by a future agreement. It is expected the Agreement will be reviewed by June 2019 in order to reflect the OfS's regulatory framework that will be in force from 1 August 2019.

## Termination

26. Either Party can terminate this Agreement by giving the other Party no less than three months' notice. In such cases the Agreement will terminate on the last day of the full month that is three months after the written notice being served.

## Updates to this Agreement

27. Either Party may propose amendments to this Agreement at any time but to become effective an amendment requires agreement of the other Party. Amendments will come into effect on a date to be agreed by all Parties.

## Publication

28. This Agreement will be published on the respective websites of the OfS and the OIA.

## Liaison

29. There will be regular meetings between the officers of both Parties, including at least one meeting annually between the respective Chief Executives of each Party and also the Independent Adjudicator for Higher Education. In addition, there will be regular informal contact at operational level. Responsibility for ensuring that these meeting take place will rest with the nominated contacts (see below).

## Nominated officers and first contacts

30. Each Party shall nominate a primary officer and other named contacts to represent their organisation in this Agreement and the related joint activity.

31. Changes to the primary officer and other named contacts should be notified to all other parties at the earliest opportunity. At the time of the signing of this Agreement nominated contacts were as follows:

<b>Name</b>	<b>Job title/responsibility in relation to this Agreement</b>	<b>Contact details</b>
Katherine Penry	Head of the Transition Period Regulation Team, Office for Students	Katherine.penry@officeforstudents.org.uk
Charlotte Corrish	Head of Stakeholder Engagement and Membership	<a href="mailto:Charlotte.corrish@oiahe.org.uk">Charlotte.corrish@oiahe.org.uk</a>

**Signed:**

Signed on behalf of the OfS:



Susan Lapworth  
Director of Competition and the Register

Date: 24 May 2018

Signed on behalf of the OIA:



Ben Elger  
Chief Executive

Date: 25 May 2018