

## Rules 2018: draft for consultation

### Introduction

The Office of the Independent Adjudicator for Higher Education (OIA) runs the student complaints<sup>1</sup> scheme. These Rules of the student complaints scheme came into effect on [ ] 2018. We will deal with any complaints which we receive on or after that date under these Rules. If we received the complaint before that date we will deal with it under the Rules which applied when we received it.

Where we refer to higher education providers in these Rules, we mean those providers which are members of the OIA scheme.

### **1. What we do**

We review student complaints independently, impartially and transparently, and use our learning from complaints to help improve policies and practices in higher education.

### **2. Who can complain**

- 2.1. Students and former students can complain to us about their higher education provider.
- 2.2. A student is someone who is or was registered at a higher education provider, or who is or was studying for a higher education qualification.
- 2.3. The term “student” includes trainees and apprentices.
- 2.4. Students at some providers can only complain if they are on a higher education course.
- 2.5. Making a complaint to us does not prevent a student from bringing legal proceedings against the higher education provider if they are dissatisfied with the outcome of our review.

### **3. Higher education provider**

- 3.1. A higher education provider becomes a member of the OIA automatically if it is a “qualifying institution”. Qualifying institution is defined by section 11 of the Higher Education Act 2004.
- 3.2. A higher education provider which stops being a qualifying institution will continue to be member of the OIA for a period of 12 months after it stopped being a qualifying institution. This is called a “transitional institution”.
- 3.3. Any body providing higher education which is not a “qualifying institution” may apply to become a member of the OIA.
- 3.4. All members of the OIA must comply with the Rules and their procedures and regulations must be compatible with the Rules.

### **4. Complaints we can review**

- 4.1. A student or former student can complain to us about anything their higher education provider has done or failed to do.

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<sup>1</sup> All underlined words and phrases will have associated guidance notes.

- 4.2. A student or former student can complain to us about the higher education provider where they are or were studying.
- 4.3. A student or former student can complain to us about the higher education provider which grants the award for which the student is or was studying.

## 5. Complaints we cannot review

- 5.1. We cannot review a complaint about an application for admission to a higher education provider unless the person complaining is a former student of that higher education provider who is applying for re-admission, and the complaint is directly connected to their time as a student.
- 5.2. We cannot review a complaint about the academic judgment of a higher education provider.
- 5.3. We cannot review a complaint about a student employment matter.
- 5.4. We cannot review a complaint about a higher education provider if it was not a member when the events complained about arose unless those events were part of a series of events which continued after the provider became a member.
- 5.5. We cannot review a complaint unless the higher education provider is a member when we receive the student's Complaint Form<sup>2</sup>.
- 5.6. We cannot review a complaint about a transitional institution unless the events complained about occurred before the date it became a transitional institution.
- 5.7. We cannot review a complaint about something which has already been the subject of legal proceedings in a court or tribunal unless those proceedings have been put on hold.
- 5.8. The OIA is the alternative dispute resolution body for higher education complaints. We cannot review a complaint about something that has already been considered by another alternative dispute resolution body.
- 5.9. We cannot review a complaint made by the personal representatives of a student who has died unless we received the Complaint Form during the student's lifetime.

## 6. Complaints we may decide not to review

- 6.1. We may decide not to review a complaint if we decide that it is about something which does not affect the person making the complaint as a student.
- 6.2. We may decide not to review a complaint if we decide that the complaint has no serious purpose, or is intended to cause disruption or annoyance, or if the student is seeking an unrealistic remedy.
- 6.3. We may decide not to review a complaint if we decide that to do so would seriously damage our ability to run our processes effectively.

## 7. Completing the higher education provider's internal processes

- 7.1. We will not review a complaint unless the higher education provider has had the opportunity to look at it first. This means that normally the student needs to have completed the provider's internal processes before complaining to us.
- 7.2. The higher education provider will send the student a letter confirming when the student has completed the provider's internal processes. This letter is called a "Completion of Procedures Letter" and must comply with our Guidance on Completion of Procedures Letters.
- 7.3. In exceptional circumstances we may decide to review a complaint when the student has not completed the higher education provider's internal processes and/or does not have a Completion of Procedures Letter.

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<sup>2</sup> Guidance on references to "receiving the Complaint Form" will state that where a student is unable to complete the Complaint Form for reasons connected to a disability we may accept the complaint in another format provided it is made within the relevant timeframe.

7.4. We will not normally review a complaint which arises from information or evidence which the student has obtained after the date of the Completion of Procedures Letter or, where they do not have a Completion of Procedures Letter, more than 28 days after the student stops being a student.

## 8. Time limits

8.1. We cannot review a complaint unless we receive a Complaint Form from the student within 12 months of the date the higher education provider told the student its final decision. The 12 month period will normally run from the date of the Completion of Procedures Letter.

## Review process

### 9. What does review mean?

- 9.1. When we have decided that we can consider a complaint we review it. This means obtaining all the relevant information we need to make a decision, and can include trying to settle the complaint.
- 9.2. Our review does not have to follow the same rules of evidence as legal proceedings and we do not have to follow decisions we have made about other complaints.

### 10. Initial consideration of the complaint

- 10.1. A complaint should normally be made in writing, by submitting the completed Complaint Form together with relevant documents.
- 10.2. We will send a copy of the Complaint Form and, where appropriate, the accompanying documents to the higher education provider at this stage.
- 10.3. We will decide whether the complaint is one which we can review under these Rules.
- 10.4. We may ask for information from the student and/or the higher education provider to help us decide whether we can review the complaint.
- 10.5. We will tell the student and the higher education provider within three weeks of receiving the Complaint Form, or the further information we have requested, whether or not we can review the complaint. If we decide that we cannot review the complaint, or parts of it, we will explain why.
- 10.6. The student or the higher education provider may ask us to reconsider our decision that we can or cannot review the complaint (or parts of it) by writing to us within 14 days of the decision. A different reviewer will reconsider the decision.

### 11. The review

- 11.1. 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.
- 11.2. We will review the complaint by looking at the documents which the student and the higher education provider have sent us. We will only hold a hearing or have a face-to-face meeting with the student and/or the higher education provider if we consider it is necessary to do so.
- 11.3. Where appropriate, we may at any time look for a way to settle the complaint which both the student and the higher education provider agree to. This may include referring the complaint to a mediator if the student and the higher education provider agree. The student and the higher education provider will be given time to consider the proposed settlement before deciding whether to accept it.

## 12. Gathering information for a review

- 12.1. When we have decided that a complaint is one which we can review we will always:
  - 12.1.1. Give the higher education provider the opportunity to comment on the Complaint Form and any accompanying documents;
  - 12.1.2. Give the student the opportunity to respond to the higher education provider's comments on the complaint.
- 12.2. We may ask the student and/or the higher education provider to answer specific questions and/or provide additional information or documents.
- 12.3. We will normally give the student and the higher education provider the opportunity to comment on information received during the review where it is relevant to our decision.
- 12.4. The student and the higher education provider must respond to any requests for information we make during our review.
- 12.5. When we ask the student or the higher education provider for information or comments we will set a deadline for the response. The deadline will normally be 14 or 28 days but it may be shorter or longer depending on what we are asking for. We may grant an extension to the deadline where we consider it is appropriate to do so.
- 12.6. If the higher education provider does not provide information requested during the course of our review, or does not provide it within the time limits set, the Independent Adjudicator may report it to the Board, and may publicise it in the Annual Report and/or by other means.
- 12.7. We will tell the student and the higher education provider when we have received all of the information relevant to the complaint.

## 13. The Complaint Outcome

- 13.1. 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.
- 13.2. We will send the Complaint Outcome to the student and the higher education provider as soon as we reasonably can. This will normally be within 90 days of deciding that we have received all the information relevant to the complaint. We may extend the 90 day period if we decide that the complaint is highly complex. If we do, we will write to the student and the higher education provider to explain that and to tell them when we expect to conclude the review.
- 13.3. The Complaint Outcome will set out our decision that the complaint is Justified or Partly Justified, or Not Justified, and the reasons for the decision.
- 13.4. In making our decision about the complaint we may consider whether or not the higher education provider properly applied its regulations and followed its procedures, and whether or not the higher education provider's decision was reasonable.
- 13.5. We may also issue a Complaint Outcome to record the details of a settlement or mediation, or to confirm that a complaint has been withdrawn or terminated.

## 14. Recommendations and Suggestions

- 14.1. When we decide that a complaint is Justified or Partly Justified we may make a Recommendation or Recommendations that the higher education provider should follow.
- 14.2. The Recommendations we make may be different from an outcome that a Court might reach applying legal rules.
- 14.3. Some examples of the sort of Recommendation we might make are:
  - 14.3.1. that the complaint should be referred back to the higher education provider for it to consider again, because it has not properly followed its internal procedures and the outcome has or might have been seriously affected as a result;

- 14.3.2. that the higher education provider should take a course of action that we consider is fair in the circumstances;
  - 14.3.3. that the higher education provider should change the way it handles complaints;
  - 14.3.4. that the higher education provider should change its internal procedures or regulations;
  - 14.3.5. that the higher education provider should make a payment to the student which may include compensation for distress and inconvenience;
  - 14.3.6. that the higher education provider should apologise to the student for what has gone wrong;
  - 14.3.7. that the complaint should be considered in another forum.
- 14.4. Where we intend to make Recommendations we will send a copy of the proposed Recommendations, together with our reasons for proposing them, to the student and the higher education provider with the Complaint Outcome.
- 14.5. The student and the higher education provider may comment on the proposed Recommendations and will have 14 days to do so. We may extend the time for commenting on the proposed Recommendations where we consider it is appropriate to do so.
- 14.6. Once the time limit for commenting on the proposed Recommendations has passed and we have considered any comments we have received, we will tell the student and the higher education provider that we have confirmed the Recommendations, or set out our revised Recommendations.
- 14.7. We expect the higher education provider to comply with any Recommendations we make in full and within the time limits we set, and to report to us when it has done so.
- 14.8. The student may choose whether or not to accept the Recommendations.
- 14.9. If the higher education provider makes an offer to the student in line with our Recommendations and the student accepts the offer in full and final settlement of their complaint, the student will not normally be able to pursue legal proceedings about the same issues.
- 14.10. If the Independent Adjudicator decides that the higher education provider has not complied with our Recommendations they will report it to the Board and will publish information about it in the Annual Report and/or by other means.
- 14.11. We may make suggestions in any Complaint Outcome that the higher education provider should consider taking a course of action or amending its internal procedures or regulations.

## 15. Conclusion of the review

- 15.1. The review process is completed:
- 15.1.1. When we decide that we cannot look at a complaint under Rule [10.5] or that decision is confirmed following a reconsideration under Rule [10.6];
  - 15.1.2. When we decide to terminate a complaint under Rule [16.1 ], or that decision is confirmed following a reconsideration under [16.3];
  - 15.1.3. When the student and the higher education provider confirm their agreement to a settlement;
  - 15.1.4. When the Complaint Outcome is issued under Rule [13.1] if no Recommendations are made; or
  - 15.1.5. When we tell the student and the higher education provider that our Recommendations are confirmed or set out revised Recommendations under Rule [14.6].
- 15.2. We may reopen or continue with a review and issue a revised Complaint Outcome and/or revised Recommendations, if we decide there is good reason to do so because:
- 15.2.1. we receive new evidence which is could make a difference to the outcome of the review, and which the student or higher education provider could not reasonably have given to us at an earlier date; or

15.2.2. we have reason to believe that there might be an error in the Complaint Outcome which has or might have seriously affected the outcome of the review.

15.3. Any request to reopen the review must normally be made within 28 days of the date of the Complaint Outcome, or the date we confirm our Recommendations where we have made Recommendations.

## 16. Suspension, Termination and Withdrawal

16.1. We may terminate or suspend a review if we decide that:

16.1.1. Information obtained during the review indicates that the complaint falls within Rule [7];

16.1.2. The higher education provider has satisfactorily dealt with the complaint;

16.1.3. The higher education provider has made a reasonable offer to settle the complaint and the student has refused it. In those circumstances, we may require the higher education provider to repeat the offer to the student and to hold it open for a reasonable period of time;

16.1.4. the student has not complied with time limits we have set, or has unreasonably delayed during our review;

16.1.5. the student has acted aggressively, or offensively, or abusively, or unreasonably persistently, or has made unreasonable demands during our review;

16.1.6. the student has tried to mislead us or the higher education provider about their complaint;

16.1.7. the student can no longer be contacted; or

16.1.8. (suspension only) there are other good reasons for doing so.

16.2. If the student has appointed a Representative, we may suspend our review and/or refuse to permit that Representative to act for the student if we decide that:

16.2.1. The Representative is not acting in the best interests of the student;

16.2.2. The Representative has tried to mislead us and/or the student;

16.2.3. The Representative has not complied with time limits we have set, or has unreasonably delayed during our review;

16.2.4. The Representative has acted aggressively, or offensively, or abusively, or unreasonably persistently, or has made unreasonable demands during our review;

16.2.5. The Representative has been misled by the student.

16.3. If we decide to suspend or terminate our review, the student may ask us to reconsider our decision by writing to us within 14 days of the decision. A different reviewer will reconsider the decision.

16.4. The student may withdraw their complaint at any stage during the course of the review.

## 17. Charges and fees

17.1. We will not charge any fee to a student for reviewing their complaint.

17.2. Higher education providers must pay us an annual subscription which may include a case related element based on a published scale. The subscription and case related element is determined by the Board.

## 18. Members which have applied to join the OIA

18.1. We may publish additional Rules which will apply to higher education providers which are not qualifying institutions and which have joined our complaints scheme.

## Role of the Board and Independent Adjudicator

### 19. The Role of the Board

19.1. The role of the Board in relation to these Rules is to:

19.1.1. preserve the independence of the scheme and the role of the Independent Adjudicator.

19.1.2. review, and where appropriate, amend these Rules.

19.1.3. consider how, to deal with non-compliance by a higher education provider which is reported to it under Rule [14.10].

19.2. The Board will not be involved in the review and/or determination of individual complaints.

### 20. The Role of the Independent Adjudicator

20.1. The Independent Adjudicator is appointed by and responsible to the Board.

20.2. The Independent Adjudicator will act independently of the Board, higher education providers and students in reviewing and deciding any complaints under these Rules.

### 21. Publishing and sharing information:

21.1. We will prepare and publish each year an Annual Report which will include information about:

21.1.1. the complaints received;

21.1.2. the Complaint Outcomes issued and Recommendations made;

21.1.3. the extent to which Recommendations made have been followed (with information about higher education providers which have not complied with a Recommendation);

21.1.4. how we have used income from annual subscriptions and the case related element.

21.2. We may publish, at our discretion, summaries of complaints we have received and considered where:

21.2.1. in the opinion of the Independent Adjudicator it is in the Public Interest to publish; and

21.2.2. the review process is complete.

The published summaries may identify the higher education provider concerned but will not identify the student.

21.3. We will issue guidance about the timing and content of any publication under Rule [21.2], where and how it will be published, and the opportunity for a higher education provider to make comments on the proposed publication.

21.4. We may publish summaries of complaints in anonymised form.

21.5. We may publish any statistical or other information that we consider relevant and proportionate.

21.6. We expect higher education providers to compile and send to us any relevant information which we request in order to help us to carry out our work.

21.7. We may hold discussions with other appropriate bodies or individuals with a shared

interest in complaints in higher education. Where appropriate, this may include making formal agreements to exchange information.

21.8. Where we decide that a body has a relevant right or interest in receiving information about the operation of the scheme, we may provide that information. This may include information about complaints received and/or reviewed; Complaint Outcomes issued and Recommendations made; matters of compliance or non-compliance. In particular we will co-operate with bodies engaged in regulating, financing or supervising standards within the higher education sector in any part of the United Kingdom.

21.9. The information published or provided under Rule [21] will, in relation to personal data, comply with applicable data protection legislation.

21.10. We may publish guidance:

21.10.1. in relation to these Rules,

21.10.2. in order to promote the scheme,

21.10.3. in order to promote good practice, and

21.10.4. on other matters we considers appropriate, consistent with the OIA's purpose.

### **Amendment and governing law**

#### **22. Amendments to the Rules**

These Rules may be amended from time to time in accordance with Rule [19]

#### **23. Law**

These Rules shall be governed by and interpreted according to the law of England and Wales.