



office of the
independent
adjudicator

PUTTING

THINGS

RIGHT

 www.oiahe.org.uk

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Effective from February 2019

Contents

3	Introduction
4	What sort of remedies might we recommend?
4	What are practical remedies?
5	What about an apology?
6	What are financial remedies?
6	Showing proof of financial loss
7	What about outstanding fees?
7	What about legal fees?
8	What about distress and inconvenience?
10	What other circumstances are relevant?
11	What about delays?
12	Will the provider follow our Recommendations?
12	What are Suggestions and Observations?
13	Case examples

Introduction

When a complaint is Justified or Partly Justified we will usually make Recommendations. Our Recommendations aim to put things right for the individual student and, where appropriate, to improve procedures or processes.

We can make all sorts of Recommendations to put things right. We ask students to tell us in the Complaint Form what sort of remedy they are looking for, even if that remedy is not mentioned in this guidance. We will consider any remedy proposed by the student or the provider, but it is important that the remedy proposed is achievable.

Students should try to submit a Complaint Form as soon as possible. The longer they wait the less likely a practical remedy will be achievable.

Please also refer to the [Rules of our Scheme](#). If there is any conflict between the information in these pages and the Rules, then the Rules take priority.



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What sort of remedies might we recommend?

Wherever possible our Recommendations will try to provide the student with a practical remedy. If a practical remedy is unavailable or inadequate we will consider financial compensation. We try to put things right for a student, but we do not make Recommendations designed to punish a provider or require a provider to pay a penalty or fine.

If the provider offers a remedy before a complaint is brought to us, or while we are looking at the complaint, we will normally consider whether the offer was reasonable. Depending on the circumstances, we might recommend or suggest that the provider repeats its offer or proposes an alternative remedy. Keep in mind that if we recommend a provider offers financial compensation, the amount we recommend might be higher or lower than the provider's earlier offer.

When we make Recommendations, we will give the student and the provider the opportunity to comment on them before we confirm our Recommendations.

What are practical remedies?

The aim of our Recommendations is to return the student to the position they were in before the circumstances of the complaint. This is why it is important for students to submit their Complaint Form as soon as possible: it gives us the best chance of achieving this. Sometimes we will recommend a practical remedy, a financial remedy, or a mixture of practical and financial remedies.

As a practical remedy we may recommend that the provider should:

- Re-run a process that was affected by procedural flaws or possible bias.
- Offer a fresh assessment opportunity.
- Re-mark work following the right assessment procedures.
- Offer an apology.

These are just a few examples of the practical Recommendations we have made.

We can't interfere with a provider's academic judgment, so we can't recommend directly that a piece of work be given a particular mark. But, in some cases our Recommendations may result in marks or classifications being changed. For example, we might recommend that a provider reconsider a student's academic appeal, or the application of a penalty for late submission, and that process might result in the student's mark or classification being changed.

Our Recommendations are directed at a provider, so we won't normally recommend that a particular member of staff should do something or that a provider should take action in relation to a member of staff.

We can't make Recommendations that a student should do something, but they may need to participate in some further action to make a remedy effective. For instance, if we recommend that the provider should re-mark some work, the student might need to provide another copy of it.

What about an apology?

We will normally recommend a provider offers an apology if we uphold a complaint and this is what the student has asked for. We may also recommend an apology where we consider it would be helpful to restore an ongoing relationship even if this is not what was requested.

Apologies are most effective when given voluntarily and at an early stage in the provider's internal complaints process.

A meaningful apology should:

- Be made promptly.
- Acknowledge what has gone wrong.
- Accept responsibility for it.
- Explain clearly why the failure happened.
- Express sincere regret for any negative effects on the student.
- Set out what action has been taken to put this right.

If we recommend an apology this does not mean the provider has to make an admission of liability in the legal sense. We recommend an apology so a provider can acknowledge, and take responsibility for, what it has done wrong.

What are financial remedies?

We normally recommend a financial remedy if other remedies are unavailable or inappropriate. A Recommendation for financial compensation is our judgment about what is a fair and reasonable remedy for the complaint. Where we recommend a refund of fees, we will normally recommend that the provider returns the money to the source it came from, for instance, the Student Loans Company.

When considering whether financial compensation is appropriate, we may consider whether:

- The student or the provider have taken, or failed to take, any reasonable steps necessary to minimise financial losses or the impact of the matter complained about.
- The provider has already made a reasonable offer to resolve the complaint.
- We may also refer to previous Recommendations we have made in comparable circumstances, and to awards made by other decision-making bodies.

Showing proof of financial loss

Although we may make a Recommendation to compensate a student for actual financial loss or the loss of an opportunity they must be able to prove these losses. We do not compensate speculative financial losses or lost opportunities.

In appropriate cases, we will ask the student questions about the amount they are claiming, and we will ask them to send us supporting evidence. For example, we may ask for receipts relating to expenses, or money that they have lost because of what the provider has done wrong. If the student has been prevented from doing something they may be able to claim for lost opportunity. For example, the inability to complete a placement, apply for a bursary, or to seek paid employment. They will normally need to quantify the loss and show their chances of obtaining what has been lost. For example, if the student has lost the opportunity to apply for a bursary, they should provide evidence of the value of the bursary and their prospects of obtaining it. For the loss of an opportunity to take up a job, they should provide evidence confirming a job offer or confirming that the salary would have been higher had they obtained a specific qualification.

When we recommend compensation for future loss of earnings, we will take into consideration that we will recommend a lump sum payment which will not be subject to the same tax and National Insurance deductions that earnings would have been.

We don't normally make Recommendations for living expenses because whether a student was studying or not they would have had to pay for general living expenses such as food and accommodation. However, we may make Recommendations for specific expenses such as where a student has had to pay more for accommodation than they otherwise would have done.

What about outstanding fees?

Sometimes when we recommend financial compensation a student may also owe tuition fees or have some other outstanding debt to the provider. It may be reasonable for the provider to deduct any money owed from any compensation we recommend. However, if the debt is disputed, or if it relates to something which is unconnected to their complaint to us, then it is generally not going to be reasonable for the provider to deduct this money. A provider can ask for debts to be deducted from any recommended compensation when commenting on the practicalities of Recommendations made in the Complaint Outcome. If appropriate, we will get views about whether there is a dispute about the debt.

What about legal fees?

We won't normally recommend that a provider contributes to the legal costs associated with bringing a complaint to us. This is because we are an informal alternative to the courts and it is not necessary to have legal representation to bring a complaint. However, if a provider's procedures are excessively complex and the student needs to seek legal advice or assistance to navigate those procedures, we may recommend that the provider reimburse the student for some or all those costs.

What about distress and inconvenience?

We may also consider whether it is appropriate to recommend a payment for distress and inconvenience in addition to, or instead of, other practical or financial remedies. For example, if the student has been distressed, or put to additional trouble in some way because of the provider's delay we may recommend compensation for this. We may also recommend compensation for disappointment if a student has not received what they expected to receive.

We consider each case on its own individual facts but have developed bands of compensation which set out our general approach. These bands are not intended as strict rules governing when we must recommend a distress and inconvenience payment or an amount of compensation. Below are some of the factors we may consider when deciding the level of distress and/or inconvenience and the amount of compensation to recommend.

INDICATIVE COMPENSATION BANDS FOR OIA DISTRESS AND INCONVENIENCE AWARDS

Level of distress and inconvenience	Recommended compensation
Moderate	Up to £500
Substantial	Between £501 and £2,000
Severe	Between £2,001 and £5,000

We may recommend payments over £5,000 in exceptional circumstances.

Moderate

- The provider has done or not done something which has caused some distress and inconvenience in the short term (eg less than six months).
- Minor maladministration, mishandling or unreasonable handling of a complaint by the provider which has caused additional unnecessary distress and inconvenience.
- Unreasonable or avoidable substantial delays (eg over six months) which caused some distress and inconvenience.
- Moderate delays (ie less than six months) or other procedural irregularities where there is evidence to suggest the student suffered actual disadvantage.
- The provider's decision was unreasonable, there was no direct academic consequence for the student, but it caused some distress and inconvenience.

Substantial

- The provider has done or not done something which caused some distress and inconvenience in the long term (eg more than six months).
- Procedural flaws which caused inconvenience and distress but did not affect the outcome.
- Evidence of circumstances causing a reasonable perception of bias during the internal procedures.
- Substantial maladministration which disadvantaged the student.
- Substantial mishandling of a complaint which resulted in or caused unreasonable or avoidable substantial delay (eg over six months) and where the delay disadvantaged the student.
- The provider's decision was unreasonable, there is no direct academic consequence for the student, but it caused substantial distress and inconvenience.

Severe

- The provider has not properly considered its responsibilities under relevant equalities legislation or has not followed relevant guidance.
- The provider's decision about the central element of the complaint was unreasonable and resulted in severe distress and inconvenience.
- Procedural flaws which, if they had not occurred, may have resulted in a different outcome.
- Cogent and contemporaneous evidence to suggest that the student suffered from ill health because of something the provider did or didn't do.
- Major maladministration, procedural flaws, delays or other breaches of natural justice in a provider's internal process that disadvantaged the student.
- Serious interference or bias during the provider's internal consideration of a complaint or appeal.
- Serious and unexplained delays leading to injustice.
- Where the student has been seriously disadvantaged but a practical remedy is inappropriate or impossible.

The amount of compensation recommended depends on which parts of the complaint are Justified. For example, we may recommend compensation for the distress and inconvenience for each different part of a complaint which is Justified.

What other circumstances are relevant?

Our Recommendations will depend on the circumstances of each case, which might include whether:

- The provider has taken steps to try to address or reduce any actual or potential distress and inconvenience.
- The provider's handling of the complaint or appeal has caused distress and inconvenience beyond what we would normally expect.
- The student told the provider that the complaint or appeal was causing distress and inconvenience during the internal procedures.
- The student has provided evidence supporting the severity of the distress and inconvenience experienced.
- The student has experienced distress and inconvenience over a long period of time.
- The student has provided evidence of being a vulnerable person.
- The number and nature of the provider's acts or omissions that led to a Justified or Partly Justified complaint.
- The provider is likely to have breached other laws, such as the Consumer Rights Act 2015.
- The person or persons who caused the student distress and inconvenience had high status at the provider.
- The provider had an opportunity to resolve a complaint but didn't take it.
- The student has lost time, experienced trouble, or incurred minor costs while pursuing the complaint.

We will also consider the impact of the student's own actions, conduct or behaviour in assessing compensation for distress and inconvenience. We may consider whether the student:

- contributed to the issues that gave rise to the complaint or to the duration of the complaint.
- unreasonably refused or rejected an option that was available or offered by the provider.
- contributed to the delays in resolving the complaint.

Although we may recommend compensation for the time, trouble and minor costs experienced during the handling of a complaint or appeal this type of compensation is only recommended if what the student experienced was more than what is routinely experienced. For example, we may recommend compensation for time and trouble where information is disclosed during our review that was not made available to the student earlier and which, if known, could have resolved the complaint sooner. In all but the most exceptional cases, our Recommendations for payments for time and trouble will fall within the “moderate” band.

It is sometimes appropriate to recommend a payment for distress and inconvenience where an appeal was wrongly considered, and the provider needs to reconsider it. However, this will depend on the circumstances of the case. For example, we consider the seriousness of any procedural irregularity, how likely it is that the student will succeed if their case is reconsidered, any delays on the part of the provider, and whether the provider missed an opportunity to reconsider the case at an earlier time.

What about delays?

When considering compensation for the distress and inconvenience caused by delays we will consider:

- The length of the delay.
- Whether delay was raised in the complaint to the provider and/or with us.
- Whether the delay disadvantaged the student.
- Whether the provider kept the student informed during any period of delay.
- The reasonableness of the delay (eg was the complaint to the provider particularly complex or the documents provided by the student unusually long and detailed).
- Whether the student may have contributed to the delays.
- The amount of following up the student had to do during the handling of the complaint.

Will the provider follow our Recommendations?

We expect providers to comply with our Recommendations in full and in a prompt manner. We normally set a timeframe for the provider to comply with the Recommendation. The Recommendations and the timeframe for complying are set out in the appendix to our Complaint Outcome. The appendix will also set out the evidence the provider is required to produce to satisfy us that compliance has occurred.

We carefully monitor compliance. The Independent Adjudicator is required by our Rules to report any non-compliance to our Board and to publish it in our Annual Report.

What are Suggestions and Observations?

We will sometimes make suggestions or observations. We may point out that what the provider has done was not good practice and propose ways to improve processes without requiring a provider to report back formally to us. However, we will usually ask the provider to let us know what action has been taken in response. We may also suggest that the provider repeats an offer to settle a complaint so that the student has another opportunity to consider the offer. We normally make suggestions and observations if we have decided that the complaint is Not Justified or where the student has not been disadvantaged because of what the provider has done or not done.

Case examples

The cases below illustrate the types of remedies we can offer and how our approach to remedies is applied in practice. You can view [more examples](#) of the types of remedies we can offer.

Case example 1

We decided a provider had not fully considered a student's complaint about the failure of the course to offer all of the vocational opportunities outlined in the prospectus. We recommended the provider should refer the complaint to a Complaints Panel for full review, apologise to the student and pay financial compensation of £750 for the distress and inconvenience caused by the deficiencies identified in relation to the provider's investigation of her complaint. The compensation did not relate to any failings in the course itself; that was a matter for the Complaints Panel to consider.

Case example 2

A student complained to us about the process followed when her work was marked. We decided the complaint was Justified. The student had failed the assessment. There were several errors in the way the provider had assessed the work and it had provided unclear information about whether the assessment had been externally moderated. We recommended that the work should be re-marked and moderated by independent members of staff who had not previously been involved. After the re-marking, the student passed the assessment.

Case example 3

A student complained to us after being withdrawn from his course. We decided that the provider had not applied its attendance regulations or complaints processes correctly and had not demonstrated that it had taken account of the student's disability. We recommended a partial reimbursement of fees and accommodation costs totalling more than £12,000 because it was no longer possible for the student to resume his studies.

Case example 4

A student complained to us about the way the provider had applied its assessment criteria for assignment word limits. We concluded that the complaint was Partly Justified. We recommended that the provider should re-mark the work, following the correct assessment criteria. The work was re-marked by two assessors and referred to the External Examiner.

Case example 5

A student complained about a provider's failure to consider his extenuating circumstances, which related to a diagnosis of disability made during the appeal process. The provider had a policy of never permitting appeals based on retrospective evidence and had not looked at the individual merits of the student's case. We did not consider that approach was reasonable. We concluded that the complaint was Partly Justified. We recommended that the provider should reconsider the student's appeal and change its regulations to consider each case on its individual merits.

Case example 6

A student complained to us about the outcome of his academic appeal. He said that there was a procedural irregularity in the conduct of the appeal, and that there were significant delays in the provider's consideration of the appeal. We concluded that there was a technical procedural irregularity in the conduct of the appeal, but that the outcome of the appeal would inevitably have been the same. However, we concluded that the delays to the appeal were unreasonable and that the provider had not kept the student informed. We recommended compensation of £500 for the distress and inconvenience caused by the unreasonable delays.

Case example 7

A PGCE student complained about a provider's decision not to send her complaint for a hearing by a Complaints Panel. We concluded that the complaint was Justified because there was insufficient evidence documenting how the provider had managed the arrangement of placements for the student, and the student's case therefore required further consideration. We concluded that the provider's failure to act on her complaint in a timely manner resulted in her having to extend her studies from one to two years. We were also critical of the way that the provider handled the student's complaints and decided that this caused the student a significant degree of frustration, distress and inconvenience. We recommended that the provider should pay the student £10,750 in compensation for the delay in the student being able to complete her course and seek employment. That sum was based on the student's actual starting salary when she did complete the course, discounted to take account of Income Tax, National Insurance and possible pension contributions, and the fact that the student may not have obtained employment immediately. We recommended a further payment of £2,000 for distress and inconvenience. We also recommended that the provider should review its Student Complaints procedure.

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Registered Company number: 04823842

Registered Charity Number: 1141289

February 2019