



Memorandum of Understanding between the OIA and HEFCW

Amended November 2019

Introduction

The purpose of this Memorandum of Understanding (MoU) is to set out how the Office for the Independent Adjudicator for Higher Education (the OIA) and the Higher Education Funding Council for Wales (HEFCW) will work together and share information in order to meet their respective responsibilities with respect to Higher Education (HE) in Wales. It sets out the principles underpinning the interaction between the two organisations and provides guidance on the exchange of information between them.

It is intended to promote:

- clarity about respective roles and responsibilities
- effective working, information sharing and communication between the parties; and
- liaison in the development of any guidance for the sector.

Both organisations commit to providing the other with information that is accurate, current and robust. Both organisations will try to make sure that their requests for information and referrals of information, including concerns, are made in a timely way.

This Agreement is not a statutory, contractual, or legally binding document. Nothing in this document is intended to create any rights, liabilities or obligations which would have a binding effect in law. But, the organisations are genuinely committed to the aims of the Agreement and will act in accordance with its terms on a voluntary basis, as far as is reasonably possible.

Our roles

The organisations recognise, and have regard for, their respective roles and responsibilities and recognise the independence of their remits.

A. The OIA

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

The OIA Scheme was designated under the Higher Education Act 2004, which established an independent scheme to adjudicate on student complaints against higher education providers in England and Wales, without charge to complainants.

The OIA became designated operator of the student complaints scheme in January 2005. The OIA became the consumer Alternative Dispute Resolution (ADR) body for Higher Education approved by the Chartered Trading Standards Institute, on 7 July 2015. The OIA's remit was extended by the Consumer Rights Act 2015 and was further extended by Higher Education and Research Act 2017.



Governing bodies of “qualifying institutions” 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 Government Ministers.

Under the Scheme, which is 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.

B. HEFCW

HEFCW was established in 1992 under the terms of the Further and Higher Education Act 1992, confirmed by the Education Act 2002. HEFCW is responsible for distributing funds for teaching, research and related activities at eight universities, and for teaching activities at the Open University in Wales. HEFCW also funds HE courses at further education colleges.

HEFCW also has a regulatory role in respect of those institutions that are regulated under the Higher Education (Wales) Act 2015. Regulated institutions are those HE institutions, further education (FE) colleges and other HE providers with an approved Fee and Access Plan. HEFCW’s role under the Higher Education (Wales) Act 2015 is, amongst other aspects, to ensure that only institutions that are financially viable, well managed and that provide education of adequate quality can enter the regulatory system and become regulated institutions. HEFCW will then monitor compliance by all regulated institutions with: their Fee and Access Plans (including Fee Limits); the requirements in respect of the quality of education; and HEFCW’s Financial Management Code. HEFCW will intervene only where necessary and reasonable to ensure that the students, the regulated institution and the reputation of the wider HE sector are protected from: the charging of excess fees; provision of inadequate quality or provision likely to become inadequate; unacceptable fee and access plan delivery; and poor financial management and governance.

HEFCW’s intervention powers under the Higher Education (Wales) Act 2015 are set out in a published Statement of Intervention. Potential interventions in respect of non-compliance with provisions of the Higher Education (Wales) Act 2015 by regulated institutions include the issue of Notices and Directions, which are enforceable by injunction. For significant cases of non-compliance HEFCW may issue a Notice regarding refusal to approve a new Fee and Access Plan and in the most serious cases a Notice of withdrawal of an existing Fee and Access Plan. However, HEFCW will normally seek to work with institutions in the first instance, wherever appropriate, to address issues through dialogue and the provision of advice or support where necessary.

HEFCW has been delegated functions relating to the specific designation of higher



education courses in Wales. Those functions include making recommendations to Welsh Ministers on whether to designate specific courses for student support and to monitor providers that already have courses specifically designated for student support. HEFCW will exercise these functions in the context of the criteria set out in Welsh Government's specific designation policy. This includes the course being validated by an appropriate body, provision offered being of adequate quality, the provider being financially viable and the provider making a contribution to the public good in connection with education.

Working together

A. Sharing of Information

The OIA and HEFCW will identify the areas where their complementary roles and independent functions inter-relate, on an on-going basis, and agree areas where it is appropriate to share information and contribute to the respective work of the other organisation. The working relationship between the OIA and HEFCW will be characterised by regular on-going contact and open exchange of information, through both formal and informal arrangements. The arrangements will be kept under review by the named contact points.

The nature of information shared under this MoU includes, although is not limited to:

- information that HEFCW has that may assist the OIA in undertaking a review of complaints by individual students or groups of students;
- information that HEFCW has about systemic issues which may assist the OIA in undertaking a review of complaints;
- information that HEFCW has that may assist the OIA in administering the membership of the OIA Scheme;
- information relevant to concerns about standards and quality, or the charging of fees in excess of those set out in the relevant provider's Fee and Access Plan with HEFCW, which arise in complaints considered by the OIA;
- summary information gathered through the OIA scheme which identifies broad themes and concerns about quality and standards from across the HEFCW regulated HE sector in Wales or individual institutions in that sector, or institutions that have courses that are specifically designated for student support by Welsh Ministers; and
- information that the OIA has, including through complaints referred to the OIA, that may have implications for, or assist with, HEFCW exercising its regulatory and monitoring functions.

Both organisations will:

- ensure that disclosures to the other organisation are lawful;
- only use the information for the purposes for which they have received it;
- store information securely;



- identify information which may be freely shared but assume that all information received is confidential unless it has been so identified;
- ensure that only people who have a genuine business need to see that information will have access to it;
- report data losses or wrongful disclosure to the nominated contact;
- only hold the information while there is a business need to keep it;
- destroy the information in line with applicable guidelines;
- provide assurance that they have complied with these principles, upon request.

Nothing in this Agreement prevents either organisation disclosing information where this is required by law.

It is possible that one organisation may wish to take further action to engage with a Higher Education provider or other body, as a result of information shared under this Agreement. In this case, the organisation wishing to undertake further action should inform the other organisation first, unless this would prejudice the organisation seeking to take action.

Both organisations will comply at all times with Data Protection legislation, including the General Data Protection Regulations (GDPR) and the Data Protection Act 2018 (DPA) and any relevant codes of conduct or certifications. This 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.

In respect of any personal data which is shared, both organisations, whether sending out or receiving information, act as Data Controllers in their own right, and not as Data Processors for the other organisation. Nothing in this agreement relieves each organisation of its legal obligations as a Data Controller. If one of the organisations must notify the Information Commissioner's Office that a data protection breach has occurred, which concerns any personal data that has been shared under the terms of this Agreement, they agree to inform the other organisation.

HEFCW is subject to the requirements of the Freedom of Information Act 2000 which is UK legislation pertaining to England, Wales and Northern Ireland. The OIA is not subject to the Freedom of Information Act 2000, but considers Openness to be a core value. If either organisation receives a request for information which was provided by the other, then the organisation which received the information will inform the other organisation and invite representations on the potential impact of disclosure.

In the event that HEFCW exercises its intervention powers during the course of an OIA review of an individual complaint or complaints, the organisations will seek to ensure, where possible, that the intervention by HEFCW does not delay the OIA's review of the complaint(s). HEFCW may await the outcome of the OIA process, prior to initiating formal intervention, in order to avoid unnecessary duplication of action although, as the



circumstances that trigger HEFCW intervention may be different to those that trigger OIA involvement, HEFCW may need to act in parallel with the OIA. HEFCW will liaise closely with the OIA in such circumstances.

B. Sector developments, consultation with sector and external communications

Where appropriate, the OIA and HEFCW will:

- inform one another as soon as practicable on relevant developments within their areas of responsibility, where possible prior to release of any reports, press releases, speeches or policies;
- exchange information that may be reasonably useful to the other, subject to the imperatives of mandates, necessary confidentiality constraints and safeguards;
- invite each other to relevant events hosted by one and of interest to both; and
- liaise, involve and keep each other informed as necessary on drafting key documents relevant to the other's functions.

Liaison

There will be regular meetings between officers of both organisations, to take place at least once a year. There may be additional contact at operational level, on a regular or ad hoc basis, as required. Responsibility for ensuring that these meetings take place rests with the nominated contacts.

Administration of this agreement

- This Agreement takes effect from the date of signature, below. It replaces any previous such Agreements between the organisations.
- The Agreement remains in force until terminated by either organization. Either organisation can terminate this Agreement by giving a minimum of three months' notice, in writing.
- Both organisations may propose amendments to this Agreement at any time. Amendments must be agreed in writing by both organisations, and will come into effect on a date to be agreed by both organisations.
- Both organisations agree to review the terms of this Agreement no less than once a year.
- Both organisations will make this Agreement publicly available, including on their websites.
- Each organisation will nominate one person as having responsibility for the



administration of this Agreement. Each organisation may also identify a further person as the primary contact for the activities set out in the Agreement. Changes to the nominated contacts should be notified to the other organisation at the earliest opportunity.

- At the time of signing this Agreement, the nominated contacts are:

Name	Job Title/ Responsibility in relation to this agreement	Contact details
Charlotte Corrish	Head of Public Policy	Charlotte.Corrish@oiahe.org.uk
Ewen Brierley	Director of Regulation and Analysis	Ewen.Brierley@hefcw.ac.uk

It is intended that the arrangements in this MoU should apply generally. However, it is recognised that some circumstances will require special handling and nothing prevents the organisations from making exceptional arrangements to meet specific and urgent needs in relation to a particular case or cases.

In order to ensure that issues are handled at the appropriate level and that developing policy considerations are taken fully into account, each organisation has established designated points of contact. Where they consider it appropriate, designated points of contact may delegate ongoing liaison to members of their staff.

The OIA and HEFCW will work to ensure that relevant staff in their respective organisations are aware of the content of this MoU and the responsibilities it places on each individual member of staff. Access to the information shared by OIA and HEFCW will only be granted to those who have a business need. Each organisation will respect and take appropriate steps to protect the confidential nature of documents and information that the other may provide.

Signed

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Ben Elger
Chief Executive - OIA

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David Blaney
Chief Executive – HEFCW

Date

Date