

This Guidance applies to complaints where the Complaint Form was received between 01/03/13 and 08/07/15.

Refer to <http://oiahe.org.uk/media/100348/guidance-note-scheme-eligibility-july-2015.pdf> for Guidance applying to complaints received on or after 09/07/15



office of the
independent
adjudicator

Guidance Note: Eligibility and the Rules

Introduction

The Rules of the OIA set out the complaints which are covered by the Scheme and the time limits for submitting a complaint. There are some complaints which we cannot look at, and some complaints which we will not normally look at. The Rules also allow us discretion to terminate or suspend consideration of a complaint in certain circumstances.

The purpose of this note is to provide guidance on the OIA's Rules and policy on eligibility, and how we exercise our discretion, where appropriate, and to give examples of decisions about cases we can and cannot look at. It should be read in conjunction with the Rules of the OIA Scheme <http://oiahe.org.uk/media/1258/oia-rules-march-2013.pdf> and our Guidance Note regarding Completion of Procedures Letters <http://www.oiahe.org.uk/media/85511/completion-of-procedures-letter-guidance-march-2013.pdf>. In the event of any conflict between this Guidance Note and the Rules the latter will prevail.

This guidance covers only the Rules relating to eligibility to submit a complaint and the circumstances in which a complaint may be terminated or re-opened. It does not cover the Rules relating to the Review process once a case has been accepted for consideration.

Where appropriate, and for ease of reference, we use the word "university" throughout this note to include all participating institutions. The Rules refer to Higher Education Institutions (HEIs).

It is for the OIA to determine the eligibility of a complaint. However, if a university considers that a complaint might be ineligible, it may explain this in its Completion of Procedures Letter and the OIA will take its comments into account when deciding on eligibility. Each case is considered on its individual merits.

The OIA generally makes its decision on eligibility after receiving the Complaint Form from the student. Where we consider that a complaint is something we can look at, but that there are certain aspects which are ineligible, we will explain this at the start of our review. However, it sometimes becomes apparent in the course of the review of a complaint that certain aspects are not eligible for consideration under our rules, for example, where they relate to academic judgment or where the complainant has not been materially affected by the university's actions, and in these cases we will explain this in our Decision.

Where we decide that a complaint is not eligible for consideration under the rules of the OIA Scheme, we will write to both the complainant and the university explaining the reasons for our decision. The complainant will have the opportunity to appeal against this decision to a member of

our Approval Team within two weeks of the date of our decision. We will notify both the complainant and the university of the outcome of any appeal and will explain our reasons. Where we decide to exercise our discretion to consider a complaint which we would not normally look at, we will explain our reasons to both the complainant and the university.

Rules 1 and 2 - Complaints covered by the Scheme

Rule 1 provides that **“The main purpose of the Scheme is the independent, impartial and transparent review of unresolved complaints from students about acts or omissions of HEIs and, through learning from complaints, the promotion of good practice”**. A list of universities covered by the Scheme (“qualifying institutions”) can be found at <http://oiahe.org.uk/about-us/list-of-universities.aspx>. “Student” is defined as **“a student who is or was registered at the HEI complained about”** (Rule 16). If there is a doubt about whether the complainant is a “registered” student, we will decide by looking at the university’s procedures.

Students may also complain if they are **“a student at another institution undertaking a course of study or programme of research, leading to the grant of one of the HEI’s awards”** (Rule 2.2). Students at a college which is not a Higher Education Institution doing a course which leads to an award of a university can complain about what the university has done. So, we might look at how the university has dealt with a complaint about a college, and whether it has fulfilled its responsibilities under any validation or collaborative agreement. The student must have exhausted the university’s internal complaints procedures. The term “award” is not defined in the Rules, and is not restricted to a higher education level qualification.

Some colleges (for example, colleges of Oxford and Cambridge) are individual members of the Scheme. In such cases, we can consider a complaint against the college itself, provided its internal processes have been completed.

The OIA cannot accept complaints from someone who is not a student, although students may appoint another person to represent them in their complaint. If they do so, they must ensure that the representative knows all about their complaint. We will not correspond with a complainant and their representative about a complaint at the same time.

Generally the OIA has no remit to look at complaints about students’ unions. However, we can consider a complaint relating to a students’ union if the union is part of the legal entity of the university, or the complaint concerns the university’s obligations in respect of the students’ union.

Similarly, we do not generally have a remit to look at complaints about companies associated with a university, but which are separate legal entities, for example, a finance company providing credit for tuition fees, or an accommodation provider. Nor can we look at complaints about placement providers.

However, we can look at whether the university has fulfilled its obligations to its students in the arrangements it makes with these outside bodies.

Rule 3 - Complaints not covered by the Scheme

Some of the Rules of the Scheme arise from the provisions of the Higher Education Act 2004 which sets out the complaints which the OIA cannot consider.

The Scheme does not cover a complaint to the extent that:

Rule 3.1 - It concerns admission to an HEI

We cannot consider a complaint from a student whose application for study at a university is rejected, or badly handled. Such a student would also be precluded from complaining to the OIA because they were not a registered student at the university. However, we will normally consider a complaint if a student, after registering at the university, is required to leave because of some irregularity in his/her application for admission. We may also consider complaints from registered students which relate to the information provided by the university to prospective students prior to admission.

We will not normally consider complaints from former students, who have either withdrawn from a programme or study or have been required to leave, who subsequently reapply for admission to the university. If a student is already at a university but is applying to join another course or to transfer to PhD status, we will look at the university's procedures to decide whether the complaint is an admission issue.

Rule 3.2 - It relates to a matter of academic judgment

Academic judgment is a term found in Part 2 of the Higher Education Act 2004, so its interpretation will ultimately be for the courts. However in our view academic judgment is not any judgment made by an academic. It is a judgment that is made about a matter where only the opinion of an academic expert will suffice, so for example a judgment about assessment, a degree classification, research methodology or course content/outcomes will normally be academic judgment. However, we consider that the following areas do not involve academic judgment: decisions about the fairness of procedures, whether they have been correctly interpreted, what the facts are, how a university has communicated with the student, whether an opinion has been expressed outside the areas of competence, the way evidence has been considered, whether there is evidence of bias or maladministration.

In addition, we would not normally interfere with a professional judgment made, for example, by staff at a placement. Decisions on whether a student's work contains plagiarism or whether s/he is fit to practise in a profession will normally be matters of academic or professional judgment, but that judgment must be evidence based.

Rule 3.3 - The matter complained about was the subject of court or tribunal proceedings and those proceedings have been concluded, or the matter is the subject of court or tribunal proceedings and those proceedings have not been stayed.

The OIA will not reconsider matters which have already been decided by the courts. We cannot consider complaints where the matter is or becomes the subject of court or tribunal proceedings which have not been stayed (adjourned or put on hold). In signing the Complaint Form the complainant acknowledges that s/he must inform the OIA immediately if any part of the complaint is being dealt with in the courts or by another body.

We may ask to see the claim form and any defence filed in order to establish whether the legal proceedings relate to the same subject matter. If the legal proceedings have been "stayed" or "adjourned" by the court, we may ask to see the relevant court order.

If a complainant has applied for permission to bring a judicial review claim against the university and has been refused permission, we would normally consider that those proceedings have been

concluded and we would not look at their complaint. However, we may accept the complaint if the judge has identified the OIA as an “alternative remedy” available to the complainant, and has refused permission on that basis. We could only accept such a complaint for review provided the judge has not made any findings on the merits of the case.

Rule 3.4 - It concerns a student employment matter

We cannot consider complaints from employees of a university. If a student is employed by the university as well as being a student, for example where a postgraduate student is also employed by the university, say as a lecturer or demonstrator or as a warden in a hall of residence, we can only look at those aspects of the complaint which relate to the complainant as a student.

Rule 3.5 - In the opinion of the Reviewer the matter complained about does not materially affect the complainant as a student.

The OIA generally takes a broad approach in considering whether the complainant has been affected as a student, and will accept complaints which relate to the student life and the outcome of the student’s studies. For example, we have considered complaints about references for former students, and where awards have been withdrawn where plagiarism or other misconduct is established some time after graduation.

However, some complaints about universities may have no bearing on the student life or may not be in any way connected with study. For example, we decided not to consider a complaint about a university’s voluntary legal advice centre declining to take on a student’s case against a private landlord; about a university’s finance department pursuing an undisputed fee debt against a former student who had left her course some years before; and about the theft of a bicycle from a university’s bike rack.

The OIA may also conclude that an act or omission by the university has had no material effect on the outcome of the student’s studies. For example, a marking issue may have no effect on the degree classification, or a procedural irregularity in an appeal may have been rectified at a later stage of the procedure.

Rule 3.6 - The matter complained about is being dealt with (or has been dealt with) under the current or previous rules of the OIA (and Rule 8.3 does not apply).

The OIA cannot look at the same complaint twice. However, we might look at a complaint about whether a university has complied with recommendations we have made on a previous complaint.

Occasionally we will reopen a review if the student produces new evidence which is material to the outcome after we have issued our Final Decision and there is good reason to do so. In exceptional circumstances, we might also reopen a review if correspondence received following the Final Decision gives us reason to believe we might have made a substantive error in the Decision (Rule 8.3).

Rule 3.7 - It is made by the personal representatives of a student and the OIA had not received a Complaint Form during the student’s lifetime.

We cannot look at a complaint concerning a student who has died unless the Complaint Form was received before their death.

Rule 4 - Time limits and Exhaustion of Internal Complaints Procedures

Rule 4.1 – A complainant must have first exhausted the internal complaints procedures of the HEI complained about before bringing a complaint to the OIA. The definition of “internal complaints procedures” in our Rules includes procedures relating to student complaints, academic appeals, disciplinary matters, student accommodation, and breaches of codes of conduct and regulations. However this is not an exhaustive list.

Rule 4.3 provides that the university must issue a Completion of Procedures Letter promptly after its procedures have been exhausted. More detailed guidance about the exhaustion of the internal procedures is contained in our Guidance Note regarding Completion of Procedures Letters <http://www.oiahe.org.uk/media/85511/completion-of-procedures-letter-guidance-march-2013.pdf>.

In exceptional circumstances we may accept a complaint for review, if we are satisfied there is good reason to do so, even if the University’s processes have not been exhausted (Rule 4.6). We may consider doing so where there has been undue delay by the university in progressing the complaint and there appears to be no prospect of early resolution. In such a case we would want to satisfy ourselves that the complainant had taken reasonable steps to progress the complaint. We might also take on a complaint where no Completion of Procedures Letter has been issued, if the university has unreasonably delayed in issuing a Completion of Procedures Letter, or has refused to do so, after the procedures have been completed. Again, we would expect the complainant to pursue the matter first with the university.

There are circumstances where a university might issue a Completion of Procedures Letter even though its procedures have not been exhausted. An example of this might be where the student has not escalated the complaint or appeal to the next stage, despite being clearly signposted to it, or has attempted to escalate the complaint or appeal after the university’s deadline for doing so has expired. In such cases, we would consider whether it was reasonable for the university to decide not to allow the student’s complaint or appeal to proceed further. We would not normally consider the substantive issues raised in the complaint or appeal. Our Guidance Note regarding Completion of Procedures Letters provides detailed information about such circumstances.

Complainants sometimes raise issues in their Complaint Form which were not covered by the university’s Completion of Procedures Letter. In such cases we will check which issues the student raised in their complaint or appeal to the university before reaching a conclusion on whether the matters raised with us have exhausted the university’s internal procedures. However, if a student wishes to complain about delays or a university’s handling of a complaint or appeal we do not expect them to have to go through a separate process internally before bringing their complaint to us.

In exceptional circumstances, we might take the view that it would be expedient to deal with secondary issues which have been raised as part of a wider complaint but which have not been previously considered by the university. We will explain to the university why we have decided to review those secondary issues as well as the substantive issues which it has considered.

Rule 4.2 – the OIA will not normally consider a complaint unless the completed Complaint Form it is received within three months from the date upon which the internal procedures were exhausted. The time limit will normally begin to run from the date of the Completion of Procedures Letter (**Rule 4.3**). Our Guidance Note regarding Completion of Procedure Letters provides that the Completion of Procedures Letter should state the date by which the OIA should

receive the Complaint Form. For example, if the Completion of Procedures Letter is dated 7 January, the Completion of Procedures Letter must state that it should be received by the OIA on or before 7 April.

If we do not receive the Complaint Form within the three month time limit we will normally rule it to be ineligible. However, in exceptional circumstances, we may accept a complaint for review, if we are satisfied there is good reason to do so, even if we receive the Complaint Form late (Rule 4.6).

For example, if it is clear that the complainant sent us the Complaint Form in good time and there is evidence that it has been delayed in the post, we would normally consider that this is a good reason to extend the deadline. If we receive an incomplete Complaint Form within the three month period, we may return it to the complainant to complete, specifying a date by which it should be returned to us.

If the complainant sends us a Complaint Form saying that supporting documents will follow, we may also ask the complainant to supply the documentation by a specific date.

Each case is considered on its individual merits. However, examples of cases of good reasons to extend the time for submission of the Complaint Form might include:

- The Completion of Procedures Letter does not specify the deadline for submission of the Complaint Form to the OIA, or is otherwise unclear.
- The student did not receive the Completion of Procedures Letter, and there is evidence that s/he pursued the matter with the university.
- There is evidence that the complainant was ill or had been in an accident at the time the Complaint Form should have been submitted, and as a result was unable to do so.
- There is evidence that the complainant was suffering from a condition which impaired their ability to submit a complaint on time.
- There is evidence that the complainant suffered a bereavement at the time the Complaint Form should have been submitted.
- There is evidence that the student was out of the country at the time the Complaint Form should have been submitted and unable to submit it electronically.

We would expect the complainant to contact us to explain the problem prior to the deadline, if at all possible.

We are unlikely to consider that there is a good reason for extending the time for submission of a Complaint Form where:

- No evidence is provided to support the circumstances which the complainant claims prevented them submitting the Complaint Form on time, or the evidence does not fit the date for submission.
- Medical evidence suggests that the complainant's ability to submit the Complaint Form was not impaired.
- The complainant raises general life issues, such as work, studies or holidays.
- The complainant contacted the OIA for advice after receiving the Completion of Procedures Letter and was clearly informed of the need to submit by the three month deadline, but failed to progress the matter within the timeframe.

- The student did not receive the Completion of Procedures Letter, but should have expected to receive one and did nothing to pursue the matter with the university within a reasonable timeframe.
- The deadline for submitting the Complaint Form fell on a Saturday or Sunday, or on a Bank Holiday, and the Form was not submitted until the next working day. However, if the complainant emailed the Complaint Form to us before 9.00am on the working day following the deadline, we would normally accept it.

Rule 4.5 – The OIA will not normally consider a complaint where it considers that the substantive event(s) complained about occurred more than three years before the Complaint Form is received by the OIA.

In exceptional circumstances, we may accept a complaint for review, if we are satisfied there is good reason to do so, even if the substantive events complained about occurred more than three years before (Rule 4.6).

The reason we have the “three year” rule is that it is not always possible to conduct a fair review of events which took place more than three years ago. Sometimes important documents will have been destroyed and the recollection of individuals will have faded. We may give consideration to events which occurred more than three years ago if they were linked to more recent events, or if it would be artificial to draw a line at a specific date. For example, if the complaint is about supervision which took place over a long period, we might look at all of that period, depending on the circumstances of the case. We also have regard to whether the university concerned is responsible for any delay, or to issues which might have prevented the complainant progressing the complaint with the university.

Where a university has made a recent decision on a complaint about events more than three years before the Complaint Form was received, and offers a remedy for shortcomings it has identified, we might review the remedy offered by the university to decide whether it was reasonable. We might also consider the university’s handling of the complaint rather than the substantive events.

Rules 5.4, 8.1 and 8.2 - The OIA’s discretion to terminate or suspend consideration of a complaint

There are a number of situations where the OIA may terminate or suspend our consideration of a complaint, at any stage of the review process, where we consider it appropriate, if it appears to us that certain conditions are met.

Rule 5.4 – The Reviewer may reject a complaint at any time without full consideration of the merits, if in his or her opinion, the complaint is frivolous or vexatious.

The OIA’s policy on frivolous or vexatious complaints is available on our website <http://oiahe.org.uk/about-us/policies/policy-on-frivolous-or-vexatious-complaints.aspx>.

Rules 8.1.1 and 8.1.2 – The HEI has satisfactorily dealt with the complaint, or the HEI has made a reasonable offer to settle the complaint and the Complainant has refused it.

We may consider that the university has dealt with the matter satisfactorily where it has granted the complainant the remedy they were seeking, even though the complainant may remain dissatisfied with the university’s conclusions on the substantive issues raised.

Sometimes in the course of our review, a university makes an offer to reconsider the matter under its procedures, which reflects what our recommendation is likely to be if we found the complaint to be justified. In those circumstances, we might consider it appropriate to terminate our review of the complaint. At the conclusion of the university's reconsideration of the matter, it should issue another Completion of Procedures Letter. If the complainant remains unhappy after the university has reconsidered the matter, it would be open to them to complain to the OIA again about the outcome of that process, should they wish to do so.

If the university has made a satisfactory offer to settle the complaint, and the student has refused it, we may require the university to repeat the offer or hold it open for a reasonable period of time.

Rule 8.1.3 – The complaint would be better considered in another forum.

We may terminate or suspend our review of a complaint if it would be more appropriate for the issues to be considered by another specialist forum. For example, it might be more appropriate for certain issues of finance and credit to be considered by the Financial Ombudsman Service.

Complainants frequently raise issues about the Data Protection Act. Breaches of the Data Protection Act are a matter for the Information Commissioner's Office and will not normally be considered as part of our review, unless they are found to have materially affected the student in terms of their study or pursuing their complaint.

Rule 8.1.4 – There are proceedings taking place within the HEI or elsewhere which may be relevant to the complaint.

As noted above in **Rule 3.3**, we cannot consider complaints which are the subject of court or tribunal proceedings which have not been stayed.

Sometimes the issues the complainant has raised with us are due to be considered by another body, for example, a professional regulator. The complainant may have instituted proceedings against another party, for example the college at which they studied for a degree awarded by the university, and the issues before the court may be the same or relevant to those raised in their complaint to us.

There may also be other proceedings ongoing within the university, such as disciplinary or grievance proceedings, which have a bearing on the complaint to the OIA. In these circumstances we may consider it appropriate to either terminate or suspend consideration of the complaint.

Rule 8.1.5 – The Complainant has repeatedly failed to comply with time limits set by the Reviewer or these Rules, or has unreasonably delayed in his or her conduct of the complaint

Rule 8.2.3 – The representative has repeatedly failed to comply with time limits set by the Reviewer or these Rules or has unreasonably delayed in his or her conduct of the complaint

We may terminate or suspend our review of a complaint if the complainant or their appointed representative does not provide information requested by us within a reasonable time, or otherwise causes unreasonable delays to our review.

We will terminate our review if the complainant fails to respond to our correspondence. However, we will warn the complainant of this possibility before taking this action. If we close a complaint in these

circumstances, we will consider reopening it if the complainant subsequently asks us to do so and can provide a good reason for not keeping in touch with us.

Rule 8.1.6 - The Complainant has acted aggressively, offensively, or abusively, or unreasonably persistently, or has made unreasonable demands in his or her conduct of the complaint

Rule 8.2.4 - The Representative has acted aggressively, offensively, or abusively, or unreasonably persistently, or has made unreasonable demands in his or her conduct of the complaint;

The OIA's policy on Unacceptable Behaviour can be found on our website <http://oiahe.org.uk/about-us/policies/unacceptable-behaviour-policy.aspx>. If a complainant or their representative continues to behave in a way which we consider to be unacceptable, we may decide to terminate contact with them, which may mean that we terminate our review of the complaint.

Where a decision to terminate the complaint is due to unreasonable delay or behaviour of the part of the representative we would notify the complainant and we would consider reopening our review if the complainant subsequently decided to deal with the complaint in person, or to appoint another representative.

Rule 8.1.7 the complaint has no real prospects of success

If, based on the information we have and our experience of handling complaints, we consider that the complaint has no real prospects of success, we will terminate our review. We will explain why we consider that there is no real prospect of success.

Rule 8.1.8 the Complainant can no longer be contacted

It is important for the student to keep in touch with us and to notify us if they change address. We will terminate our review if our correspondence to the complainant is returned to us by the Post Office and we are unable to contact the complainant by other means. We will try to contact the student by email, post and telephone before deciding to suspend or terminate our review.

Rule 8.2.1 the representative is not acting in the best interests of the Complainant

Rule 8.2.5 the representative has been misled by the Complainant

The situations described in Rules 8.2.1 and 8.2.5 create a conflict of interests between the representative and the student and that makes it difficult or impossible for us to conduct our review.

If we suspend or terminate our review on these grounds, we would consider reopening our review if the complainant subsequently decided to deal with the complaint in person, or to appoint another representative.

Examples of a representative not acting in the student's best interests would be: where a representative is refusing to put forward an offer which the university has made to the student; or where a representative appears to be following his or her own agenda rather than presenting the student's complaint.

Rule 8.1.9 – There are other good reasons for doing so

We may terminate or suspend our review for other good reasons.

Other circumstances

This note cannot cover all the queries that may arise about eligibility. If you have a query that is not answered by this note, please check our website www.oiahe.org.uk which contains further information about decisions we make, or contact our Enquiries Team on 0118 959 9813.