

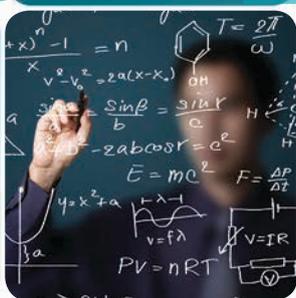


office of the
independent
adjudicator

'for students in higher education'

Annual Report 2012

www.oiahe.org.uk



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Introduction by the Chair



Ram Gidoomal

In 2012 the OIA received and closed more complaints than ever before. The continuing rise in the number of students bringing their cases to the OIA occurs in an environment where the student experience is at the heart of the higher education system and where the higher education system itself is expanding and changing.

The OIA provides an efficient, independent ombudsman service for students who have taken a complaint through their university processes. We have made further refinements to our processes and brought in additional case-handlers to help us keep pace with the rise in complaints. At the same time we have kept a close eye on the costs of our operations. The average cost of dealing with a complaint decreased again in 2012.

We have also increased the flow of information to universities. For the first time in 2012 we published key complaints data for all subscriber organisations. This has been welcomed as helping universities and students' unions have a clear picture of what is happening in their own institution.

2012 was the first year of the new student finance arrangements that allow universities to charge home students fees of up to £9,000. The expectation is that higher tuition fees will lead to more complaints. The increase will undoubtedly provide major challenges for universities, students' unions and the OIA.

Some of the responses to those challenges were explored in the *Pathway 3* consultation undertaken by the OIA in 2012. There was clear evidence that universities are successfully operating a range of early resolution approaches, drawing on the resources and expertise of well-established student support offices and students' unions. A number of pilot programmes have been set up following *Pathway 3* to look at developing approaches and allowing the lessons learned to be shared across the sector. The results of the pilots will inform the development of a Good Practice Framework for complaints handling by the OIA in partnership with the Academic Registrars' Council, the National Union of Students, the Quality Assurance Agency and the Association of Heads of University Administration.

Early resolution was also a theme of the tenth annual conference of ENOHE, the European Network of Ombudsmen in Higher Education, which the OIA was pleased to host in April 2013.

The work of the OIA depends on the dedicated work of its independent Board and on the expertise and contribution of a small and committed staff, led by the Independent Adjudicator and Chief Executive, Rob Behrens. I thank the staff and my colleagues on the Board for their continued commitment to improving complaints handling in higher education.

Ram Gidoomal CBE

Chair of the Board of Trustees/Directors

The Independent Adjudicator's Review of the Year

Introduction

The Office of the Independent Adjudicator for Higher Education (OIA) plays a critical role in safeguarding the student experience in England and Wales.



Rob Behrens

At the OIA we see one in six of the complaints, including academic appeals, that have been through all the stages of a university's complaints or appeals process. Each complaint represents a late or last resort stage in what will already have been a detailed and often protracted process. It is in the interests of everyone involved in higher education in England and Wales, and above all of students, that effective complaints procedures are in place, backed by a transparent, efficient, independent ombudsman service (the OIA) ensuring fairness and accuracy in student complaints handling.

"I am grateful to my case adjudicator for all his time and efforts on my case. I greatly appreciate the assistance that OIA have provided me and students in similar situations to mine."

"There was praise for the OIA and its endeavours, experience and expertise, underpinning a clear consensus that keeping the OIA as the sole adjudicator would help to ensure independence and objectivity in adjudication, consistency in awards and to enable the OIA to identify any trends that could indicate systemic issues."

Government response to submissions to the White Paper and the Technical Consultation Paper, June 2012

The OIA's agenda has been shaped by the third of the Pathway consultations that seek input from higher education institutions, students' unions and other interested parties on the way that the OIA and the OIA Scheme should anticipate and respond to rises in student complaints and to changes in the policy context of higher education.

The agenda has also been shaped by the international context of higher education. Effective complaints handling is one contributor to the international reputation of higher education in England and Wales. It is also an area where the UK has much to share with other countries. During 2012 the OIA agreed to host the tenth anniversary conference of the European Network of Ombudsmen in Higher Education (ENOHE), which took place in Oxford in April 2013.



IMPLEMENTING PATHWAY 3

The results of the *Pathway 3* consultation with the sector were published in October 2012.

The consultation sought views from across the higher education sector and beyond on effective strategies to promote the early resolution of complaints and appeals and better all-round complaints handling in universities.

It led to:

1. The launch of a series of Campus Pilots on Early Resolution, run by universities and students' unions and coordinated by the OIA.
2. The establishment of a steering group to construct a sector-wide, evidence-based, voluntary Good Practice Framework on handling complaints and appeals.
3. The adoption of a revised funding model for the OIA in the context of significant annual increases in complaints, further predicted rises and a growing diversity of institutions, public and private, joining the Scheme.

In November 2012 the OIA's work in alternative dispute resolution (ADR) was recognised by our inclusion on the shortlist for the Excellence in ADR and Conflict category of the Centre for Effective Dispute Resolution's biennial awards.



Developments in complaints handling

During 2012 a number of changes came into effect.

Early resolution and good practice

The first set of changes, and perhaps the most important, is directed at achieving earlier and more effective resolution of complaints.

Universities, students' unions, the OIA and Government Ministers in England and Wales have all recognised the value of early resolution as a common sense approach to disputes between students and their universities. The question has been how to implement early resolution. At the end of 2012, following clear consensus among respondents to *Pathway 3*, the OIA brought together universities and students' unions committed to running pilot projects to explore different approaches to early dispute resolution. A range of projects are running in several universities looking at different techniques including mediation, the use of student conciliators and training.

The outcomes of these pilots will inform consultation on the development of a new Good Practice Framework on complaints and appeals handling. This is being led by a steering group of the OIA, the Quality Assurance Agency, the National Union of Students, the Academic Registrars' Council and the Association of Heads of University Administration. The need for a framework was enthusiastically endorsed by respondents to *Pathway 3*.

A clear written framework of operational guidance that universities and students' unions can apply locally will give a basis on which to make improvements in complaints handling across the system.

The framework will support and complement the principles on complaints handling established for the sector in the revised UK Quality Code prepared by the QAA.

Risk-based regulation and policy

The second set of changes relates to the OIA's new role within the regulatory framework that safeguards the quality of higher education. The OIA is a member of the Regulatory Partnership Group, co-convened by the Higher Education Funding Council for England and the Student Loans Company. The work of the group has become more important in the absence of legislation following the publication in 2011 of the UK Government's Higher Education White Paper.

In December 2012 the OIA and the QAA formalised working relationships by signing a Memorandum of Understanding setting out the ways the organisations work to inform each other about regulatory risks. OIA colleagues were closely involved in the drafting of the chapter of the UK Quality Code that deals with student complaints, published by the QAA in April 2013.

Communication and transparency

A third area of focus is increasing the transparency of the OIA Scheme, making information available to students and the wider public. For the first time in 2012 the OIA sent and published what will be annual letters to each participating university, detailing the number of complaints submitted by their students and the outcomes.

"Despite the disappointing outcome I am pleased the letter does acknowledge what happened, so I am grateful to the OIA and to yourself for your prompt administration."

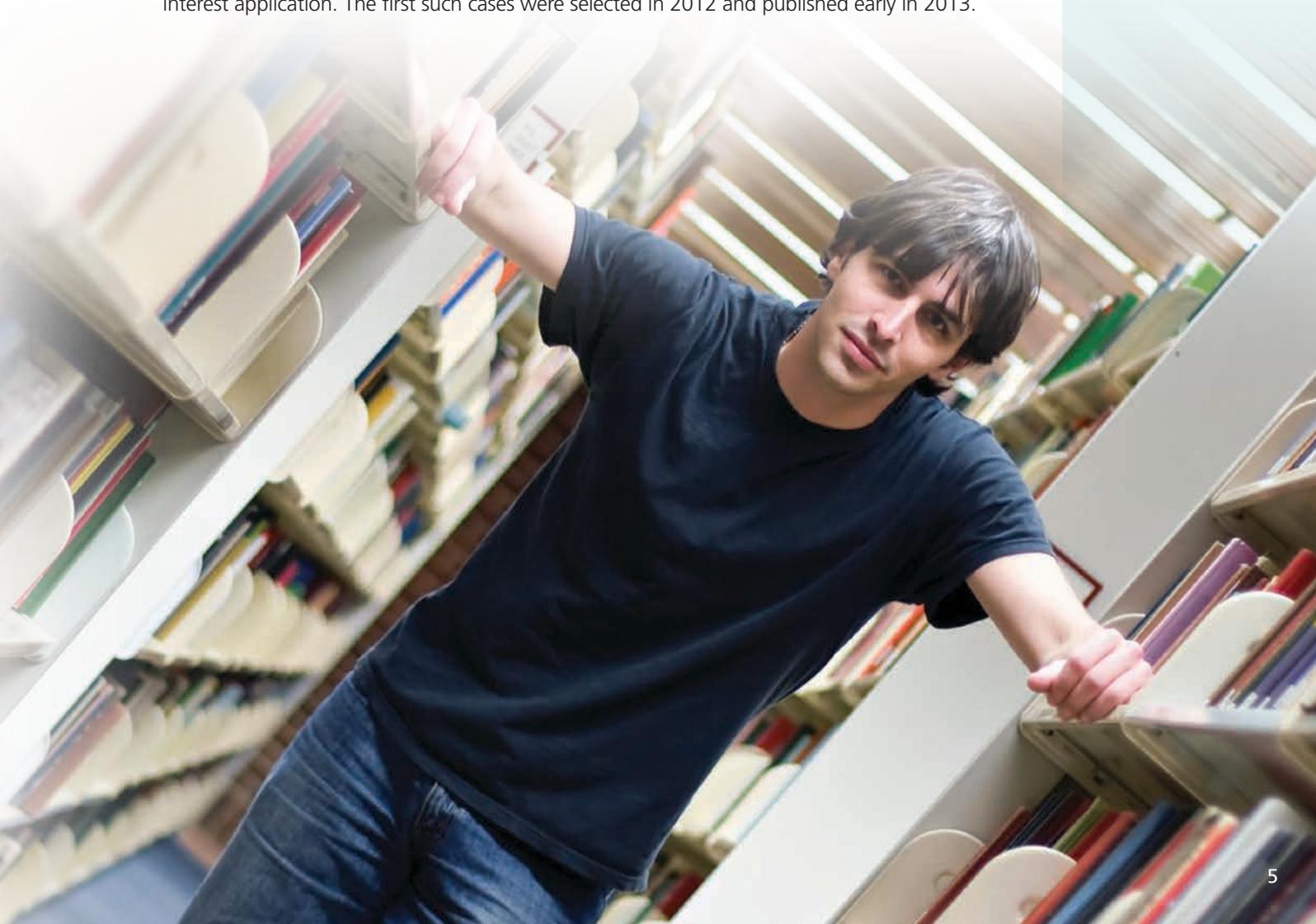
The reason the OIA has published these letters is to help universities and students' unions see and analyse what is happening in their own institutions, to benchmark universities with institutions of a similar size and to take steps to increase the number of complaints universities resolve internally.

The annual letters set out:

- the number of students at the university
- the number of Completion of Procedures Letters issued. This is a letter the university must provide to a student when an appeal or complaint has gone through all of the stages in the university's process. Only a minority of students follow up a complaint to the university by bringing their grievance to the OIA
- the number of complaints from students at the university that the OIA has closed, broken down by complaint category
- a comparison with the number of complaints made by students of other universities of a similar size
- a breakdown of complaints by outcome.

In 2013 the letters will be developed to include qualitative information in instances where universities exhibit particular patterns in complaints handling.

Additionally, in February 2012 the OIA Scheme Rules were changed to allow the Independent Adjudicator to include the name of the university when publishing cases with a wider public interest application. The first such cases were selected in 2012 and published early in 2013.



Complaints reviewed and closed

Complaint headlines – OIA performance 2012

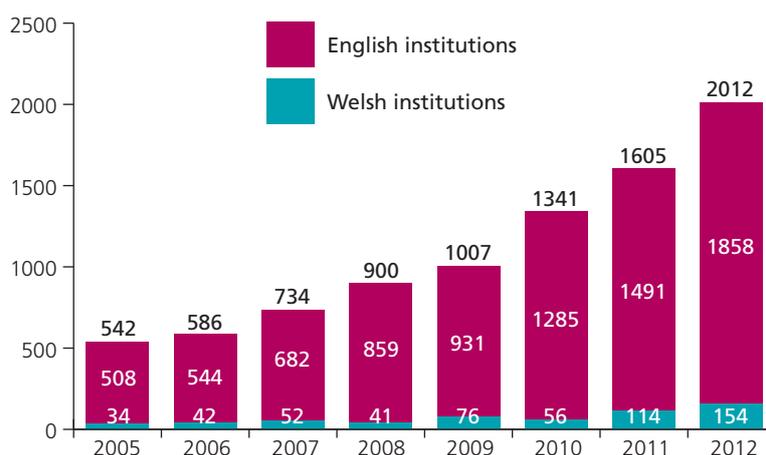
Table 1
OIA
performance
in 2012

	2011	2012	Key Performance Indicator
Complaints received	1605	2012	–
Complaints closed	1443	1795	–
Unit cost per complaint closed	£1663	£1616	–
Percentage of enquiries processed within five working days	89%	87%	80%
Total number of complaints awaiting allocation	567 (52%)	759 (58%)	30%
Complaints over nine months from receipt of complaint	20%	21%	20%
Average number of days to determine eligibility	133	49	–
Average number of days from receipt of complaint to closure	250	228	–

In 2012 the OIA received 2,012 complaints.

In 2012 the OIA received 2,012 complaints. This is another record year, representing a 25 per cent increase on complaints received in 2011. The upward trend shows no sign of slowing down and the expectation is that complaint numbers will continue to rise as the impact of increased fees is felt.

Chart 1
Number of
complaints
received
per year

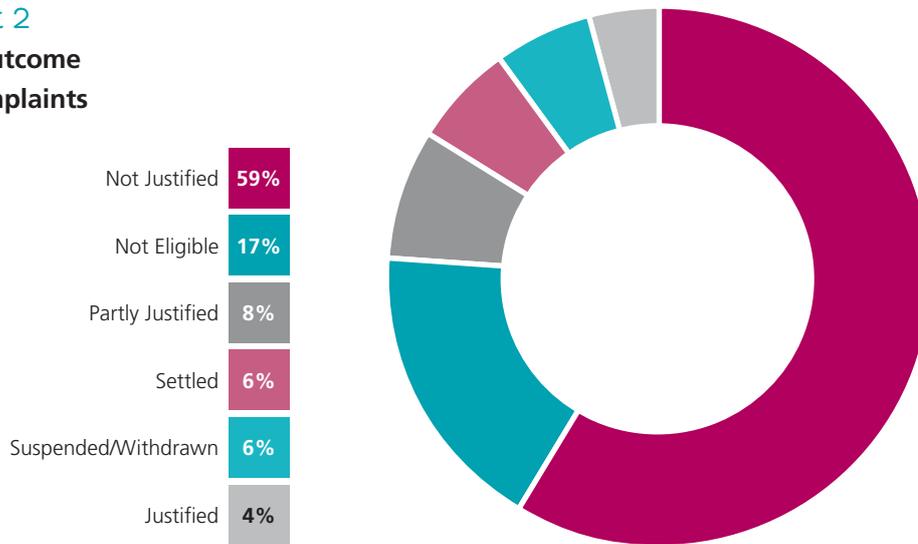


Changes made in 2011, to introduce a triage system to determine eligibility of complaints, have continued to have a positive impact. The average time taken to make an eligibility decision is now 49 days, down from 133 days in 2011. The OIA has a key performance indicator that by the end of 2013 95 per cent of eligibility decisions will be made, or further information requested if required, within ten working days.

In 2012 the OIA closed 1,795 complaints, an annual increase of 24 per cent compared to 2011.

Complaint outcomes 2012

Chart 2
The outcome of complaints



Just under one fifth of cases brought to the OIA are found to be ineligible, either because they are out of time, they are outside our remit or concern issues that are not directly relevant to the complainant’s higher education.

Just under one fifth of cases brought to the OIA are found to be ineligible.

CASE STUDY – NOT ELIGIBLE

A student complained that the University had not taken account of the effect on his performance of losing his bicycle from a cycle rack outside the University library.

The OIA considered that the complaint was ineligible under Rule 3.5 of the Scheme because the matter complained about did not materially affect the complainant as a student. The substance of the complaint concerned the way in which the University had responded to the theft of the bicycle and did not relate to his experiences as a student. The student had the opportunity under the University’s regulations to submit a claim for extenuating circumstances if he felt that his academic performance was affected by the loss of the bicycle, but did not do so.

The overall balance of outcomes in closed cases remained broadly similar in 2012, with slight decreases in cases found to be Justified or Partly Justified.

Over the year more than 100 cases were closed through settlement by the OIA either directly or by referral, with the agreement of both parties, to mediation. The total amount for settlements was £97,335.

The OIA looks for opportunities to settle cases at each stage in the process. A case will be considered for settlement when it is apparent that part or all of the complaint has some merit and the OIA considers that the university needs to change its approach to a complaint. In 2012 more cases were Settled than found Justified. This is a trend that I expect to continue as more complaints are resolved earlier in the process.

“The University is willing to bring this matter to an amicable resolution by offering, as you have suggested, a fresh consideration of his Appeal at Stage 2. It will arrange an Appeals Panel meeting with members not previously involved in the matter.

The University proposes that the Panel would consider the appeal as it was originally submitted at Stage 2. (The student) would need to be aware that holding Stage 2 afresh would not automatically mean that the appeal will be upheld.

The University is grateful for the opportunity to have the file closed in this way.”

Settlement can be applied in a very wide range of circumstances. Examples from 2012 include:

- the university agreed to remark the student’s work
- the university agreed to refer the student’s case to another appeal hearing
- a fine imposed on a student for a disciplinary offence was withdrawn when the OIA investigation brought to light an administrative error in the university’s processes
- a goodwill offer was made to a student in respect of a placement.

Where cases are Justified or Partly Justified the OIA will make Recommendations for steps to be taken to remove the disadvantage to the student arising from the matter complained about, or for the payment of compensation. In 2012 the OIA recommended that universities pay £189,892 in compensation to students.



CASE STUDY – SETTLED CASE

A group of students complained that the University had misrepresented important facts about an MA course. The students felt that this disadvantaged them academically and financially as a result of committing to and undertaking the course, which did not meet aspirations or requirements. The University made an initial offer of £500.

The OIA found that for two of the three semesters of the course much of what the students could reasonably have expected in terms of teaching, content, delivery and learning experience was not delivered. Although the University sought to address some of the shortcomings, and by semester three had taken steps to provide much of what it had advertised, this was in large part because students pursued complaints in a highly constructive way, from within six weeks of the course beginning.

We recommended, and the parties accepted, a refund of two thirds of the total tuition fees for the course should be paid to each of the students, in addition to the payment of £500 that the University had already proposed.

Timescales and costs

Closing more cases reduced the average number of days needed to close a complaint from 250 to 228. This is still too high and reflects the pressure on case-handling teams from the increased number of eligible complaints.

A priority is to increase case-handling capacity. We have reduced the size of the senior management team and diverted the resource into front-line case-handling. In the second half of 2012, following an increase in subscriptions, we were able to hire more case-handling staff, both directly and through a small outsourcing agreement. We have also increased the number of approvers, who audit the most complicated cases, from four to seven.

The OIA provides a specialist and more cost-effective alternative to the courts in handling student complaints. We continue to reduce the unit cost of dealing with cases year on year. The current unit cost is around £1,600.

Staffing

The OIA's staff deal with complaints from students who are often frustrated or distressed by the events that have led them to bring their case. The skills required of our staff go beyond the technical ability to look at the procedural details of a case to a range of highly developed inter-personal and communications skills. The OIA provides training and support for all staff. I am immensely grateful to my colleagues who bring huge personal commitment and expertise to their roles.

In September 2012 Susanna Reece, one of two Deputy Adjudicators, left to focus on her consultancy business. During more than eight years at the OIA Susanna was at the heart of setting up and overseeing key policies and processes of the organisation. We wish her well.

"(My son) is very grateful that someone was prepared to listen to his sad story. Your hard work and neutrality made a big difference to our lives!"



"I would like to express my gratitude for the excellent service, and congratulate you for dealing in such a professional manner with the complaint that has led to pleasing results."

Service complaints

The number of service complaints received increased from 17 in 2011 to 31 in 2012. When these complaints were reviewed a number turned out to be concerned with the outcome of the decision rather than complaints about the OIA's customer service. Delays in the process accounted for most of the rest of the complaints.

Funding

The increase in the number of student complaints required the OIA to review capacity and funding during 2012. The annual subscription rate for participating universities was increased, with the revenue raised being used directly to increase case-handling capacity.

From 2014 a small case-related element will be included in the subscription system. The amount universities will pay will depend partly on the number of complaints referred to the OIA in 2013. This is part of the OIA's work to encourage and incentivise universities to deal with complaints internally.

CASE STUDY – PARTLY JUSTIFIED

Two overseas students complained to the OIA that the University had refused to accept their application for bursaries because they had missed the deadline. The crux of the students' complaint was that the deadline for the bursary had not been made clear to them.

The bursaries were available to some students from outside the UK who were able to demonstrate that they held qualifications of the same standard as A levels. The University did not inform the students when they first raised the issue of the deadline that the school leaving qualification awarded in their home country did not meet the criteria for the bursaries. The OIA observed that if that information had been made available at the outset it was unlikely that the students would have continued with their complaint.

The OIA found the complaint Partly Justified and recommended that the University pay compensation to the students.

Non-compliance

Universities in general have an excellent track record in complying with the Recommendations of the OIA. This is due, in part, to the work of the Points of Contact within universities, who work with the OIA and with their colleagues in the institution to make sure that the necessary actions are understood and carried out.

The OIA Scheme requires universities to comply with Recommendations within a prompt time frame, and makes provision in the Rules for details of non-compliance to be reported to the Board and published in the Independent Adjudicator's Annual Report. Before 2012 this provision was last used in 2010.

London South Bank University

At its 41st meeting on 22 March 2013 the OIA Board agreed unanimously with the Independent Adjudicator's recommendation to publish details of non-compliance by London South Bank University.

The Independent Adjudicator's decision relates to the University's management of an appeal brought by a student on grounds of extenuating circumstances. In its Formal Decision the OIA had found the student's complaint to be Partly Justified on procedural grounds. The University had not provided the student with information presented by the Faculty to the appeal panel and had not given the student the opportunity to attend in person.

We recommended that the University re-hear the appeal within a specified time frame, and that the student be given the opportunity to attend the appeal hearing in person.

The University did not follow the formal Recommendations included in the OIA's decision on the case. The student attended an initial re-hearing but was not given the opportunity to attend when this was reconvened. Information presented by the Faculty following the initial re-hearing was not provided to the student. Furthermore the re-hearing was not set up within the specified time frame.

The repetition of failures identified in the OIA's Formal Decision served to compound the failure of the University to comply with our Recommendations.

The higher education environment

Sector expansion and membership of the OIA Scheme

In England, Government policy has been to expand higher education provision to include private, for profit and alternative providers.

The granting of university title to the University of Law (formerly the College of Law) in November 2012 was the first instance of a change of status affecting a Non Qualifying Institution belonging to the OIA Scheme. As other institutions are awarded university title they will automatically be admitted as subscribing members of the OIA Scheme.

Throughout 2012 the OIA has held detailed discussions with private providers, both where they have applied to be granted title, as in the case of Regent's College, now Regent's University London, and where, as in the case of Kaplan, they work in partnership to deliver programmes that are accredited by existing universities.

"I am very pleased with the outcome of my complaint and would like to thank you and all others involved for the way it was handled."

QUALIFYING AND NON QUALIFYING INSTITUTIONS

The Higher Education Act 2004 defines 'Qualifying Institutions' which are required to participate in the complaints scheme run by the OIA as the 'designated operator' of the Scheme. Broadly this applies to universities in England and Wales with degree-awarding powers, and constituent colleges, schools or halls.

Other institutions may apply to join the Scheme by application to the Board.

As the range of providers offering higher education increases it is important to make sure that students are not disadvantaged by where they choose to study. The notion of a 'level playing field' is more than just a phrase. When it comes to student disputes all students should have access to a specialist, independent, experienced ombudsman service. The OIA was one of a number of bodies arguing in its response to the Government's consultation on controlling student numbers in alternative providers that membership of the OIA Scheme should be mandatory where students are receiving public funding from the Student Loans Company.

The European Union has adopted a Directive on Alternative Dispute Resolution (ADR) that will require member states to ensure that consumers have access to ADR for all contractual disputes between consumers and businesses. While there is an exemption for 'public providers of further and higher education' the details of how the exemption will apply are still being worked out. The impact on the OIA will depend on the outcome of discussions in which we are constructively engaged.

Judicial review

The process the OIA follows in considering a complaint is subject to judicial review. Each case clarifies the role and remit of the OIA. In 2012 nine new cases were brought, making a total of 40. One case, that of *Mr Cardao-Pito*, has been upheld, as reported in the 2011 Annual Report.

In *Mr Mustafa's* case (Queen Mary, University of London), the claimant obtained the permission of the Court of Appeal to bring a claim for judicial review. Allowing Mr Mustafa's appeal on one ground, Lord Justice Sedley said:

"I think a viable point of law may be lurking here, namely whether the determination of plagiarism is *necessarily* a matter of academic judgment and so always outwith the OIA's jurisdiction."

The student had used material which he had referenced, but the material had not been identified by indented text or quotation marks, so it was not possible to see where the quotations began and ended. The OIA determined that the University had correctly followed its procedures and given the student appropriate guidance, and that its decision that the student was guilty of plagiarism was a matter of academic judgment.

Mr Mustafa's claim was dismissed at a High Court hearing on 15 May 2013 before the Honourable Mr Justice Males (judgment delivered on 23 May 2013). The judgment gives clarity on the remit of the OIA to consider cases which "involve a matter of academic judgment but where the correctness of that judgment is not a central issue."

Mr Justice Males said that the OIA cannot look at complaints "where the central subject of the complaint is a dispute about an academic judgment and that complaints where such disputes are peripheral are not intended to be excluded." In the specific case brought by Mr Mustafa, Mr Justice Males found that:

"If the OIA had decided that it could not consider the complaint merely because it involved an allegation of plagiarism, without considering whether determination of that allegation related to a matter of academic judgment, that would have been an error of law. However, I do not regard the OIA as having so decided. Its decision, as I read it, was not that any determination of whether plagiarism existed was *necessarily* a matter of academic judgment, but that on the facts *this* particular determination was."

One of the three cases from 2011 to reach a substantive hearing was *Mr Burger's* claim (the others are *Mr Cardao-Pito* and *Mr Mustafa*). The claim was dismissed at a substantive hearing before Mr Justice Mostyn on 5 February 2013 (judgment delivered on 6 February 2013). His claim related to whether an error in the OIA's decision was material to the outcome; the judge determined that it was not and, therefore, the OIA's decision was not undermined.

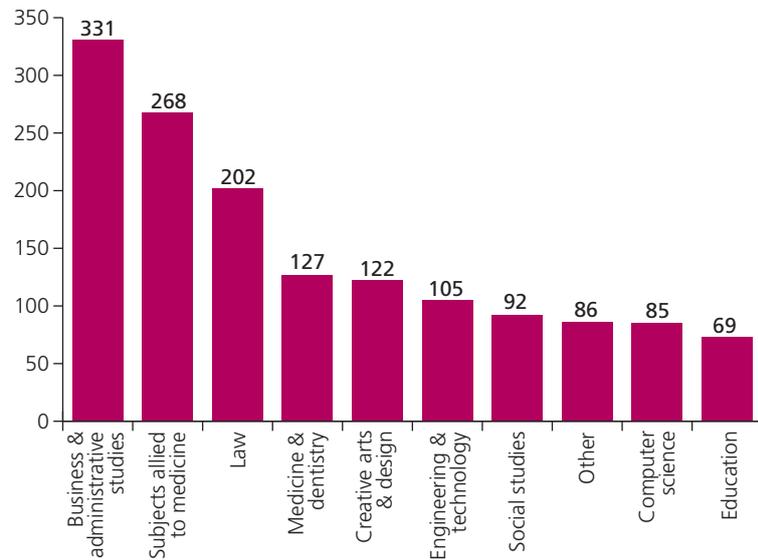
The 2011 Annual Report records the Court of Appeal stage of *Ms Maxwell's* judicial review. Ms Maxwell sought permission to appeal to the Supreme Court. This was refused on the grounds that the application did not raise a point of law of general public importance.

All of the judgments relating to OIA judicial review claims can be found on the OIA website.

Trends in complaints - who complains?

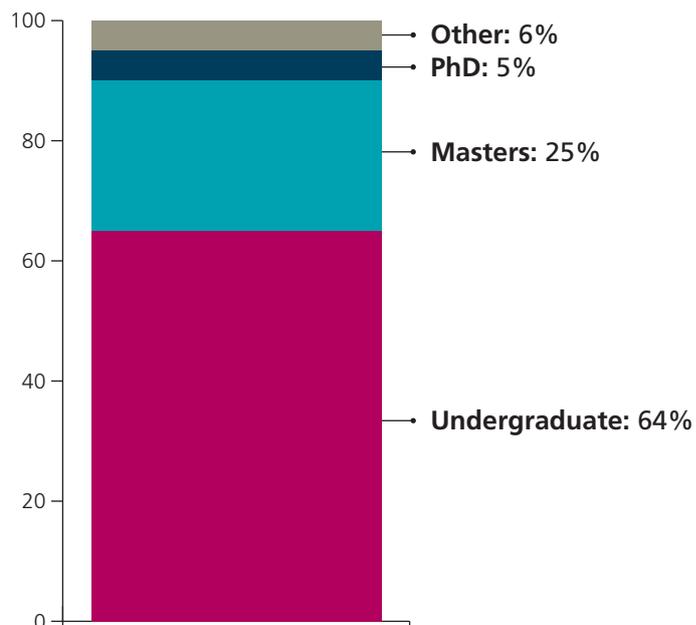
Detailed complaints statistics show that the background and discipline mix of complainants is broadly consistent with patterns in previous years. Students whose courses lead directly or comprise a step towards a professional qualification remain the most likely to complain.

Chart 3
Complaints received by course type – top ten



Postgraduates and international students from outside the European Union are proportionately more likely to complain than undergraduates and home students.

Chart 4
Complaints received by student status



Complaints by age, gender and nationality

The year-on-year increase in the proportion of complaints from younger students seen in 2011 did not continue in 2012. The distribution of complaints by age, gender and nationality is broadly similar to last year.

Chart 5
Complaints received by age

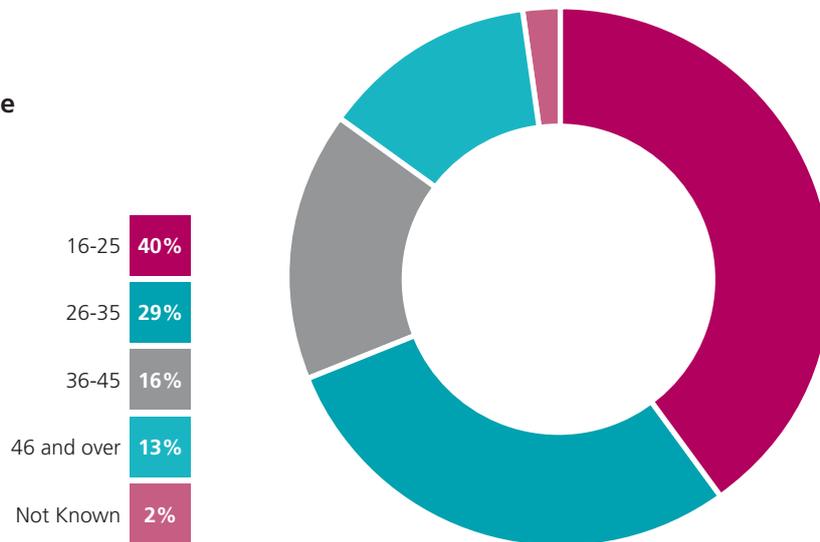
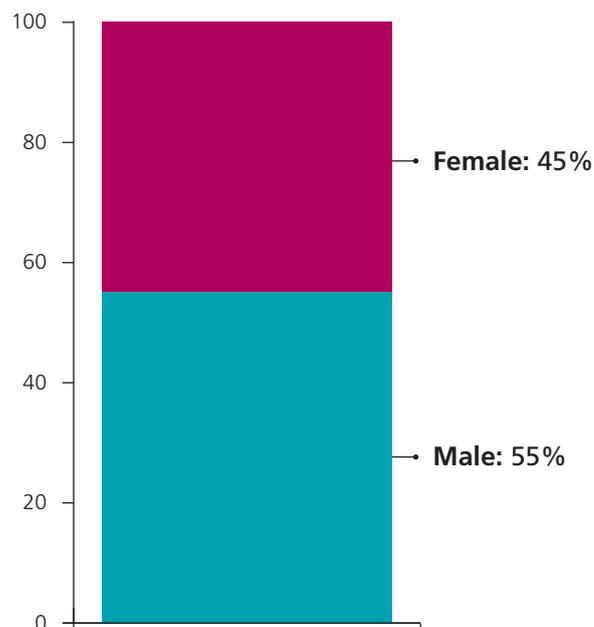


Table 2
Most common nationalities of complainants – top ten

Nationality	Number
British	664
Indian	55
Nigerian	50
Pakistani	31
Chinese	28
Bangladeshi	12
Greek	12
Irish	11
American	10
Saudi Arabian	10

Chart 6
Complaints received by gender

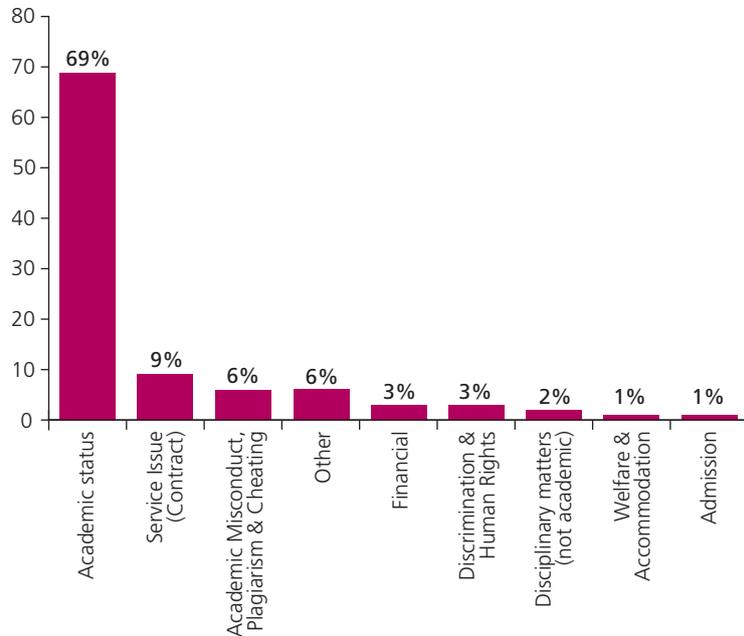


"I am very genuinely grateful for your help in addressing these issues, and for helping make a generally rather depressing process more bearable!"

Persistent themes

The principal categories of complaint remain consistent with 2011 patterns.

Chart 7
Complaints
closed by
principal
category



Academic status

The majority of complaints related to academic status, including academic appeals, progression and grades. This reflects the importance to students of achieving a first class or upper second class honours degree, or a postgraduate qualification. Matters complained about include examinations boards and appeals, assessment and mitigating circumstances on grounds of disability, health or personal circumstance.

The OIA does not intervene in matters of academic judgment.

CASE STUDY – NOT JUSTIFIED

A student appealed against the mark awarded for his postgraduate thesis. He had submitted a detailed rebuttal of the examiners' comments and criticised the University for not arranging for his thesis to be reviewed by a third marker. The University turned down the appeal and the student complained to the OIA.

The OIA found that the University's regulations did not permit appeals which challenged the academic judgment of markers. We considered it a matter of academic judgment for the University to choose to mark each individual piece of work on its own merits and that the appropriate mark for the thesis was a matter for the University. The University's regulations provided for two examiners to mark a thesis – a student's disagreement with their assessment did not require the University to bring in a third marker. The University's actions were in line with its assessment regulations.

We considered that the University had acted reasonably in all the circumstances and in line with its regulations.



Academic misconduct, plagiarism and cheating

Plagiarism cases accounted for six per cent of complaints closed – the same as in 2011. The burden of proof is a key issue and there have been some good examples of universities putting in place and applying very clear guidance.

Plagiarism fundamentally undermines academic integrity. One case that was upheld related to the University's response to concerns raised by a student about possible plagiarism by academic staff. Universities should apply the same rigour to addressing allegations of plagiarism by academic staff as they apply to allegations against students.

CASE STUDY – JUSTIFIED

The OIA found a complaint to be Justified on the basis that the University did not investigate significant allegations about possible malpractice on the part of academics with appropriate objectivity and openness. The University's documents indicated that a strong impression was given to the student that they might be treated less favourably due to these allegations.

Service issues: accurate information

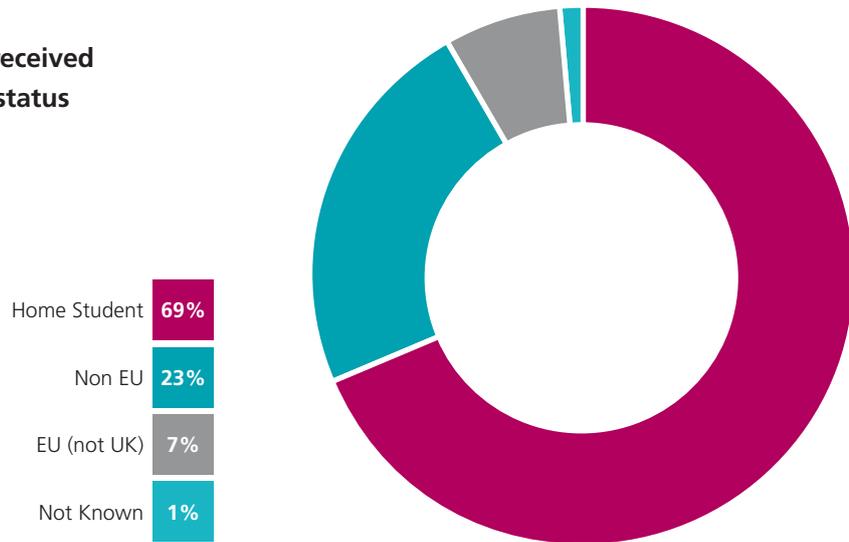
The accuracy of information provided to students is a major theme in Government policy. Universities spend a great deal of money on marketing. The competition between universities to attract students through prospectuses and marketing has led to cases where students have successfully complained that they have been misled.

CASE STUDY – PARTLY JUSTIFIED

A student on a specialist MBA course brought a successful complaint that the University had not provided all the industry-specific modules promised in the brochure. The student was awarded a partial refund of fees and compensation.

Complaints by International students

Chart 8
Complaints received
by financial status



23 per cent of complaints came from students from outside the EU.

It is striking that the majority of complaints from non-UK students are from students from outside the EU, representing 23 per cent of complaints. This may be for a number of reasons to do with the fees that they have to pay, language support, cultural assumptions by or about students from different backgrounds, peer pressure and procedures related to visa applications.

CASE STUDY – JUSTIFIED

A student from outside the EU was studying for a professional qualification that was validated by the University but delivered by a partner college.

Before starting her studies the student specifically confirmed with the University's partners that she would be sponsored for immigration purposes.

The student's visa became due for renewal in her third year. At this time the relationship between the University and its partner colleges was breaking down and the latter declined to issue the Confirmation of Acceptance for Studies letter that the student needed. The University told the student it was unable to sponsor her for a programme offered by the college, although it subsequently took steps to ensure that other international students could complete their studies.

The student complained to the University and when her complaint was rejected took her case to the OIA. We found that under the terms of the Memorandum of Co-operation between the University and its partner colleges the programme remained the overall responsibility of the University. We determined that the University had acted unreasonably in failing to assist the student with her immigration sponsorship and recommended an award of £15,000 to cover some of the fees she had paid at the college, legal fees for advice on her immigration status and compensation for anxiety and stress.



Emerging issues

Higher education delivered by partner organisations

An increasing number of higher education programmes are delivered in partnership arrangements, for example between a university and a further education college, as a joint programme between universities, or between two or more campuses of the same university. This opens up a number of issues.

The OIA sees cases where an arrangement between a university and a partner organisation is discontinued and inadequate arrangements are made to cater for students.

CASE STUDY – PARTLY JUSTIFIED

The OIA upheld a complaint brought by a student who embarked on a course of study delivered as part of a partnership between a university and a further education college. The University and the college were in different towns. When the University's partnership with the college ended, teaching and facilities were moved to the University site, and some classes rescheduled from weekday evenings to Saturday mornings. The student cited the transfer of teaching and facilities as mitigating circumstances in an appeal to the Examination Board.

The OIA was not provided with evidence that any attempt was made to consult students about the changes. This denied the complainant a proper opportunity to consider options such as withdrawing, applying to transfer onto a suitable course elsewhere, or investigating whether she could make arrangements that would make studying elsewhere more convenient for her.

There was no evidence that the Examination Board looked at whether rescheduling teaching or the increased travel demands would affect her ability to access library and support facilities or the time available to her for study.

The OIA concluded that the University's management of the demerger with the college did not take full account of the needs of students and that the University did not give proper consideration to the extenuating circumstances that the student drew to its attention. The OIA recommended that the student be granted an appeal and financial compensation.

Working in partnership also requires universities to be very clear which procedures apply in different circumstances.

CASE STUDY – JUSTIFIED

A student was reading for a PhD and appealed the outcome of his viva on the basis that the examiners did not appear to understand his subject. He was registered at a college which could not award PhDs at this point and therefore the PhD was to be awarded by the University. In the four years that the student was registered the college obtained degree awarding powers.

On examining the University's regulations it became clear that the University had confused which procedures applied and did not comply with its own regulations requiring that examiners had a particular profile of academic and examination experience. The OIA found the case Justified and asked the University to offer the student a further year at the University with supervision followed by a fresh first submission of his thesis.





Disability

Complaints about the way universities take into account the specific needs of students with disabilities suggest that there is still room for improvement in the way universities set, communicate and apply procedures for reasonable adjustments and extenuating circumstances in relation to disability.

CASE STUDY – JUSTIFIED

A student had depression which became severe in her final year. She submitted several mitigating circumstances claims as she was failing to meet academic deadlines for her dissertation and other course modules.

At the end of the year the student made a further submission and provided a medical letter which stated that her mental health was so impaired by her depression that she had not been in a fit state to have attended for the final months of her course.

The University rejected her mitigating circumstances claim on the basis that it was retrospective and that she had attended the university and submitted some work during this period.

The OIA considered that it was unreasonable for the University to consider her claim to be retrospective given that she had brought her mental health issues to their attention at several points during the year. We also criticised the University for not considering that the student might be a disabled person under the equality legislation and whether it might therefore have specific duties to her.

Students also need to make sure that they have requested adjustments to which they may be entitled.

CASE STUDY – NOT JUSTIFIED

A student complained that her tutor's response to a query about her feedback was inappropriate and unprofessional because she had a severe anxiety disorder and was upset by negative comments. The University had not been asked to make any adjustments to the feedback process in light of the student's disability. The overall feedback had included positive as well as negative points and the student had specifically asked to discuss the more critical comments. The OIA considered that the University had acted reasonably in all the circumstances.

Students' unions

Students' unions are key partners for both students and universities in preventing and dealing with complaints and appeals. The role of students' unions and the excellent work of students' union officers and staff are undoubted strengths of the higher education system in England and Wales.

It is disappointing that the OIA has evidence that universities do not always refer to the students' union or keep it informed of changes in complaints handling processes or the outcome of cases affecting students at the university. I encourage universities to work closely with students' unions to share this information with them.

Section 22 of the Education Act 1994 defines the responsibilities of universities in relation to their students' union. A key question is the extent to which the university can and should intervene where there are allegations made against the students' union, its officers or staff.



**CASE STUDY –
JUSTIFIED**

The OIA upheld a complaint brought by a student who had been disqualified by his students' union from standing for election to a sabbatical post. It was clear from the evidence that the University did not have a procedure in place for dealing with complaints about the students' union. It had not taken steps to define its remit in relation to the students' union and the independent Returning Officer, nor any important limitations to that remit.

The OIA recommended that the University should pay £3,000 in compensation for distress and inconvenience caused by its failure to define its role regarding students' union decisions, its failure to publish a complaints procedure and its mishandling of the student's complaint.

Social media

The use of social media by both students and staff will only increase. Cases are emerging around allegations of bullying and harassment via social media, and in disciplinary and fitness to practise cases.

**CASE STUDY –
PARTLY JUSTIFIED**

A student (A) complained about unsatisfactory behaviour by a fellow student (B), including comments that B had made about her on B's Facebook page. The University determined that the Facebook postings did not constitute harassment, noting, amongst other things, that B's Facebook page had tight privacy settings and that the comments had had to be translated before A had been able to read them. However, the OIA determined that the University's decision to reject this aspect of A's complaint was unreasonable in all the circumstances.

Outreach

The OIA's Outreach programme plays an essential role in keeping staff in touch with universities and students' unions and helping these organisations stay in touch with the OIA. I make regular visits to universities and their students' unions.

Regional network meetings were held at Cardiff, Southampton, Leeds Metropolitan and University College London. We also held two meetings in Reading – a Learning from Complaints seminar, and an open forum for students' union advisers.

In June we held our Annual Open Meeting at Glaziers Hall in the City of London, attracting around 100 people. Three external speakers, Baroness Verma, at the time Spokesperson for the Cabinet Office and the Department of Business, Innovation and Skills, Professor Eric Thomas representing Universities UK, and the outgoing Vice President for Higher Education of the NUS, Usman Ali, spoke positively about the independence of the OIA and its complaints handling record. For Baroness Verma the OIA had delivered a 'top of the league' performance.

Rob Behrens

Independent Adjudicator and Chief Executive

OIA Board of Trustees/Directors

As at 1 April 2013

The OIA Board of Directors has 15 members.

Nine, including the Chair, are **Independent Directors** appointed by fair and open competition on the basis of their skills and experience.

Six are **Nominated Directors**, appointed by the major representative bodies in Higher Education in England and Wales. The representative bodies may also nominate **Alternate Directors** to attend Board meetings if their Nominated Director is not available.

Directors are normally appointed for a three-year term of office, which can be renewed once.

The Board's responsibilities include:

- oversight of the performance and effectiveness of the Independent Adjudicator and the Scheme
- setting the budget for the OIA
- determining the level of subscriptions payable by universities each year
- approving the Rules and procedures for the operation of the Scheme
- preserving the independence of the Scheme.

Board members are not involved in the review of individual complaints.

OIA Board members

Chair

Ram Gidoomal CBE

Deputy Chair

Terry Price

Independent Directors

Emily Collins – until November 2012

Peter Forbes

Carey Haslam

Erica Lewis – appointed December 2012

Dr Andrew Purkis OBE

Dr Martyn Thomas CBE

Claire Weir

Colin Wilby

Nominated Directors

Nominated by the Association of Heads of University Administration

Steve Denton

Nominated by the Committee of University Chairs

Peter Hermitage

Nominated by GuildHE

Jenny Share – until November 2012

Haf Merrifield – from November 2012

Nominated by Higher Education Wales

Dr Chris Turner

Nominated by the National Union of Students

Usman Ali – until July 2012

Rachel Wenstone – from July 2012

Nominated by Universities UK

Professor Mike Thorne

Alternate Directors

GuildHE

Haf Merrifield – until November 2012

Professor Geoffrey Elliott – from January 2013

National Union of Students

Alex Bols – until June 2012

Dr Debbie McVitty – from July 2012

Universities UK

Professor John Raftery

Association of Heads of University Administration

Mark Humphriss

Higher Education Advisory Panel

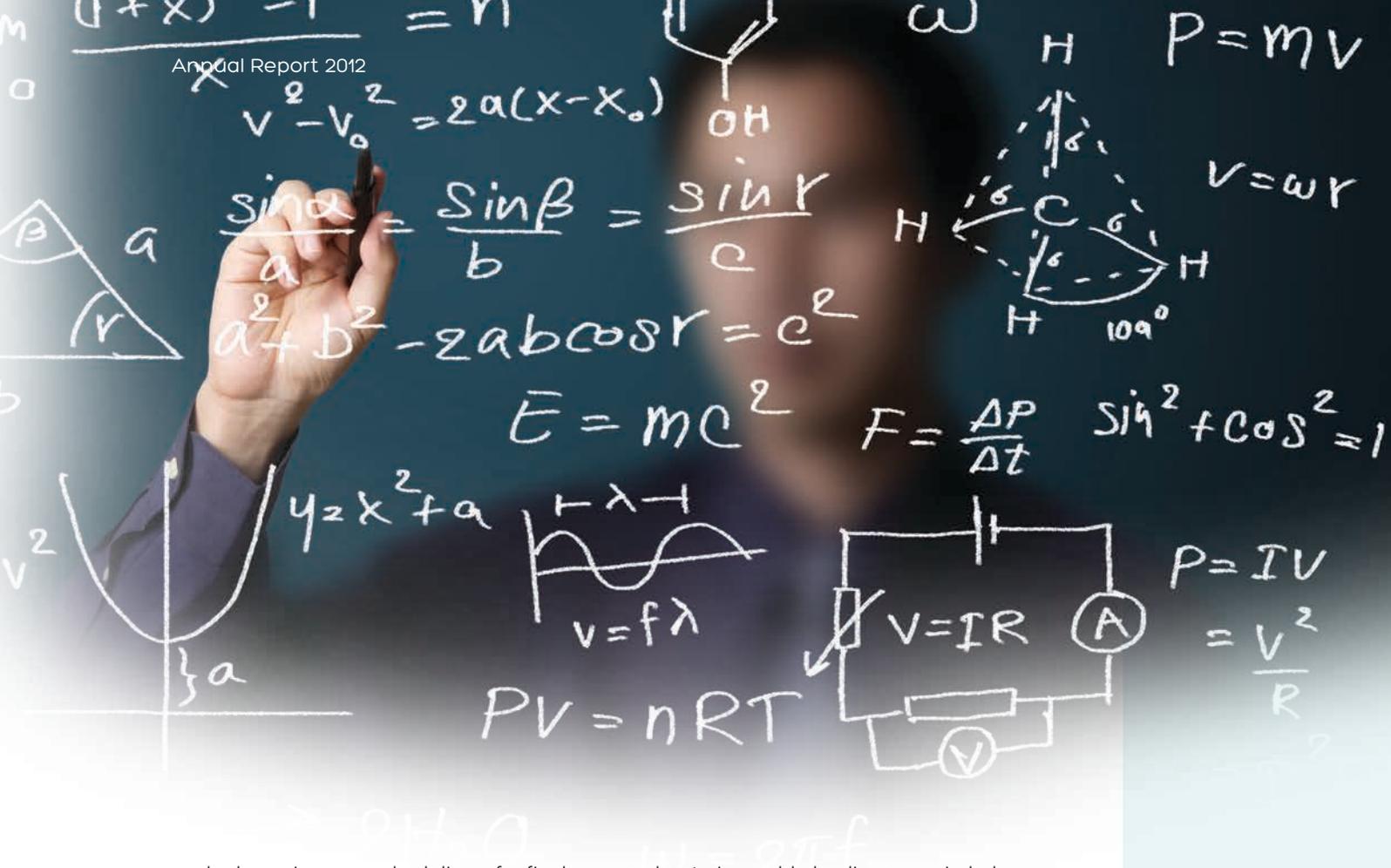
The role of the Panel is to provide advice and expertise on good practice. The panel members are drawn from universities across England and Wales.

In 2012 the Panel was chaired by Professor Avrom Sherr, Woolf Professor of Legal Education and Director of the Institute of Advanced Legal Studies. The other Panel members were Pam Ackroyd, Pro-Vice-Chancellor (Operations) at Cardiff Metropolitan University; Tessa Byars, Senior Adviser at Anglia Ruskin Students' Union; Dr Wayne Campbell, Director of Student Services at the University of Kent; Heidi Cooper-Hind, Head of Student Services at the Arts University Bournemouth; Mike Ratcliffe, Director of Academic and Student Affairs at Oxford Brookes University; Jo Spiro, Student Support Services Manager at the Union of University of East Anglia Students and Dr Andrew West, Director of Student Services at the University of Sheffield.

In April 2013 Avrom Sherr, Mike Ratcliffe and Andrew West came to the end of their second terms of office. We are grateful to them for their valuable contributions and their support for the Panel since its inception. We welcomed the following members in April 2013: Andrea Bolshaw, Academic Registrar at Coventry University; Sam Dale, Deputy Academic Registrar at Durham University and John Peck, Head of Registry at University College London School of Pharmacy. Wayne Campbell has taken over as the new Chair.

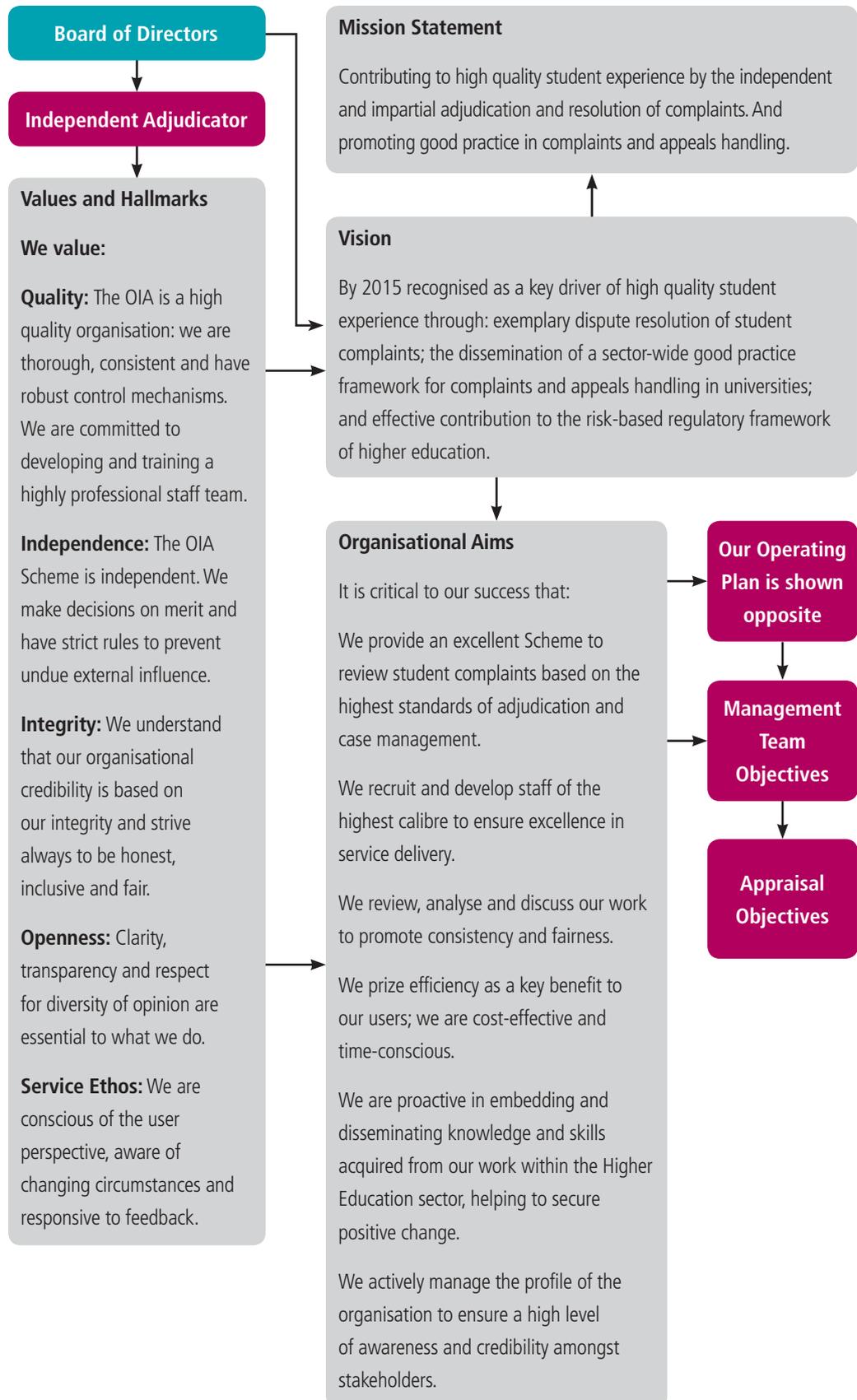
Questions to the HEAP panel cover a wide range of topics. Issues raised in 2012 included:

- where the mark of assessed work is to be capped, whether it is normal practice for the uncapped mark to be recorded separately in case the cap is subsequently removed
- whether it is normal practice for universities to refuse a student permission to resit an examination or assessment that has already achieved a pass mark
- how universities handle requests from students wishing to withdraw from their studies and whether there are standard procedures, especially a "cooling off" period
- how common it is for PhD examiners to express divergent views in their preliminary reports, with one recommending the award of an MPhil and the other a PhD, and for an examiner's preliminary report to differ greatly from the final joint report, where no viva was held
- the length of time an institution should reasonably have taken to update its enrolment rules subsequent to amendments made to the UKBA visa policy/guidelines and whether the changes should have applied retrospectively to students already accepted on to a course



- the last minute re-scheduling of a final year student's time-table leading to an imbalance of work over the semesters and whether a university would normally put in place a contingency plan to maintain the balance of work
- whether a university is expected to apply adjustments recommended in an educational psychologist's report even when no specific disability or specific learning disability has been identified and whether it is then reasonable to expect the university to consider the student as disabled in other respects
- whether the Examination Board should be made aware of a student's disability when considering their overall profile if that student has already had reasonable adjustments in place, or whether this would constitute 'double compensation'
- whether a university should implement a mechanism to allow it to divulge to a student the outcome of disciplinary procedures against a member of staff following specific allegations by the student
- if the ruling of a professional body that a student is not fit to practise takes precedence over the university's decision to allow them to proceed
- how universities consider the duty to prevent discrimination against carers (under the Equality Act 2010) in relation to assessment procedures.

Strategic Plan



Operating Plan 2013

We provide an excellent Scheme to review student complaints based on the highest standards of adjudication and case management

Closure levels

The continuing development of our processes and capacity will enable us to close more cases than ever before in 2013 (and at a lower unit cost). We expect to close over 3,000 cases at a unit cost below £1,500.

Access to the Scheme

In the absence of a Higher Education Bill we have made incremental changes to our Non Qualifying Institutions Protocol. From 2014 NQI subscriptions will be on the same basis as other Institutions. In 2013 we will continue to work with alternative providers and Further Education Colleges to bring more Institutions into the scheme and minimise the number of higher education students in England and Wales who cannot have complaints independently reviewed by the OIA.

Settlements

We have reviewed our processes and capacity to put a much greater emphasis on the settlement of cases where appropriate. We expect to settle at least 10 per cent of complaints before decision stage in 2013.

Rules

We will review the OIA Scheme Rules to ensure that they reflect current processes and practice and are straightforward to use and understand. The amended Rules will be available to universities and students' unions by March 2013.

We recruit and develop staff of the highest calibre to ensure excellence in service delivery

Staff structure

In 2012 we restructured to reduce the size of the senior management team and commit an even higher proportion of resource to front-line work. We will continue to develop the organogram to ensure that we are structured to deal with the increasing requirements on the Office. The latest organogram will be published in the Annual Report in June 2013 as well as on the website.

Decision making at appropriate levels

The continuing development of our risk-based approach and the approvals and quality control systems will further empower staff and allow a higher proportion of decisions to be taken at the earliest possible stage.

Targets

We are developing our processes for individual and team target setting to ensure alignment with our renewed structures and organisational goals.

Training

We will expand our in-house training programme to take account of the rapid growth and changing structures of the Office. In doing so we will make use of the 'magic' approach to needs analysis (mandatory skills, adapting to change, growth and progression, improvement to practice and corrective coaching).

**We prize efficiency as a key benefit to our users:
we are cost-effective and time-conscious**

Timescales

The increase in complaints numbers puts pressure on resources. We recognise that delays in dealing with cases cause significant difficulties for both student complainants and universities. Given the increase in capacity associated with the 2013 subscription fee, and ongoing process improvements, we have set a target for the year of 85 per cent of new cases received by the OIA being dealt with within six months.

Eligibility

It is important for complainants (and universities) to know as soon as possible whether the issues they are raising could be suitable for review by the OIA. We will continue to refine our processes in this area and by the end of 2013 we aim to make 95 per cent of eligibility decisions (or requests for further information if required) within ten working days of receiving the completed complaint form.

Compliance

The effectiveness and credibility of the OIA scheme requires careful and timely compliance with our Recommendations. We will build on our protocol for monitoring compliance during 2013 with the aim that 95 per cent of student-centred Recommendations are implemented by the target date set.

Case element

The implementation of the new subscription system will begin in 2013 as data is collated to facilitate the introduction of the case-related element in 2014. The OIA will take into account the funding from the case element (expecting to raise around 10 per cent of total income) in setting the core subscription rates late in autumn 2013.



We review, analyse and discuss our work to promote consistency and fairness

Annual letters

In 2012 the OIA published for the first time statistical information about complaints relating to every subscribing institution. This information was well received in the sector as being helpful and well presented. In 2013 we will build on this by additionally including in annual letters qualitative information highlighting key issues and practices where appropriate.

Knowledge management

The rapid growth in complaints coming to the OIA poses new challenges in ensuring continuing consistency of approach across the Office. A significant knowledge management project will audit existing practices and ensure that processes are fit to deal with expected volume increases and to support the ongoing less-paper initiative. A report will be made to the Board by June 2013.

ENOHE

The OIA will in April 2013 host the Annual Conference of the European Network of Ombudsmen in Higher Education for the first time since 2008. The theme of the conference will be 'Rising tuition fees, rising complaints and alternative approaches to dispute resolution' and will provide valuable opportunities for sharing learning and strategies in relation to complaints handling.

We are proactive in embedding and disseminating knowledge and skills acquired from our work within the higher education sector, helping to secure positive change.

Regulatory Partnership Group (RPG)

We will continue to play an active role in ensuring a joined up approach between the organisations that are part of the higher education regulatory framework. As well as contributing to the work of the RPG and its sub-groups we will make appropriate bilateral arrangements (building on the Memorandum of Understanding with the QAA in 2012) where complaint-related information can assist in the addressing of systemic concerns.

Early Resolution Pilots

As an outcome of the *Pathway 3* consultation we will capture learning from at least six pilot initiatives in universities and students' unions seeking to encourage early resolution of complaints. A launch event was held in late 2012 and throughout 2013 we will instigate opportunities for the sharing of experience and dissemination of ideas.

Good Practice Framework

A key outcome of the 2012 *Pathway 3* consultation will be the development of a Good Practice Framework that gives guidance on operational complaints and appeals resolution. The OIA has established a steering group including the Quality Assurance Agency, the Academic Registrars' Council, the Association of Heads of University Administration and the National Union of Students to oversee the framework, in consultation with the sector. Consultation will take place during 2013.



We actively manage the profile of the organisation to ensure a high level of awareness and credibility among stakeholders.

Enquiries

We have re-organised the structure and resourcing of our enquiries function to help us continue to respond to both telephone and e-mail enquiries in a timely and accurate way. By the end of 2013 we aim to be able to respond to 85 per cent of enquiries within two working days.

Communications

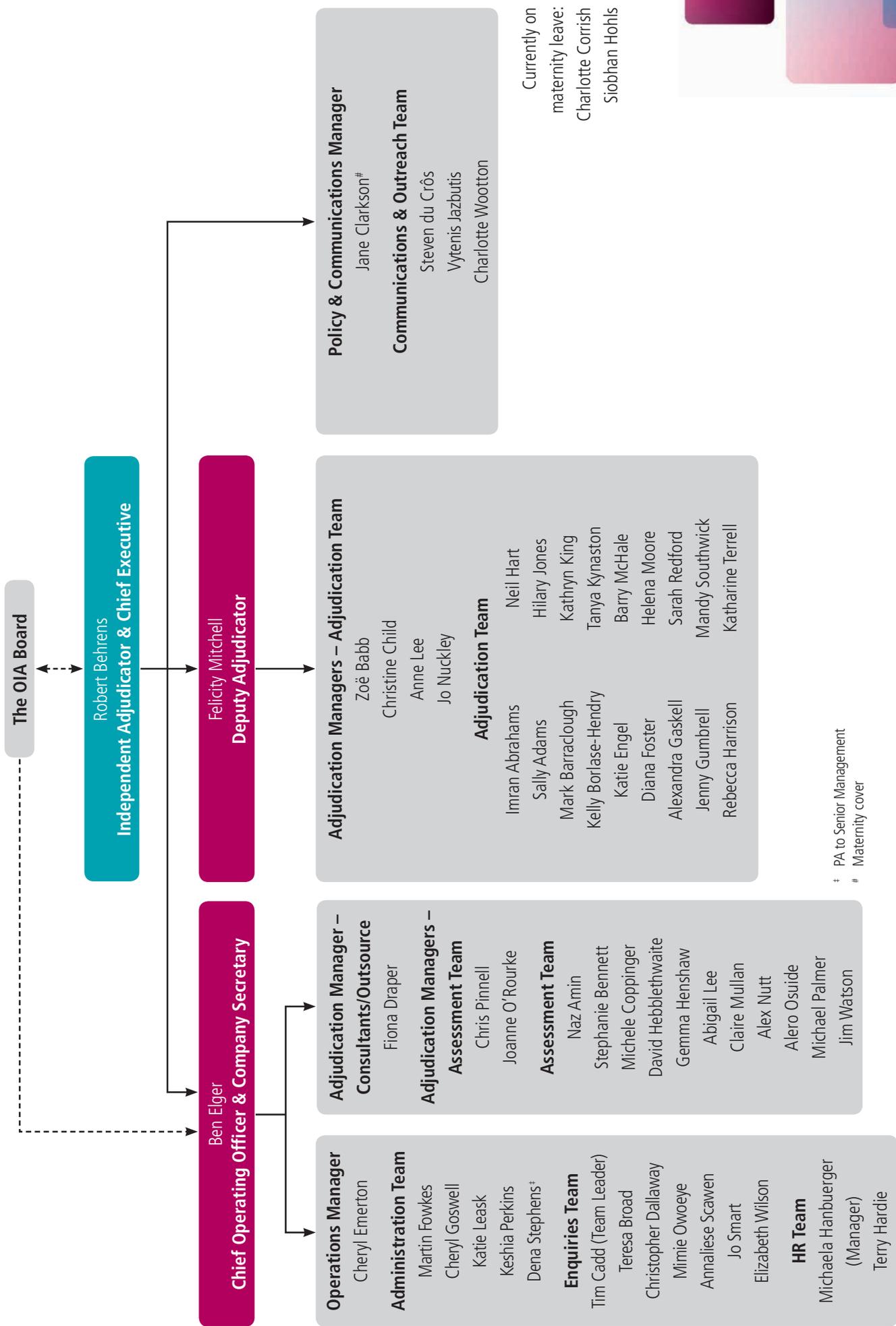
We will review the way we communicate with stakeholders and other users with particular emphasis on the greater use of web communications and social media. This will include the development of a social media strategy and internal guidance on its use. We will also continue to focus on developing the functionality and accessibility of the website in conjunction with the less-paper project.

Outreach

The Independent Adjudicator and other members of the team will be extensively engaged in visiting universities and students' unions to exchange views on key issues with university and student representatives. In addition to the visits programme the successful regional meeting format will be continued.

Annual Report/Open Meeting

The Annual Report for 2012 will be launched at the 5th Annual Open Meeting in June 2013 and will focus on the key emerging issues for the OIA and the sector relating to complaints.



+ PA to Senior Management
Maternity cover

OIA Subscriptions for 2012

Subscriptions to be based on full-time and part-time Higher Education and Further Education students at Higher Education Institutions, according to 2009/10 HESA statistics.

Qualifying Institutions

	Band	2012 Subscription Fees
Fewer than 500 students	A	£634
501 to 1,500 students	B	£1,281
1,501 to 6,000 students	C	£6,889
6,001 to 12,000 students	D	£13,668
12,001 to 20,000 students	E	£22,720
20,001 to 30,000 students	F	£34,342
30,001 to 50,000 students	G	£40,812
50,001 to 100,000 students	H	£50,222
More than 100,000 students	I	£77,162

Statement of Financial Activities

For the year ended 31 December 2012

	Unrestricted Funds £	Total 2012 £	Total 2011 £
Income Resources			
<i>Income for charitable activities</i>			
Subscriptions	3,041,690	3,041,690	2,342,935
Workshop income	3,520	3,520	11,568
<i>Income from generated funds</i>			
Other income	1,106	1,106	772
<i>Investment income</i>	13,655	13,655	7,726
Total incoming resources	3,059,971	3,059,971	2,363,001
Resources Expended			
Charitable activities	2,904,808	2,904,808	2,373,631
Governance costs	46,185	46,185	41,581
Cost of generating funds	–	–	–
Total resources expended	2,950,993	2,950,993	2,415,212
Net incoming/(outgoing) resources	108,978	108,978	(52,211)
Net movement in funds for the year	108,978	108,978	(52,211)
Total funds at 1 January 2012	514,636	514,636	566,847
Total funds at 31 December 2012	623,614	623,614	514,636

The amounts derive from continuing activities. All gains and losses recognised in the year are included in the statement of financial activities.

Balance sheet at 31 December 2012

	2012		2011	
	£	£	£	£
FIXED ASSETS				
Tangible assets		282,936		204,029
CURRENT ASSETS				
Debtors	69,344		48,951	
Cash at bank and in hand	3,437,025		2,671,357	
		3,506,369		2,720,308
CREDITORS				
Amounts falling due within one year	(3,165,691)		(2,409,701)	
NET CURRENT ASSETS		340,678		310,607
TOTAL ASSETS LESS CURRENT LIABILITIES		623,614		514,636
FUNDS				
Unrestricted Funds				
General fund		623,614		514,636
		623,614		514,636

These summarised financial statements may not contain sufficient information to gain a complete understanding of the financial affairs of the Office of the Independent Adjudicator for Higher Education. The full auditors' report and financial statements can be found on our website at www.oiahe.org.uk
Independent Auditors' Statement: We have examined the summarised financial statements set out on pages 35 and 36.

Respective responsibilities of Trustees and Auditors You are responsible as Trustees for the preparation of the summary financial statements. We have agreed to report to you our opinion on the summarised statements' consistency with the full financial statements, on which we reported to you on 22 March 2013.

Basis of opinion We have carried out the procedures necessary to ascertain whether the summarised financial statements are consistent with the full financial statements from which they have been prepared.

Opinion In our opinion the summarised financial statements are consistent with the full financial statements for the year ended 31 December 2012.

**Crowe Clark Whitehill LLP, Chartered Accountants and Registered Auditors, Reading RG1 1PL.
27 March 2013.**



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independent
adjudicator

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