

These Rules apply to complaints where the CF was received between 01/03/13 and 08/07/15.

Refer to <http://oiahe.org.uk/media/100294/oia-rules-july-2015.pdf> for Rules applying to complaints received on or after 09/07/15.



'for students in higher education'

Rules

These are the Rules of the student complaints scheme ("the Scheme") established by The Office of The Independent Adjudicator for Higher Education ("the OIA"). The Rules supersede all previous rules of the OIA and are effective from 1 March 2013. Complaints received by the OIA prior to this date will be dealt with under the Rules prevailing at the time.

The governing bodies of all qualifying Higher Education Institutions (HEIs) in England and Wales have a statutory obligation under the Higher Education Act 2004 to comply with the Rules. Governing bodies should ensure that their procedures and regulations are compatible with the Rules.

1. Purpose

The main purpose of the Scheme is the independent, impartial and transparent review of unresolved complaints by students about acts and omissions of HEIs and, through learning from complaints, the promotion of good practice.

2. Complaints Covered

The Scheme covers complaints about an act or omission of an HEI made by:

- 2.1 a student at that HEI; or
- 2.2 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.

3. Complaints Not Covered

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

- 3.1 it concerns admission to an HEI;
- 3.2 it relates to a matter of academic judgment;
- 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;
- 3.4 it concerns a student employment matter;
- 3.5 in the opinion of the Reviewer the matter complained about does not materially affect the complainant as a student;
- 3.6 the matter complained about is being dealt with (or has been dealt with) under these or any previous Rules of the OIA (and Rule 8.3 does not apply); or
- 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.

4. Time Limits and Exhaustion of Internal Complaints Procedures

- 4.1 A complainant must normally have first exhausted the internal complaints procedures of the HEI complained about before bringing a complaint to the OIA.
- 4.2 The OIA will not normally consider a complaint unless the completed Complaint Form is received within three months from the date upon which the internal complaints procedures were exhausted.

Rules

- 4.3** The HEI will, not more than 28 days after the internal complaints procedures have been exhausted, issue a letter (“Completion of Procedures Letter”) to the student concerned confirming that those procedures have been so exhausted. The time limit in Rule 4.2 will normally begin to run from the date of issue of the Completion of Procedures Letter.
- 4.4** The issuing of Completion of Procedures Letters shall be in accordance with guidance published by the OIA from time to time.
- 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.
- 4.6** In exceptional circumstances, and where satisfied there is good reason to do so, a Reviewer may accept a complaint for review where:
- 4.6.1** the internal complaints procedures of the HEI have not been exhausted and/or the HEI has not issued a Completion of Procedures Letter; or
- 4.6.2** the completed Complaint Form is received more than three months after the date of the Completion of Procedures Letter; or
- 4.6.3** where the substantive events complained about occurred more than three years before the Complaint Form is received by the OIA.

5. Acceptance of Complaint

- 5.1** A complaint must be made in writing, normally by completing the Complaint Form.
- 5.2** The Reviewer will send a copy of the Complaint Form and, where appropriate, the accompanying documentation to the HEI for its information.
- 5.3** The Reviewer will determine whether a complaint is within the jurisdiction of the Scheme, as prescribed by these Rules, and may at any time dismiss the complaint if the OIA does not have jurisdiction to review it.
- 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.

6. Review Procedures

- 6.1** Once a complaint has been accepted the Reviewer will carry out a Review of the complaint to decide whether it is justified, partly justified or not justified.
- 6.2** The Review will normally consist of a review of documentation and other information and the Reviewer will not hold an oral hearing unless in all the circumstances he or she considers that it is necessary to do so.
- 6.3** The nature and extent of the Review will be at the sole discretion of the Reviewer.
- 6.4** In deciding whether a complaint is justified the Reviewer may consider whether or not the HEI properly applied its regulations and followed its procedures and whether or not a decision made by the HEI was reasonable in all the circumstances.
- 6.5** The normal Review process for dealing with a complaint will be:
- 6.5.1** The Reviewer will decide what further information (if any) he or she needs for his/her review. At any time the Reviewer may:
- give the parties the opportunity to comment on representations received,
 - require the parties to answer specific questions and/or provide additional information. This may include a requirement that the HEI provides a copy of the information that it considered at the final stage of its internal complaints procedures (and any related records).
- 6.5.2** The parties shall comply with any request for information the Reviewer may make relating to the Review, and with any time limit set out in the request or, where no time scale is indicated, as soon as is reasonably practicable.

Rules

- 6.5.3** The Reviewer shall not be bound by legal rules of evidence nor by previous decisions of the OIA.
- 6.5.4** The Reviewer will issue a Complaint Outcome to the Complainant and the HEI as soon as reasonably practicable and when he or she has determined that he or she has all the material he or she needs to make a decision, or otherwise considers it appropriate to do so.
- 6.5.5** The Complaint Outcome shall be in writing and contain reasons.
- 6.5.6** The parties will be given the opportunity to make representations on the Complaint Outcome. The principal purpose and focus of those representations will be:
 - The identification of any material errors of fact in the Complaint Outcome; and
 - The practicalities of any proposed Recommendations.
- 6.5.7** After a Complaint Outcome has been issued, the Reviewer may:
 - Conduct a further Review of the Complaint or refer the Complaint to another Reviewer for further Review;
 - Confirm in writing to the parties that representations made on the Complaint Outcome are not material to the decision, and that the Complaint Outcome is the OIA's Final Decision;
 - Issue a revised Complaint Outcome. The Reviewer will not give the parties the opportunity to make representations on the revised Complaint Outcome unless the Reviewer considers it necessary to do so.
- 6.6** At the conclusion of the Review, the Reviewer will write to the parties to confirm that the Complaint Outcome (or revised Complaint Outcome) is the OIA's Final Decision.
- 6.7** Notwithstanding the above the Reviewer may at any time seek to achieve a mutually acceptable settlement of a complaint (including, with the consent of the parties, through the appointment of a mediator) whenever he or she considers it appropriate.

7. Recommendations

- 7.1** The Reviewer may, where the complaint is Justified or Partly Justified, make Recommendation(s) that the HEI should do something or refrain from doing something. Those Recommendation(s) may include, but not be limited to, the following:
 - 7.1.1** that the complaint should be referred back to the HEI for a fresh determination because its internal procedures have not been properly followed in a material way;
 - 7.1.2** that the HEI should take a course of action that the Reviewer considers to be fair in the circumstances;
 - 7.1.3** that the HEI should change the way it handles complaints;
 - 7.1.4** that the HEI should change its internal procedures or regulations;
 - 7.1.5** that compensation should be paid to the complainant, including, at the Reviewer's discretion, an amount for inconvenience and distress;
 - 7.1.6** that the complaint would be better considered in another forum.
- 7.2** The OIA expects the HEI to comply with any Recommendations made in the Complaint Outcome in full, and in a prompt manner.
- 7.3** Where Recommendations require the HEI to take a particular course of action it should do so within the time scale stipulated or, where no time scale is indicated, as soon as is reasonably practicable. The HEI shall report to the Reviewer on such compliance.
- 7.4** The Reviewer may, where the complaint is Not Justified, make Suggestions that the HEI should consider taking a course of action or amending its internal procedures or regulations.

8. Suspension, Termination and Reopening Review

- 8.1** The Reviewer may terminate or suspend his or her Review, as he or she considers appropriate, if it appears to the Reviewer that:

Rules

- 8.1.1** the HEI has satisfactorily dealt with the complaint;
 - 8.1.2** the HEI has made a reasonable offer to settle the complaint and the Complainant has refused it. In those circumstances, the Reviewer may require the HEI to repeat the offer to the Complainant and to hold it open for a reasonable period of time;
 - 8.1.3** the complaint would be better considered in another forum;
 - 8.1.4** there are proceedings taking place within the HEI or elsewhere which may be relevant to the complaint;
 - 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;
 - 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;
 - 8.1.7** the complaint has no real prospect of success;
 - 8.1.8** the Complainant can no longer be contacted; or
 - 8.1.9** there are other good reasons for doing so.
- 8.2** The Reviewer may suspend his or her Review and/or refuse to permit a Representative to act for the Complainant if in the opinion of the Reviewer:
- 8.2.1** The Representative is not acting in the best interests of the Complainant;
 - 8.2.2** The Representative has misled the Complainant and/or the OIA;
 - 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;
 - 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;
 - 8.2.5** The Representative has been misled by the Complainant.
- 8.3** The OIA may reopen a Review and issue a revised Complaint Outcome following the issue of a Final Decision under Rule 6.6, where it is satisfied there is good reason to do so, and:
- 8.3.1** new evidence is presented which is material to the outcome of the Review; or
 - 8.3.2** information or representations received give reason to believe there might be a substantive error in the Complaint Outcome.

9. Appeal

The Complainant may appeal against the decision of a Reviewer to dismiss or reject the Complaint or terminate or suspend the Review under Rules 3, 4, 5 or 8:

- 9.1** if the decision is made by a Case-handler, by writing to the Case-handler within 14 days of the decision. The appeal will be determined by an Approver.
- 9.2** if the decision is made by an Approver, by writing to the Approver within 14 days of the decision. The appeal will be determined by another Approver.

This Rule 9 does not apply to a Final Decision issued under Rule 6.6.

10. Publication

- 10.1** The Independent Adjudicator may in accordance with this Rule from time to time publish summaries of Complaint Outcomes (and any accompanying Recommendations) where:

- 10.1.1** in the opinion of the Independent Adjudicator it is in the Public Interest to publish; and
- 10.1.2** the Complainant's duly completed Complaint Form has been received on or after 1 April 2012; and
- 10.1.3** the Review has been concluded.

The published summaries may identify the HEI concerned but will not identify the Complainant.

Rules

11. Compliance

- 11.1 The Independent Adjudicator may report any non-compliance by an HEI with a request for information under Rule 6.5 to the Board and may publicise it in the Annual Report, or by other means at his or her discretion.
- 11.2 The Independent Adjudicator will report any non-compliance by an HEI with a Recommendation under Rules 7.2 or 7.3 to the Board and will publicise it in the Annual Report, and by other means at his or her discretion.

12. Role of the Board

The Role of the Board is set out in *Governance of the OIA Scheme*. For the purposes of these Rules, the relevant sections are:

- 12.1 Preserving the independence of the Scheme and the role of the Independent Adjudicator.
- 12.2 Considering whether, and if so how, non-compliance by an HEI referred to the Board under Rule 11 should be dealt with.
- 12.3 Reviewing, and where appropriate, amending these Rules from time to time, subject to the provisions of the Act.
- 12.4 The Board shall not be involved in the review and determination of individual complaints.

13. The Independent Adjudicator

The Independent Adjudicator is appointed by and responsible to the Board. In determining any complaints under these Rules the Independent Adjudicator shall act independently of the Board, HEIs and complainants.

The powers of the Independent Adjudicator are set out in *Governance of the OIA Scheme*. For the purposes of these Rules, the relevant sections are:

- 13.1 The Independent Adjudicator may enter into discussions and memoranda of understanding with any bodies or persons the Independent Adjudicator considers fit on matters of common interest, including the exchange of information. The Independent Adjudicator may provide information concerning the operation of the Scheme, including information on complaints received and/or reviewed and on Complaint Outcomes issued and Recommendations made and on related matters of compliance or non-compliance, including where he or she thinks fit, in relation to any individual complaint, Complaint Outcome and Recommendation, to any body which in the view of the Independent Adjudicator has a relevant right or interest in receiving such information. In particular the Independent Adjudicator shall co-operate with bodies engaged in regulating, financing or supervising standards within the higher education sector in any part of the United Kingdom. The information provided under this Rule 13.1 shall, in relation to personal data, comply with applicable data protection legislation.
- 13.2 The Independent Adjudicator shall prepare each year his or her Annual Report (which shall be distinct from the annual report of the Company) on the discharge of the functions of the Independent Adjudicator during the most recently ended reporting period.

The report will include information about:

 - 13.2.1 complaints referred under the Scheme;
 - 13.2.2 the Complaint Outcomes issued and Recommendations made by Reviewers;
 - 13.2.3 the extent to which Recommendations made by Reviewers have been followed (listing any HEIs which have not complied with a Recommendation);
- 13.3 The Independent Adjudicator may publish digests of complaints in anonymised form and statistical information.
- 13.4 The Independent Adjudicator shall issue guidance from time to time as to the timing and content of any publication under Rule 10 and the medium for publication and the opportunity for an HEI to make comments on a proposed publication (which shall not be binding on the Independent Adjudicator). The Independent Adjudicator shall have power to make all decisions for the purpose of Rule 10. The right to publish summaries of Complaint Outcomes (and any included Recommendations) under Rule 10 shall be in addition to the publication rights under Rules 13.1, 13.2, 13.3 and 13.6.

Rules

- 13.5** The Independent Adjudicator may delegate, subject where necessary to the approval of the Board, any of his or her powers to the Deputy Adjudicator and other members of the staff of the Scheme.
- 13.6** The Independent Adjudicator may publish an annual letter to each HEI setting out the number of complaints received by the OIA from that HEI and the outcome of complaints closed during that period, together with such other information as the Independent Adjudicator shall from time to time determine.
- 13.7** If requested to do so by the Independent Adjudicator, an HEI shall compile and send to the OIA an annual return stating the number of Completion of Procedures Letters issued in the previous calendar year.
- 13.8** The Independent Adjudicator may publish guidance:
- 13.8.1** in relation to these Rules,
 - 13.8.2** in order to promote the Scheme,
 - 13.8.3** in order to promote good practice, and
 - 13.8.4** on such other matters as he considers appropriate, consistent with the OIA's purpose.

14. Charges and Fees

- 14.1** The Scheme will not make any charges to complainants for the consideration of their complaints.
- 14.2** Each HEI is bound to pay a total annual subscription and/or case related element, based on a published scale, for participating in the Scheme. The subscription and/or case related element will be determined by the Board from time to time.

15. Non-qualifying Institutions

- 15.1** Rule 2.2 shall not apply to Non-qualifying Institutions. The OIA may exclude from the Scheme complaints brought by students studying identified courses at the Non-qualifying Institution.
- 15.2** From time to time the OIA may publish additional Rules which shall apply to Non-qualifying Institutions which have joined the Scheme with the consent of the Board.

16. Interpretation

Unless the context otherwise requires the definitions and interpretations set out below shall apply to these Rules:

“Act” means Higher Education Act 2004.

“Annual Report” means each annual report on the discharge and functions of the Independent Adjudicator in accordance with Rule 13.2.

“Approver” means the Independent Adjudicator, the Deputy Adjudicator and such senior members of staff as shall be designated as Approvers by the Independent Adjudicator.

“Board” means the board of directors of the Company and Trustees of the charity.

“Case-handler” means the individual with responsibility for day to day management of the complaint file.

“Complaint” means a complaint in accordance with Rules 2 and 3 and includes part of a complaint.

“Complainant” means a student or a former student who is entitled to bring a complaint under the Scheme.

“Complaint Form” means an application form in a format approved by the OIA for making a complaint under the Scheme.

“Complaint Outcome” means the document issued by the Reviewer setting out:

- the outcome of the complaint (for example, settled; mediated; withdrawn); or
- the decision on the complaint, any Recommendations or Suggestions made, and the reasons for the decision and any Recommendations or Suggestions following a Review under these Rules.

“court or tribunal” excludes those courts or tribunals which are internal to an HEI or are established pursuant to the powers of an HEI.

Rules

“Final Decision” means the Complaint Outcome issued by a Reviewer at the conclusion of a Review under these Rules.

“Higher Education Institution” or **“HEI”** means any of the following institutions in England or Wales:

- (1) a university (whether or not receiving financial support under section 65 of the Further and Higher Education 1992) (“1992 Act”) whose entitlement to grant awards is conferred or confirmed by an Act of Parliament, a Royal Charter or an order under section 76 of the 1992 Act;
- (2) a constituent college, school or hall or other institution of a university falling within (a) above;
- (3) an institution conducted by a higher education corporation, as defined by section 90(1) of the 1992 Act;
- (4) a designated institution, as defined by section 72(3) of the 1992 Act,
- (5) a Non-qualifying Institution which has joined the Scheme with the consent of the Board.

“internal complaints procedures” means those complaints and appeals procedures of an HEI which concern students and for the avoidance of doubt, include, but not by way of limitation, procedures concerning student complaints, academic appeals, disciplinary matters and breaches of codes of conduct and regulations.

“Non-qualifying Institution” means a Higher Education Institution which is not a qualifying institution in accordance with Part 2 of the Higher Education Act 2004.

“Office of the Independent Adjudicator for Higher Education” or **“OIA”** means the Company limited by guarantee and registered charity which is designated as the operator of the Scheme in accordance with the Act

“Public Interest” means one or more of the following:

- (1) publication which can be justified as highlighting either a significant act or omission of the HEI and/or the impact of the case on an individual complainant or group of complainants, and/or
- (2) publication which can be justified as drawing to the attention of HEIs, students’ unions and students the import of the Complaint Outcome for the purpose of providing a wider understanding of the Scheme and its operation and/or good practice relating to complaints between students and their HEIs and/or
- (3) publication which can be justified as ensuring or improving continued public, user and stakeholder confidence in the transparency of the Scheme and the independent nature of decision-making under the Scheme.

“Recommendation” means a recommendation which is included in a Complaint Outcome.

“Review” means the process of considering a complaint to:

- (1) explore means of settlement or other resolution, or refer to mediation; or
- (2) obtain sufficient information to make a decision on the complaint.

“Reviewer” means the person who is conducting the Review, and includes the Case-handler and the Approver.

“student” means a student who is or was registered at the HEI complained about (or in the circumstances described in Rule 2.2 is or was registered at that other institution).

“student employment matter” means a matter relating to the student’s employment by the HEI rather than their student status.

A plural word includes the singular and vice versa.

A reference to a statute in these Rules shall include a reference to that statute as may be modified, amended, re-enacted or supplemented from time to time.

17. Amendments to the Rules

These Rules may be amended from time to time in accordance with Rule 12.3.

18. Law

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