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Draft OIA Rules for Large Group Complaints: consultation response

We are grateful to all those who took the time and trouble to respond to our consultation despite the many other pressures everyone is under.

Some consultation responses expressed broad support for a process that would enable the resolution of complaints from large groups of students in an efficient and timely way. But the responses also raised concerns about the detail of how the process behind the new Rules would work, and how we would ensure that the process is fair.

We have made several changes to the proposed Rules to address some of the concerns and added some explanatory notes, and we explain below broadly how we envisage the process would work, which we hope will provide reassurance on many of the concerns raised.

Purpose of the Large Group Complaints process

The purpose of the Large Group Complaints process is to help manage complaints from a large group of students effectively. Some concerns were expressed in the responses that we would use it to “drum up” complaints. We would like to reassure people that this is absolutely not our intention or the purpose of the process. We will not be “advertising” for complaints or undertaking any kind of campaigning activity to generate complaints.

If there is an event that leads to large numbers of students being dissatisfied and the provider can’t reach a resolution that the students find acceptable, it is highly likely that those students will complain to us whether or not we have a specific process for large group complaints. We already regularly handle group complaints under our usual processes and we are aware that some providers have large group complaints at the moment. Our experience tells us it is better to be as prepared as we can be to help make consideration of such complaints more streamlined and effective for all involved.

When the Large Group Complaints process might be used

We could see from the consultation responses that it would be helpful to explain in more detail when we think it might be appropriate to use the Large Group Complaints process. Our development of the Large Group Complaints process is about being prepared, rather than an expectation that it will become a frequent part of our work. We envisage that the circumstances for which it would be suitable are quite specific:

- All of the complaints in the group would be about the same provider (or possibly two providers where there is a partnership arrangement). We would not use this process to join up complaints about similar issues from students at different providers.
- There would be a high degree of commonality between the complaints in the group. There are two elements to this:
 - The issue affecting the students would be the same or very similar. This could be an issue affecting a whole cohort of students on a particular course or module (for example, if a suite of laboratories had to be closed at short notice because it was found to be unsafe), or an issue with provider-owned accommodation which affected a large number of students in the same Hall of Residence.
 - The students would have been impacted in similar ways, and a common approach to putting things right would be possible. Under the proposed process it would be possible to consider different remedies for different groups of students within a Large Group, or to create sub-groups of students, for example, to distinguish students taking a pathway that was more affected than others. But we would not use the Large Group Complaints process where the students involved have very different views about the crux of the complaint and/or where finding a potential remedy that was appropriate for the whole group or sub-groups did not look feasible.
- The number of complaints in the group would be significantly higher than the group sizes that we routinely handle under our normal processes. As a guide, we don't expect to use the Large Group Complaints process for complaints involving fewer than 100 students. But we think it would be unhelpful to set a specific threshold because that could be quite arbitrary (there is no substantive difference between a group of 99 students and one of 101) and we would want to take a holistic approach to deciding whether the Large Group Complaints process was the most appropriate way to consider any particular group complaint.

We think it is unlikely that this kind of situation would occur very often, and we expect to continue to handle most group complaints through our usual processes. Where the Large Group Complaints process is potentially the best way to consider a particular complaint, we would discuss that with the provider and the students before we decide which process to use.

There is also an element of student choice whether to be part of a Large Group Complaint. A student who believes that their complaint is not adequately covered by what is being considered in the group complaint can ask us to consider reviewing their complaint individually under our usual processes.

How the Large Group Complaints process would work

Some of the consultation responses raised concerns about the detail of how the process behind the new Rules would work, and how we would ensure that the process is fair to both parties. We have considered these concerns very carefully and have made some changes to the proposed [additional Rules](#) to address them. We hope that the further information below about how the process would work will also provide reassurance.

How complaints would enter the process

Respondents expressed significant concerns that we would accept complaints for review from students without the complaints having first been raised with the provider. Providers drew attention to their records in successfully resolving complaints internally, including group complaints. We agree that providers are best placed to resolve students' concerns directly. We are not proposing to change the important principle that we won't look at a complaint if the provider hasn't had an opportunity to consider the issues, and we have amended the proposed wording of Large Group Complaints Rule 2 to make that explicit.

The main difference is that where a provider has fully considered an issue that has been raised by a number of students and has reached a final position on that issue, it would not be necessary for the provider to consider an individual complaint about the same issue from other students before those students could join a Large Group Complaint. That would allow the provider to pause consideration of any other complaints about the same issue while we decide whether to start the Large Group Complaints process. We think that all this will reduce administration for providers and the work involved for individual students.

Where a large number of students have similar complaints, we would expect at least one of those complaints to have completed the provider's internal complaints procedure before we would consider accepting the complaints for review as a Large Group. Where students are already coordinated as a group, we would expect to see a continuation of current practice that a Completion of Procedures (COP) Letter is issued to all members of the group at or around the same time. So it is likely that many more than one complaint will have already completed the internal procedures.

But the new additional Rules would allow for some additional flexibility, for example:

1. A provider, a group of students, or a student representative body working on behalf of a group of students, might approach us because they think that a mutually agreeable resolution will not be reached using the provider's internal procedures. We would discuss this with those involved to see whether it would be helpful for us to begin our involvement before students complete the final internal stage (which is usually a review), and before COP Letters are issued. The intention of this is to reduce the administrative burden on the provider of carrying out the final stage for a large number of students. It's helpful for everyone if providers tell us early on if they are handling a group complaint

that is likely to come to us, and providers often do this already. But it is not a formal requirement and it wouldn't be a breach of our Rules if the provider didn't do this.

2. A provider might receive further new complaints about an issue which it has already fully considered under its internal procedures for a number of other students. Those "new" students could be allowed to join the group complaint to the OIA without the provider needing to address each of these complaints individually through its internal procedures, again reducing the burden of doing this. Where a student or students have missed the provider's deadline for complaining we would discuss with the provider whether it was reasonable and pragmatic to allow any or all of those students to join the Large Group.

Some responses expressed concern that this approach would encourage students to "jump on the bandwagon", and that students who had not been dissatisfied might be swept along or pressured into making a complaint that they did not in fact feel strongly about. Others expressed concern that students who had not made a complaint within the deadlines set within the internal procedures (and whose complaints would usually be ruled out of time without the provider considering the substance of the complaint) would benefit from the complaints raised by their more pro-active peers. There was strong feeling that this undermined a basic principle that there is an onus on a person to raise a complaint if they are dissatisfied.

However we think it is beneficial to identify as many students who may have been adversely affected by a particular issue as possible and to gather information about their complaints at the same time. If there is some merit in the substantive complaint, it is likely that understanding the views of all affected students at once will help us in identifying the most appropriate way forward. Where practical remedies are identified it is good practice to offer these remedies to all students affected, even if they have not made a complaint. The intention isn't to enable students to bypass the provider's internal processes or for students to feel pressured to complain, but to encourage students who intend to complain to do so using an efficient and proportionate process.

There was some concern that having Rules and a process specifically for large group complaints could be confusing for students, involving different deadlines and routes internally and to the OIA. If we decided to use the Large Group Complaints process, we would give clear information to students about their options at an early stage. A student can't be part of a Large Group Complaint and also complain to us individually about the same issue.

Time limits

The consultation responses expressed different views about how long a student should have to join a Large Group Complaint to the OIA. The proposed Large Group Complaints Rules would allow us to set a deadline for students to join the group complaint. We would discuss this with the provider and with any individual students or representatives of students that we had been in contact with. We would give students at least four weeks.

An appropriate timeframe may depend on the nature of the complaint. Where there are time sensitive factors, especially relating to any possible remedy, it may be better to set a short deadline. In other cases this may not be as significant but we still think it is beneficial to gather the complaints together within a reasonably short timeframe so that we can progress our review.

There were some suggestions in the consultation responses that more time would be needed for students in a large group, because they would be more likely to need legal advice, or because being part of a Large Group Complaint would be more onerous for the individual student. We don't think this is the case. Legal advice is not needed for any complaint to us. We are an alternative dispute resolution scheme. Our processes are already designed to minimise the information we need to ask the student for as we get most of the information we need from the provider. It may be that students who are part of a Large Group Complaint have less to do than if they were making an individual complaint. We would of course allow for flexibility where students have good reasons for needing a longer period.

Concerns were also expressed that setting a shorter deadline was not compatible with the 12-month period for submitting a complaint that we have to allow as the ADR body. We would still be compliant with ADR requirements if we set a shorter deadline for the Large Group Complaints process, because any student who misses a shorter deadline for that process still has an opportunity to bring a complaint to us in the usual way. And the overall 12-month deadline would still apply.

Deciding to use (or not use) the Large Group Complaints process

The consultation responses raised the question of whether a provider or student could ask us to review our decision about whether or not to use the Large Group Complaints process. Under our existing Rules, students and providers can challenge our decision not to accept a complaint for review or to only accept part of it, but not how we decide to review the complaint. For example, we already decide whether we will treat related complaints as a group complaint or review them separately.

We are applying the same principle to the Large Group Complaints process. We would discuss it with the provider and the students involved to understand their views and any concerns about using this process. Wherever possible we would try to reach agreement on the most appropriate process, but if agreement could not be reached we would decide which process to use. We wouldn't start the Large Group Complaints process where we could see that the provider was still working with the students to try to resolve their concerns.

A student who did not want to participate in the Large Group Complaint process could ask us to consider reviewing their complaint under our usual process. But if a student wanted to make an individual complaint they would usually need to have a Completion of Procedures Letter from the provider. The exact route for such a student would depend whether they had already raised a complaint with the provider and, if so, what stage their complaint had reached.

Where we decide not to use the Large Group Complaints process, we would discuss with the students and the provider the options the students would have for pursuing their complaint.

And we would continue our current approach of talking to providers and of directing individual students towards sources of advice and support.

Appointing a representative

Students in a Large Group Complaint would be able to appoint a representative to handle the complaint on their behalf, in the same way individual students or groups whose complaints are considered under our usual processes can. There would be no requirement to appoint a representative, and representatives would not need to be legally qualified.

The review

Some of the issues raised in the consultation responses were around concerns about how a review of a Large Group Complaint would work in practice, including concerns about fairness to the students and the provider involved in the Large Group Complaint, and to other students who use our service. We have made some changes to the proposed Rules to address some of these concerns. The information below explains more about how we envisage reviewing a complaint under the proposed process and we hope this additional information is helpful.

Our Rules don't include operational detail as they are intended to set the framework within which we can operate our processes flexibly to be as effective as we can. We would publish accompanying guidance on the Rules for Large Group Complaints to explain how the additional Rules would work in practice, in the same way as we do for our existing Rules.

Our current approach to group complaints

It may be helpful to first explain our current approach to group complaints.

If a number of students complain to us about the same or substantively similar issues, we usually consider their cases together as a group. This is most common where students submitted their complaint to their provider as a group, and some or all of that group have decided to pursue it to the OIA. Most group complaints to us have been about service issues, and they are usually from students within a single cohort. Under our current Rules, each individual student receives their own Complaint Outcome. Typically we have used this approach for groups of up to 20 students, although some have been larger. We think that this process needs to be streamlined to operate effectively for all involved if we were to receive a complaint from a much larger group (100+ students).

Sharing information and opportunity to comment

We have carefully considered how best to balance the need for our process to be fair and be seen to be fair with the need to be able to effectively manage a complaint from a very large group of students.

The starting point is that providers would still have the opportunity to make their position clear to students (and to us) when they respond to the students' complaint, and students would still be able to give us their views when they submit their Complaint Form to us.

We have made some changes to the draft Large Group Complaints Rules in response to the concerns raised. Under Rule 8, we would share all information and documents, subject to data protection limitations (see below), with all students in the Large Group Complaint and with the provider. Under Rule 9 we would give the students and the provider the opportunity to comment

on the information and documents that we consider to be relevant to our decision. We would draw attention to the information that we consider to be relevant. This would not prevent the provider or the students from drawing our attention to other information or documents that they considered important.

It would be disproportionate and impractical in a complaint from a large group about the same or very similar issues to expect every individual student to comment on all the information and documents we have shared. We may decide to give opportunities to comment through discussion rather than in writing, and we would focus those discussions on the information we need to reach a decision.

Some respondents were concerned that students in large groups would have more opportunity to discuss their cases with us if they were part of a group than if they were pursuing a complaint individually. Under our usual process, students, their representatives and Points of Contact at providers all have the opportunity to talk to case-handling staff by telephone during our review as well as sending us information and making comments in writing. Under the Large Group Complaints process only the means of communication would be different - where there is a large group of students, it may not be feasible to hold individual conversations by telephone with all those involved and so we would expect to use online meeting technology instead.

Where we hold a discussion with students, we would share a recording of the discussion with the provider. If we consider it appropriate, we may invite the provider's Point of Contact to join the discussion.

Settlement

There were some concerns that if we tried to settle a Large Group Complaint, we would not be able to negotiate an agreement that would be acceptable to so many different students and the process could become very drawn out. But we would take the same approach to trying to settle a Large Group Complaint as we do when trying to settle any other individual or group complaint: we try to reach an outcome that both parties agree to, but if it becomes clear that this wouldn't be possible or couldn't be achieved without extensive negotiations, then we reach our own decision about the outcome of the complaint and an appropriate remedy.

Deciding what is reasonable

Our approach to reaching a decision on a Large Group Complaint would be the same as for any other complaint. In deciding whether a complaint is Justified or Partly Justified, we would look at whether the provider properly applied its regulations and followed its procedures, whether the procedures themselves were reasonable and whether the provider's decision was reasonable in all of the circumstances. Where relevant we would take into account legislation, such as consumer law. Our role is to decide whether the provider has acted reasonably and whether students have been treated fairly, which is broader than whether a provider has met its legal obligations. We would make a decision about whether a provider has followed what we consider to be good practice, having regard to relevant sector guidance and our own experience of handling complaints.

Putting things right

We have a wide discretion in deciding on the sort of Recommendations to make when we decide that a complaint is Justified or Partly Justified. We can make Recommendations that a provider should do something that benefits an individual student or group of students – that might be a practical or financial remedy – and/or that it should do something to change or improve its policies or practices.

Some concerns were expressed that providers and students would not have an opportunity to comment on proposed remedies. We have added Large Group Complaints Rule 10, which says that we will discuss a suitable remedy for the complaint with the students and the higher education provider before we make any Recommendations. If we intend to make practical Recommendations, for example that the provider allows students to repeat part of their course, we would ask the students and the provider for their comments on those before we make our Recommendations.

Our usual approach to making Recommendations is set out in our guidance [Putting Things Right](#). We intend to apply the same principles to Large Group Complaints. We recognise that it would not be beneficial to either party, nor an efficient way to resolve complaints, if we made Recommendations that weren't practical. But it's not always possible to find a remedy that everyone agrees with and we would make the final decision on Recommendations in the same way as we do for other complaints.

Reopening of Large Group Complaints

Some concerns were also expressed that the Rules for Large Group Complaints don't allow for a request to be made to reopen the complaint. We hope that the changes we are proposing around information sharing and opportunities to comment address some concerns about the overall fairness of the proposed process.

We will always reopen a review if it comes to light that we have made an error that has seriously affected the outcome of our review. If a student or a higher education provider thought this was the case with a Large Group Complaint, they could contact us to explain why, and we would consider it under our quality control processes. But the Large Group Complaints process would not work effectively if every student, and the higher education provider, could routinely apply individually to us to reopen our review. So we are not proposing to formally build this into the process.

Data protection

Nothing in our Rules or the additional Rules can alter our responsibilities towards personal data under data protection legislation, nor the responsibilities of providers and student representative bodies. We have published guidance about [supplying personal data](#) to the OIA, which includes the legal bases for our processing.

Although we do not rely on consent from students as the legal basis for our data processing, it would not be appropriate for providers or student representative bodies to give us the contact details for students who might want to engage with the proposed Large Group Complaints process,

particularly if the students had not agreed to this or been told that this could happen. This is why in Rule 14 we refer to providers giving students information about the availability of the Large Group Complaints process.

If a student submitted a complaint to us under the Large Group Complaint process, they would receive a notification about how their personal data would be handled, as they do on our usual Complaint Form. This would make it clear that the identities of any student participating in the process may be shared with other students participating in the process (for example, because online meetings will not be attended anonymously). We do not expect however, to share any contact details between participants in the group. We would not make every individual student's Complaint Form available to the other students in the group. We may provide summarised or anonymised versions of individual students' submissions to us, to the group.

We would give students opportunities to give us information privately (for example by private chat during an online meeting rather than to everybody). If that information is relevant and material to the outcome of the group complaint, we would act in line with our current approach to find ways to share the information without disclosing personal data inappropriately (for example by summarising, paraphrasing or anonymising the information). It may be that in some cases, we would decide that the appropriate action is to review the individual student's complaint separately from the rest of the Large Group.

In our experience, most group complaints are about service issues, which tend not to be specific to a student's personal circumstances in the way that other complaints might be. We anticipate that much of the documentation that a provider would send to us in response to a Large Group Complaint would not refer to the personal data of individual students. As with our usual process, we would discuss with the provider any data protection concerns it might have.

We would take steps to share information and documentation about the complaint with the group in a secure environment.

Subscription fees

Some responses expressed concern about the possible impact of the proposed Large Group Complaints process on subscription fees. The core subscription payable by a provider is determined by reference to the provider's size and type rather than to case numbers. In terms of the case fee element, we have discretion to reduce the number of points allocated to (and therefore the amount payable for) cases that we have considered as a group, and we routinely apply substantial reductions to group complaints to recognise the efficiency of a group process. We would also apply this discretion to cases considered under the Large Group Complaints process. A provider would not pay more for cases in a Large Group Complaint than if those cases had been considered as a group complaint under our usual processes.

Other points raised

We welcome the suggestion that it would be helpful to make more explicit reference to complaints from groups of students, including large groups of students, within our Good Practice Framework, and we will consider this further. But, as the Good Practice Framework sets out principles for how providers should address complaints from students rather than being about how we review complaints, changing the Good Practice Framework alone would not make a difference to how we could review large group complaints.

Equality considerations

We have considered whether the proposed process might have implications for students with protected characteristics.

Our proposal to change our usual review process in specific situations has potential to impact disabled students because, in our view, those students may be more affected by issues that give rise to complaints than other students. However, we are satisfied that the proposals are not disadvantageous. The new process would be accessible to disabled students and we would be able to make adjustments to support disabled students through the process as we do with complaints under our usual processes. Some disabled students may have been affected differently by the issues raised in a Large Group Complaint and those students would be able to complain through our usual processes just as they would have been able to if the new process had not existed.

We do not believe that students with other protected characteristics would be negatively impacted by the proposed changes. The existence of the new process will make dealing with Large Group Complaints more efficient, which will also benefit students in our usual process.

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