



office of the
independent
adjudicator

The OIA and the Scheme

Explanatory note

oiahe.org.uk

[DRAFT FOR CONSULTATION]

Contents

The Scheme	3
The OIA – who we are and what we do	3
Our independence	4
Providers covered by the Scheme	5
Complaints covered by the Scheme	6
When can students complain?	7
What we do	8
How we work	9
Remedy	10
Complaints we cannot or will not consider	11
Terminating or suspending our review	12
Asking us to reconsider a complaint or a decision we’ve made	12
Sharing learning from complaints	13
The role of the Independent Adjudicator	13
The role of the OIA Board	14
Law	14



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The Scheme

The Scheme sets out the terms of how we operate and handle any complaints that we receive to meet the requirements of the Higher Education Act.

This note is supplementary to the Scheme and may be updated by the OIA from time to time, to reflect the OIA's current practice.

The OIA – who we are and what we do

The Office of the Independent Adjudicator for **Student Complaints** (OIA) is the independent body chosen to run the student complaints scheme in England and Wales. The student complaints scheme is for students in post-compulsory education in England and in Wales.

Our purpose is to improve students' experiences by resolving complaints fairly and independently and using the learning we gain to influence change.

In applying the Scheme and considering the extent to which a complaint is justified, we aim to achieve what we think is the best possible outcome to a complaint in the circumstances. We aim to support effective resolution at the earliest point in our process, or in some cases, the higher education provider's process.

Whatever our involvement and whatever the outcome of a complaint, we identify learning from complaints and share what we learn to bring improvements.

Our independence

10. Independence

Casework is conducted under the authority of the Independent Adjudicator, who is appointed as an independent person to carry out the review of complaints. All casework is carried out under the authority of the Independent Adjudicator to appropriate quality standards and by approved process to ensure independence and consistency.

Our independence is vital to our work. We are independent from students and providers, and from governments and regulators. We are overseen by a Non Executive Board and one of its key responsibilities is to protect the independence of our Scheme.

Casework is conducted under the authority of the Independent Adjudicator. This is the title of the independent person who is appointed by the Board to carry out the review of complaints.

Our independence is underpinned by principles of impartiality, fairness, transparency and accessibility.

What do we mean by “student”, “provider” and “award”?

A “student” is someone who has accepted an offer to study, who is or was registered at a provider, or who is or was studying for an award granted by a provider. The term “student” includes trainees, apprentices and learners as well as former students.

When we say “provider”, we mean those providers that are covered by the OIA Scheme. They may have the title University, College or Institute.

Other terms for “award” include degree or qualification.

Providers covered by the Scheme

1. Providers covered by the Scheme

Most providers are a “qualifying institution” that are, by law, automatically part of the OIA Scheme. Other providers may apply to join the Scheme voluntarily if they meet our conditions for joining. A provider that stops being a qualifying institution continues to be part of the OIA Scheme for 12 months from the date when it stopped being a qualifying institution. They are called a “transitional institution.” Providers that are part of the OIA Scheme must comply with the requirements imposed on them by this Scheme.

To find out if a provider is part of our Scheme, you can [check the list](#) on our website.

12. Requirements of providers that are part of the OIA Scheme

- a. All providers that are part of the Scheme must pay an annual subscription to fund our service. This may include a case-related element based on a published scale. The subscription and case-related element is set by the OIA Board.
- b. Providers must respond to any reasonable requests for information we make about a complaint. We act if a provider does not comply with a request for information about a complaint.
- c. Providers must issue a student with a Completion of Procedures Letter when the student completes the provider’s internal processes.
- d. Providers must comply with any Recommendations we make in full within the timeframe we set and report back to us. We act if a provider does not comply with a Recommendation within the timeframe we set.
- e. Providers must respond to any reasonable requests we make for relevant information relating to their internal complaints procedures to support us in working effectively and efficiently, and in identifying learning and good practice.

The subscription and case-related element is set by the Board. There is no connection between the subscription the provider pays, the outcomes we reach and the **Recommendations** we make.

Complaints covered by the Scheme

2. Complaints covered by the Scheme

A student or former student can complain to us about anything their provider has done or failed to do from the point at which they accept an offer to study from that provider.

Students at a provider in England or Wales (or studying for an award granted by a provider in England or Wales), can complain to us about their provider.

Students can complain to us about anything their provider has done or failed to do.

A student can complain about the provider where they are or were studying. If a different provider grants the award the student is or was studying for, the student can also complain about that provider.

Students at some providers can only complain about their provider if they are or were on a certain type of course. The provider's entry on the [list on our website](#) makes it clear if students are affected by this restriction.

We can look at complaints from:

- a student affected by something that has happened to them as an individual
- groups of students who have all been affected by a particular issue or event at a provider. Where a group of students have all been affected by a particular issue or event at a provider we may decide to review those complaints together.

Usually, the best person to bring a complaint to us is the student themselves. But a student may appoint another person to represent them provided they give us clear permission to communicate with the representative.

Where a group of students is represented by one or more individuals, each student will need to "opt in" as an individual. We will not usually review a student's complaint solely on the basis that the student was part of the group that complained to the provider.

When can students complain?

3. Students should raise their complaint with the provider and exhaust the provider's internal procedure before bringing a complaint to us

We will not review a complaint unless the provider has had the opportunity to look at it first, unless we consider that exceptional circumstances apply. A student therefore normally needs to have completed the provider's internal processes before complaining to us.

All providers have internal processes for student disputes and complaints, and these are generally the best and quickest way to resolve a dispute or complaint.

When a student has not completed the provider's internal processes, we may look at the complaint if we see evidence of unreasonable delays or other failings in the way the complaint has been dealt with by the provider.

4. There is a time limit for students to bring a complaint to us

When the student completes the provider's internal processes the provider must issue the student with a "Completion of Procedures Letter." A student has 6 months from the date of the Completion of Procedures Letter or the provider's final decision, if no Completion of Procedures Letter is issued, to submit a Complaint Form to us.

Withdrawing a complaint

A student may withdraw their complaint at any time after submitting a Complaint Form to us. A provider cannot withdraw from the process.

What we do

5. What we do

We review qualifying complaints to decide the extent to which the complaint is justified as soon as we reasonably can. Where we think that early resolution of a complaint may be possible, we intervene to support effective resolution possibly by settlement. We share the outcome and the reasons for our decision with the student and provider. Where a group of students have all been affected by a particular issue or event at a provider we may decide to review those complaints together.

Our review of student complaints

When we have decided that we can look at a student's complaint, we review it.

We always consider how the complaint could be resolved as efficiently and effectively as possible. Whatever the outcome, we reach our decision as soon as we can and share our decision and the reasons for our decision with the student and provider.

Alternative dispute resolution

11. Our service is free for students

We are an alternative dispute resolution body. We were set up to provide relatively informal, speedy and cost-effective handling and resolution of students' complaints.

We use informal inquisitorial methods. We ask questions and consider relevant information to decide whether a provider's decision was reasonable in all the circumstances and the extent to which the student's complaint is justified.

Our processes can result in a range of outcomes and remedies which may be practical, financial or designed to improve procedures or processes.

Legal issues

In cases involving legal issues we will refer to the law (and any associated guidance) to inform our judgment about whether the provider has acted in a reasonable and fair way.

But we work differently from a court and were not intended to be a substitute for the courts. This means that we can't make legally binding decisions when legal issues are in dispute.

Court judgments are the outcome of rigorous adversarial judicial process which can involve dealing with the proof of contested facts, applying legislation to proven facts, establishing legal rights and obligations and awarding legal remedies such as damages.

We do not apply an adversarial approach or follow the same rules of evidence as legal proceedings. The outcome we reach, and any remedy, may be different from the outcome a court might reach applying legal rules. We can make wider findings and recommendations than those confined to points of law. We do not consider requests for compensation or financial losses in the same way as a court would.

How we work

We work by asking questions and considering the relevant evidence. We decide the questions we ask, the evidence we need to look at and the action that needs to be taken to get to the best possible outcome as efficiently and effectively as we can.

When we look at a complaint, providers must respond to any reasonable requests for information we made. As a minimum, we usually expect the provider to share the information that it considered and used to reach its decision on the student's case. We will generally share the information we receive with the student and provider and provide equal opportunities for them to present their views and comment on the information we receive.

We analyse the information we receive to decide the extent to which a complaint is justified and, where justified, to decide what remedy to recommend. When the facts are disputed, we make a decision on the balance of probability.

To decide whether to uphold the student's complaint, we consider

- whether the provider's final decision was reasonable in all the circumstances of the case.
- whether the provider followed its procedures, and
- whether those procedures were fair

Local/early resolution

If we think it may be possible to resolve the complaint through the provider's own processes, we may attempt to settle the complaint. This may mean we:

- Refer the complaint back to the provider to take further action to resolve the complaint / complete the internal complaints process if not already done.
- Provide guidance to the student and provider on how to resolve the complaint.

Possible outcomes of our review

If we decide we either can't or won't look at the complaint, we usually say it is **Out of remit**.

If we review a complaint we may decide on one of the following outcomes:

- Premature
- Out of remit
- Reasonable offer
- Resolved with intervention
- Not justified
- Withdrawn

The following are outcomes where the case is justified to some extent or in full:

- Justified: severe, moderate, low

In deciding the appropriate category, we consider the nature of the failing (including for example potential breach of legal responsibility/ failing to follow process/failing to apply established standards of good practice and delays) and impact (for example severe/ long term, individual or wider cohort).

We will share the outcome as soon as we reasonably can and will provide reasons.

Remedy

6. Recommendations

Where we uphold a complaint because we decide it is justified to some extent or in full, we may make Recommendations that the provider should follow.

Where we uphold a complaint because we decide it is justified to some extent or in full, we may make Recommendations that the provider should follow. Providers must act on our Recommendations within the time frame we specify and we act if a provider does not comply. The Independent Adjudicator may report a provider to the OIA Board for non-compliance and may publicise it in the Annual Report and/or by other means.

The student may choose whether to accept the Recommendations we make.

Students may still be able to bring legal proceedings against the provider after our processes have finished. If a student has accepted an offer from the provider in full and final settlement of the complaint, that may mean neither the student nor the provider cannot bring legal proceedings about it.

Complaints we cannot or will not consider

Sometimes we will be unable to accept a complaint, or we will decide not to accept a complaint.

7. We cannot consider complaints about academic judgment.

Academic judgment is not any decision or judgment made by an academic. It is a decision or judgment about something that can only be made by someone who has the appropriate academic expertise.

Decisions about what grade, mark or result to award a student, or whether an examiner has the appropriate subject expertise to assess a student's work, will normally be academic judgment and something we cannot consider. We can consider whether the provider has followed its marking and moderation procedures, and other relevant assessment processes. And whether there was any bias or unfairness in the decision-making process.

8. We exclude some complaints

We will not look at a complaint, or a part of a complaint, if we decide it is about something that has already been looked at by us or a court or tribunal, or is being looked at by a court or tribunal and those proceedings have not been put on hold (stayed).

- a.** We will not normally look at a complaint, or a part of a complaint, if we decide it is about:
 - i.** An application for admission to study at a provider and/or the decision whether to offer the student a place to study
 - ii.** Issues to do with a student's employment by the provider.
- b.** We cannot review a complaint about a transitional institution unless the events complained about occurred before the date it became a transitional institution.

Terminating or suspending our review

- 9. We may terminate a qualifying complaint without considering the merits of the case if we decide the complaint is frivolous or vexatious, or there is other good reason to terminate our review.**

We may suspend or terminate a review at any time if we decide that the complaint is one that we either cannot, will not or may decide not to consider.

In applying the Scheme, we always consider how complaints could be resolved as efficiently and effectively as possible. There may therefore be other occasions when we decide not to look at a complaint and to terminate or suspend our review. These may include situations where we consider:

- Looking at the complaint would seriously damage our ability to run our processes effectively
- The issues in the complaint would be better dealt with or more effectively remedied by the courts or another dispute resolution body or relevant organisation
- Another alternative dispute resolution body or relevant organisation is or has considered the same issues as the complaint.
- Or there is another good reason to do so. For example, the student is too unwell to progress their complaint at the current time.

Asking us to reconsider a complaint or a decision we've made

We may look again at a complaint or a decision we have made if we decide there is good reason to do so because:

- the student or the provider shares new evidence with us that could change the decision or outcome, and which we think they could not reasonably have shared before: or
- we think that we might have made an error which may have seriously affected the outcome or a decision we have reached.

Sharing learning from complaints

13. Each year we publish an Annual Report on the student complaints scheme.

Whatever the outcome of a complaint, we want to identify good practice and what can be learnt wherever possible. We use what can be learnt from complaints to improve students' experience and to influence change. We share our learning and good practice so that the Sector in England and Wales is better at handling complaints and using learning from complaints and wider experience to bring improvements.

We may publish or share, in a form we decide is appropriate, summaries of complaints and any statistical or other information about complaints or the operation of the student complaints scheme that we consider relevant and proportionate.

The role of the Independent Adjudicator

The Independent Adjudicator is a position held by a suitably qualified person who is appointed by and responsible to the OIA Board.

The Independent Adjudicator will act independently of the Board, providers and students in reviewing and making decisions about any complaints.

We act if a provider does not comply with reasonable requests for information or Recommendations we make on a complaint. The Independent Adjudicator may report non-compliance by a provider to the Board and may publicise it in the Annual Report and/or by other means if:

- the provider does not provide the information we request during our review or does not provide the information requested during the time limit set, or
- the Independent Adjudicator decides that a provider has not complied with our Recommendations.

The role of the OIA Board

The role of the Board in relation to the Scheme is to:

- preserve the independence of the Scheme and the role of the Independent Adjudicator, and where appropriate, amend the published Scheme.
- consider how to deal with non-compliance by a provider that is reported to it by the Independent Adjudicator.
- Set the annual subscription and case-related element.

The Board will not be involved in the review and/or determination of individual complaints.

Law

This Scheme is governed by and interpreted according to the law of England and Wales.

Any information we publish or provide to other appropriate bodies will, in relation to personal data, comply with applicable legislation.

Providers should operate in a way that is compatible with and in accordance with UK law.