



THE OFFICE OF THE
INDEPENDENT
ADJUDICATOR FOR
HIGHER EDUCATION

resolving student complaints

Annual Report 2007

www.oiahe.org.uk

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**Independent Adjudicator -
Baroness Ruth Deech**



**Deputy Adjudicator and Chief Executive -
Michael Reddy**

In 2007 the Office of the Independent Adjudicator for Higher Education has established itself as an accepted feature of higher education, intersecting with and advising across the sector. The OIA was the subject of its first judicial review and analysis by the Court of Appeal, and was confirmed in its approach by the judges. The number of complaints handled has risen by almost 30%, but the average time taken to complete them has remained within our target level of 6 months.

“Very much needed to be there for students”. [Letter from applicant]

“Although I am disappointed with the decision, thank you for the time and care your office has taken in considering my complaint.”

“Though tremendously disappointed by your decision, on reading it fully I find no argument apparent against your findings. . . .I would like to thank you for your assistance and investigations on my behalf, and state that I accept your findings and decision.”

[Letters from students whose complaints were not found to be justified.]

“I admire your diligence in considering my case. I think you have done an amazing job to wade through all the paperwork and convoluted details of this case. I do not agree with everything that you have concluded; however my view is very one-sided and I understand the conclusions that you have come to.”

[Letter from a student whose complaint was found to be partly justified.]

“The complaint was handled in a most professional manner; the ‘pros and cons’ were well laid out and easy to understand, enabling responses to be accurately constructed.”

“Thank you for reaffirming my belief in justice and restoring my faith in the education system.”

“This [is] to show my appreciation of your meticulous appraisal.”

[Feedback from students whose complaints were found to be justified.]

This is my last Annual Report, as I retire from the post of Independent Adjudicator on 30 April 2008. It has been an enormous privilege to serve as the first Independent Adjudicator and to oversee the setting up of a fascinating and worthwhile scheme. The Office team is committed to excellence in decision-making and is passionate about righting wrongs, if any, to students. The decisions of the OIA play and will continue to play a valuable part in sustaining the excellence of British higher education. Through its work, students can be assured of justice in university decision making, and universities and colleges can be assured of guidance and fairness in settling disputes. Now that the Scheme is integrated into the operation of the administration of all universities in England and Wales, and embedded in the law, it can look forward to a period of stability under the new Independent Adjudicator, Robert Behrens, and it can plan to encourage universities and colleges to find the best ways to resolve more disputes successfully within their own procedures.

SUMMARY

- Around 1350 decisions have been issued by the OIA since its inception
- In 2007 applications to the OIA rose by 25% to 734
- 639 investigations were completed
- New Guidance to the Scheme was issued
- There was a rise of around 50% in enquiries and visits to the website
- A new Independent Adjudicator, Robert Behrens, has been appointed to succeed Baroness Deech in May 2008

The year under review (1 January to 31 December 2007) was the third full year of operation of the statutory scheme enabled by the Higher Education Act 2004. The Office of the Independent Adjudicator for Higher Education was designated as the student complaints scheme under the Act with effect from 1 January 2005. We note this year a general acceptance of the Scheme and its operations by universities, and growing familiarity with it on the part of the judges. Judicial opinion on its working was expressed in the first judicial review of a decision by the OIA, and the decision was upheld. The OIA is increasingly seen as a model for resolution of student disputes by overseas universities and governments and in 2008 it will be hosting the international conference of the European Network of Ombudsmen in Higher Education on the theme Universities, Students and Justice.

Our objectives are:

a) We aim to resolve speedily and fairly those student complaints that cannot be settled by the higher education institution (university/college) itself, and to do so in a cost effective manner.

In the year 2007 we closed 639 complaints. The average time taken to process a complaint was 24 weeks from acceptance to decision. This shows an increase of 64% in the output, but the Office has continued to meet its target of completion in an average of 6 months. This target was achieved even though 49% of the universities and colleges were late responding to the OIA during the course of investigations, and 36% of students. Not all of those who were late in responding had asked for extensions of time in which to do so. Some universities have without reason failed to respond to requests for information, in breach of the Rules of the Scheme, thereby risking being reported to the Board of the OIA. The number of applications received in 2007 (not all of which proved to be eligible for handling under the Scheme) rose by 25% to 734, while eligible complaints increased by 29% to 600. The number of staff involved in reviewing cases rose to 21, and they have all helped to meet the growing demand for workshops and presentations about the OIA at conferences, and to the giving of direct assistance and training to university staff. During 2007 all our decisions and recommendations were accepted and implemented by the universities and colleges to which they applied.

b) We aim to promote a less legalistic approach to dispute resolution in higher education.

From the outset, our aim has been to give students a service that is user-friendly, so that there is no need for the expense and delay likely to be incurred by resort to legal services. It has been our policy to defend claims by disappointed complainants to the courts for permission to judicially review our decisions. In 2007 a number of students commenced such proceedings, but only one case reached court, and in that case the decision of the OIA was upheld: the court was of the opinion that it would only be in rare circumstances that permission would be given for judicial review of the OIA by a student, and that the court would be slow to interfere with the exercise of judgment by the OIA. The OIA welcomes the Court of Appeal's endorsement of its approach to decision-making and the clarification it provides for all those engaged in the Scheme. It is hoped in the future that the OIA will be able to avoid the unjustified expense incurred in responding to the number of judicial review applications that are commenced with little prospect of success.

c) We aim to share information about how universities should handle complaints and what constitutes good practice.

We have continued to share good practice with universities and colleges, and to enable their administrators to meet to discuss at our workshops how best to resolve disputes.

Our workshops have been very well attended and have focused on topics of particular interest to universities at the moment – disability, fitness to practise procedures and the student contract. In each case we have given a platform to national experts on the topics and have also taken the opportunity to explain to delegates what is happening at the OIA. There has been increased demand for our contribution to conferences on higher education, for our advice on these issues when considered by other national bodies, for articles in education journals and for training visits to universities. In particular, we provided comments on the revision of section 5 of the QAA Code of Practice for the Assurance of Academic Quality and Standards in Higher Education, on academic complaints and appeals, and gave the keynote presentation at its launch.

Growth in numbers of applications to the OIA is not a hallmark of success. It should be our aim to work with the universities and colleges to find every possible way to resolve the complaint internally, and to promote confidence on the part of students that the hearing of their complaint by the university is fair and just and resolves the matter without need to resort to further appeal, litigation or lawyers.

d) We aim to be accessible to both universities and students and to keep them informed about our work on a regular basis.

A revised Guide to the Scheme was issued in 2007 and further tailored information was included on the website.

We met with, amongst others, the Academic Registrars' Council, the Association of Heads of University Administration, the General Medical Council, High Court Judges and student conferences. We have liaised with the Quality Assurance Agency, the Council of University Chairmen, the Equality Challenge Unit, the British and Irish Ombudsman Association, the UK Council for International Student Affairs, UniversitiesUK, the Scottish Public Services Ombudsman, the European Network of Ombudsmen in Higher Education, campus ombudsmen from North America and Australia, and other stakeholders.

Staff have been informed by presentations from experts about student complaint handling overseas, about practices at individual universities and other current higher education issues, and in turn OIA members have made many presentations at conferences, spoken to the media and written articles.

e) We aim to treat all complainants and enquirers fairly and with respect, and in a positive spirit of support for good relations between all sectors of higher education.

OIA staff have received diversity training and they keep up to date with all equality legislation and practice as it applies to our work. A system has been devised whereby complainants who are dissatisfied with the handling of complaints (not the outcome) may make their concerns known to

the OIA and to the Secretary of the Board of the OIA. Students are included in our planning and communication work and training is given at the NUS conferences as required. The changing disability laws and their application to cases have taken up much time in discussion and legal advice.

f) We aim to promote a good experience of education for all students at universities and to preserve the high academic standards and integrity of the institutions.

The Deputy Adjudicator participated in the first meeting of the National Student Forum, launched in October 2007 by the Secretary of State for Innovation, Universities and Skills, at which it was announced that Lord Triesman was appointed the first Minister for Students (and subsequently Baroness Morgan of Drefelin). The Deputy Adjudicator has continued to contribute to the Forum the unique insight of the OIA into the student experience. The OIA has noted the higher proportion of complaints from international and postgraduate students than might be expected from their presence in the student population. The OIA will continue to investigate their particular problems, which often stem from adjusting to new ways of studying in a different culture, or embarking on research in settings very different from the more supportive ones experienced by undergraduates.

g) We aim to maintain a system that is fair to all and accountable to the public.

We have regular meetings with Ministers and officials at the Department for Innovation, Universities and Skills. We have cooperated with researchers and we provide as much information as we can on our website and in our literature, tailored to the needs of the various users of our Scheme. We are conscious of the obligations placed on us by our designation as the Scheme under the Higher Education Act and of the accountability of the adjudicators to the Board of the OIA. Our accountability is constituted by our openness and ultimately by supervision by the courts. We believe that there is general satisfaction with the quality of our decisions, and that there has been a reduction in litigation directed against universities as a result of our work. Accountability in practice means working to deserve respect for, and confidence in, our decisions, and our record as set out in this Report will, we believe, bolster that element.

New issues

Shifting perceptions about higher education

There has been a very important shift in the perception of the purposes of university education. Until recently, the university world was understood, by the public at large, and by its members, as competitive in admissions and in the level of graduation, with no absolute standards that guaranteed admission or graduation. So it was the case that only the best of the cohort for which there were available places in university secured admission, but it did not mean that all who were qualified would secure places. Similarly with classification of degrees on graduation: the best few candidates would be awarded first class and upper second class degrees, but these were not given to all who reached a certain level. University education was like qualifying for the Olympics, not like passing the driving test. It was taken to include striving to go further in the pursuit of knowledge than the previous generation, and was not confined to the mastery of basics. But there is now a strong perception that university education is a system of simple qualification. This has implications for many issues we look at including disability, discrimination and mitigating circumstances complaints.

Disability

Disability discrimination law as applied to academic issues has come to be a very important and demanding element of our work, and one that is also perceived as sensitive by the universities and colleges. In our 2006 Annual Report we referred to the new law: new regulations made under the Disability Discrimination Act came into force in September 2006, and thus affected our consideration of complaints in 2007. The duty that these place upon universities to make reasonable adjustments to prevent substantial disadvantage to a disabled student compared to non-disabled students now applies in relation to a provision, criterion or practice other than a competence standard. Under the earlier law, a university could argue that a disabled person, despite adjustments to ease the examination process, was still not able to reach a particular academic standard. Under the new law, however, students must meet a level of “competence.” This means that universities must set out the competences that are to be achieved by their teaching and, in the case of disability, ensure that the assessment of those competences (but not the competences themselves) is adapted to the needs of the particular disabled student.

However, although higher education may now become more about obtaining qualifications, many university teachers and students still see the system as competitive; so there may be a perception of unfairness in assessing some categories of students in alternative ways and yet still placing them at a certain point in a classified list. Account has also to be taken of the demands of professional bodies, such as nursing or teaching, which graduates will be joining after their higher education course. Competence, in the view of the professions, has to include rising levels of proficiency and the ability to go the extra mile in the care of their charges. Pupils who are not taught, and patients who are not treated at the best standards available, may well take action on the grounds of negligence against employers. It follows that the duty on universities and colleges to make adjustments in testing competence standards, by, for example, exempting the chronically anxious from taking examinations under the usual conditions, is fraught with difficulty in the light of future demands that will be placed on the employed graduate in the professions. Universities and Colleges also have to judge the fitness to practise of students on some professional courses.

When reviewing complaints involving disability discrimination the OIA does not investigate in the same manner as a court, nor make findings which are based on supposition as to what a court might have done in the same case. However, the OIA must have regard to the law and guidance on disability discrimination in order to form an opinion as to best practice and to decide whether the university has acted fairly. The OIA has made it quite clear to universities and colleges that the testing of competence standards has to be adjusted, if possible, to the needs of the disabled student. Difficult issues of interpretation remain, such as whether the ability needed to take an examination under examination conditions is a “competence”, and what adjustments, if any, need to be made to grades already achieved when a student is diagnosed as having dyslexia (accepted across the sector as meeting the definition of disability under the Disability Discrimination Act 1995) towards the end of the course.

The OIA has noted from its investigations that some universities and colleges still lack familiarity with the need to have satisfactory disability assessment and support systems, and that there remain issues with making appropriate adjustments. How best to foster and assess the abilities of dyslexic students remains problematic for higher education.

A related issue is mental health: now that the university population mirrors the makeup of the general population more closely, it is only to be expected that a commensurate proportion of university students will suffer from mental health problems. It is not clear whether universities have a duty to seek treatment for them or the resources to do so. It would seem to be good practice for universities to have proactive general planning in this field, covering staff roles, disclosure, support, referral to external services and emergency responses.

The importance of this aspect of the OIA's work was recognised in 2007 by the inclusion in our programme of a specialist workshop developed by the Senior Assistant Adjudicator, who specialises in this area. Entitled Disability: Understanding the Issues, this proved so popular that it was run on three occasions with input from expert speakers on the law and practice related to disability discrimination and from the OIA team on best practice arising from our experience.

The Student Contract

The OIA is aware that a number of universities have formal contracts of one type or another with their students and that this is a matter of current interest, although a formal written contract (as distinct from the university's regulations) has not yet been the subject of a decision. There has always been a contract between university and student, based on the prospectus, handbook and regulations, entered into at the time of offer or on registration, but it has perhaps not been recognised as such, and this has given rise to the new more comprehensive documentation now going by the name of contract or charter. Whether or not it is expressed in the standard university documentation, a significant amount of general law applies to the relationship between the university and the student: discrimination laws, unfair terms and data protection are examples. Our concern with the new written university-student contracts is that students do not appear to favour them, regarding them as one-sided and non-negotiable, laying down, they would say, duties on students and using exclusion clauses to protect the University from liability. Typically, the student contract contains terms covering the issues that tend to be referred to the OIA in complaints – discipline, accommodation, bursaries, computing and so on. The situation could arise where the student or

the university has breached their contractual liability as spelled out in the contract in a way that would be stigmatised by the court. Yet the jurisdiction of the OIA is broader – what is fair and reasonable in all the circumstances – and the OIA might come to a different conclusion from the court on the same facts, one that is more specialised and flexible. This dilemma remains to be resolved; it too formed the topic for a workshop, described below.

Fees

For the first time this year there have been a few complaints relating to eligibility for home or overseas fees. The OIA appreciates that this is a complex but well understood matter on the part of universities and other higher education bodies, and that they have long experience of the determinations. Nevertheless, the OIA has given decisions on the issue: there is no other forum to which a student may turn if he or she disputes the categorisation.

Workshops

The workshops were chaired by the Independent Adjudicator with participation by the Deputy Adjudicator, the Senior Assistant Adjudicator and other members of staff. During the day, case studies were conducted for small groups of participants and the workings of the OIA in the relevant field are explained. In addition to the ones described below, “Introduction to the OIA” workshops are given regularly for university and student representatives.

A workshop entitled **Fitness to Practise and Student Complaints** was held in March. Chris Farrell, Chief Health School Administrator of Nottingham University made a presentation on Fitness to Practise – some practical issues; the Deputy Adjudicator spoke about the OIA’s experience in this field; Stephen Murfitt, solicitor, spoke on Fitness to practise – the regulators’ perspective, with some general law.

Issues that arose were:

- The need to harmonise professional and university requirements so that a student on a medical, nursing, accountancy, pharmacy, law or other professional course is made aware from the very outset of his or her studies of the professional requirements. A student might fall foul of the professional requirements even though he or she has not broken any university regulation, and the university’s regulations should provide for termination of the course in such circumstances
- Ensuring that students on professional courses within universities (which have increased in number) are aware of the special requirements of their intended profession
- The importance of the proper constitution of fitness to practise panels in universities: normally no member of the professional bodies sat on them, but a legal representative might be useful as an advisor
- The links between fitness to practise requirements and issues that affect universities, such as plagiarism, disability, forgery and mitigating circumstances
- The advisability of universities having specific Fitness to Practise panels or committees to deal with problems in medical and other professional schools, and the attention that needs to be

paid to the composition of the panels when making decisions that will affect a student's career prospects

- The importance of professional input in borderline cases turning on behaviour and attitudes, and the need for liaison with the professional bodies, such as the General Medical Council and the Nursing and Midwifery Council
- If procedures were sound, the courts were unlikely to challenge decisions taken by universities in an exercise of their discretion that the student was unfit to practise

In May there was a workshop on **The Student Contract and the Real World**. Selman Ansari, barrister, spoke on Student Contracts: now you see them, now you don't; Professor Ewan McKendrick of Oxford University gave An Overview of the Contractual Relationship; Dr. Jeremy Ovenden, Head of Student Planning and Information of the University of Kent made a presentation on An Alternative Approach to Student Contracts; the Independent Adjudicator spoke on Student Contracts in Practice.

The overall result of the Contract Workshop was one of scepticism in relation to the usefulness of formal student contracts. Delegates were aware of a spectrum of formal and informal contracts and "charters" in their universities.

Issues that arose were:

- A formal written contract will not of itself help a university to avoid litigation
- A contract could not replace the other important documentation of a university, such as the regulations and handbook, but there was value in setting out the responsibilities and rights of both universities and students (albeit that it appeared that students were rarely consulted in the drawing up of the contract terms) even if the contract turned out not to be enforceable
- A contract could be useful in managing the expectations of students, sponsors and parents, and could benefit from being presented as a partnership. All universities already had accommodation contracts with students
- A contract usually set out the university's responsibilities by way of teaching hours, provision of facilities and student support, while student responsibilities were to attend, submit work on time, avoid academic and general misconduct, pay fees and use support services
- Universities should be wary of assuming a broader responsibility for matters than is required by the "duty of care"
- There may be difficulty in distinguishing between employment rights on the one hand and student rights on the other where postgraduates are employed as research assistants by the university
- Litigation on contractual terms might produce unforeseen results. The law of the land, such as negligence liability, would apply to the student contract as it does to all other contracts, and statute law might void exclusion clauses commonly inserted by universities in their favour, e.g. no liability for strikes or other failure to deliver promised courses. Courts would inject implied

terms into contracts in any case. and might also give an unanticipated definition of “academic judgment”, an area hitherto restricted to the university

- It remained to be seen to what extent contracts would be enforceable by the courts and whether in the case of a contractual dispute the courts would expect a student to use the OIA before resort to litigation
- There was thought to be momentum towards a sector-wide model student contract in the interests of consistency, but it was thought that such a contract might be couched in too general terms. The interest in and the move towards more formal contracts was seen as emblematic of the changing relationship between students and universities

The November workshop on **Disability** was oversubscribed, and repeated in December and January 2008. Presentations were made by Andrew Burns, barrister, on the legal aspects; by Caroline Davies of Impact Associates and Honey Lucas of the Equality Challenge Unit, on Anticipating the Issue; by Sara Henry, of the Southampton University Disability Service on the Student Experience and Disability at Southampton; and by Margaret Doyle, mediator, on Mediation of Disability Discrimination Act claims.

Issues that arose were:

- It is estimated that there are at least 131,000 disabled students in the population of 2 million UK students
- That the legal definition of disability is broad and that universities should assume that a self-declared disabled student was disabled and then move on to consider other criteria required by law
- That reasonable adjustments should be made for applicants and potential applicants, students, graduates, staff and visitors, anticipatory and individual
- That disclosure should be encouraged from the outset, that disclosure to one person is equivalent to disclosure to the university as a whole and that disabled students should be encouraged to have an assessment, even though it has sometimes proved difficult to persuade them to do so. An occupational health expert’s evidence or other independent evidence should be obtained as soon as possible
- The Disabled Students’ Allowance is not available to European or overseas students, leading to a problem with the costs of making adjustments
- What is the substantial disadvantage and what constitutes a reasonable adjustment to overcome it?
- Cases of “exam panic” (of which a number were considered by the OIA) were unlikely to be regarded as mental impairment if they were temporary and abated after the examination, but the diagnosis would be different if the panic related to an underlying mental or physical health issue

- That in the case of a diagnosis of dyslexia part-way through or at the very end of the course, the examination board should be made aware of the situation as mitigating circumstances. Some universities might require a student to re-take a year or be examined by viva in such circumstances. Others would offer the student the option of re-taking the affected assessments anew, with the appropriate support in place
- Universities and colleges should take full notes of meetings where decisions are made about disabled students so that the reasoning can be available in case of recourse to the OIA
- That there should be consideration of early use of fitness to practise procedures in the case of disabled students intending to enter a profession, in particular where mental health issues have become evident and problematic. The right choice of procedures was essential
- That there was value in screening all fresher students for dyslexia but that resources did not usually make that practicable
- In an unresolved case, there is an alternative procedure open to a student: the Equality and Human Rights Commission could make a determination whether a student was disabled under the Disability Discrimination Act and refer the case to mediation. This is free to the student and if a settlement is agreed, the right to go to court will be waived
- There is a substantial amount of complex law for universities and colleges to understand and apply; procedures need to be carefully chosen and there should be advance planning in cooperation with other institutions and with staff, and a budget for reasonable adjustments set aside

Communications

New guidance leaflets describing the Scheme were produced in 2007 in order to assist students and university administrators in using the scheme; both sectors have dedicated pages on the OIA website. A template and new guidance relating to the Completion of Procedures Letter were issued. A great deal of the time of OIA staff is usefully spent meeting members and organisations within higher education to explain our work to them and also in receiving their comments and liaising with them. Members of the Office have written articles for education journals and given press interviews.

The OIA attaches great importance to its communication with all interested parties. To this end, the OIA held meetings with major stakeholders during the year, including the Committee of University Chairmen, the Academic Registrars' Council, the Association of Heads of University Administration, the Equality Challenge Unit, the UK Council for International Student Affairs (UKCISA), the Quality Assurance Agency, the Russell Group, the National Postgraduate Committee, the Higher Education Academy and the Education Law Association. Meetings enabled the OIA to explain to bodies representing university interests the structure and reasons for subscription levels within the context of the sector's financial planning, and to discuss the scope of the OIA's work as it develops. The need to minimise costs, and hence subscriptions, was emphasised and linked to encouraging universities and colleges to review their internal complaints handling mechanisms with a view to reaching settlement at an early a stage as possible without further recourse. The value of involving student unions and mediation was discussed. It was agreed that the OIA would consider benchmarking the costs of settling a complaint.

Discussions with UKCISA centred on managing the expectations of international students and their particular issues and the question of overseas fees' determination. International students' experience in this country's higher education system was also the theme of our discussions with the Equality Challenge Unit, together with the question of diagnosis of disability.

Senior staff participated in meetings with the Quality Assurance Agency and made input into the drafting of the new QAA Code on Academic Complaints and Appeals. The OIA participated in the establishment of the new National Students' Forum and in legal meetings of the British and Irish Ombudsman Association, as well as meeting the Public Services Ombudsmen of Scotland and Wales. The Independent Adjudicator delivered a lecture about the OIA to the Judicial Studies Board and made several addresses to higher education conferences. Members of the Office attended conferences and gave papers on a number of subjects, including the international aspects of plagiarism, mitigating circumstances, access to justice, international students, postgraduate complaints and managing student expectations. They went to a variety of relevant meetings, including amongst others the European Association for International Education, the Dearing Report Conference, the International Education Association, the Higher Education Policy Institute, the Universities and Colleges Education Law Network and the European Network of Ombudsmen in Higher Education annual conference. At this conference the Independent Adjudicator gave a paper on the Student Contract and the Deputy Adjudicator gave one on the OIA as a Watchdog.

Members of the Office met with the General Medical Council to discuss fitness to practise issues and to examine the guidelines that they issue to universities and medical schools on this topic. We also met an officer of the General Social Care Council to discuss complaints handling.

The OIA met with a few individual universities, either to learn about their particular circumstances or to assist in training complaints handlers; in the latter case a modest charge to cover costs is made. The OIA was visited by a representative of Sydney University and by Dr Johannes Hahn, Austrian Federal Minister for Science and Research, in order to learn more about our methods.

The OIA is grateful to those members of universities who have assisted in the training of staff at this Office and enabled staff to keep up with the latest developments in universities and higher education policy. The OIA also welcomed the implementation of the proposal that there should be established a special interest group for university administrators who deal with complaints and appeals.

Good working practices

Some changes have been made to the way we fast track complaints, where appropriate. Parties are given more scope to provide further information following a preliminary decision that a complaint is justified, and if further investigation is needed, the case may be allocated to a different casehandler.

Decisions that were formerly categorised as Justified in Part are now called Partly Justified, as a more accurate description of the result.

The OIA continues to urge complainants to respond speedily to the representations of the university on the complaint: the standard letter has been amended to press for a response in less than 28 days.

It is worth noting that in formulating a recommendation about the award of compensation to a student when a complaint is found justified, the OIA does not take into account speculative earnings, that is earnings that the complainant suggests that he or she might have made had the university not behaved in the way complained of. The OIA takes into account only that loss of earnings which is proved, for example, by a letter offering a job which could not be accepted in the circumstances, or good evidence of reduced earnings. However, compensation for loss of a chance may well be recommended.

The appointment of a new Independent Adjudicator is likely to be accompanied by changes in the office staff structure.

A Summary of our Statistics (see also Annex 4)

Our helpdesk dealt with approximately 1400 enquiries in 2007. As in previous years the vast majority of enquiries were from students wanting to know more about how the Scheme works or whether a complaint was eligible under our rules. A breakdown of the main types of enquiry we received appears overleaf.

Types of Enquiry

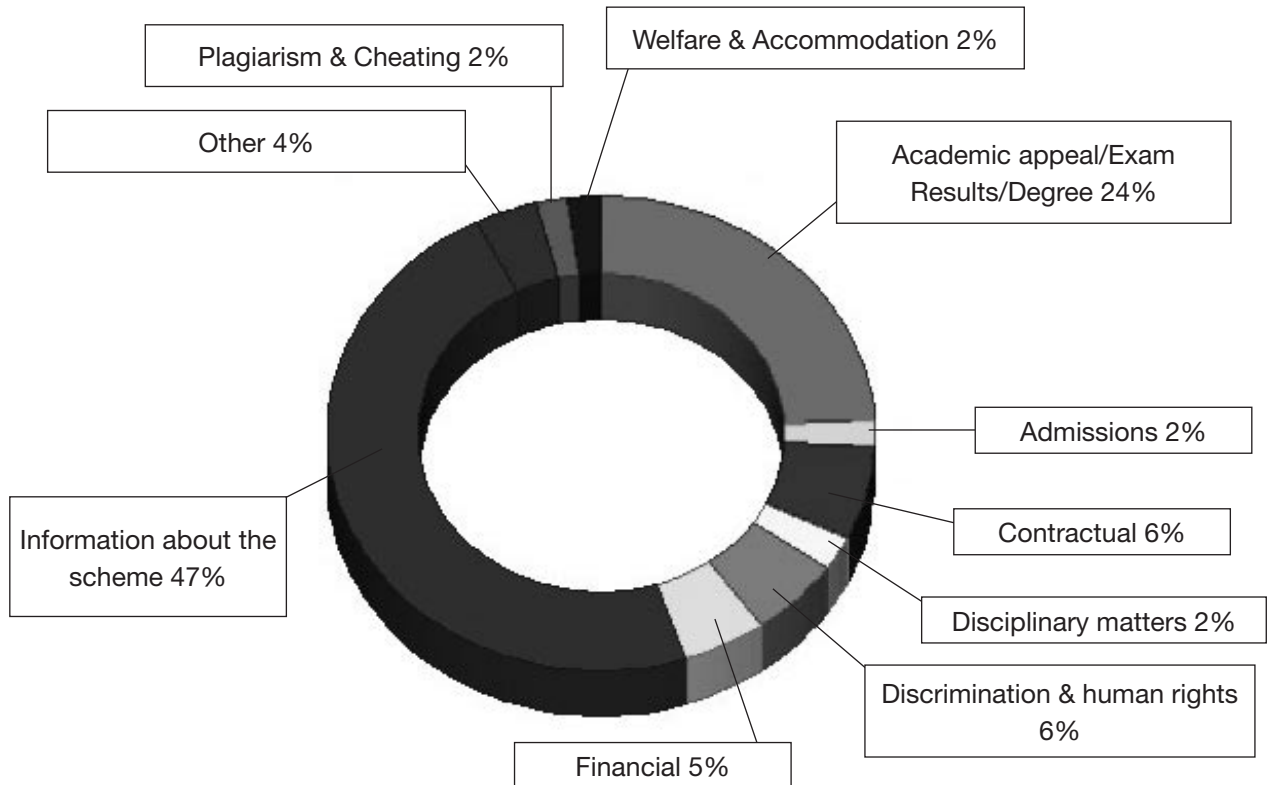


Chart 1

We received 734 Scheme Application Forms from students during the year, an increase of 25% over 2006.

Not all applications we receive become eligible complaints. We rejected approximately 18% of applications (this figure has been fairly consistent over the last 3 years). The main reasons were because applications were received out of time (that is, not received within 3 months of the issue of a Completion of Procedures letter or within 3 years of the substantive events), because the internal complaints procedures of the university or college complained about had not been exhausted or because applications were purely about academic judgment. Several applications were rejected because students had already commenced legal proceedings against their university.

Notwithstanding the increase in applications this year we met our target of processing applications within an average of 25 working days. The average time taken was 23 days, 8 days quicker than in 2006. The improvement was due to the Office devoting more resources to this stage of our process.

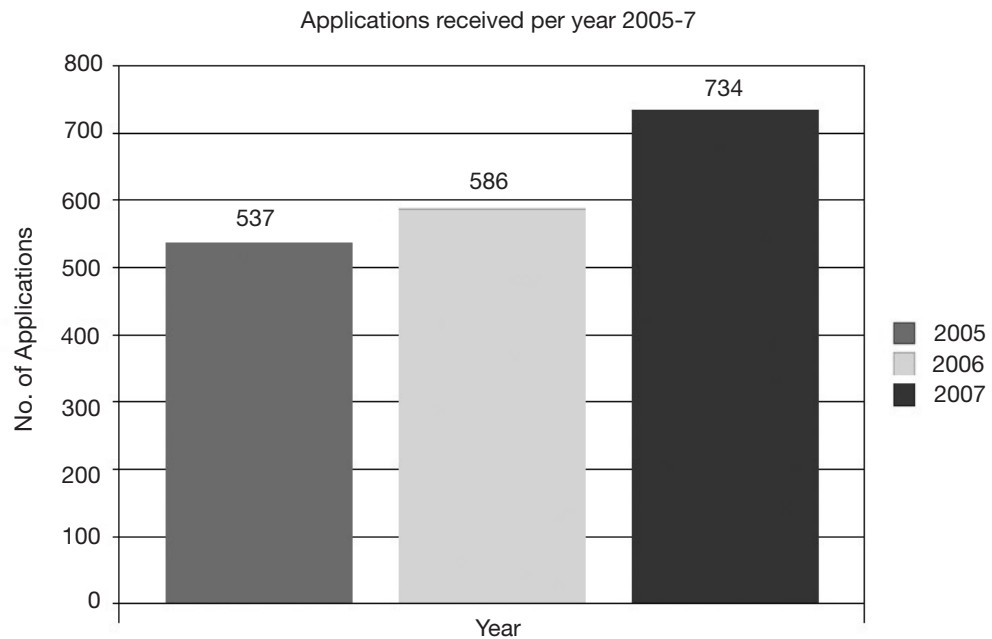


Chart 2

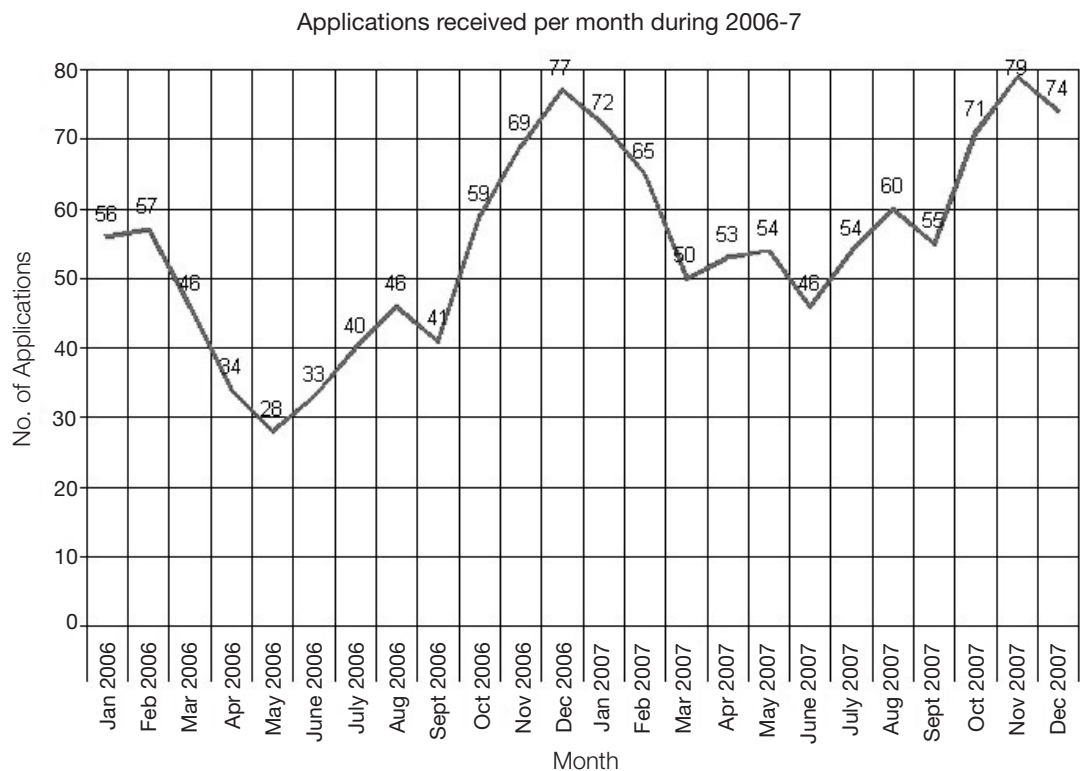


Chart 3

We received exactly 600 eligible complaints during 2007 representing an increase of 29% over 2006. This was nearly double the increase we had predicted. Notwithstanding the significant increase the average time to deal with a complaint remained under 6 months (171 days) and by the end of the year we had a smaller work in progress than at the end of 2006 (218 cases). Only 6 complaints were older than 12 months at the end of the year.

Over 40% of complaints were the subject of our fast-track procedure in 2007.

In 2007 nearly 65% of complaints were about academic status, that is, about academic appeals, assessments and grades. Disciplinary matters and plagiarism together formed the next largest category, followed by complaints of a contractual nature.

Complaints accepted per year 2005 -7

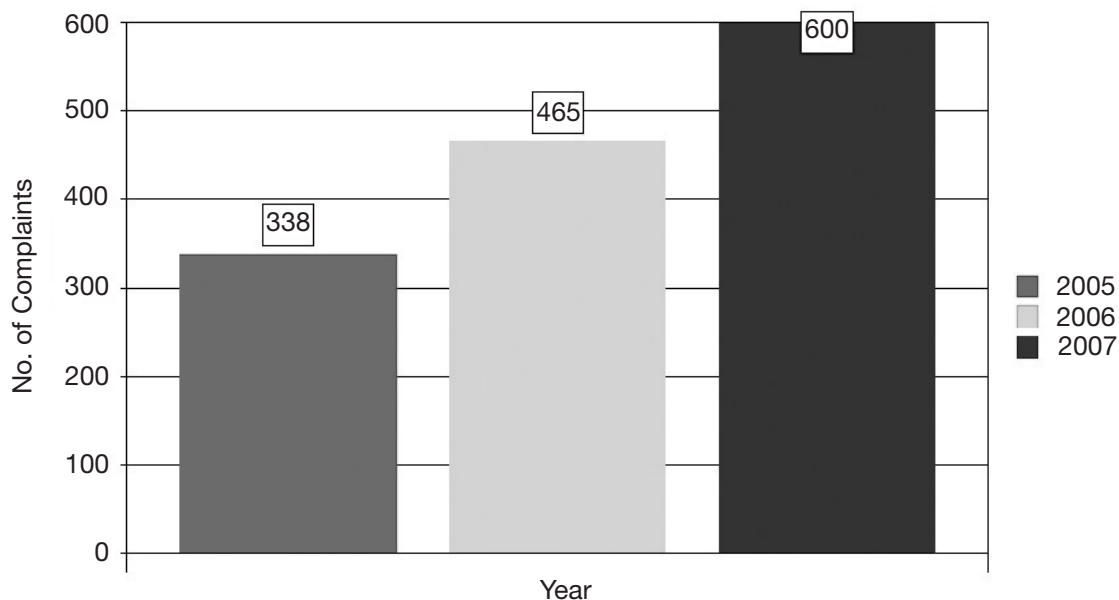


Chart 4

Subject matter of Complaints 2007

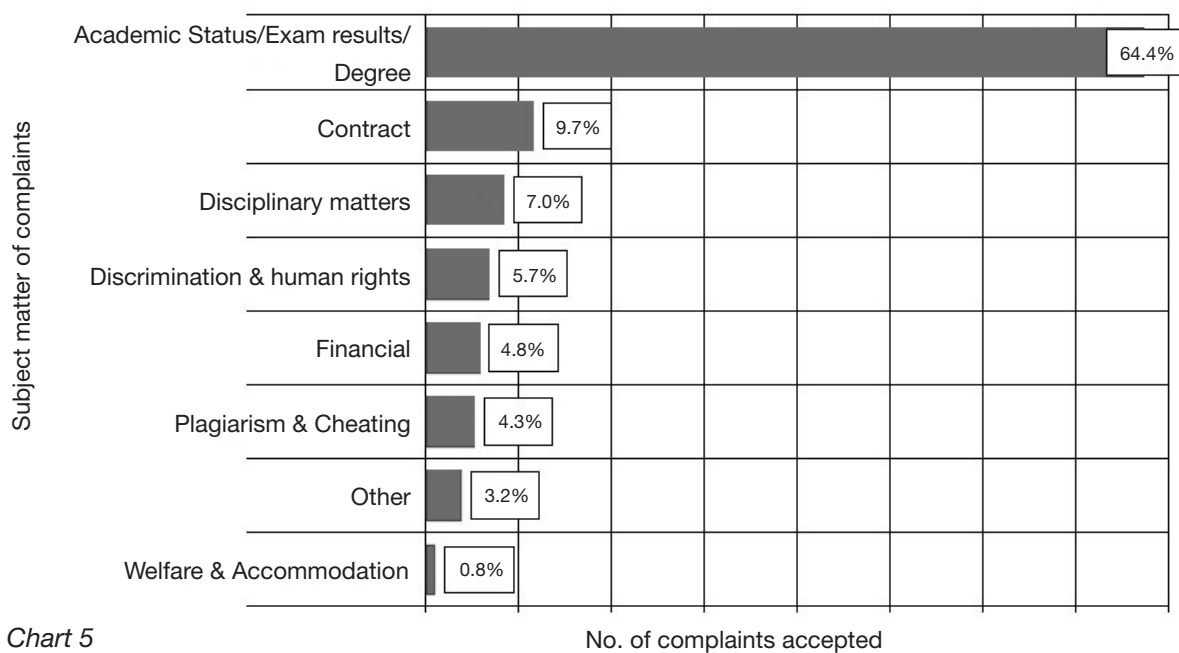


Chart 5

The following charts provide further information about the complaints we received:

Complaints received by Course Types in 2007

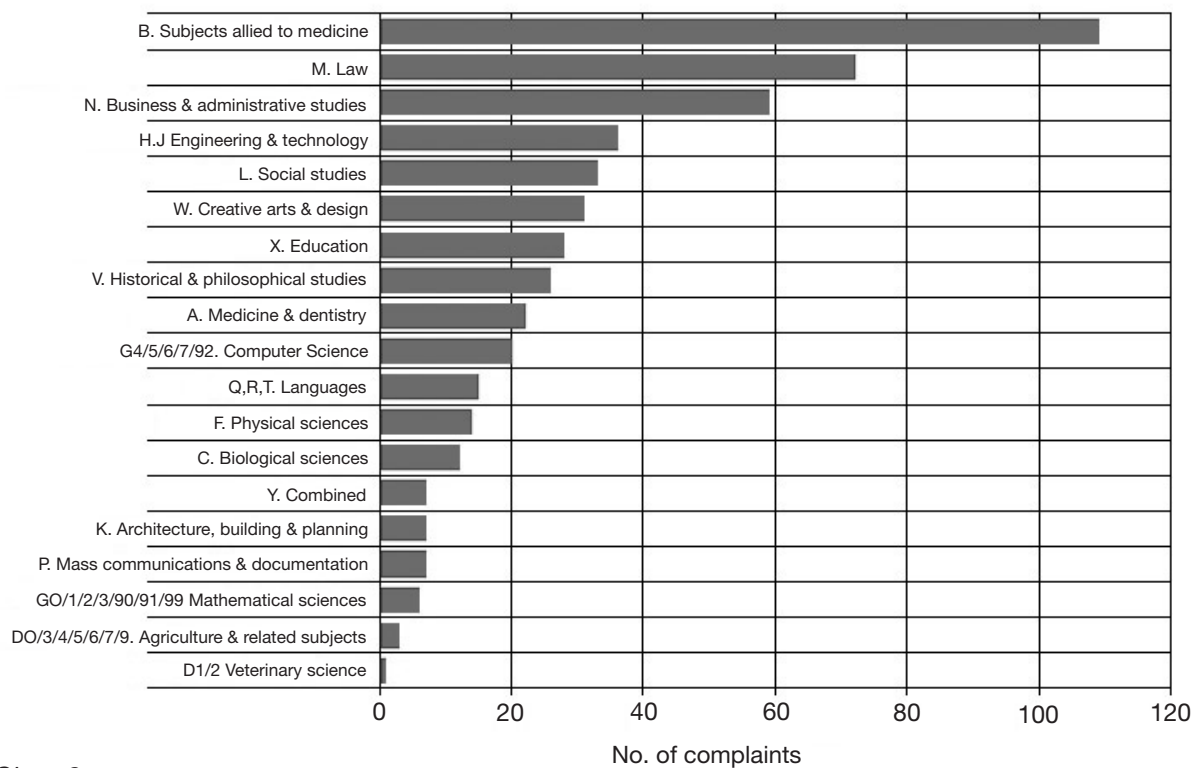


Chart 6

Complainants by age group

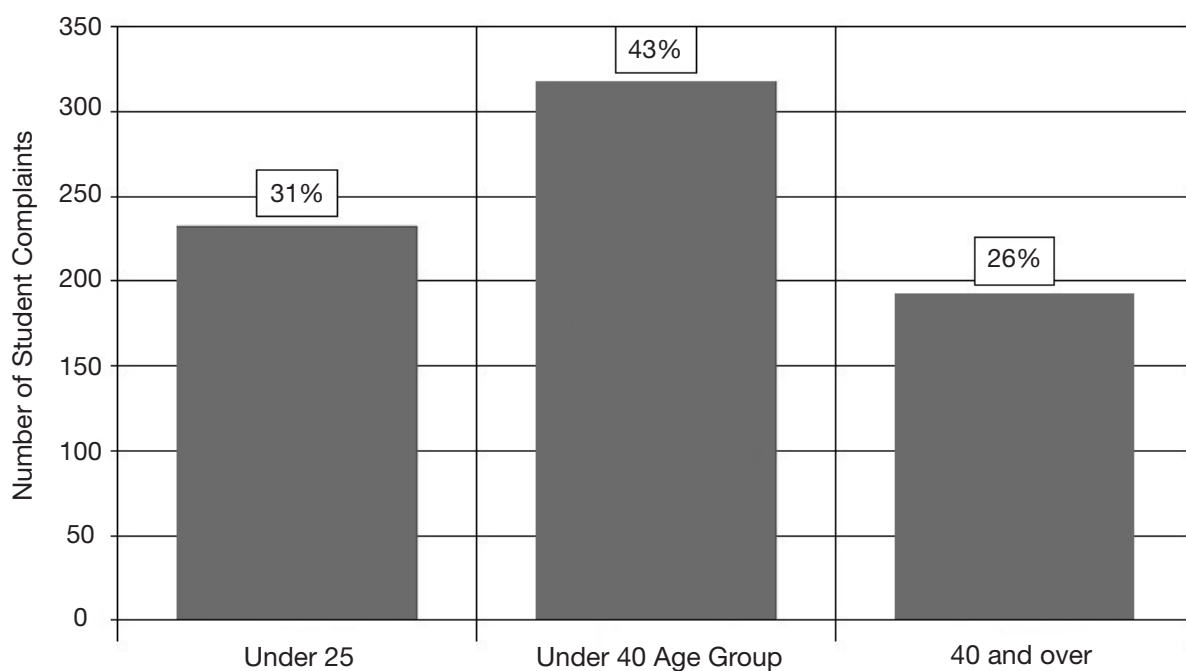


Chart 7

Complaints by student status

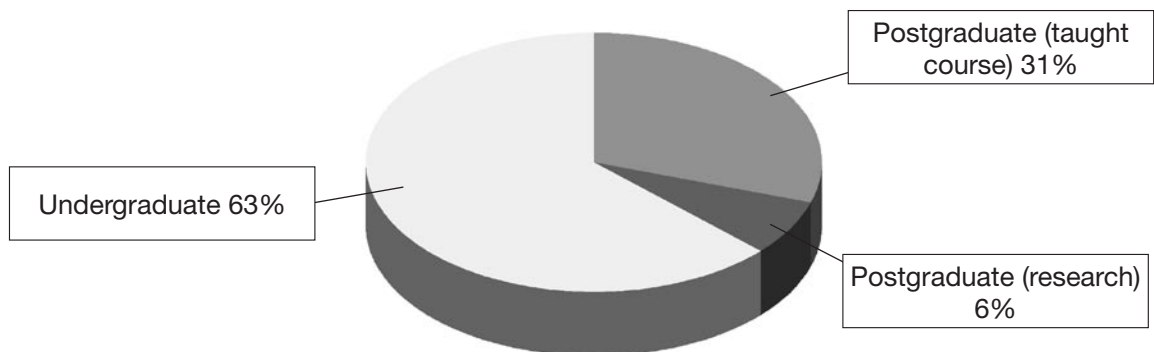


Chart 8

Complaints by nationality

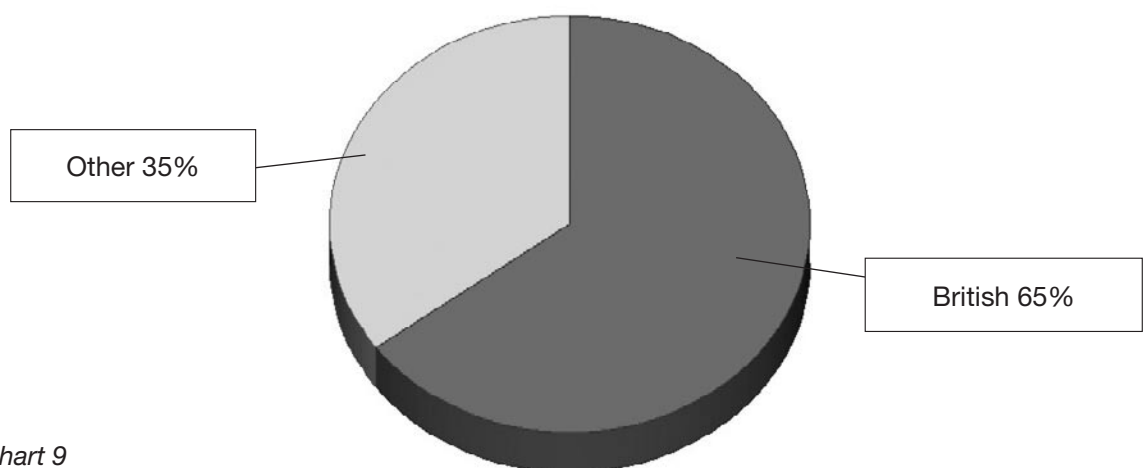


Chart 9

Complaints by financial status

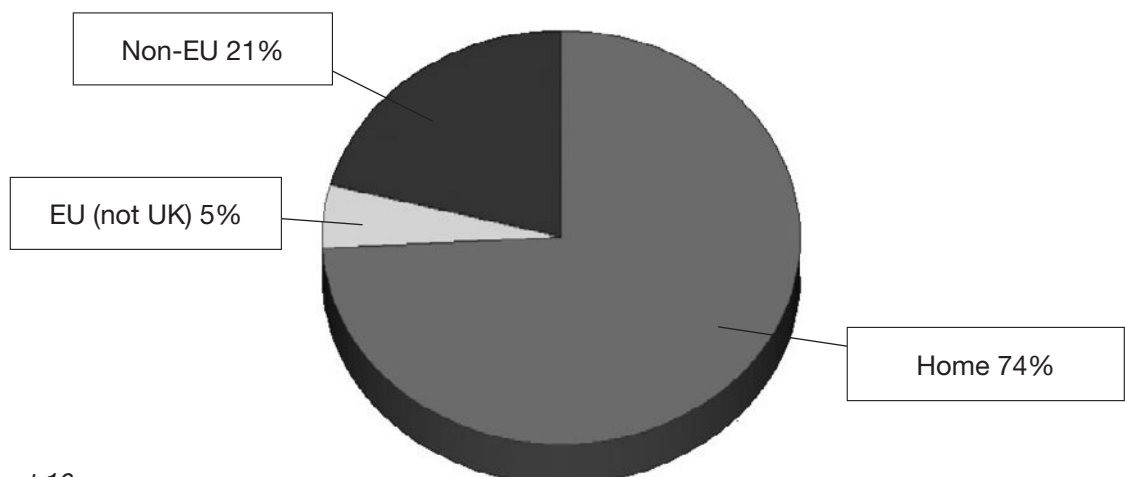


Chart 10

During the year 26% of complaints were upheld to some extent and a further 7% of complaints were settled by a university in favour of the complainant without the need for a full investigation.

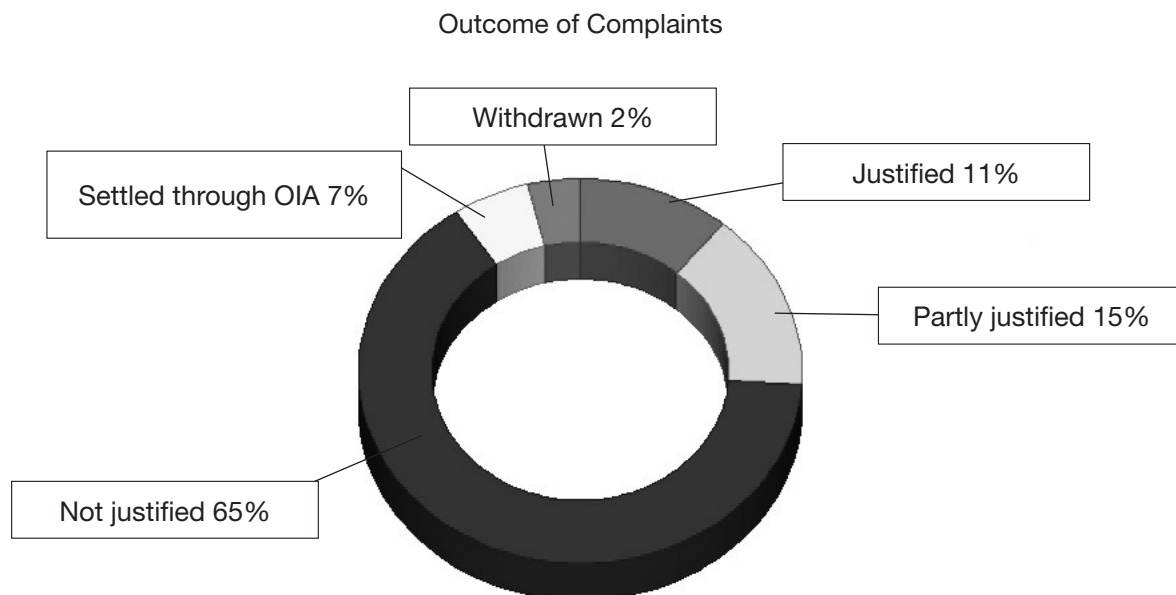


Chart 11

When complainants send us a Scheme Application Form we ask them to complete and return an equal opportunities monitoring form which is held by our administrative staff. In 2007 176 students completed the form in respect of their ethnic background and 50 students did so in respect of a disability. The charts below show the main results.

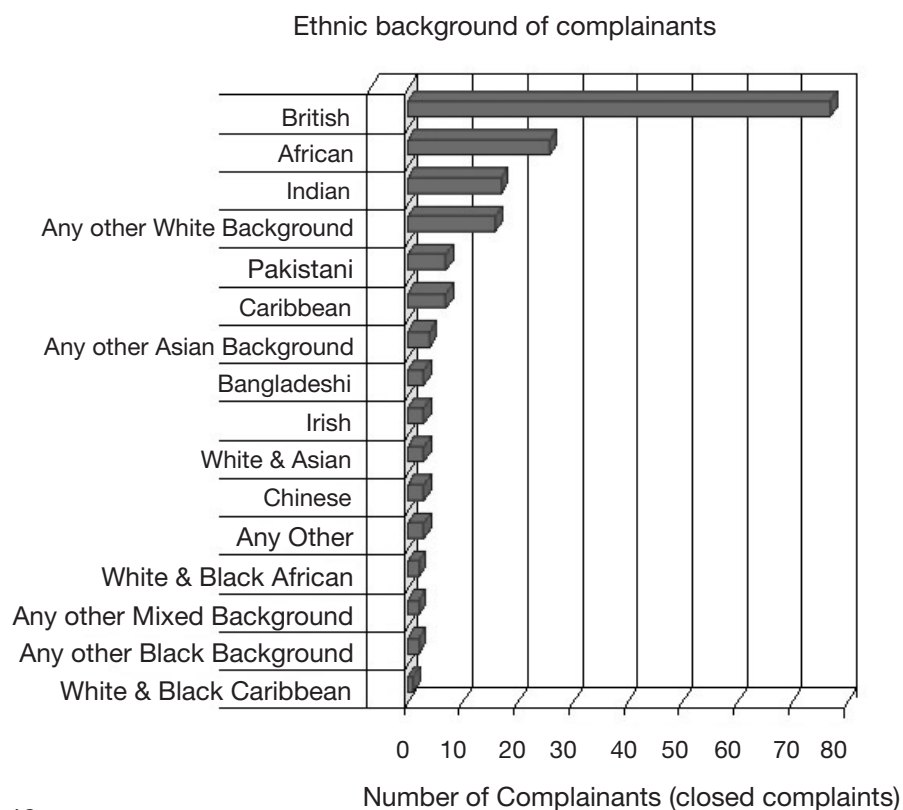


Chart 12

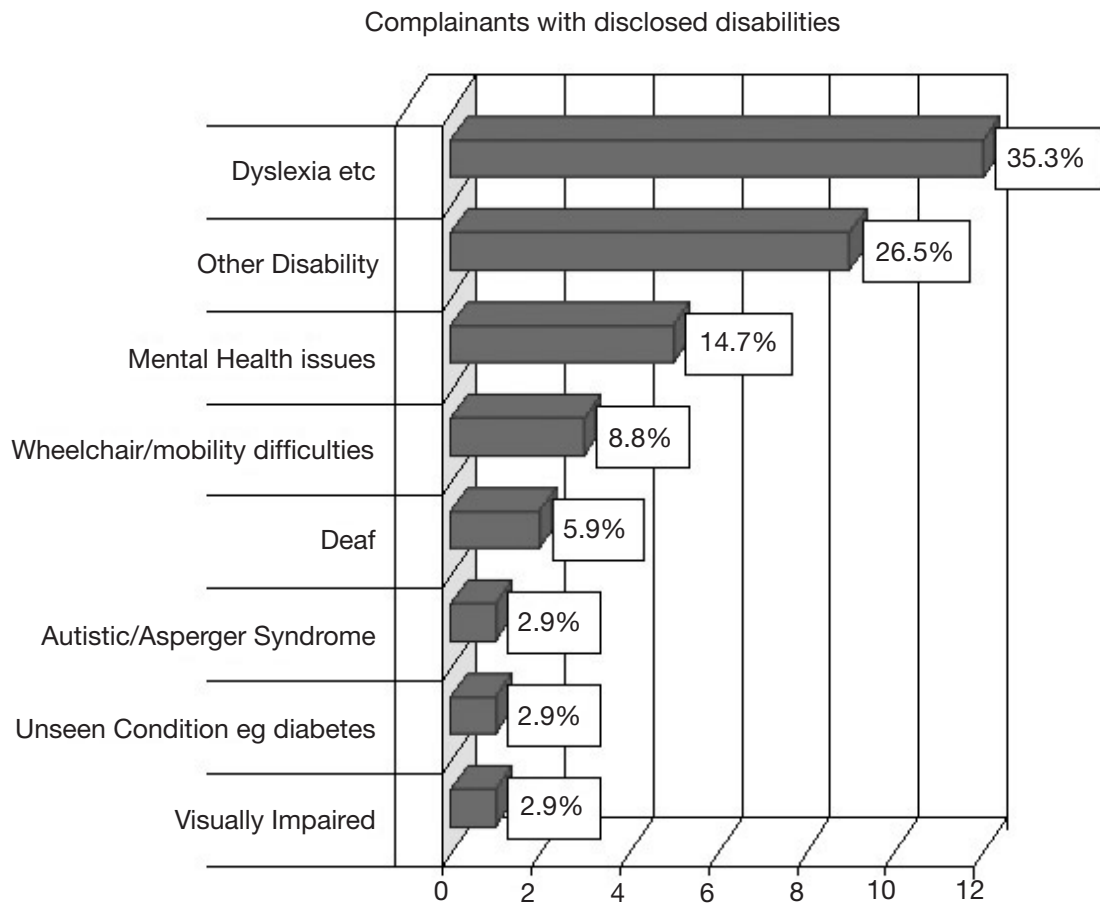


Chart 13

We also send out feedback forms to students after a formal decision is issued. 119 forms were returned during the year. The information we receive from these forms helps us review the effectiveness of our processes. While the nature of the comments generally reflects whether we uphold a complaint or not we do receive some useful suggestions. However, clearly the mechanism is insufficient in itself for us to get a full picture on how students view the Scheme, so further work is planned for 2008 in this area.

Some facts have been altered slightly in order to preserve confidentiality

DISCIPLINARY ISSUES

CASE 1

S was assaulted by another student in his hall of residence. S reported the incident to the Dean and asked him to investigate. After the investigation had commenced the Dean discovered that he was himself implicated in the events that had allegedly led to the assault. S nevertheless asked the Dean to continue the investigation, which he did. Eventually the complaint was escalated to the next stage, but the OIA found that the involvement of the Dean, once his connection to the events was disclosed, was contrary to the duty to act fairly (the principles of natural justice): that those involved in investigating or deciding upon complaints or appeals must do so impartially and must not act in any matter which may give rise to an actual or apparent conflict of interest. In considering S's complaint, the university would not permit him to complain about an officer of the university without that officer's consent, but insisted on treating it as a complaint against the university. No substantive hearing took place. This was unreasonable and contrary to the university procedures. The complaint took 2 ½ years to be decided, which was too long. The OIA found the complaints by S **partly justified**, recommended that the university reform its procedures and expressed the opinion that allegations of criminal offences should be investigated by the appropriate authorities and not by the university.

CASE 2

S's registration at the university was terminated because of serious and repeated instances of plagiarism. He complained to the OIA about lack of support for his studies and inconsistent advice by tutors. The OIA found the complaint **justified** on procedural grounds. The Academic Misconduct Panel, which had upheld the allegations against S, included a member who had been involved at an earlier stage with checking the extent of the plagiarism, and he had provided evidence to the Panel as well as being a member of it. Evidence was taken by the Panel from some university personnel in the absence of S. More evidence was taken from a third party after S had left the Panel meeting. He did not have the chance to comment on this evidence. Moreover S had not been informed fully in advance of the nature of the allegations against him and the procedure that was to be followed by the Panel. The conduct of the proceedings breached the duty to act fairly: the student should be made fully aware of any charge against him; both parties should be heard and have the opportunity to hear what the other party has said; the student should receive copies of all information considered by the Panel in reaching its decision, and judging panels should be free of any perception of bias. The OIA recommended that the case be heard by a fresh Panel and that the meeting should be conducted following the requirements of natural justice. It also recommended that the university should review its regulations to ensure that they were appropriate in the light of the findings. [A fresh Panel met to reconsider the case. It concluded that the work in question was plagiarised. It offered S a chance to resubmit new assignments to be capped at 40%, and some tutorial support. It set out S's right of appeal against this decision and warned him that any further misconduct would result in exclusion.]

GRADUATE ISSUES

CASE 3

S was registered for a PhD as a full time student for 3 years. She continued to write up her thesis after that period, and submitted two years later. Her supervisor retired one year before submission. Following the PhD examination, the thesis was referred for correction and re-examination a year later, and some limited tuition was offered. S appealed against the examiners' decision on the ground of inadequate supervision or training. S had attended very few of the research training sessions that had been offered, and the university had made no attempt to encourage her to do so. The retired supervisor had indicated to S concerns about her progress. The transition to the new supervisor was not sufficiently smooth and there arose a misunderstanding about the methodology of the thesis which should have been addressed before examination. Nevertheless, by the time the original supervisor retired, S should have completed most of the thesis and the change should not have been of great effect. S's appeal was delayed while the university sought to find a way to enable the satisfactory completion of the thesis. The OIA held the complaint **justified** because of the delays and because the university did not take sufficient steps to ensure that S was properly trained. The recommendation was that after more supervision the thesis should be examined again by two external examiners with no previous involvement, and that the university should pay S £1250 to compensate S for time wasted as a result of the first submission.

CASE 4

S, an overseas student, twice failed her dissertation. She complained to the university that there had been inadequate supervision in relation to the resubmission. The university accepted that there had been some failures concerning the appointment of a new supervisor and determined that the fee of £2500 paid for her third submission (which was successful) should be refunded. S complained to the OIA about the second failure, which she believed was caused by a new supervisor. A different supervisor oversaw the successful, third submission. S drew attention to the widely differing marks for the thesis under different supervisors. She claimed compensation for additional costs arising from staying in the UK for the third submission. The OIA found that issues concerning the marks were ones of academic judgment, over which it has no remit. The university had acceded to S's request for a refund of fees only, had provided a third supervisor and discounted the second submission. The University had fully addressed the issues raised internally by S and her complaint was found to be **not justified**.

ACADEMIC APPEALS

CASE 5

S, a medical student, failed a course, which required her to repeat the final year of the programme. She appealed against the grade on the grounds of bias, prejudice and inadequate assessment. Part of the failed assessment related to professional considerations, attitude, conduct and appearance. The university's view was that the complaint was a challenge to academic judgment, which was not a valid ground for appeal. S complained to the OIA, which found that there was considerable evidence of concern about S's conduct and attitude and no evidence of bias in the assessment, even though it was necessarily subjective in part. Nevertheless it was unfair that criticisms of S's

appearance had not been pointed out to her at the time when they were observed. The appeal process however, was procedurally flawed because the panel Chair considered evidence which S had not seen and upon which she had no opportunity to comment before the decision was made. Even though there was a degree of unfairness in the case, it had been reviewed by the Pro Vice-Chancellor and he had apologised appropriately to S. The complaint by S to the OIA was found to be **not justified** but it was recommended that the university review the appeal panel procedures and that staff should be provided with guidance on good practice in raising concerns about students' appearance.

CASE 6

S failed to attend a final year examination because she had made an error about the date. The university applied its regulations and deemed that the re-take would be capped at 40%. S complained on the ground that her mistake was genuine and yet because the mark would be capped she was being treated as if she had failed the examination on the first occasion. The university would not treat the error as mitigating circumstances. The OIA found the complaint to be **not justified** because the university had followed its regulations properly, and the student had to take responsibility for attending examinations on the correct date.

CASE 7

S failed a course and was required to withdraw. He appealed on the ground that the supervision had been defective. His appeal was rejected by the college appeals panel (Stage 1). After that panel retired to consider the case, the departmental representative X joined the panel without S or his representative being allowed to be present. S appealed (Stage 2) on that ground, stating that X had introduced irrelevant material and that the panel had not considered the issue of inadequate supervision. The Stage 2 appeal was dismissed by the college appeals manager, who found no defects in the procedure of the Stage 1 appeal panel. S complained to the OIA. The college admitted that X had advised the Stage 1 panel after the conclusion of the hearing but claimed that this related only to clarification of the regulations and not to substantive matters. The OIA held that the duty to act fairly had been breached: even if nothing of substance had been discussed in the absence of S and his representative, it is the perception of bias that counts. There was no way of knowing what remarks may have been made when X was with the panel alone, and S therefore was unable to rebut any allegations that might have been made. Accordingly the rejection of S's appeal at Stage 2 was unreasonable because the breach of the principles of natural justice had not been taken into account. Moreover the college's regulations prescribed that a Stage 2 appeal was to be heard by another panel, at which the appellant has the right to be heard in person. This procedure had not been followed and thus the complaint was found to be **justified**. The OIA recommended that the university conduct a full Stage 2 hearing of the appeal.

FITNESS TO PRACTISE ISSUES

CASE 8

The university discovered in his final year that a medical student had six criminal convictions and a caution. S also suffered from depression. The university alleged that S had not disclosed the convictions at the time or on his UCAS form, and that the conduct involved was a disciplinary

offence under its regulations. The Fitness to Practise Committee of the university required him to withdraw, and he appealed against the severity of this decision. The OIA will not interfere with the professional judgment of such a panel. The OIA found that the wording of the university regulations did not cover behaviour when S was not enrolled as a student and that the UCAS form asked for details of convictions, not cautions. Moreover the convictions had been disclosed in a Criminal Records Bureau form the previous year and given to an officer of the Medical School, but there had been a failure to transmit the information to the Medical School directly. Nevertheless the OIA found that S had done all that was reasonably necessary in the circumstances to disclose the convictions. In view of procedural errors, the complaint was found to be **justified** and the OIA recommended that a new and freshly constituted Fitness to Practise Committee should hear the case, set out the matters to be addressed and consider only those matters which the university regulations allow it to consider. In the event that S were not to be required by the new panel to withdraw from the course, the university should not charge him course fees for the repeated final year of study. [A new fitness to practise panel was convened, and S was allowed to return to his studies as a fourth year student. Fees for the fourth and fifth year were waived.]

CONTRACTUAL ISSUES

CASE 9

S missed some weeks of teaching in her second year because of illness, and then the AUT industrial action led to some examinations being cancelled. S was awarded a 2:1 degree and appealed. The grounds were that her mitigating circumstances had not been considered and that the staff who considered the effect of the industrial action were the same staff who considered the result, and that they were therefore unlikely to take an unbiased view of the impact of that action on the students. The appeal was rejected by the university on the ground that the illness had been considered and that there was no evidence that she had been disadvantaged by the industrial action. S complained to the OIA and sought financial compensation for breach of contract in cancelling work and for stress and inconvenience, and that the degree classification should be reconsidered. The OIA found that the university had acted reasonably in response to the industrial action and had offered students replacement assessments, which S had not taken. S was working and on holiday at the date of the replacement assessments and also failed to take a further opportunity to sit the examinations. The illness had been taken into account and there were no grounds for requiring a reconsideration of the degree result. The complaint was **not justified**.

CASE 10

S was a student teacher. She was assigned a teaching placement in a school which she could not reach by public transport, nor could she find accommodation near the school, so she declined the placement and her studies were suspended for a year. There was a disagreement over the conditions for returning to study and S issued a complaint to the university. The complaint was made in April 2005. No progress appeared to have been made, and in June 2006 S applied to the OIA citing inability to obtain a completion of procedures letter from the university. After further correspondence between the OIA and the university and the grant of many extensions, the complaint was accepted in October 2006. By February 2007 only incomplete representations had been received from the university without any indication of when a definitive response would be made. The OIA found that there were delays by the university in looking at the complaint, that internal procedures had not been completed, no completion of procedures letter had been issued

and there were delays in responding to the OIA's requests for information. This was unreasonable and unfair on the student. In a formal decision, not preceded by a draft, the OIA found the complaint to be **justified** and recommended that in the interim the university pay S £500 for the stress and inconvenience suffered as a result of the delays in dealing with her complaint. This recommendation was independent of any other recommendation that might be made in respect of the complaint, and the sum was to be paid within 28 days of the decision. The university's attention was drawn to Rule 6.4 of the Scheme which states that the parties are expected to comply promptly with reasonable requests for information and that non-compliance may be reported to the Board of the OIA.

CASE 11

S registered on an engineering course which was advertised as accredited by the professional body. At induction the university advised his cohort that they could transfer to a more specialised engineering course, which was also accredited. S decided to transfer. Before joining the university S had taken a foundation degree in the subject and achieved credit points in it. However the university subsequently decided that the foundation degree was deficient in some respects and S took extra courses and stayed for another year in order to remedy the deficiency. After graduation and on applying for related posts without success it emerged that the engineering course was not accredited. S complained to the university which rejected his complaint that he had been misled about accreditation. It also stated that since S was no longer an enrolled student he could not proceed to further stages with his complaint. On complaint to the OIA, it was decided that the issues about the foundation year were matters of academic judgment and not within the remit; but that students had been misled about the accreditation of the new course; that there were unreasonable delays in the university's handling the complaint, and that there was no certainty that the course would be validated even retrospectively for the benefit of S. There was clear evidence that the lack of accreditation had affected S's career prospects, and the complaint was **justified**. The OIA's decision was that the university should offer S £14,500 and continue to pursue accreditation of the course from which he had graduated. If this course did not receive retrospective accreditation the university should offer the further sum of £12,000 to S to enable him to pursue accreditation through another route and to meet tuition fees thereby necessitated. [Accreditation was subsequently obtained for S and is being pursued for the rest of his cohort.]

DISABILITY ISSUES

CASE 12

S, an art student, informed the college of his dyslexia and dyspraxia, and was duly assessed by the college's disability support services. Staff were aware of the need to make the recommended allowances in written assessments; however, they were not made aware of the need also to make adjustments in non-written examinations and of the considerations that should have been taken into account in assessing S's listening and presentation skills. Because of a poor grade for the exhibition part of the examinations (which included an interview by the examiners), he was awarded a lower second class degree. S had complained in previous exhibition assessments that no account had been taken of how his disability would affect his performance, yet no appropriate adjustments were made to the final exhibition assessment. S complained to the OIA about the failure to make adjustments as required by the Special Educational Needs and Disability Act 2001, and about bias on the part of the examiners. The OIA accepted that it was not practical for exhibited work to be marked anonymously and found no bias on the part of the examiners. The complaint

was, however, found to be **partly justified** on the disability ground, for no adjustments had been made to S's non-written assessments. Moreover the college had no procedure for re-evaluating art work which, in this case, had been dismantled and had deteriorated. The college took two years to hear S's complaint, which was an unreasonable delay. The OIA recommended that there should be reassessment by new examiners of the exhibited work on the basis of slides of it, and that the college should support S in making submissions in respect of it. The sum of £3500 was recommended to be paid by the college to S in respect of storage costs of the artwork and compensation for the delay. No recommendation was made in respect of the substantial legal costs incurred by S.

CASE 13

S suffered from depression, which he notified to the university in his second year; in his third year he also notified them of his obsessive compulsive disorder. He was awarded a pass degree after an allegation against him of plagiarism in six essays. The allegation was not clearly substantiated, however, and S was given no opportunity to address the accusation and explain his condition, nor to attend a hearing by a panel, as provided for in the university's regulations. The complaint was **partly justified**. In relation to the late diagnosis of his disorder, S had almost completed his course by then and the university made the only reasonable adjustments that it could, in the circumstances, by sending details of the disability to the Finals Board. The OIA recommended that the plagiarism allegations be investigated, taking into account the disability, and that S should be given the opportunity to provide further evidence of its effects on his work. [The Plagiarism Panel met and heard S's representations. It found that the allegation of plagiarism was not proven and the faculty was asked to remark the essays solely on their academic merits, disregarding any accusations of plagiarism, and having first sought specialist advice on how S's disability was likely to have affected his essay work.]

FINANCIAL ISSUES

CASE 14

S, and the other students in his cohort, complained that the information given by the university about a 3-year course was misleading, especially that the impression was given that fees in the third year were at a reduced level. On registering for a Diploma, the students were informed that that course had been cancelled and that their course was to be an MA. On the website and in the literature the MA was shown as having fees of £1500 in the first two years and £750 in the third year, for which fewer hours of tuition were offered. S alleged that this information was confirmed orally by a university official, although on another page of the literature the third year fees for the (cancelled) Diploma were stated to be £1500, as in the first two years. In the second year of the course the fees rose to £2000 but due to a previous "error" S's cohort were still charged £1500, as advertised. In the third year they were asked to pay over £2000. S complained about the amount on the ground that the original advertised fee was £750. The university accepted that there had been confusion in listing the correct fees but rejected the complaint on the ground that in total the fees paid by S over 3 years were actually less than they should have been under correct fees regulations. The OIA held that the complaint was **justified**. The documentation supported the belief of S that the fees in the third year would be charged at a lower rate. The fact that S paid less overall than he might have done due to errors made by the university in publishing the correct level of fee was immaterial. S should have been able to rely on the information that he was given

initially in order to plan for the three years' fees. The uncertainty and delay in the university's actions in dealing with the issue had caused stress and inconvenience to S and was detrimental to his studies. It was recommended that the university should offer to S and all others in the cohort to pay the original tuition fee of £750 (plus inflation) for the third year and that S should be paid £200 in recognition of the detrimental effects on him of the university's mistakes, delay and confusion.

CASE 15

Before registering on a computing course in 2007 S inquired repeatedly about the university's scheme for assistance for students on a low income without a computer. The university offered her £500 from its Scheme for the purchase of computers and also directed her to another source, the Access to Learning Fund. S alleged that the university was putting obstacles in the way of applications from poor people: she also needed books, furniture and other technical equipment for the course. The university offered a further £300 to cover internet access and a telephone line and proposed that S turn to state benefits for other equipment and rental needed. S complained to the OIA that the university should provide all essential study requirements for people on low incomes. The complaint was found to be **not justified**. The university followed its own procedures in relation to the financial assistance that it controlled, and had to take account of the proper use of public money, which was limited and regulated by central government. The university had tried to help and advise S appropriately in the circumstances.

CASE 16

S was at school in the UK for 7 years before studying medicine at the first university, where he was classified as an overseas student. On transferring to a second university for continuation of his studies he appealed against this classification. The appeal was rejected on the ground that S had been resident in the UK three years prior to registration primarily for the purposes of education. S complained to the OIA, which in reaching its decision considered the guidance on fees issued by the college, the DFEE (as it was) and the UK Council on International Student Affairs as well as the relevant law. S alleged that he would have been ordinarily resident (as required to be classified as a home student for fees) in the UK even if he had not been in full time education. The second university's view was that S had been in the UK for the purposes of full time education as he had been at school here and then studied medicine full time at the first university before taking up his place at the second university. The OIA found the complaint to be **not justified**. The situation of S was not clear cut, but universities are permitted to make a decision, based on the evidence available, as to the classification. It exercised its discretion to classify S as overseas, acting in accordance with its own guidance and the authority given to it by the Department to take the decision. The university alleged that matters of fee status were not within the remit of the OIA: this was incorrect because it is for the OIA to determine its jurisdiction within the limits of the Higher Education Act, which gives it jurisdiction over any "act or omission" of a university.

CASE 17

S was born in the UK and educated here until she was 7, when her (non-British) parents took up employment overseas. S completed her school education overseas. She was accepted for admission by the university on the basis that her fees were at the overseas rate. On taking up her place, she appealed against the classification on the grounds that (a) she had acquired

British citizenship shortly before taking up the place and (b) that her parents were overseas during the relevant period only because of their temporary employment, but for which S would have been resident in the UK. Her appeal was rejected by the university on the grounds that she had been resident overseas during the 3 years before starting studies in the UK, and that there was no evidence that her parents' employment overseas was temporary. S complained to the OIA. The complaint was found to be **not justified**. The university's decision was reasonable and the acquisition of British citizenship did not affect the application of the classification regulations.

ACCOMMODATION ISSUES

CASE 18

A first-year student, S, was granted a licence in respect of a room in a hall of residence. The university's rules forbade smoking, tampering with the fire safety equipment in the hall and leaving guests unattended, and provided that persistent offenders would be dismissed from the hall. S left friends in the room who smoked there and covered the fire alarm to prevent detection. S failed to remove the cover, which was discovered a day later during a scheduled inspection. On the next working day the university sent S a Notice to Quit the room within 28 days because of the breach of regulations. S appealed against this decision the next day; the appeal was dismissed two days later as showing no grounds. S complained to the OIA 5 days after the dismissal of the appeal by the university, on the ground that the decision was unreasonably harsh. The OIA took into consideration the university's regulations and the law relating to eviction (Protection from Eviction Act 1977, the Housing Act 1988 and the Notices to Quit (Prescribed Information) Regulations 1988).

Within six days of receiving the application, the OIA reached a preliminary decision that the complaint was **justified**. The reasons were: (a) there had been no hearing to investigate the breach of fire regulations. The duty to act fairly required that S should have been given an opportunity to present her case, been informed of the charges she faced, been given reasons for the exclusion, and reasons for dismissing the appeal. (b) The university was in breach of its regulations in dismissing S's appeal summarily and should have convened an appeal board. (c) The Notice to Quit gave 26 days' notice instead of 28 and may also have been defective in not setting out the need to apply for a court order for possession and the licensee's rights to legal advice. (d) This offence was a first offence and the university's rules referred to exclusion only where there was persistent offence. Nevertheless, S was in serious breach of the university regulations. The OIA recommended that the Notice to Quit be withdrawn and that the penalty be reconsidered. Four days after receipt of the preliminary decision, the university served a fresh amended Notice to Quit on S. In the light of the university's representations, the formal decision of the OIA was that the new Notice to Quit should not be enforced until S exercised her right of appeal, if she chose to; that the university's procedures in relation to eviction should be clarified; that S's rent should be refunded pro rata if she left the hall; and that S should be paid £100 compensation for the inconvenience caused by the first, faulty Notice to Quit. We accepted that there may be circumstances in which it is appropriate for a university to issue a Notice to Quit, but universities should ensure that the internal appeal procedures and procedures to enforce the Notice to Quit are not incompatible.

Given the seriousness of the offence, no recommendation was made to withdraw the second Notice to Quit.

Since its inception the OIA has been and will remain accountable to the OIA Board and ultimately to the Secretary of State and the Welsh Assembly under the Higher Education Act 2004. In 2007 the Board members were

Independent Directors

Ms Margaret Doyle (appointed November 2005)
Mr Christopher Eadie (appointed March 2005, resigned December 2007)
Mr Mark Emerton (appointed September 2004 and renewed in September 2007 for a further three-year period)
Professor Norman Gowar, chair (appointed August 2003)
Ms Sophie Holmes (appointed March 2005)
Mr Hugh Smith, deputy chair (appointed September 2004)
Dr Cecilia Wells OBE (appointed March 2005)

Nominated Directors

Mr Ray Burton (appointed April 2007)
Mr Malcolm Faulkner (appointed June 2005, resigned August 2007)
Mr Gareth Lewis (appointed August 2003)
Ms Maxine Penlington (appointed August 2003)
Ms Heather Somerfield (appointed September 2005)
Professor Mike Thorne (appointed August 2007)
Mr Wes Streeting (appointed July 2006)

Professor Malcolm Gillies attended one meeting as the alternate for Professor Thorne
Dr Sofija Opacic resigned as the NUS Alternate Director from July 2007

Secretary

Mr Michael Miller (appointed May 2006)

A prime responsibility of the Board is to safeguard the independence of the adjudication process. Board members are not permitted access to case files or to intervene in any way in decisions made by the Independent Adjudicator or other staff.

The Board met four times in 2007 and received reports from the Independent Adjudicator and the Deputy Adjudicator on each occasion. New members received formal induction. There is a majority of independent (ie not appointed by the higher education sector) members. In 2007 the Board established a new subcommittee, Nominations, in addition to the three existing ones, Audit, Finance and Remuneration

External Accountability

This has been strengthened in two additional ways in 2007. First, by revising the system whereby complaints about the handling (not the outcome) of a complaint by the Office are dealt with: in the first instance by the casehandler and then the Deputy Adjudicator. The Company Secretary also has a role in the procedure.

Second, in clarifying the circumstances in which a decision of the OIA may be judicially reviewed by the courts. In December the Court of Appeal gave judgment in the case of *The Queen on the application of Siborurema v Office of the Independent Adjudicator* [2007] EWCA Civ 1365. The student in this case had failed his examinations at London South Bank University four times and was withdrawn from the course. His appeal against the decision to withdraw him was based on mitigating circumstances, which he had not disclosed by the required date under the university's regulations. His complaint was found to be not justified by the OIA but he was eventually granted permission by the court to apply for judicial review of the decision because of the public interests involved: this was the first full hearing involving the OIA and judicial review.

The application was refused on its merits. The judges found that the OIA is amenable to judicial review because its function is essentially public. The scope of any review will be limited and the number of cases in which an application for judicial review could get past the permission stage is likely to be very small. The availability of an alternative civil action against the university may be enough to justify refusal of permission to judicially review.

The judges accepted that there is a broad discretion under the Scheme as to how the review of a complaint is to be carried out, and that the decision whether a complaint is justified or not involves an exercise of judgment with which the court will be very slow to interfere. The OIA's discretion as to how it handles a complaint was confirmed, provided that it was prepared to make an exception to its general policy in an appropriate case. The OIA has taken due note of the implications of the judgment in considering its working practices, and appreciates the guidance of the court in considering the nature of the Scheme in this, the first OIA case to reach the court.

The OIA has continued its series of meetings with the Department for Innovation, Universities and Skills in order to keep the Department fully informed of its work.

Baroness Ruth Deech

Annex 1

UNIVERSITIES AND HIGHER EDUCATION COLLEGES COVERED BY THE SCHEME



England

Anglia Ruskin University
Arts Institute at Bournemouth, The
Arts London, University of the
Aston University
Bath Spa University
Bath, University of
Bedfordshire, University of
Birkbeck College
Birmingham City University
Birmingham, The University of
Birmingham, University College
Bishop Grosseteste College
Bolton, The University of
Bournemouth University
Bradford, University of
Brighton, University of
Bristol, University of
Brunel University
Buckingham, University of
Buckinghamshire, New University
Cambridge, University of (and constituent colleges)
Canterbury Christ Church University College
Central Lancashire, University of
Central School of Speech and Drama
Chester, University of
Chichester, University College
City University
Conservatoire for Dance and Drama, The
Courtauld Institute of Art
Coventry University
Cranfield University
Creative Arts at Canterbury, Epsom, Farnham,
Maidstone and Rochester, University College for the
Cumbria, University of
Dartington College of Arts
De Montfort University
Derby, University of
Durham University
East Anglia, University of
East London, University of
Edge Hill College
Essex, University of
Exeter, University of
Falmouth, University College
Gloucestershire, University of
Goldsmiths, University of London
Greenwich, University of
Guildhall School of Music & Drama
Harper Adams University College
Hertfordshire, University of
Heythrop College
Huddersfield, The University of
Hull, The University of
Imperial College of Science, Technology and
Medicine
Institute of Cancer Research
Institute of Education
Keele University
Kent, The University of
King's College London
Kingston University
Lancaster University
Leeds College of Music
Leeds Metropolitan University
Leeds, The University of
Leeds Trinity and All Saints
Leicester, University of
Lincoln, University of
Liverpool Hope University College
Liverpool, The Institute for Performing Arts
Liverpool John Moores University
Liverpool, University of
London Business School
London Metropolitan University
London School of Economics and Political
Science
London School of Hygiene and Tropical
Medicine
London South Bank University
London, University College
London, University of
Loughborough University
Manchester Metropolitan University, The
Manchester, The University of
Middlesex University
Newcastle, The University of
Newman University College
Northampton, The University of
Northumbria at Newcastle, University of
Norwich School of Art and Design
Nottingham Trent University, The
Nottingham, University of

Open University, The
 Oxford Brookes University
 Oxford, University of (and constituent colleges)
 Plymouth St Mark and St John, University College
 Plymouth, University of
 Portsmouth, University of
 Queen Mary, University of London
 Ravensbourne College of Design and
 Communication
 Reading, University of
 Roehampton University
 Rose Bruford College
 Royal Academy of Music
 Royal Agricultural College
 Royal College of Art
 Royal College of Music
 Royal College of Nursing Institute
 Royal Holloway, University of London
 Royal Northern College of Music
 Royal Veterinary College, The
 Salford, The University of
 School of Oriental and African Studies
 School of Pharmacy
 Sheffield Hallam University
 Sheffield, The University of
 Southampton Solent University
 Southampton, University of
 St George's Hospital Medical School
 St Mary's College
 Staffordshire University
 Sunderland, University of
 Surrey, University of
 Sussex, University of
 Teesside, University of
 Thames Valley University
 Trinity Laban
 Warwick, University of
 West of England, Bristol, University of the
 Westminster, University of
 Winchester, The University of
 Wolverhampton, The University of
 Worcester, University of
 Writtle College
 York St John College
 York, University of

Wales

Aberystwyth University
 Bangor University
 Cardiff University
 Glamorgan, University of
 North East Wales Institute of Higher Education
 Open University, Wales
 Royal Welsh College of Music and Drama
 Swansea Metropolitan University
 Swansea University
 Trinity College Carmarthen
 Wales Institute Cardiff, University of
 Wales Newport, University of
 Wales, Lampeter, University of
 Wales, University of

This business plan provides a plan for the fourth year of operating the statutory scheme. The relevant period is 1 January to 31 December 2008.

Our main objectives for the year will be:

1. To continue to resolve student complaints as efficiently as possible, consistent with our statutory duties
2. To implement the restructuring of the Office following the appointment of the new independent adjudicator, replacing Baroness Deech who retires in April 2008.
3. To work with higher education institutions (“HEIs”) and student organisations in developing good practice about complaints and appeals and in improving our service delivery

The key assumptions of the plan are:

- Workload arising from complaints will increase by 20%
- A contingency fund to cover litigation costs of up to £200,000 is established
- Service level targets will remain unchanged
- Individual institutional subscriptions increase by 36%
- The number of participating institutions will remain the same
- The OIA will remain at its current premises

Complaints handling

We have assumed an increase in student complaints for 2008 of 20%, which means that new complaints in 2008 are likely to be in the region of 650 - 700. This forecast is based on the significant growth in complaints we are currently experiencing (30% increase in applications this year) although, of course, six monthly provisional figures can only be a very rough guide to what may happen next year.

We expect the impact of increased tuition fees in England, changes in equality legislation and practice and the growing awareness of the scheme generally will mean that the number of complaints will not plateau yet. However, a better understanding of the scheme by its users through good practice recommendations should have the effect of slowing down the increase.

Our service level targets for 2008 will remain unchanged, that is:

- 90% of enquiries to be sent an initial response within 5 working days
- Average time to process Scheme Application Forms (i.e. eligibility determined) to be within 25 working days
- Average time to resolve complaints to be within 6 months

Re-organisation

The most significant changes in 2008 will be the assumption of office by the new full time independent adjudicator and a senior operating officer to assume the major administrative functions. Additionally it is likely that a certain amount of other restructuring within the office will be necessary. This will involve changes to the OIA's constitution.

Other staffing

We expect to increase our other staff numbers by around 10% in 2008. This increase is one half of the projected increase in growth in the number of complaints. The Office will continue to outsource its IT, accounting and payroll requirements.

Costs and Efficiency

We have now reached the stage in our development where economies of scale and better understanding of our processes by our users should lead to efficiency gains. Furthermore, flexibility in the way we are able to deal with complaints (arising from changes in our Rules in 2006) should enable us to process complaints more quickly. However, in contrast to these pluses we also face an increasing number of attempts by students to involve the OIA in litigation and we are finding that on too many occasions HEIs are requesting an extension of time, or are late in providing information. So it would be unrealistic to reduce our target time for dealing with complaints in 2008 to less than an average of 6 months.

All our casehandling staff work to performance targets. Currently, assuming that casehandling constitutes about 75% of our work, our unit cost per adjudication is in the region of £2000 - £2500. As we have said before we consider this compares very favourably with the cost of litigation or arbitration. Unfortunately in the short term this figure is likely to increase as some important legal issues about the scheme are brought before the courts. For a scheme of our size litigation costs form a disproportionate part of our total budget.

The Office has always paid attention to the way similar schemes work, particularly as to performance and cost issues. In this regard information provided through our membership of the British and Irish Ombudsman Association is invaluable. But a direct comparison with other schemes is very difficult because each scheme has its own criteria and imperatives. Nevertheless in 2008 the OIA will seek to be more transparent about its performance and achievements.

Higher Education Advisory Panel

In 2008 we intend to establish an external panel of up to four specialists in higher education practice. There are two objectives:

First, our adjudicators will be able to consult with the members of the panel on difficult or "high impact" issues relating to our work on an ad hoc basis. However, we will not have any obligation to consult the panel and, of course, the final decision will be ours alone.

Second, the Office will have the benefit of a formal six monthly briefing on higher education matters by the panel.

We are currently refining the arrangements for the panel. We anticipate consulting the sector on the appointment of panel members.

This development should enable the OIA to benefit from a wide range of experience across the sector

Other activities

The Office will continue to provide guidance to students and higher education institutions about the scheme and to disseminate examples of good practice about complaints handling. To date all our workshops have been fully subscribed, and further workshops and seminars are planned.

In April 2008 the OIA will be hosting the annual European Network of Ombudsmen in Higher Education conference in London under the caption “Universities, students and justice”. The conference is aimed at all those who are involved in handling students’ concerns and complaints.

The OIA is currently an associate member of the British and Irish Ombudsman Association. Ombudsman-type schemes that meet BIOA’s criteria for recognition may apply for full membership. The Board has agreed in principle to pursue this aim and the necessary arrangements are currently being explored

NQIs

Our enabling legislation (The Higher Education Act 2004) permits non-qualifying higher education institutions to subscribe to the OIA scheme. So far we have received a handful of applications. The Board has taken the view that the scheme needed to have more experience before admitting such institutions. This approach will come up for review by the Board in 2008.

Operations

Our proprietary IT applications should continue to meet our requirements in 2008 although, inevitably, we will need to increase the number of networked seats we operate.

Premises

We have assumed that for 2008 our existing premises will cope with our requirements. However, the lease for part of our premises will expire at the end of 2009 with no guarantee of renewal, so we will need to regularly review the options available to us for alternative office space.

Communications

We are currently reviewing how we communicate with the sector. Early in 2008 we aim to have in place a more transparent communications strategy which will include better contact with our stakeholders and users. Not only do we want to be sure that our users understand our policies and practices but we also value their feedback on our service delivery.

Some HEIs have systemic complaint handling issues while a few still do not seem to fully understand our Rules. We intend to start a programme of visits to these institutions to provide guidance and assistance as well as visits on a more random basis.

We also intend to upgrade the service provided by our helpdesk facility. We consider it is vital to manage student expectations by explaining clearly what we can do and what we cannot do for them.

Our web site provides a great deal of information about the history and work of the OIA, including a selection of case studies. In 2007 we established pages especially for students. In 2008 we will offer a similar service to HEIs.

Strategic risks

The audit committee will continue to investigate and monitor strategic risks affecting the Office. A risk register, health and safety policy and a disaster recovery plan have now been approved by the Board. In 2008 the committee will particularly focus on equality issues.

Corporate governance

The role of the Board includes the safeguarding of the independence of the Scheme, ensuring that it is appropriately funded and monitoring the performance of the Scheme. In this regard the Board will continue to be supported by the audit, finance, remuneration, rules and nomination committees.

A priority for the Board in 2008 will be the amendment of the OIA's Articles of Association in line with its restructuring plans.

Subscriptions

We are forecasting that total subscriptions for 2008 will need to increase by slightly more than last year, that is, 36% per institution (although a few institutions will need to pay more as a result of moving to a higher subscription band). If it had not been for the need to establish a contingency fund for litigation costs the increase would have been significantly less than this. Currently there are no plans to introduce case fees, although this is a topic which the Board regularly reviews

The Budget

The main differences in the budget compared with the 2007 budget relate to staffing costs and the establishment of the contingency fund for litigation costs. The increase in staffing costs over 2007 (including salary increases), other than those relating to reorganisation, is approximately 13%.

Michael Reddy
Deputy Adjudicator & Chief Executive

September 2007

Office of the Independent Adjudicator for Higher Education 2008 Budget

	Qtr 1 2008	Qtr 2 2008	Qtr 3 2008	Qtr 4 2008	2008 Budget
	£	£	£	£	£
Staff salaries/on costs	200,000	210,000	225,000	235,000	870,000
Re-structuring costs	25,000	25,000	25,000	25,000	100,000
Consultants/other staff costs	27,872	27,872	27,873	27,873	111,490
Rent/rates/service charges *	43,750	43,750	43,750	43,750	175,000
Professional fees	17,500	17,500	17,500	17,500	70,000
Office supplies	16,250	16,250	16,250	16,250	65,000
Telephone/postage/web/IT	12,500	12,500	12,500	12,500	50,000
Training	4,500	4,500	4,500	4,500	18,000
Misc.	15,000	15,000	15,000	15,000	60,000
Bd of Directors	4,250	4,250	4,250	4,250	17,000
Contingencies **	62,500	62,500	62,500	62,500	250,000
Depreciation	11,750	11,750	11,750	11,750	47,000
Total expenditure	440,872	450,872	465,873	475,873	1,833,490
Subscriptions					1,794,127
Deferred capital grant					7,363
Misc. Income					12,000
Net bank interest					20,000
Total income					1,833,490

* rent based on actual payments due

** includes £200,000 for litigation contingency fund

September 2007

Annex 3

OIA RULES & SUBSCRIPTION RATES



As our Rules did not change in 2007 they are not repeated here. They can be found on the OIA website (www.oiahe.org.uk) or in the Annual Report for 2006.

OIA Subscriptions for 2007

Figures based on full time and part time higher education and further education students at higher education institutions, according to 2004/5 HESA statistics

	Band	Fee
Less than 500 students	A	£290
501 to 1,500 students	B	£585
1,501 to 6,000 students	C	£3,145
6,001 to 12,000 students	D	£6,245
12,001 to 20,000 students	E	£10,380
20,001 to 30,000 students	F	£15,695
30,001 to 50,000 students	G	£18,650
50,001 to 100,000 students	H	£22,950
More than 100,000 students	I	£35,265

1) Number of staff (including part-time staff/consultants)

28 (20.50 FTE)

2) Total number of universities subscribing to scheme (year end) (excluding Cambridge and Oxford Colleges)

145 (146)

3) Number of Student Enquiries by type

Academic status	544
Admissions	16
Contract	90
Disciplinary matters	53
Discrimination & human rights	68
Financial	65
Information about Scheme	432
Other	51
Plagiarism & Cheating	36
Welfare	19
Total	1374
<i>(Total for 2006)</i>	<i>897</i>

4) Scheme Application Forms Received

Outcome:

Eligible	505
Settled/withdrawn	24
Eligibility being reviewed	87
Not eligible	118
Total	734
<i>(Total for 2006)</i>	<i>(586)</i>

Number of Applications open over 6 months at end of period

3

5) Complaints received by category

Total	600
<i>(Total for 2006)</i>	<i>465</i>

By type*:

Academic status	388
Contract	58
Disciplinary matters	42
Discrimination & human rights	33
Financial	29
Plagiarism & Cheating	26
Other	8
Welfare	5

By gender:

Female	280
Male	320

By age:

Under 25	194
25 - 39	249
40 and over	138
Not known	19

By student status:

Further Education	0
Other	14
Postgraduate	216
(Taught)	(179)
(Research)	(37)
Undergraduate	368
Franchised/Validated	2

By nationality: (over 2%)

British	395
Pakistani	16
Indian	15
Chinese	14
Nigerian	14
Irish	13

By financial status:

Home	440
EU	28
Non-EU	122
Not Known	10

6) *Complaints by performance*

Number of Complaints received	600
Number of Complaints closed	639
Work in Progress	218
Average no. of days to close complaint in period after admission to Scheme	171
Number of Complaints open after 12 months from admission at end of period	6

7) *Complaints by outcome*

Justified/Partly justified	168
Not justified	413
Settled	48
Withdrawn	10
Total compensation	£172,769
<i>(Total for 2006)</i>	<i>£32,527</i>

8) *Justified complaints by type*

Academic status	66
Contract	43
Disciplinary matters	19
Financial	15
Discrimination & human rights	11
Other	7
Welfare	5
Plagiarism & cheating	2

NB. Student "Enquiries" may or may not involve a complaint. "Applications" are enquiries for which we have received a scheme application form. "Complaints" are applications we consider on the face of it come within our jurisdiction

Figures in brackets are for 2006, where appropriate.

*Many complaints can be classified under more than one category. Generally we apply the category which we consider to be the most relevant to the key head of complaint.

The Independent Adjudicator

Baroness Deech - DBE, MA, Hon LL.D

Deputy Adjudicator & Chief Executive Officer

Michael Reddy - LL.B, LL.M, MBA, accredited mediator, barrister (non-practising)

Senior Assistant Adjudicator

Susanna Reece - BA, MSc, solicitor (non-practising)

Senior Reviewer

Felicity Mitchell - BA, barrister

Adjudication staff

Alex Blacknell – LL.B, solicitor (non-practising)

Isobel Brown (Liaison Manager) – BSc, MA, PGCE

Katie Carter – BMus, DMS

Fiona Draper – LL.B, solicitor (non-practising)

Tony Drew – BSc, CQSW, APCIP

Siobhan Hohls – BSoc Sci, LL.B, Attorney admitted under the High Court Rules of South Africa
(non-practising)

Craig Knowles – BA, LL.B, Barrister and Solicitor of the High Court of New Zealand
(non-practising)

Anne Lee – LL.B, solicitor (non-practising)

Jo Nuckley – BA, MPhil

Sarah Payne – BA, MBA, solicitor (non-practising)

Helena Pell – BSc, solicitor

Chris Pinnell – BA

Kay Shepherd – BA, solicitor (non-practising)

Niamh Sherwood – BCL, solicitor (non-practising)

Helen Walton – ATCL, BA, LL.B, Barrister and Solicitor of the High Court of New Zealand
(non-practising)

Patricia Witts – LL.B, PhD, solicitor (non-practising)

Victoria Woollen – BA, PG Dip. in Social Security law, solicitor (non-practising)

Administration Staff

Teresa Broad

Cheryl Emerton (Administration Officer)

Cheryl Goswell

Sandra Reader

Dominic Taylor – BSc

Deborah Thompson – BA

Charlotte Wootton (Liaison Officer) – BA

March 2008

