



**Memorandum of Understanding
between
Office of the Independent Adjudicator (OIA)
and
Office for Qualifications and Examination Regulation (Ofqual)**

Introduction

1. This Agreement sets out a framework for effective liaison and communications by which the Office of the Independent Adjudicator (OIA) and the Office of Qualifications and Examination Regulation (Ofqual) (together 'the parties' and each respectively 'a party') will work together and share information in order to meet their respective responsibilities in the higher education sector.
2. The aims of this Agreement include:
 - a. Effective working, information sharing and communication to assist both parties in the public interest
 - b. To provide a framework for effective working communication between the two organisations
3. The OIA and Ofqual recognise and respect their differing duties, operational priorities and constraints, independence of remits and confidentiality requirements. However, where the law permits and in the public interest they commit themselves to professional co-operation.

Legal status and effect

4. Nothing in this Agreement shall, or is intended to create any rights, liabilities or obligations which would have a binding effect in law. Nevertheless, the parties are genuinely committed to pursuing the aims and purposes of this Agreement in good faith, and intend to act in accordance with its terms on a voluntary basis.

Roles and responsibilities

Ofqual

5. Ofqual is a non-ministerial government department. It is independent of ministers and reports directly to Parliament. Ofqual has a number of statutory objectives, including:

- to secure that regulated qualifications:
 - (a) give a reliable indication of knowledge, skills and understanding; and
 - (b) indicate a consistent level of attainment (including over time) between comparable regulated qualifications;
- to promote the development and implementation of regulated assessment arrangements which:
 - (a) give a reliable indication of achievement, and
 - (b) indicate a consistent level of attainment (including over time) between comparable assessments;
- to promote public confidence in, and awareness of, regulated qualifications; and
- to secure the efficiency of regulated qualifications.

6. Ofqual has a range of statutory powers to enable it to fulfil its objectives and discharge its functions.

7. In performing its role, Ofqual must act in a way which is compatible with its objectives, and which is considered to be most appropriate for the purpose of meeting its objectives.

8. Ofqual establishes and maintains a register of regulated qualifications. It has prepared and published a framework that includes initial and ongoing conditions of recognition that regulated Awarding Organisations (AO) must comply with.

9. As such, Ofqual regulates those AOs that award regulated Higher Education qualifications.

The OIA

10. The OIA is a company limited by guarantee and is governed by its memorandum and articles of association. It is also a registered charity. The OIA Scheme was designated under the Higher Education Act 2004 which established an independent scheme to adjudicate on student complaints against universities in England and Wales, without charge to complainants.

11. The OIA became designated operator of the student complaints scheme in January 2005. The OIA's remit was extended by the Consumer Rights Act 2015 and was further extended by Higher Education and Research Act 2017.

12. Governing bodies of "qualifying institutions" are required to comply with the Scheme rules. "Non-qualifying institutions" may apply to join the Scheme. The OIA has the duties of the Designated Operator under the 2004 Act to publish the Scheme and supply relevant information to the appropriate UK and Welsh Assembly Government Ministers.

13. Under the Scheme, which is funded by annual member subscriptions based on student numbers, together with a smaller 'case-related element', the OIA has a wide remit to consider complaints about an 'act or omission' by a member provider, brought by a student or former student. The OIA will not interfere with matters of academic judgment, nor does the OIA consider complaints about admissions, employment-related issues or matters that have been, or are being, considered by a court. Generally, a complainant must have first exhausted the member provider's internal processes before bringing a complaint to the OIA.

Information shared

14. Where it is lawful and in the public interest to do so, the parties agree to disclose information to the other where their roles and independent functions inter-relate and where it is appropriate to share information and contribute to the respective work of the other organisation.

15. The Parties shall wherever possible share anonymised and/or aggregated data. Personal data should only be shared for a specific lawful purpose and where one or more lawful bases for processing have been identified.

16. Where staff of either party are given access to the shared data, this should be on a need-to-know basis and unrestricted access is prohibited. Staff should be trained and fully aware of their responsibilities under this Agreement as well as maintaining the security and confidentiality of the shared data.

17. At all times operating within the requirements of the Data Protection Act 2018 and UK General Data Protection Regulation and/or any other relevant data protection legislation, the nature of information shared under this Agreement may include, although is not limited to:

- a. Referral of complaints received by either organisation that may partially or exclusively fall within the remit of the other organisation. In such cases, the referring organisation shall consider the appropriate lawful basis and shall where relevant and appropriate obtain valid consent to sharing any personal data;
- b. Ongoing communication about a complaint that falls within the remit of each party where it is necessary to share information to assist the other party to perform its functions;
- c. Summary information that Ofqual has which may assist the OIA in undertaking a review of complaints by individual students or groups of students;
- d. Summary information that Ofqual has about systemic issues which may assist the OIA in undertaking a review of complaints;
- e. Summary of information gathered through the OIA scheme which identifies broad themes and concerns about quality and standards of providers who deliver and/or award Ofqual regulated qualifications and who are OIA members in England or Wales;
- f. Information that the OIA has, including information obtained through complaints referred to the OIA, that may have implications for or assist Ofqual in exercising its functions;
- g. The OIA and Ofqual will inform each other where there are significant developments or announcements which may impact the other organisation's work.

Information Received

Use of information received

18. The recipient of information received from the other party will use the information only for proper purposes, such as regulatory, disciplinary, contractual or other legal investigations or proceedings. Proper purposes shall include activities carried out to fulfil Ofqual and the OIA's core functions, as described above. Proper purposes may also include further lawful disclosure of the information such as to persons under investigation, witnesses, legal advisers, other regulators, professional bodies, prosecuting bodies, and law enforcement agencies including the police, HM Revenue and Customs, the Serious Organised Crime Agency (or any body that in future carries out the functions of such bodies).

19. The parties agree to liaise or co-operate where appropriate to avoid action that prejudices or may prejudice an investigation by another party or person.

Confidentiality of information received

20. Information provided by each party may be confidential. Each party will observe confidentiality as required in relation to shared information which is not in the public domain. Information must not be disclosed by the receiving party to any third party without the agreement of the originating party.

21. The confidentiality of the information shared is subject to any overriding legal obligations on the parties to disclose information. Where one party is obliged to disclose information to a third party, it will inform the originating party as soon as is practically possible.

Security, Retention and Assurance

22. Each party will take appropriate technical and organisational measures to ensure the security of the information received. Access to information shared will only be granted to those who have a genuine business need.

23. The parties agree to:

- a. report any breach of confidentiality or incident involving a risk or breach of security including data losses or wrongful disclosure to the Single Points Of Contact (SPOC).
- b. only hold shared information while there is a business need to keep it;
- c. securely destroy shared information in line with applicable guidelines and retention periods;
- d. provide assurance that they have complied with these principles, upon request.

General Data Protection Regulation (UK GDPR), the Data Protection Act 2018 (DPA), Human Rights Act 1998 (HRA) and common law

24. Both parties undertake to comply with the requirements of the UK GDPR and the DPA and any relevant codes of conduct or certifications alongside the HRA and common law principles of confidentiality and privacy in the operation of this agreement.

25. Where a situation arises for the sharing of personal data the parties will consider this on a case-by-case basis, with considerations and decisions being documented.

26. Where appropriate, the parties shall consider carrying out a data protection impact assessment and dependent on the findings, a separate data sharing agreement may be necessary.

27. To the extent that personal information is processed, privacy notices shall be held by the data controllers responsible for the processing and will be made available to data subjects.

Freedom of Information (Fol) Act 2000

28. Ofqual is subject to the Freedom of Information Act 2000 (FOI). Openness is one of the OIA's Core Values. If a request for information is received in relation to the other party's information including any request made under FOI, then the receiving party will inform the other party and invite representations on the potential impact of disclosure. Nothing in this agreement shall restrict compliance with FOI.

Practical exchange of information

29. The SPOC for the OIA is the Head of Public Policy. The SPOC for Ofqual is the Head of Complaints.

30. This Agreement recognises that some circumstances will require special handling and nothing prevents the organisations from making exceptional arrangements to meet specific or urgent needs in relation to a particular case or cases.

Resolving issues

31. Issues and problems that arise between the two will be resolved through discussion by the SPOCs, with escalation to more senior managers where necessary.

Reporting and review arrangements

32. This Agreement will remain in force until terminated by either party. Either party can terminate this Agreement by giving the other party no less than three months' notice, in writing. In such cases the Agreement will terminate on the last day of the full month that is three months after the written notice being served.

33. Either party may propose amendments to this Agreement at any time but to become effective an amendment requires agreement of the other party. Any changes to this Agreement will be agreed in writing. Amendments will come into effect on a date to be agreed by all parties.

34. The parties will use their best endeavours to review its operation annually.

35. This agreement will cease to have effect if either party is wound up and will not bind any successor bodies unless transfer is agreed and the agreement reissued under the name of the successor.

Liaison

36. There will be regular meetings between the officers of both parties and in addition, there may be regular informal contact at operational level.

Transparency

37. This Agreement is a public document and the parties may publish it as they separately see fit.

Signatories



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Charlotte Corrish, Head of Public Policy, for the OIA

Date: 14 September 2023



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Karen Smith, Head of Complaints, for Ofqual

Date: 14 September 2023