

# OIA Scheme Rules - April 2018

## Consultation Response

The [consultation on the OIA's Revised Rules](#) was launched on 26 January and closed on 28 February 2018. We needed to change the OIA Scheme Rules because of provisions in the Higher Education and Research Act 2017 (HERA 2017) which came into force in Spring 2018 and which result in changes to our membership. We also took the opportunity to adapt the tone and style of the Rules to ensure that they are clearer and more accessible, and that they effectively communicate our purpose and review processes. We allowed five weeks for the consultation, a relatively tight timeframe because [the new Rules](#) needed to be ready to take effect from 1 April 2018 when the relevant sections of HERA come into effect.

We received a total of 66 responses to the consultation. We are very grateful for the considered and constructive comments that respondents made.

The majority of responses were positive about the changes and found the new draft Rules to be clear. This note responds to the main themes arising from the responses.

### SECTION 1

## Changes resulting from the Higher Education and Research Act 2017

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### Higher education providers and 'qualifying institutions'

The new Rules set out that:

- Where we refer to higher education providers, we mean those providers which are members of the OIA Scheme (**introduction to the new Rules**).
- A higher education provider becomes a member of the OIA automatically if it is a "qualifying institution" (**new Rule 3.1**).
- Any body providing higher education which is not a "qualifying institution" may apply to become a member of the OIA (**new Rule 3.3**).
- We cannot review a complaint unless the higher education provider is a member when we receive the student's Complaint Form (**new Rule 5.5**).

Many of the responses commented on these Rules and asked for further guidance on what these Rules would mean in practice. Some respondents were particularly concerned that without clear guidance, students might incorrectly believe they could not complain or alternatively, they might make an ineligible complaint which could have financial implications for the provider. These comments were very useful to us in preparing the [Guidance note on the OIA's Rules](#) and in particular, in developing guidance for the terms "higher education provider", "higher education course" and "qualifying institution".

### Complaints that arise when a higher education provider is not a qualifying institution

We have amended new **Rule 5.4** which now says "We cannot review a complaint about a higher education provider if it was not a member when the events complained about arose." This means that we will not consider events that were part of a series of events which started before and continued after the higher education provider became a member of the OIA. This is because of the wording of HERA. Our [Guidance note on the OIA's Rules](#) explains that we will not look at complaints which arose before the higher education provider became a qualifying institution, and member of the OIA. Sometimes a student's complaint relates to events which occurred before

and continued after the higher education provider became a member. In those cases, the events which occurred before the provider became a member are likely to be relevant background which we will take into account when considering the complaint about events which occurred after membership began.

### Who can complain to the OIA?

Respondents welcomed the clarity on what we mean by the term 'student' and in particular, that this term includes 'trainees' and 'apprentices' (**new Rule 2.3**). As requested by some of the responses to the consultation, we have included further guidance on what 'trainees' and 'apprentices' can complain about and how new **Rule 5.3** which says "*We cannot review a complaint about a student employment matter*" may apply to complaints from these students.

Many of the responses expressed concern that **new Rules 2.1 and 5.9** mean we cannot accept a complaint after a student has died. This is not a new rule. The Higher Education Act 2004 says that the complaint must be "*made by a person... as a student or former student*". That means that the student themselves must make the complaint to us. If a student has not made a complaint to us before they died, it is not their complaint but their representative's complaint.

## SECTION 2

### Changes to improve the clarity of the Rules and the Scheme processes

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The type and range of complaints we can review has not changed but we have changed the structure of the Rules to set out complaints we can review (**new Rule 4**), complaints we cannot review (**new Rule 5**) and complaints we may decide not to review (**new Rule 6**). We have tried to explain more clearly and simply that "*A student or former student can complain to us about anything their higher education provider has done or failed to do*" (**new Rule 4.1**) unless it is a complaint about one of the issues covered by **new Rule 5**. It is still the case that we cannot consider complaints about academic judgment (**new Rule 5.2**).

#### Complaints about admission and complaints from former students

Many of the responses raised concerns about new **Rule 5.1** which says "*We cannot review a complaint about an application for admission to a higher education provider unless the person complaining is a former student of that higher education provider who is applying for re-admission, and the complaint is directly connected to their time as a student.*" We have always been able to consider complaints from former students and will still not review complaints about admission. However, we have tried to make the Rules clearer following a recent Judicial Review decision. In that case the Court upheld the claimant's claim that we ought to consider her complaint about a higher education provider's decision not to permit her to restart her medical studies because she had previously studied medicine at the same provider. We had decided that her complaint related to an admissions issue and was not eligible for review under our Rules. The Court decided that, since the claimant was a former student of the higher education provider, and there was a sufficient connection between her complaint and her time as a student, hers was a "qualifying complaint" which the OIA had to review.

#### Timeframes

Respondents welcomed the introduction of clear and transparent timeframes for the student and higher education provider to comment on any proposed Recommendations (**new Rule 14.5**) and to make a request to reopen a Review (**new Rule 15.3**).

There were mixed views on the removal of **Rule 4.7** which said that we might not accept a complaint where the substantive events took place more than three years before we received a Complaint Form if we considered that accepting the complaint would seriously impair the effective operation of the Scheme. Although the Rules no longer specify a timeframe, under new **Rule 6.3** "*We may decide not to review a complaint if we decide that to do so would seriously damage our ability to run our processes effectively*". As requested, we have provided some examples of when we might use this Rule in our [Guidance note on the OIA's Rules](#).

Some of the consultation responses suggested that losing Rule 4.7 might mean we take a different approach to historic or "out of time" complaints. Our approach to such complaints has not changed. [The Guidance Note](#)

[regarding Completion of Procedures Letters](#) explains that a higher education provider should issue a Completion of Procedures Letter when a student makes or attempts to escalate a complaint or appeal outside the provider's time limits. The Letter should explain why the complaint or appeal is out of time and refer to the relevant regulations. If the student then complains to us, our review would normally be restricted to considering whether the provider's decision to reject the matter as out of time is reasonable and in accordance with its procedures.

### **The OIA review and recommendations**

In response to comments made during the consultation, the [Guidance note on the OIA's Rules](#) includes a link to the [process](#) that is followed where the Independent Adjudicator decides that the higher education provider has not complied with our Recommendations (**new Rule 14.10**).