



office of the
independent
adjudicator

'for students in higher education'



OIA

Annual Report 2011

www.oiahe.org.uk

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"I don't have the words to express my happiness and my gratitude for all your help and support. Thanks to your hard work I finally have some justice."

Introduction by the Chair



Ram Gidoomal

2011 was another momentous year for the OIA. The publication of the Government's Higher Education White Paper¹ confirmed the OIA's continued independence. It also asked the OIA to conduct a significant consultation exercise with the sector to examine ideas for the early resolution of cases and good practice in complaints-handling. The OIA responded to this challenge in the form of the *Pathway 3 consultation*² undertaken at the end of 2011. This consultation also provided an opportunity to review the OIA funding system to ensure it is fit for purpose in the context of the changing Higher Education landscape.

While the prospects for legislative change to support reform are unclear, the OIA remains committed to playing a full and constructive part in helping to shape the new regulatory framework. At the same time the Office continues to adapt processes and structures to deal with the ever-rising number of cases brought by complainants. There have been notable successes this year in dealing with cases more efficiently both early in the OIA process and where they have become 'aged'. The Board and the Office are acutely aware that further and continuing changes will be needed in response to increasing volumes.

I want to take this opportunity to thank both the staff and the Board of the OIA for their unstinting professionalism, hard work and resilience throughout the year. In particular I want to record my gratitude for the outstanding contribution of two colleagues who have retired from the Board recently – Margaret Doyle and Pauline Aldous. Both gave distinguished service to the OIA through challenging times.

In April 2011 the Office of the Independent Adjudicator was registered as a Charity. We have since successfully fulfilled the audit requirements for both a Registered Charity and a Limited Company. We view this as an important step in the continuing development of the organisation.

The OIA was pleased that the Executive Committee of the British and Irish Ombudsman Association (BIOA) unanimously approved the OIA's application for full Ombudsman Membership at its meeting on 7 December 2011. Until that date, the OIA had been a 'Complaint Handler Member'. The upgrade in membership status constitutes peer endorsement, following application and scrutiny, of the OIA's independence in relation to universities, and its effectiveness, fairness and public accountability. This is a welcome development.

Finally, I am delighted to report that, following a change to the OIA Articles of Association, Rob Behrens agreed to the extension of his second term as Independent Adjudicator and Chief Executive of the OIA until April 2016.

Ram Gidoomal CBE

Chair of the Board of Trustees/Directors

¹ Department for Business, Innovation & Skills, *Higher Education: Students at the Heart of the System* (BIS, June 2011)

² *Pathway 3 – Towards early resolution and more effective complaints-handling* (OIA, October 2011)



The Independent Adjudicator's Review of the Year



Rob Behrens

Introduction

The strategic aim of the OIA is to be a major force for positive change in Higher Education in England and Wales through the quality of our adjudication, advice and guidance. We are committed to feeding back to universities the lessons of good practice so that the student experience is enhanced. We are also committed to helping develop and contributing to the regulatory framework for the sector.

2011 was a year of challenge and change for the OIA, as for all institutions associated with Higher Education. The OIA continued to respond to year-on-year increases in student complaints received, and adjudicated on and closed more cases in-year than ever before.

At the same time – and with limited resources – the OIA could not lose sight of the policy debate arising from the Government's Higher Education reform programme. We played a full part in this policy debate in search of an enabling regulatory framework and an enhanced student experience. We continued our opposition to the ill-thought-through regulatory proposals set out in Lord Browne's review of Higher Education funding and student finance;³ gave evidence to the House of Commons Business, Innovation and Skills Select Committee; responded to the Higher Education White Paper⁴ and Technical Consultation⁵ and, at the request of the Government in the White Paper, launched a further consultation with the sector in the form of *Pathway 3 – Towards early resolution and more effective complaints-handling*.

By the end of the year the jeopardy to the independence of complaints adjudication had diminished considerably, though there was still lack of clarity about how the revised regulatory arrangements for Higher Education were to be developed.

Complaints reviewed and closed

In 2011, the OIA reviewed and closed more cases than at any time in its history, a 75 per cent increase on 2010. Given the rising volumes of complaints received, we will need to continue and build on this improved record of closure to ensure that each complainant has access to adjudication at the earliest possible opportunity.

Complaints received at the OIA continued to increase in 2011. We received more than 2,000 enquiries and 1,605 complaints. This constituted a growth of 20 per cent on the

³ *Securing a Sustainable Future for Higher Education: An Independent Review of Higher Education Funding & Student Finance*, October 2010

⁴ *Department for Business, Innovation & Skills, Higher Education: Students at the Heart of the System* (BIS, June 2011)

⁵ *Department for Business, Innovation & Skills, A New, Fit-for-purpose Regulatory Framework for the Higher Education Sector, Technical Consultation* (BIS, August 2011)

record year of 2010. There has been around a 200 per cent increase in complaints received by the OIA since the year of the Scheme's formal inception in 2005.

What is significant about these increases is that they have taken place in advance of the doubling and trebling of tuition fees scheduled (in England) for autumn 2012. A central continuing challenge for the OIA is to refine its decision-making processes and scale up its operational capacity to meet the significant annual rises in complaints received and the further rises to come in the wake of increased tuition fees.

The OIA closed 1,443 cases in 2011. This constitutes a 75 per cent increase in closures compared to 2010 and a reduction in unit costs of around 35 per cent. These are significant efficiency gains but are still not enough given the trend in rising complaints.


5 per cent of cases were Justified in 2011 (6 per cent in 2010) and 11 per cent Partly Justified (14 per cent in 2010), with 56 per cent Not Justified (53 per cent in 2010) and 18 per cent Not Eligible (18 per cent in 2010). 11 per cent of cases were settled (involving the university and complainant reaching agreement about corrective action) or resolved other than by Formal Decision in 2011, compared to 9 per cent in 2010. As the percentage of settlements rises in the context of developing the OIA's decision processes, I would expect to see the number of Justified and Partly Justified cases decrease somewhat over time. Happily, and in contrast to 2010, there are no issues of university non-compliance in 2011 to report.

Emerging Issues

As Lord Woolf's landmark Inquiry Report⁶ into the LSE's links with Libya set out, a key challenge for all universities is to remove wherever possible the ambiguities associated with permissible assistance for postgraduate study. Separately, but related, plagiarism continues to be a challenge to the integrity of university education. The percentage of cases referred to the OIA relating to plagiarism has doubled since 2008.

Permissible Assistance

Some of the more complex cases arriving at the OIA in 2011 concerned supervision of postgraduate theses, the role of supervisors, and what constitutes permissible assistance to a student. I was pleased to give evidence on general policy relating to some of these issues to Lord Woolf's Inquiry into the LSE's relations with Libya. The publication of Lord Woolf's Inquiry Report highlights key challenges for all universities. Lord Woolf noted that permissible assistance for postgraduate study is a central ambiguity which has to be addressed: "However difficult to express, there are different parameters of permissible assistance, and these should not remain unwritten."⁷ These ambiguities include: assistance with the submission of application for postgraduate study; extra tuition in a relevant subject beyond that provided by supervisors; research notes prepared by others on matters of relevance to the student's work; dictating text to an assistant; relying on an assistant to draft text and having a native English speaker correct the drafts of students for whom English is a second language.



"My sincere thank you for your genuine intervention in this so complicated matter. Without your help it would have been simply impossible to reach consensus, at any level."

⁶ *An inquiry into the LSE's links with Libya and lessons to be learned* (October 2011)

⁷ *Ibid* 2.106



Academic misconduct and plagiarism

Academic misconduct, including plagiarism, is a related challenge to the integrity of university education. From my working visits to a large number of universities, it appears to be a growing problem. Although only constituting a small total, the number of complaints categorised in this way has doubled in percentage terms since 2008. In the context of the ready availability of essays for purchase on the internet, this growth is unsurprising. Universities have done a good deal in the last three years to address definitional issues in regulations, to clarify where and to what standard the burden of proof lies and to focus on procedural fairness and the consistency and proportionality of penalties. Nevertheless, there is still a good deal to be done by a number of universities in setting out right at the beginning of programmes what is expected of students – both undergraduate and postgraduate – in terms of avoiding plagiarism and mastering technical competence in study skills. Removing ambiguity, clarifying guidance and enforcement of the rules of academic misconduct not only help to protect the reputation of universities, but as Lord Woolf pointed out, also protect the interests of the student.

University processes

Many universities contain provision for an initial consideration of an appeal or complaint to establish whether the student has *prima facie* grounds for appeal or complaint. The ordinary or common meaning of a *prima facie* case is a case which, on its face and without rebuttal, is sufficient to justify further examination. If a university's regulations provide for a *prima facie* consideration of whether the student has established grounds, then the person carrying out that consideration should restrict themselves to looking at the information provided by the student in support of the complaint or appeal. It is open to them to obtain further documents (e.g. procedures or transcripts) but as soon they ask for comments or seek representations to rebut what the student is saying, they overstep the mark. We saw a number of examples of this in 2011, and it is practice to be avoided. In such cases, we may continue to ask the university to reconsider the appeal or complaint.

Of course, it is sensible and proportionate to include some sort of sifting process for appeals and complaints so that only those demonstrating grounds proceed to a full consideration. Referring appeals and complaints back to the relevant department can also be productive: such a process can provide an opportunity for the department to reconsider the student's case and that might be to the student's advantage. However, the use of the phrase *prima facie* to describe such a process by the university can create ambiguity and may be misleading.

Developments in the OIA's case-handling processes

The significant increase in case closure rates in 2011 is a reflection of important changes in the OIA's decision-making processes originating in 2010. The clear direction of travel is the movement of the OIA from an organisation reliant on case closure through interrogatory, paper-based review to a more flexible adjudication service where early resolution and settlement of cases is explored rigorously and in advance of any necessary paper-based process.

During 2011 we piloted and (following a review process) then fully implemented a triage (initial assessment) process for all complaints received after 1 September 2011. The review also led to refinement of other aspects of our case-handling processes including developed internal guidance, a review of IT procedures and administrative support. All this means that an initial consideration of each case is now undertaken by a dedicated team of experienced case-handling staff to determine whether it can be reviewed by the OIA, how urgent the case is and how best the complaint should be handled. The possibility of negotiating a settlement is explored at this stage and the OIA has increased the number of cases resolved by a settlement in 2011. We have also used external mediators from a panel of mediators in a small number of cases to assist with settlements of this kind. The productivity gains of 2011 are currently being built upon by a further round of decision-making process reviews so that our capacity matches rising volumes of complaints.

Student experience and joined-up regulation

The OIA is four-square behind initiatives to develop and protect the student interest. We are clear this can be achieved in part through purposeful OIA activity and without detriment to the integrity of academic judgment.


The Government's Higher Education White Paper, published on 28 June 2011, confirmed the OIA's continuing independence – the bedrock of effective OIA operation. It also signalled the OIA's integration into the proposed Higher Education Regulatory Framework.

The OIA welcomed the intention to create a 'level playing field' across all institutions delivering Higher Education in relation to regulation by HEFCE and QAA and access to the OIA for student complainants. We further welcomed the proposal that the OIA should lead consultation with the sector to explore and promote early complaints resolution and the creation of more effective dissemination of good practice.

There was also explicit support for our determination to increase transparency by publishing summaries of decisions by name of university.

"We will protect the independence of the Office of the Independent Adjudicator (OIA) so students continue to have recourse to a formal independent mechanism for unresolved complaints." (Executive Summary Paragraph 12).

"We support the OIA's drive for increased transparency by publishing summaries of their decisions." 3.24



“We are therefore asking the OIA to consult the sector on future developments that will promote and deliver early resolution. These could include approaches that will minimise the number of complaints reaching the OIA, for example:

- Whether each higher education institution could provide access to a mediator, or campus ombudsman, to resolve complaints at an early stage. These could work with the OIA through regional networks;
- Whether higher education institutions should set time targets for resolution of cases and/or provide information to students on the average time taken for formal appeals and complaints; and
- Whether higher education institutions should adopt standards around the handling of complaints and keeping students updated on progress. This could be based on a best practice framework produced by OIA, who could then introduce a kite-marking scheme for university complaint processes.” 3.26

The OIA quickly developed and published the *Pathway 3 consultation*.

A Technical Consultation Paper was published in August 2011. In responding, the OIA endorsed the concept of a ‘level playing field’ in the regulation of institutions – and the consequent clarity that would be created about which institutions are ‘Qualifying Institutions’ under the OIA Scheme. However, we remained concerned about HEFCE’s new, proposed remit as the ‘student champion’ creating overlap and intervention in relation to ‘collective interest cases’. At the time of writing (end of April 2012), the prospect for the promised early legislative change to deliver the ‘level playing field’ looks diminished and so the ‘interim’ period with its attendant anomalies will be longer than anticipated. This needs to be managed constructively and in good faith.

Delivering a joined-up regulatory framework for Higher Education is not solely dependent on legislative change. There is a good deal that can be done by responsible, sovereign bodies working more collegiately. The creation of the Interim Regulatory Partnership Group (IRPG) is a good example of this endeavour.

The IRPG was established in 2011 to advise on and (where appropriate) oversee the transition to the new regulatory and funding systems for Higher Education. Led by HEFCE, its membership includes the OIA, the Student Loans Company (SLC), the Quality Assurance Agency (QAA), the Higher Education Statistics Agency (HESA), and the Office for Fair Access (OFFA). Other relevant bodies attend as observers, including UCAS, Universities UK (UUK), GuildHE and NUS. The IRPG has undertaken necessary work on mapping the current Higher Education sector and the related data landscape, and is looking at how these might change in the new era.

We have also had continued engagement with UUK, QAA, HEFCE and Ministers and officials in the relevant UK and Welsh Government Departments on a bilateral basis throughout the year as well as with professional regulators such as the Nursing and Midwifery Council.

Pathway Update

The Pathway Report

The OIA has now almost completed the implementation of the *Pathway Report*⁸ Recommendations. This has included the operationalisation of an updated and online OIA Complaint Form and a review of the OIA's literature (Recommendations 12 and 13). We have continued to develop the OIA website, with an online Tracker for complainants and universities going live at the end of 2011. We have also published *The OIA's Approach to Remedies and Redress* and completed a review of our remedies process (Recommendation 18). These initiatives help to make the OIA a more user-friendly service and have been well received.

The OIA published the review and recommendations of a report on policy and practice in relation to complaints from disabled students, commissioned from the eminent employment lawyer Sue Ashtiany (Recommendation 16). The publication of this report was delayed pending the Court of Appeal's Judgment in the case of Maxwell (see p10) and is available on our website. We are currently implementing these recommendations.

Our compliance monitoring has been strengthened following the appointment of a Compliance Manager (Recommendation 28). The OIA has disseminated guidance to the sector on this issue and I am pleased that there were no university non-compliance issues reported to the OIA Board in 2011.

Pathway 2

The OIA also concluded the *Pathway 2 consultation*,⁹ reviewing the Scheme's publication policy, the issue of an additional independent Board member and the extension of the Scheme to Further Education Colleges operating their own Foundation Degrees. The sector endorsed each of the proposals in these areas.

Following the consultation, at the end of 2011 the OIA published revised Rules and Guidance on the publication of case summaries by name of university. The new procedures apply to cases received from April 2012. In addition, the OIA will be publishing on its website an Annual Letter to each university detailing information on their complaints record. As a result of these developments, complaints-handling by the OIA becomes significantly more transparent.

There was widespread support received for proposals for an additional student member on the Board and Emily Collins was appointed under rules of fair and open competition in January 2012.

Following manifest support for the extension of the OIA Scheme to students studying Foundation Degrees in Further Education Colleges, we remain confident that this will be achieved in the near future. Our proposals for change here are in harmony with White Paper policy preferences.

⁸ *The Pathway Report – Consultation on the development of the OIA Scheme* (OIA, February 2010)

⁹ *Pathway Consultation: Second Round* (OIA, December 2010)



Pathway 3

Following the publication of the *Pathway 3 consultation* the OIA is currently analysing the results. Given the uncertainty around the Higher Education Bill, the OIA will be waiting for the Government's response to the Technical Consultation before publishing detailed outcomes of the consultation. However, the OIA is intending to publish its report in late summer 2012.

Judicial Review

There have been nearly 30 Judicial Reviews of the OIA's Formal Decisions since 2004. Judicial review is a type of court proceeding in which a judge can review the lawfulness of a decision made by the OIA. Judicial reviews are a challenge to the way in which a decision has been made, rather than the rights and wrongs of the conclusion reached.¹⁰ As such, Judicial Review is an important and authoritative external process for ensuring the accountability of the OIA's decision-making.

In one case in 2011, the Court of Appeal recognised that the informality and flexibility of the OIA's processes should be protected and that "judicialisation" of the process is not in the interests of students. In a second Court of Appeal case the Judge commented that it was not possible for a "fair-minded and informed observer" to say that there was "a real possibility that the OIA in general or its Independent Adjudicator or any individual case-handler was biased in favour of the HEI under scrutiny in any particular case or lacked independence in any way."

During 2011 we received six new Judicial Review claims. This is an increase compared to the previous three years, during which we received three or four new claims each year. The Courts have continued to apply the principles set out by the Court of Appeal in the leading case of *Siborurema*¹¹ and during the year, two Court of Appeal judgments provided some helpful further guidance.

Maxwell: Court of Appeal considers the OIA's approach to disability complaints

Ms Maxwell¹² sought to challenge the approach taken by the OIA in a complaint about the handling of her disability while she was a student at Salford University. The OIA found Ms Maxwell's complaint against the University to be Justified and recommended the payment of compensation of £2,500, in addition to the repayment of her fees, and changes to the University's procedures.

The essence of Ms Maxwell's Judicial Review claim was that the OIA ought to have made a finding on whether the University had discriminated against her.

The Court of Appeal dismissed the appeal and ruled that the OIA's decision on Ms Maxwell's complaint was "*an adequately reasoned decision in accordance with its procedures, in accordance with the law and as a proper exercise of its wide discretion.*"

¹⁰ <http://www.judiciary.gov.uk/you-and-the-judiciary/judicial-review>.

¹¹ R (on the application of Siborurema) v OIA [2007] EWCA Civ 1365

¹² R (on the application of Maxwell) v OIA [2011] EWCA Civ 1236

Giving judgment on 27 October 2011, Lord Justice Mummery said:

“Litigation in the courts against Higher Education Institutions (HEIs) for more favourable outcomes than those obtained in the special internal and external complaints procedures is not, except in very special circumstances, a course that anyone fortunate enough to be accepted for a course of higher education should be encouraged to take up. Most people would agree it is not in the interests of students, or of the HEIs that exist to provide them with educational courses, to engage in a stressful and expensive activity like litigation, when something more fulfilling, as higher education aims to be, is a more attractive long-term investment for life. This is particularly so when Parliament, taking the sensible line that there are more important things in life than generating a list out of every grievance, has facilitated the provision of a less formal and affordable out-of-court scheme for reviewing and remedying justified complaints by students.” [7]

The issue for the OIA in this matter was not to decide whether Ms Maxwell was in fact the victim of disability discrimination or whether the University is liable to her for such discrimination. The OIA’s task was to review Ms Maxwell’s complaint, which included a complaint of discrimination, to see whether the University’s decision was reasonable in all the circumstances and was justified and, if so, to what extent, and what recommendations should be made to the University.” [32]

“If the approach advocated by Mr Jones [counsel for Ms Maxwell] were correct, it is difficult to see what point there would be in having a scheme, which was established under the 2004 Act not as another court of law or tribunal, but as a more user friendly and affordable alternative procedure for airing students’ complaints and grievances. The judicialisation of the OIA so that it has to perform the same fact-finding functions and to make the same decisions on liability as the ordinary courts and tribunals would not be in the interests of students generally.” [37]

The judgment of the Court of Appeal provides helpful clarification in relation to the OIA’s processes and approach to these complex issues. The Court has recognised that the informality and flexibility of the OIA’s processes should be protected and that “judicialisation” of the process is not in the interest of students.

Sandhar: Court of Appeal considers the OIA’s independence

In the case of Mr Sandhar,¹³ the Court of Appeal considered and affirmed the OIA’s independence from the Higher Education sector. Mr Sandhar challenged whether the OIA was appropriately independent to deal with students’ complaints on grounds of its funding model and the constitution of its Board of Directors. He also challenged the approach taken by the OIA to his complaint.

In a rolled up hearing, the Court of Appeal granted permission to Mr Sandhar to apply for a Judicial Review claim, but dismissed the application. Giving his judgment, Lord Justice Longmore stated that the Claimant’s contention concerning the constitution of the OIA’s Board was wrong, because Independent Directors constituted a majority.

¹³ R (on the application of Sandhar) v OIA [2011] EWCA Civ 1614





He said:

As far as funding is concerned, it is correct that the funds come from subscriptions made by the participating HEIs, as expressly envisaged by section 15 (3) of the [Higher Education Act 2004]... It is clear that the wages of individual case-handlers are not paid by the university against whom the complaint is levelled but come from the funds generally available to the OIA from all HEIs. [33]

In all these circumstances I just do not see how it can be said that any fair-minded and informed observer could say that there was a real possibility that the OIA in general or its Independent Adjudicator or any individual case-handler was biased in favour of the HEI under scrutiny in any particular case or lacked independence in any way. Considerable care has been taken to ensure that the case-handler should be seen to be independent of the HEI whose conduct is under challenge and there is no reason to suppose that such independence is not achieved. [34]

The Court rejected Mr Sandhar's other grounds of claim, relating to the OIA's approach to his complaint. Lord Justice Longmore said:

In this context I agree with (and would approve) the reaction of Mr Ockelton to a similar point being made to him when he said at para 73 of Budd v OIA:-

"It is unnecessary and unrealistic to describe the OIA as having a discretion to enter upon a "merits review" or a "full merits review" as though those phrases marked fixed thresholds in the OIA's investigative process. They do not. The OIA does its task properly if it continues its investigation until it is confident that it has all the material it needs in order to make a decision on the individual complaint, and then makes its decision. The exercise of a discretion in this context is simply the continuous consideration of whether any more information is needed in order to make a decision on the particular complaint."

Subject, therefore, to any question of an oral hearing, it is for the complainant to produce the evidence and arguments he wishes to the OIA and its case-handler to consider. Provided that such evidence and arguments are considered, there will have been a full merits review. (paragraph 39)

He went on to conclude that there were no grounds for quashing the OIA's decision that an oral hearing was not required.

Other Cases

Of the six new claims received during 2011, two were granted permission.

In Mr Burger's case, permission was granted on one narrow issue. A date for the hearing has not yet been set.

Mr Cardao-Pito's¹⁴ claim came before His Honour Judge Gilbert QC in the Manchester District Registry in January 2012. The OIA had offered to reconsider Mr Cardao-Pito's complaint after he obtained permission to proceed with his Judicial Review claim, but Mr Cardao-Pito remained dissatisfied with the outcome of the OIA's second review.

The Judge quashed the OIA's decisions and directed that it re-determine Mr Cardao-Pito's complaint. The Judge decided that the OIA was entitled to reopen its review, although such reviews would be "wholly exceptional": the OIA's approach in this regard was consonant with a "flexible and responsive scheme". However, he said that the OIA had not given adequate reasons in relation to the amount of compensation it recommended that London Business School should pay to Mr Cardao-Pito.

The OIA is now conducting a new review of Mr Cardao-Pito's complaint.

The Judge has given some helpful guidance on what the Court would expect in the way of reasons for the compensation awards we recommend. We will use these comments to improve our practice, building on the work we have recently done on our approach to remedies which we started in response to the *Pathway Report* feedback.

Information about these and other Judicial Review cases involving the OIA can be found on our website.

Outreach

Effective service delivery requires a thorough knowledge of the sector and effective communication channels to ensure that we listen carefully to feedback from users as well as disseminating good practice. Outreach is at the heart of this process. Since taking up my appointment the OIA has made around 70 working visits to universities and students' unions.

The OIA's Outreach programme in 2011 was busy and varied and as a result we engaged with over 100 universities and students' unions.

We continued our successful working visits programme, going to institutions across England and Wales to discuss issues of importance to universities, students and the OIA. These meetings give universities and students' unions the opportunity to raise concerns they have relating to specific cases and to case-handling in general. We are pleased this year to have received invitations not just from universities but also directly from students' unions and

¹⁴ R (on the application of Cardao-Pito) v OIA [2012] EWHC 203 (Admin)



hope to see a continuation of this in the coming year. Visits are now undertaken not just by our Senior Managers but also by our Adjudication Management team, allowing us to respond more quickly to specific issues arising in universities or unions, a move which has been welcomed by the institutions themselves and also by the OIA's staff.

I am often surprised on visits to see how little information some students' unions receive from their universities about the throughput of complaints in the institution. Our revised publication arrangements will help to increase transparency in this respect. However, universities also need to do more to share information with students' unions about the number and character of complaints on a regular basis to ensure that unions can educate and advise complainants about appropriate courses of action. Following dialogue with students' unions the OIA is currently giving consideration as to whether it would be helpful to copy OIA Decisions to each students' union, suitably redacted and where consent has been granted by the complainant.

"The event was very well facilitated – I appreciated the fact that open debate and questions were encouraged."

During 2011 we ran a series of "Learning from Complaints" workshops in response to feedback from universities and students' unions the previous year. By the end of the programme over two thirds of our member institutions had attended the four sessions held in Reading and Leeds and the feedback has been extremely positive. The workshops have offered a balance between learning more about the OIA, especially emerging themes in complaints-handling, and interactive group activities. These have given delegates the opportunity to look at case studies and to discuss issues and good practice points with the OIA's staff and with each other.

We also ran a programme of regional round-table meetings in the autumn as part of the *Pathway 3 consultation* process. These informal gatherings proved popular not only as a forum for expressing views on the consultation but also as an opportunity for delegates to get together with our staff and with local colleagues. We have built on the feedback from these meetings to develop a programme of regional network forums to take place throughout 2012.

In June we held our Annual Open Meeting at Gray's Inn in London. 100 colleagues from across the sector joined us to discuss the Annual Report and to listen to a key-note address by Professor Sir Steve Smith (President, UUK and Vice-Chancellor at the University of Exeter).

Together with OIA colleagues, I was invited to speak at a wide range of sector events throughout the year including: the AUA South West Regional Conference; a Meeting Student Expectations Conference; a conference on 'The Future of Higher Education Provision'; NUS Summer Training; a Student Experience Conference; AHUA regional meetings; the ARC Council; the UKCISA Annual Conference; a GuildHE / NUS event; the Medical Schools Council Student Fitness to Practise Training Conference; a UK Council for Graduate Education event and an Education Law Seminar.

Staff Development

To ensure excellence as a service-delivery organisation, the OIA needs outstanding staff, highly skilled and trained, impartial, analytical, outward-facing and highly motivated.

We appointed the Institute of Employment Studies (IES) in late 2011 to conduct the OIA's first confidential Staff Survey. The Survey benefitted from a 98 per cent response rate. The Survey Report described a highly motivated set of colleagues with high levels of commitment to service, high levels of job satisfaction, deep respect for colleagues and a collegiate approach to work – in the jargon a high overall 'employee engagement' score. We are currently working through a number of constructive suggestions which emerged from the Survey for making incremental changes to our policies and procedures.


The OIA's staff enjoyed an excellent training visit to Oxford Brookes University in autumn 2011. As well as visiting a range of universities for training purposes, colleagues received mental health training from Mind. We also ran training events on early resolution skills, handling challenging telephone callers and line management training. We have further developed our existing mentoring programme for newly-appointed staff. A number of colleagues also completed their BIOA-accredited Professional Certificate in Ombudsman and Complaints Handling Practice, attended BIOA group meetings and the BIOA Biennial Conference. New staff received Data Protection Training as part of their induction programme.

Finally, the continued development and effective action of the OIA would not be possible without the courteous engagement of users and stakeholders of our services. I am grateful to each and every person for their constructive ideas and feedback. I am of course aware that we cannot always deliver to complainants exactly what they may want but this is the price of independence and impartiality. I am grateful too to the whole staff and Board of the OIA for their magnificent work through these difficult and exciting times. We were all delighted to learn of the reappointment of Ram Gidoomal as Chair of the OIA Board for a second three-year term. We look forward to continuing working with him through this period of transition.

Rob Behrens

Independent Adjudicator and Chief Executive





“As you can probably imagine, it will be a great relief for me to receive my compensation and to finally be able to put this matter behind me and move on from it.”

“Whilst disappointed with the preliminary decision, we are of course delighted that you have recommended the University change its coursework submission procedures to ensure similar problems do not affect other students.”

OIA complaints statistics



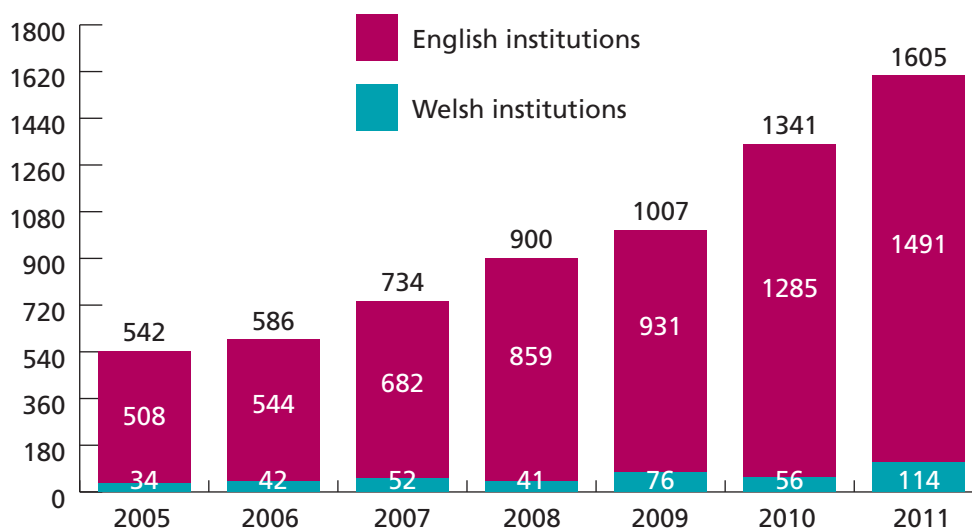
As we had predicted during 2010, there has been a 20 per cent increase in the number of complaints received during 2011 by the OIA. Once again the total number of complaints received remains relatively small when compared with the complaints dealt with by universities. We expect this upward trend to continue and have predicted we will receive around 2,300 complaints in 2012.

Following a recent change to the OIA Rules we now require universities to provide us with the number of Completion of Procedures Letters they issue to students each year. This helps us to contextualise our complaints data and identify good practice. In early 2012 all universities complied with this request for which we are grateful. The data reveals that on average, as in 2010, one in every seven students who completed a university's internal complaints procedure brought a complaint to the OIA. We will be analysing this data further and incorporating it into the Annual Letters to each university, which will be available on our website later in 2012.

In 2011 our Enquiries Team dealt with over 2,000 pre-complaint enquiries. The fact that this has not increased year-on-year may be related to an increase of traffic on our website. Our website has continued to be one of the main ways of communicating with universities, students' unions, stakeholders, press and complainants. We had an average of 4,434 views per month and our busiest day was on 14 June 2011 which coincided with the release of the 2011 Annual Report. Overall in 2011 we had an increase in views of 23 per cent

Chart 1

Number of complaints received per year





compared to 2010. This is a trend which is continuing into 2012 with an increase of 20 per cent for the first month. People from a total of 137 different countries viewed the site in 2011. Our online Tracker was launched in December 2011, since then we have had 6,471 views to date.

We received 1,605 complaints in 2011 – a rise of 20 per cent on 2010. There has been around a 200 per cent increase in complaints received by the OIA since the year of the Scheme’s formal inception in 2005. This continuing trend of significant increases shows no sign of stopping. The slight decline of complaints received about Welsh universities in 2010 has not continued.

The OIA closed 1,443 cases in 2011. This constituted a 75 per cent increase in closures compared to 2010, and a reduction in unit costs of 35 per cent. These are significant efficiency gains but still not sufficient given the significant trend in rising complaints.

Following the *Pathway Report* Recommendation 20, we have published our Key Performance Indicators which are reported below. It is important to note we will keep these under review as our processes change and develop to ensure they are continuing to drive OIA efficiency.

The OIA is meeting some of these indicators but there is clearly more to be done in developing the OIA’s processes. The number of complaints awaiting allocation and number of days to close a complaint are higher than desired. The OIA is closing cases by means other than Full Review in excess of its performance indicator – this is consistent with the changes the OIA is making to its case-handling processes including the introduction of the Assessment Team in 2010, as well as a general inclination towards settlement and mediation.

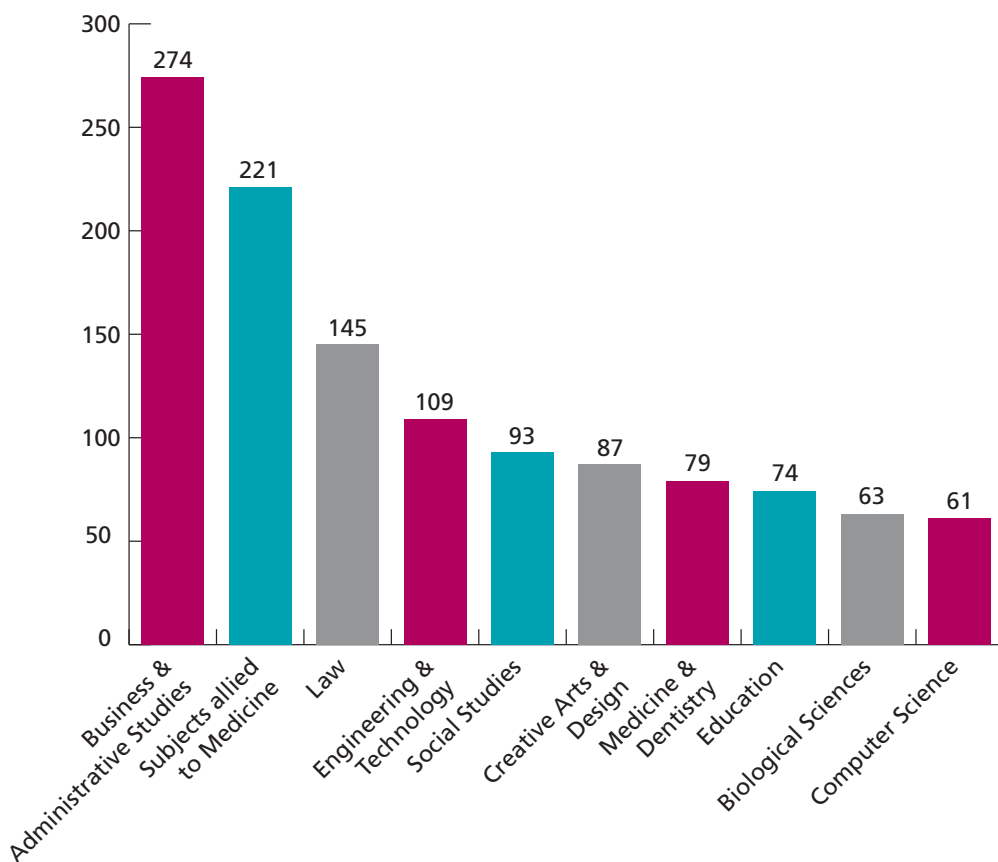
Table 1
OIA performance in 2011

	2011	2010	Key Performance Indicator
Complaints received	1605	1341	–
Complaints closed	1443	825	–
Unit cost per complaint closed	£1663	£2545	–
Percentage of enquiries processed within five working days	89%	94%	80%
Total number of complaints awaiting allocation	567 (52%)	Approx 600 (60%)	30%
Number of complaints closed other than by Full Review	75%	65%	60%
Complaints over nine months from receipt of complaint	20%	14%	20%

On average a complaint took 250 days from receipt to closure. This length of time reflects the continuing increase in complaints the OIA has received. We have already taken steps to address this by introducing in September a triage (initial review) system of sifting complaints and reaching a decision on eligibility at an earlier stage. Our triage process has led to a reduction in time taken to make an eligibility decision – the average is 23 days, down from 179 days in 2010. In approaching two thirds of the cases which have gone through the triage process, case-handlers had enough information to make an eligibility decision immediately on the basis of the student's submission. We expect these efficiency gains to continue and reduce the number of days from receipt to closure of a complaint in future.



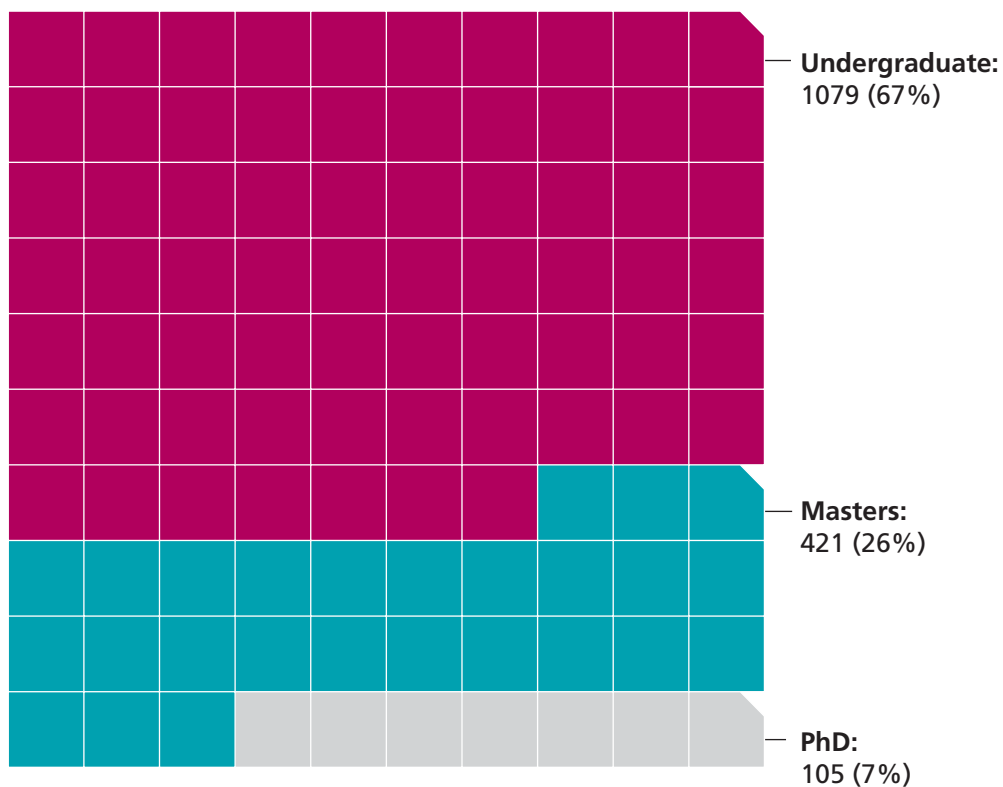
Chart 2
Complaints received by course type – top ten



Once again the three most common courses of study for OIA complainants remained the same, with professional and vocational courses tending to attract the most complaints. The distribution of complaints we receive broadly correlates to the proportion of students studying those subjects but there are some exceptions where we receive an above average number of complaints in relation to enrolment numbers. For example, in 2011 law students were approximately three times more likely to bring a complaint to the OIA than the average for other students in England and Wales.¹⁵

¹⁵ HESA, Table 3a – Student enrolments on HE courses by level of study, subject area, mode of study and location of HE institution 2010/11(1)

Chart 3
Complaints received by student status

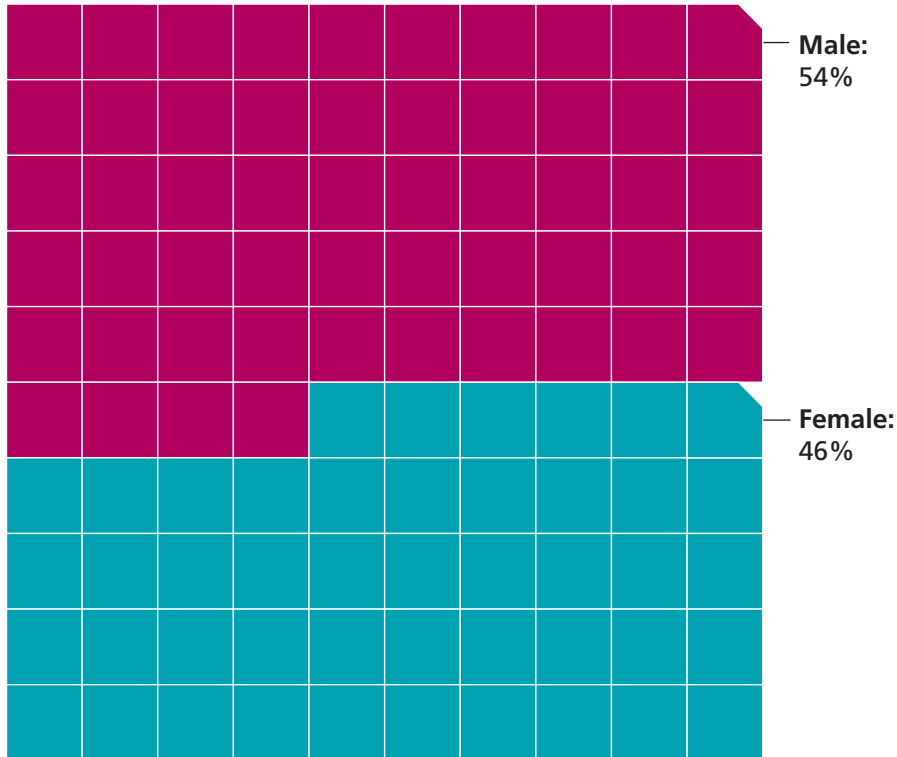


We received most complaints from undergraduates with an increase of 7 per cent from last year. Due to our new OIA Complaint Form we have been able to make further distinctions in our categories for student status. We hope to develop the use of these categories further next year once our form has been used for an entire calendar year. Postgraduate students are still over-represented in the OIA's complaints compared with the student population. Overall postgraduate complaints make up 33 per cent of the OIA's complaints compared to 23 per cent of students in England and Wales.¹⁶

¹⁶ HESA, Table 1a – All student enrolments on HE courses by location of HE institution, mode of study, domicile and level of study 2006/07 to 2010/11(1)

Chart 4

Complaints received by gender



Once again we received slightly more complaints from males and for the first time in recent years we received an increase in complaints from the under 25 category (see Chart 5 overleaf). This is an interesting development in the profile of the OIA's complainant and may be related to the growing awareness about the Scheme in the context of high-profile public debates about student finance and the student experience at university, and our increasing online accessibility and social media profile.



Chart 5
Complaints received by age

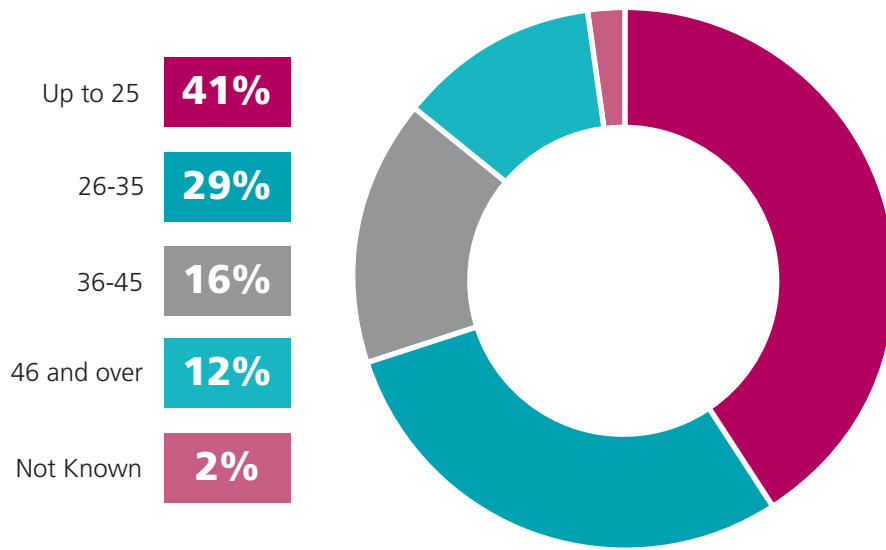
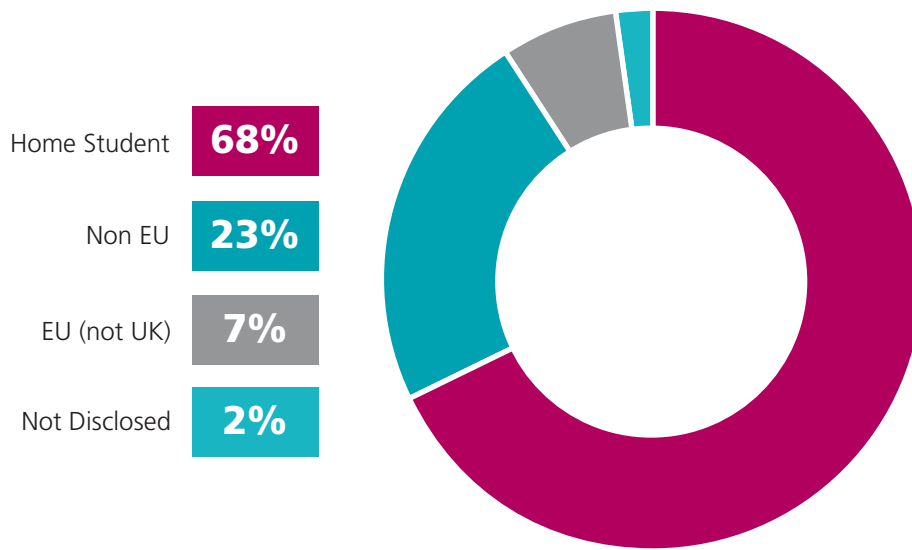


Chart 6
Complaints received by financial status



¹⁷ HESA, Table 1a – All student enrolments on HE courses by location of HE institution, mode of study, domicile and level of study 2006/07 to 2010/11(1)

The financial status of complainants is very similar to last year's pattern with most complaints being received from 'home' students, 7 per cent from elsewhere in the European Union and 23 per cent from outside the European Union. Once again international students are over-represented in the OIA's complaints received compared with the student population, where international students represent 17 per cent of students in England and Wales.¹⁷

Table 2

Most common nationalities of complainants – top ten

Nationality	Number
British	882
Nigerian	52
Pakistani	49
Indian	46
Chinese	25
Greek	17
Irish	17
American	16
Canadian	16
Zimbabwean	15

As would be expected, once again most complaints were from British students. We received an increase in complaints from American students in 2011 compared with 2010, although this is still a relatively small number.



Chart 7
The outcome of complaints

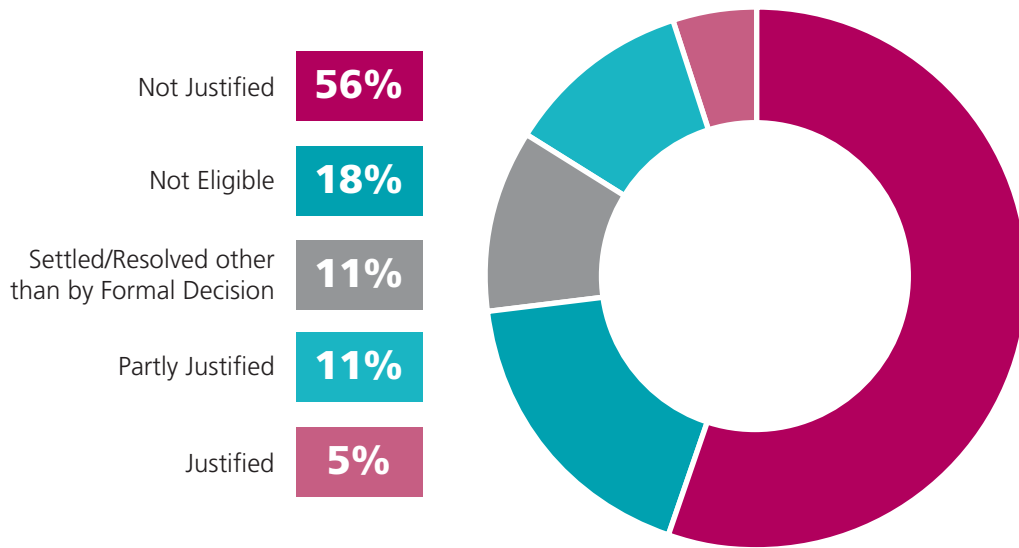
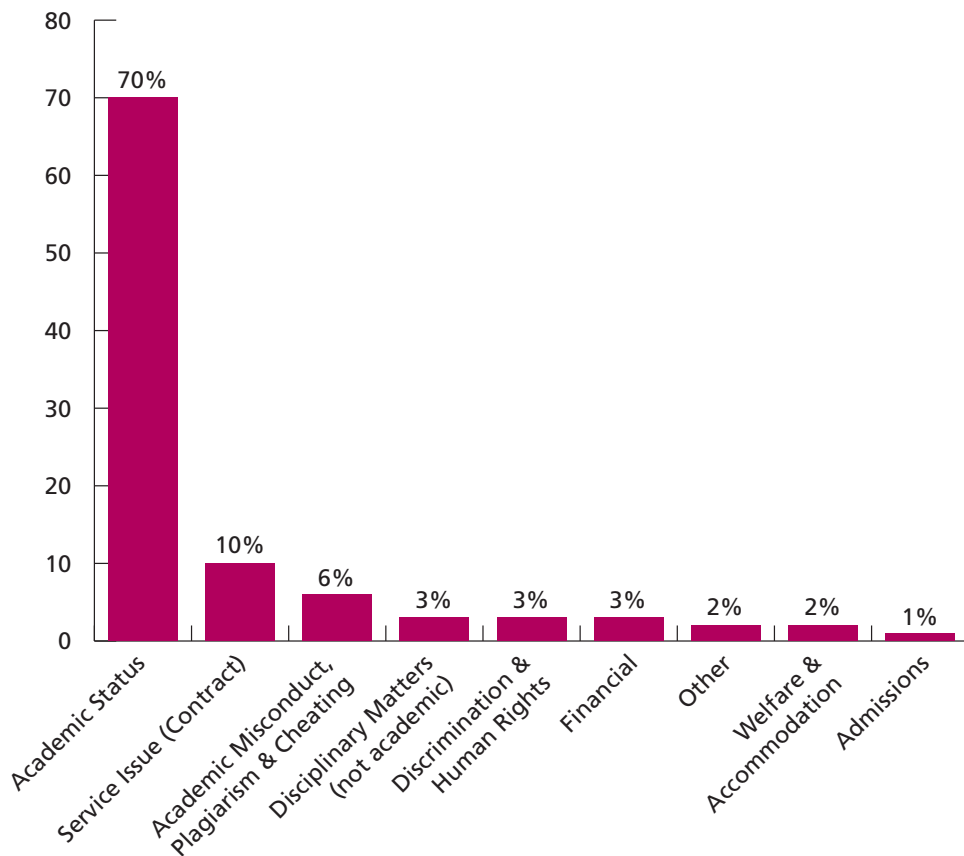


Chart 8
Complaints closed by principal category



Some graphs may not total 100 per cent due to rounding

We closed 1,443 complaints in 2011 – an increase of 75 per cent. There has been a slight decrease in the proportion of complaints found Justified (5 per cent in 2011 against 6 per cent in 2010) and Partly Justified (11 per cent in 2011 against 14 per cent in 2010). There has been an increase in the number of complaints settled or resolved other than by an OIA Formal Decision (9 per cent in 2010). The slight decrease in Justified complaints and increase in settlements reflects the OIA's emphasis on resolving complaints through means other than by Formal Decision. The number of complaints found Not Justified has increased slightly and those found Not Eligible has remained the same.

Of those complaints we closed, most were about academic status and related to academic appeals, assessments and grades. The pattern is similar to previous years. It should be noted that these categories are fairly broad, for instance "academic status" covers appeals against classifications and mitigating circumstances. It is also possible that complaints may contain elements of other categories – for instance it is not uncommon for appeals to have elements of complaint or discrimination involved. However it is still evident that the majority of the complaints received by the OIA relate principally to matters of academic progression and examination.

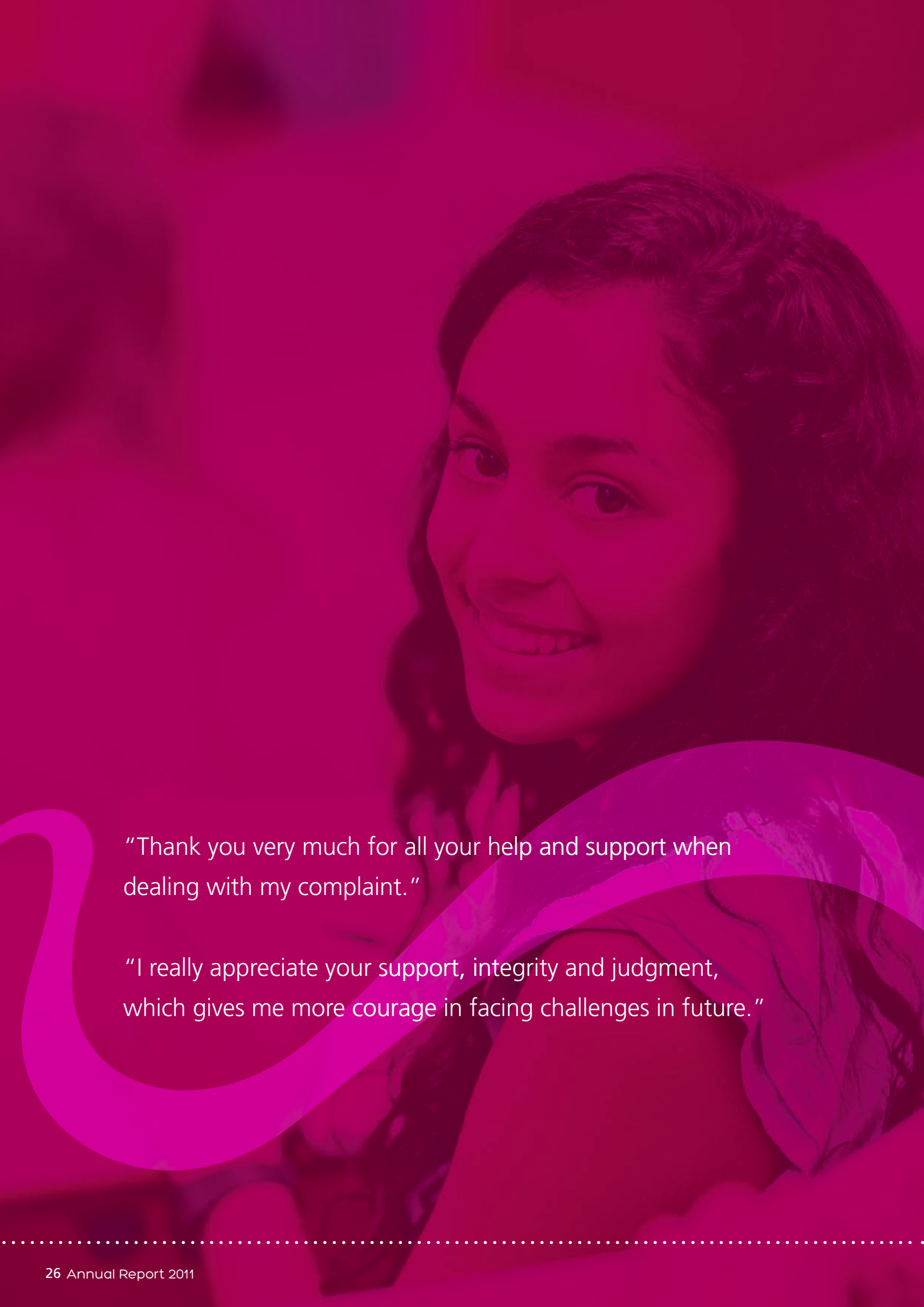
We awarded £184,188 in compensation, with the largest award being £10,000.

We have received 17 service complaints during 2011. The majority of these have, on investigation, been largely about the merits of the Decision rather than a matter of OIA performance to be considered by the Company Secretary. Where there have been issues relating to communication or delay, the OIA has provided an explanation and an apology where appropriate.

We had a 20 per cent return rate on our Equal Opportunities Monitoring Questionnaire compared to 12 per cent last year. Our new OIA Complaint Form launched in July 2011 incorporates the Monitoring Questionnaire into the form although it is still optional and separated on receipt. We believe this process, rather than the Questionnaire being a separate document, has led to a higher return rate. Of those that completed their ethnicity, the largest category selected was complainants describing themselves as English/Welsh/Scottish/Northern Irish/British (26 per cent). Over 100 complainants informed us of their disability – most described their disability as dyslexia with mental health issues being second. We hope the returns on our Equal Opportunities Monitoring Questionnaire continue to increase to allow us to get a better understanding of our complainants and their needs.



"Thank you for dealing with my case. You've done a brilliant job."



"Thank you very much for all your help and support when dealing with my complaint."

"I really appreciate your support, integrity and judgment, which gives me more courage in facing challenges in future."



Case summaries

Whilst we have noted some key information for comparison, it should be remembered that the OIA decides each case on its individual merits.

Mitigating Circumstances

CASE 1

Issues/key words: Mitigating circumstances, academic appeal

Outcome: Not Justified

Summary of case:

S made an appeal against academic failure on the grounds of mitigating circumstances. The University refused the appeal because S had not submitted a claim when required to do so by its regulations, and S had not provided evidence that she had been unable to make a claim in accordance with the regulations. S stated that she had not been aware of the regulations and that the University had not been clear about what evidence she had needed to provide.

Reasons: The OIA concluded the complaint was Not Justified. The OIA determined that the regulations had been available to S through a number of different methods. The OIA considered that it was reasonable for the University to expect students to familiarise themselves with the regulations relevant to them, and that S had a responsibility to try to mitigate the effects of her circumstances.

There was no evidence that when suffering from her circumstances S had asked how she might mitigate the effects of the circumstances on her studies. The OIA determined that the University had stated clearly what S's evidence needed to demonstrate, but she had not provided evidence to show that she had been unable to engage with the University's procedures. The OIA considered that the University had given S a reasonable opportunity to provide evidence to support her claim, but she had not done so. In the circumstances the OIA determined that it was reasonable for the University not to uphold S's appeal.

Points to note: The University's regulations were clear about the process for submitting mitigating circumstances claims.



CASE 2

Issues/key words: Mitigating circumstances

Outcome: Partly Justified

Summary of case: After S was discontinued from her studies for failing to hand in assessments, she made a claim of mitigating circumstances which included her having been a victim of a violent assault. The University determined that S's claim was out of time as its regulations required S to disclose mitigating circumstances before its assessment deadline. As well as a number of other issues complained about, S wanted her mitigating circumstances to be considered.

Reasons: The OIA concluded that the complaint was Partly Justified. During the OIA's review, it emerged that S had not been given a fixed date to hand in her assessment, and consequently did not have a fixed date to make a claim of mitigating circumstances.

In the circumstances the OIA determined that it was not fair for the University to say that S was out of time to make a claim for mitigating circumstances, as she could not have known the cut-off date for a claim.

Recommendations: The OIA recommended that the University consider S's mitigating circumstances. Subsequently S's circumstances were considered and accepted by the University, and S was permitted to re-join her course.

Points to note: In most cases students are given a clear deadline for the submission of assessments and mitigating circumstances. However, in this case no clear deadline was specified.



CASE 3

Issues/key words:

Mitigating circumstances, procedural fairness

Outcome: Justified

Summary of case:

S submitted an academic appeal about her results in two modules, because the University had not considered her mitigating circumstances. S had disclosed these to her tutor when she asked for an extension for an essay. The tutor had accepted that he did not pass the information on to the Board of Examiners which considered her results. The University rejected her appeal, saying that this was not a procedural irregularity in the assessment process. It said that it was incorrect for S to assume that, because she had asked for an extension, the tutor would also make a submission on her behalf to the Board of Examiners. The University also said that she had asked for the information to remain confidential. S denied this.

Reasons: The OIA concluded that this complaint was Justified.

Unusually, the University's procedures did not require students to make a formal written request in order for mitigating circumstances to be considered by the Board of Examiners. Under the procedures, it was sufficient for S to have a discussion with her tutor. It was the University's responsibility to keep a record of such discussions, but it had not done so in this case. There was therefore no evidence to suggest that S had asked the tutor to only consider her circumstances in the context of an extension, or to keep the information confidential. The tutor agreed that he ought to have raised the mitigation at the Board of Examiners' meeting.

Recommendations:

- That the University take the action which it would have taken had it identified the procedural irregularity and upheld the academic appeal;
- To reconsider S's results in the context of her mitigating circumstances.

Points to note: Although students could not normally rely on their tutor's advice when the regulations require a written request to consider mitigating circumstances, the regulations in this case did not require the student to make a formal written request and it was enough for S to have had a discussion with her tutor.

"I would like to take this opportunity of thanking you and your colleagues at the OIA for your efforts on my behalf."



Plagiarism and Disciplinary Conduct

CASE 4

Issues/key words: Plagiarism, academic judgment

Outcome: Not Justified

Summary of case: The University found that S had plagiarised an essay. The plagiarism software Turnitin showed that more than 50% of the text of the assignment matched published sources, and not all of this was referenced correctly. Some sentences were identical to another student's essay submitted for the module in a previous year. S denied that he had looked at another student's work, but accepted that he had taken notes from a subscription website which publishes students' essays. He said that he intended to re-write or reference these notes correctly, but had accidentally submitted an incomplete version of his essay. He felt that the University was unreasonable in categorising his offence as 'serious'. The penalty, a reduction in marks for the whole module to zero, meant that his degree classification was reduced. In his appeal, he referred to some mitigating circumstances. The University rejected the appeal.

Reasons: The OIA concluded that the complaint was Not Justified.

It was S's responsibility to ensure that he submitted the correct and final version of his essay for assessment. Universities must ensure that Turnitin reports are correctly interpreted; the initial correspondence with S had implied that 50% of the essay was plagiarised, and this was not the case. Nevertheless, the University was entitled to conclude that the plagiarism was 'serious', because the concluding section of the essay was a verbatim copy of another student's work. This was a decision made in the exercise of the University's academic judgment, with which the OIA may not interfere. The penalty applied was in line with the University's published procedures. It was reasonable for the University to reject S's statements about his mitigating circumstances, because he had not brought them to the University's attention at the relevant time. The procedures for considering the allegations of plagiarism had been followed and had given S a fair opportunity to make his case.

Points to note: The University abided by its regulations and procedures. S did not bring his mitigating circumstances claim to the University's attention at the correct time in line with the procedures.

CASE 5

Issues/key words: Plagiarism, procedural fairness

Outcome: Partly Justified

Summary of case: S was accused of plagiarism in her dissertation. Plagiarism was not, at the time, an assessment offence under the regulations of the University. S was not told what regulation she had breached, was not given any of the evidence against her, and she was not offered a hearing when she disputed the allegations contrary to the regulations. She was not given clear information about the penalty and was not told about her right to appeal the decision.

S complained to the University that the outcome was unfair because she had not been given a hearing, and said that the penalty was too severe because she had mitigating circumstances and had received no supervision. The complaint-handler reduced the penalty she had been given, but this was not in line with the regulations which required that decisions on penalties should be taken by a panel. S later submitted the same complaint to the Vice-Chancellor, which was forwarded to the original complaint-handler, who rejected it.

Reasons: The OIA concluded that the complaint was Partly Justified.

The University did not investigate S's claims that she had received no supervision, and provided no formal response to the complaint even though it said in writing that it would do so. The OIA concluded that S had not received a fair hearing regarding the allegation that she had committed an assessment offence, and that the University had not followed its procedures. This aspect of the complaint was Justified.

S also complained that she had to pay an unfair fee for retaking modules, but we concluded that this complaint was Not Justified because the fee was in accordance with the regulations and the University had acted to her benefit by arranging a payment plan although it was not obliged to do so.

Recommendations: The University should reconsider the allegation, in accordance with its procedures. S should be informed of what regulation she is alleged to have breached, be provided with copies of any evidence against her, and be given the opportunity to attend a hearing about the allegation.

Points to note: The University did not follow its procedures. S should be provided with copies of evidence in line with procedural fairness.





CASE 6

Issues/key words: Disciplinary conduct, procedural fairness

Outcome: Justified

Summary of case: Allegations were made about S's conduct and S was suspended pending an investigation under the University's Student Code of Conduct and Disciplinary Procedure.

Following the investigation, the University wrote to S requesting a response to allegations of aggressive and threatening conduct. The University reviewed the evidence and the investigating officer's report and concluded that S was guilty of three breaches of the Code of Conduct and Disciplinary Procedure and recommended that S be expelled.

S appealed against this decision, the substantive appeal ground being that the University had failed to follow its procedures as S did not have the opportunity to attend a hearing. The University rejected S's appeal saying that the spirit of the Code had been followed and, with the exception of one allegation, S had not disputed the allegations.

The University accepted that its procedures had been departed from but stated that witnesses were not prepared to attend a hearing due to concerns about S's behaviour. The University also stated that S was given an opportunity to respond to the allegations and therefore S had the same right of reply that she would have had at a hearing.

Reasons: The OIA concluded that the complaint was Justified.

Under the Disciplinary Procedure, witnesses are not required to attend a hearing unless the allegations are disputed. Given the conclusion that S did not dispute the allegations, witnesses were not obliged to attend a hearing. As a result, the University's decision to preclude S from attending a hearing on the basis of witnesses' reluctance to attend was unreasonable.

The University failed to provide evidence that copies of all witness statements were provided to S and S's responses to the allegations made no reference to the witness statements. As a result, the University's conclusions that S had the same right of reply and that S did not dispute the allegations were unreasonable.

No evidence was provided to show that the investigating officer met with S or requested S's comments during the investigation and, in addition, correspondence failed to mention S's right to present arguments in mitigation before the University determined an appropriate penalty. The OIA concluded that S was materially disadvantaged by the process adopted by the University.

"Thank you to you, and everyone involved for enabling such efficient resolution."

Recommendations:

- That the University offer to have the matter reconsidered by a new Panel with no prior knowledge of the matter.
- Due to the University's concerns regarding the safety of those involved, the University may conduct the hearing via video conferencing and should ensure that the Panel is not aware of the reason for departure from the usual process in order not to prejudice the hearing.
- That S should be given the opportunity to submit a written response to the substantive allegations and witness statements.

Points to note:

- The University did not follow its own procedures and did not abide by the rules of procedural fairness.
-

Settlement and remedies

CASE 7


Issues/key words: Disability, accommodation

Outcome: Settled

Summary of case: S was a disabled student with a specific learning difficulty and he only managed to complete one term of study before withdrawing from the University. He said he withdrew because of a lack of disability support and the University failing to send his Needs Assessment to the relevant financial bodies to secure his financial support. Having become overwhelmed, S withdrew after the first term.

S was unsure how to withdraw from his accommodation and said he found the Wardens very unhelpful. S's disability also meant that he struggled with complicated verbal instructions. The result of this was that he did not withdraw from the accommodation properly and therefore was charged for the accommodation after his withdrawal from the University. He incurred a debt which the University actively pursued.

S's mother then took up the complaint with the University and complained that the accommodation office had failed to take account of his disability when dealing with this matter and raised serious concerns about the lack of disability support S had received. The accommodation office did not acknowledge S's disability and failed to advise S's mother that it could not deal with the complaint about support and did not signpost S's mother to the relevant persons who could deal with this matter. The accommodation office issued a Completion of Procedures Letter and did not uphold S's complaint.



"I am pleased that the University has now recognised the impact on me of its actions and inactions..."



S's mother then complained to the OIA about the fact that the University had failed to take account of S's disability throughout his time as a registered student and after his withdrawal when dealing with the accommodation complaint. She also complained that the University had failed to address the complaints about the lack of academic support for S as a disabled student.

Reasons: The OIA approached the University regarding settlement, having spoken to S's mother. It was clear that he did not wish to return to the University but the issues of the accommodation and the other debt he had been left with were now the main cause of concern. When the OIA spoke to the University about its concerns about the way that S had been dealt with as a disabled student, the University recognised that the complaint had not been dealt with as it should have and that not all of the issues had been dealt with. The University therefore agreed to settle the complaint and S agreed to consider settlement.

Settlement:

- The University made an offer to refund (by way of the Student Loans Company) 2 terms of tuition fees totalling £2250. It agreed to write off the rental arrears of £933.81 and to refund the £500 of arrears already paid.
 - The offer was accepted by S and the matter was settled.
-

CASE 8

Issues/key words: Remedies, academic judgment

Outcome: Partly Justified

Summary of case: S's degree result was published as First Class Honours and he attended a graduation ceremony. Sometime later, he contacted a tutor to ask about funding for a Masters degree and was informed that this was normally only available to students with First Class Honours. It emerged that the results had been published incorrectly, and that the Board of Examiners had in fact determined that S should be awarded an Upper Second Class degree.

Following an appeal, S received an apology for the distress caused. The University decided not to reverse its decision to correct S's result to an Upper Second Class degree.

Reasons: The OIA decided that the University's decision not to award First Class Honours was reasonable. In order to demonstrate grounds for appeal, S had to show that there was some valid reason to call the safety of a mark into question – for example, evidence that an assessment had not been carried out properly. S did not dispute that his marks were correct, and there was no evidence that the examiners had miscalculated the marks or the overall degree result. The evidence clearly demonstrated that the error had occurred when the examiners' decisions had been entered onto the records system. The award of a degree is a matter of academic judgment, with which the OIA cannot interfere.

However, the OIA accepted S's statement that the University's error had led to distress. He had reported feeling humiliated when he informed friends, family and potential employers that he had not achieved a First Class Honours degree. The OIA recognised that the University had offered a sincere apology for the error and that S had not established grounds for appeal. However, in the circumstances of the case, the OIA concluded that it would have been reasonable to offer him remedy for the distress that he would have experienced.

Recommendations: The University should pay £750 in compensation in line with Level B of the OIA's awards for distress and inconvenience. For more information on the indicative bands for distress and inconvenience awards please see *The OIA's Approach to Remedies and Redress* leaflet.

Points to note: This was an administrative error for which the University apologised. However, given the distress caused, the OIA recommended a payment in addition. The award of a degree is an academic judgment and is outside the OIA's remit.

.....





Academic judgment

CASE 9

Issues/key words: Academic judgment

Outcome: Not Justified

Summary of case: S strongly disagreed with the University's method of calculating his degree classification, which meant that all students who had transferred into the University would not have their marks at previous institutions taken into account when their final degree classifications were calculated.

S felt that the University should use its discretion to raise his degree classification because his marks at his previous institution were higher than his marks at the University.

Reasons: The OIA concluded that the complaint was Not Justified. The OIA determined that the method chosen to calculate a degree classification was a matter of academic judgment, and in this case the University had followed its regulations regarding how to calculate a degree class.

Any discretion that the University could have exercised which might have raised S's degree class was in this case a matter of academic judgment, with which the OIA could not interfere.

Points to note: The University followed its regulations and, in any event, the OIA cannot interfere with an academic judgment.

"...despite being disappointed with the outcome, we would like to thank you for the thorough and professional manner in which you have dealt with this case."

OIA Board of Trustees/ Directors

As at 1 April 2012

Following the recruitment of an additional Independent Director (student perspective) in 2011, the OIA Board of Directors has 15 members.

Nine, including the Chair, are **Independent Directors** appointed by fair and open competition on the basis of their skills and experience.

Six are **Nominated Directors**, appointed by the major representative bodies in Higher Education in England and Wales. The representative bodies may also nominate **Alternate Directors** to attend Board meetings if their Nominated Director is not available.

Directors are normally appointed for a three-year term of office, which can be renewed once.

The Board's responsibilities include:

- oversight of the performance and effectiveness of the Independent Adjudicator and the Scheme
- setting the budget for the OIA
- determining the level of subscriptions payable by universities each year
- approving the Rules and procedures for the operation of the Scheme
- preserving the independence of the Scheme.

Board members are not involved in the review of individual complaints.





OIA Board members

Chair

Ram Gidoomal CBE – Appointed July 2009
Reappointed July 2012

Deputy Chair

Dr Cecilia Wells OBE – Until March 2011
Terry Price – Reappointed as Independent Director June 2010
Deputy Chair from March 2011

Independent Directors

Margaret Doyle – Until June 2011
Emily Collins – Appointed January 2012
Peter Forbes – Appointed March 2011
Carey Haslam – Appointed September 2010
Dr Andrew Purkis OBE – Appointed December 2010
Dr Martyn Thomas CBE – Appointed December 2010
Claire Weir – Appointed September 2010
Colin Wilby – Reappointed June 2010

Nominated Directors

Nominated by the Association of Heads of University Administration

Steve Denton – Reappointed October 2011

Nominated by the Committee of University Chairs

Peter Hermitage – Appointed August 2010

Nominated by GuildHE

Pauline Aldous – Until July 2011

Jenny Share – Appointed August 2011

Nominated by Higher Education Wales

Dr Chris Turner – Appointed July 2010

Nominated by the National Union of Students

Usman Ali – Appointed July 2010

Nominated by Universities UK

Professor Mike Thorne – Reappointed August 2010

Alternate Directors

GuildHE

Jenny Share – Until July 2011

Haf Merrifield – Appointed August 2011

National Union of Students

Alex Bols – Reappointed November 2010

Universities UK

Professor John Raftery – Appointed November 2010

Association of Heads of University Administration

Mark Humphriss – Appointed October 2011

OIA Higher Education Advisory Panel




The OIA's Higher Education Advisory Panel was established in 2009 and gives valuable benchmarking advice on good practice across the sector. Our initial panel members have just completed their first term and we have recently recruited some new members.

The Panel continues to be chaired by Professor Avrom Sherr, Woolf Professor of Legal Education and Director of the Institute of Advanced Legal Studies at the University of London, and the other continuing panel members are Mike Ratcliffe, Director of Academic and Student Affairs at Oxford Brookes University and Andrew West, Director of Student Services at the University of Sheffield. They have been joined by: Pam Ackroyd, Pro-Vice-Chancellor (Operations) at Cardiff Metropolitan University; Tessa Byars, Senior Adviser at Anglia Ruskin Students' Union; Dr Wayne Campbell, Academic Registrar at the University of Essex; Heidi Cooper-Hind, Head of Student Services at the Arts University College at Bournemouth and Jo Spiro, Student Support Services Manager at the Union of UEA Students, all of whom will serve from April 2012. In addition, Andrea Bolshaw, Academic Registrar at Coventry University and John Peck, Head of Registry at UCL School of Pharmacy, will serve from April 2013. We are grateful to Janet Pugh, Joanna Smith, Geoff Stoakes and Huw Morris for their contribution to the Panel in its first three years.

OIA staff members have made a total of 41 referrals to the Panel since its inauguration. The last few months of 2011 saw a marked upturn in the number of referrals, further adding to the valuable database available to our case-handling staff. OIA staff members continue to submit questions to the Panel on a wide variety of topics but there is an emphasis on complex matters relating to examination and marking processes for both undergraduate and postgraduate students. Issues raised in the last year have included:

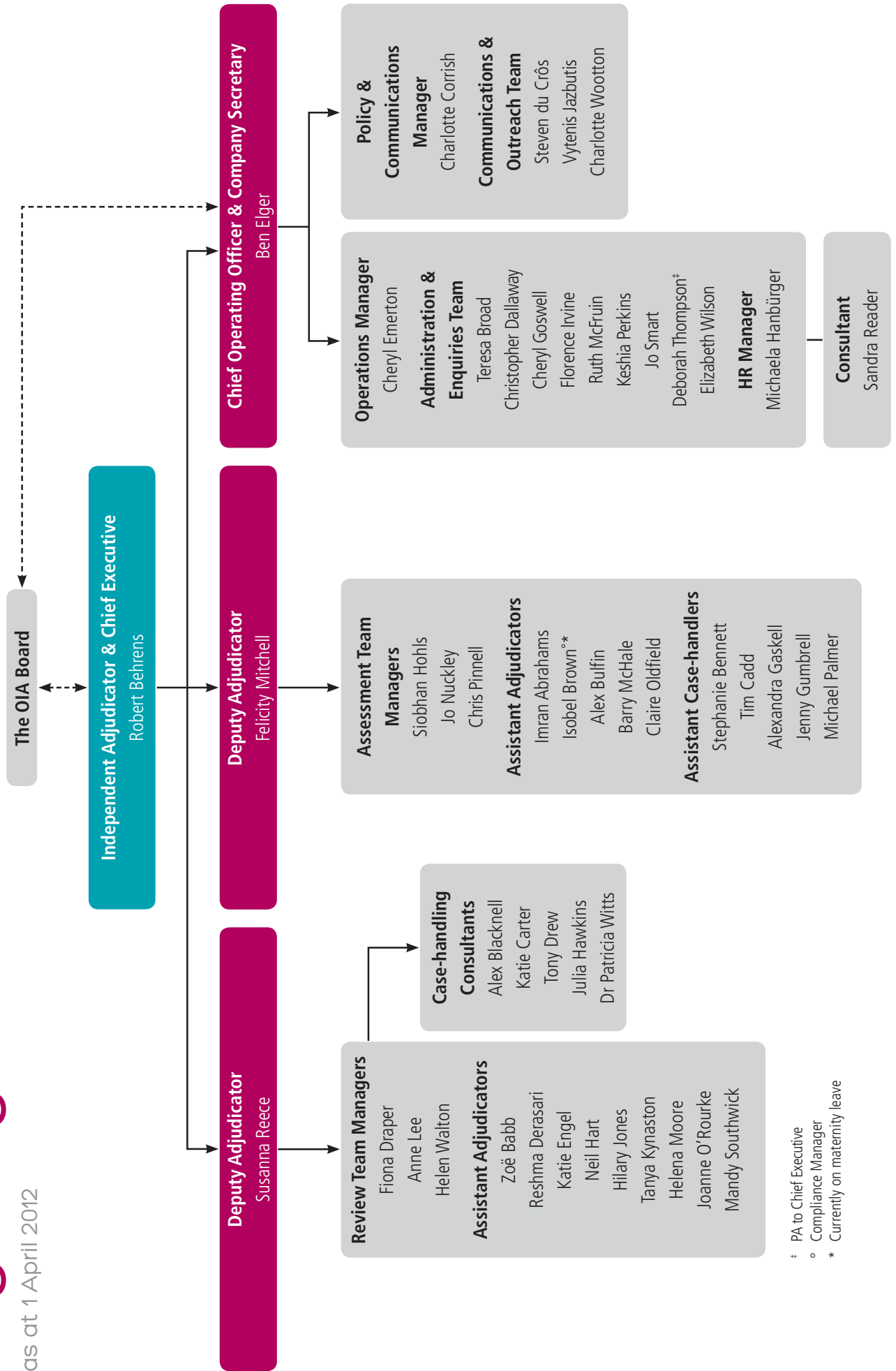
- the amount of detail that should be recorded in the minutes of a mitigating circumstances panel and whether there is a good practice model;
- the record-keeping required of meetings between the supervisor and independent marker where the two need to agree a single mark for a postgraduate engineering project and a suitable way to remark should something go wrong in the process;
- the appropriate remedy where we have found procedural errors in the second examination of a PhD student's work but where no other fault with the University has been found;
- institutions' policy regarding Facebook and other social media sites, particularly staff members befriending students;
- delays within the Student Loan Company which have prevented a student from accessing the education contract;

- 
- whether it is sector-wide practice to absolutely limit the attempts a student can have at an assessment to the number set out in the regulations, regardless of the presentation of valid mitigating circumstances, or whether discretion should be applied;
 - whether a medical student's final year marks could be raised, or the fail compensated, to allow a pass when they narrowly fail a final year exam but mitigating circumstances are presented.

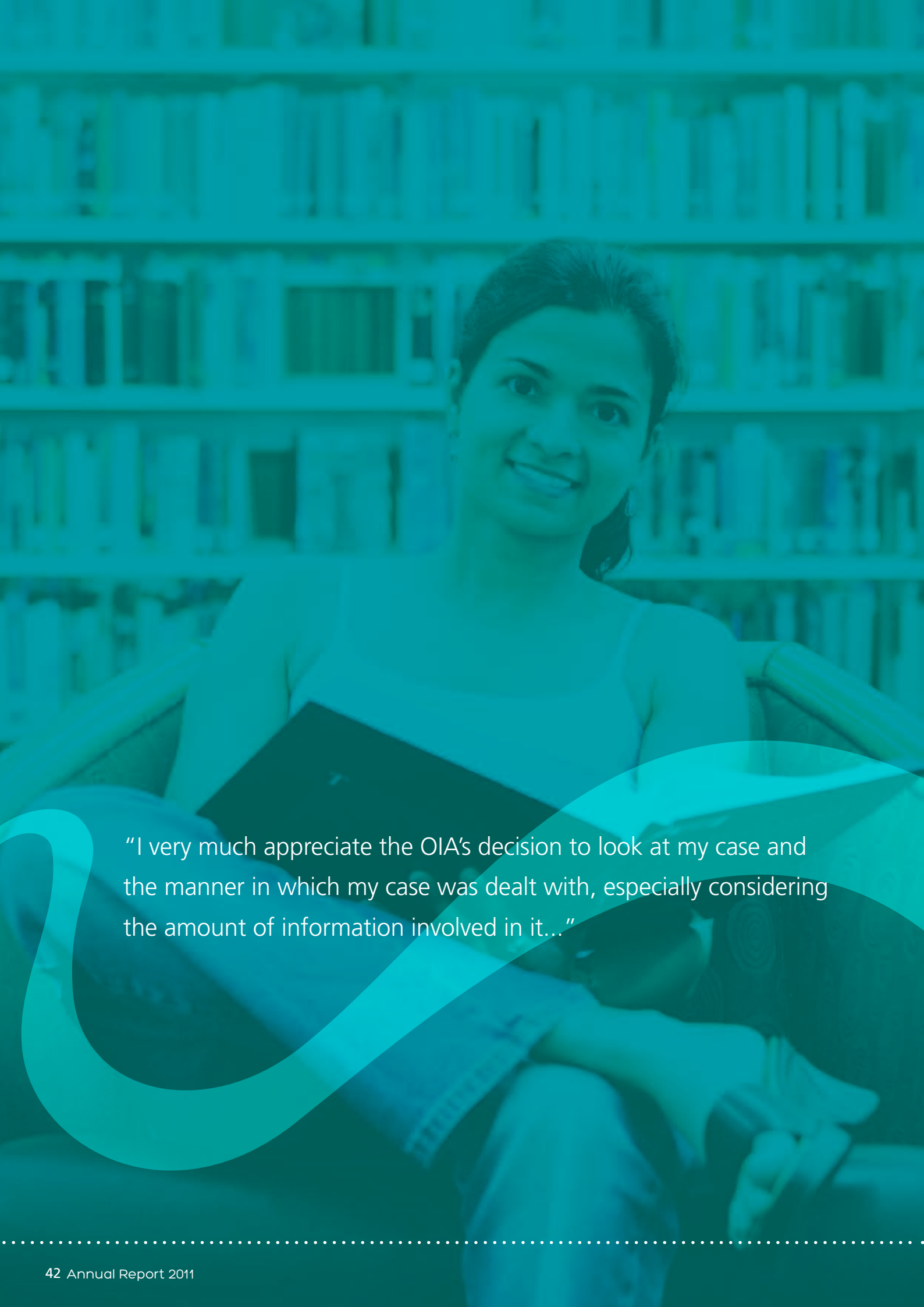
All referrals have been conducted on an anonymous basis and Panel members' responses have been swift, detailed and helpful, have informed the OIA Decisions and Recommendations and have enhanced the OIA's ability to provide practical and appropriate resolutions to Justified student complaints. Adjudication decisions and outcomes remain entirely the responsibility of the OIA adjudication team and are made on an individual, case-by-case basis.

Organogram

as at 1 April 2012

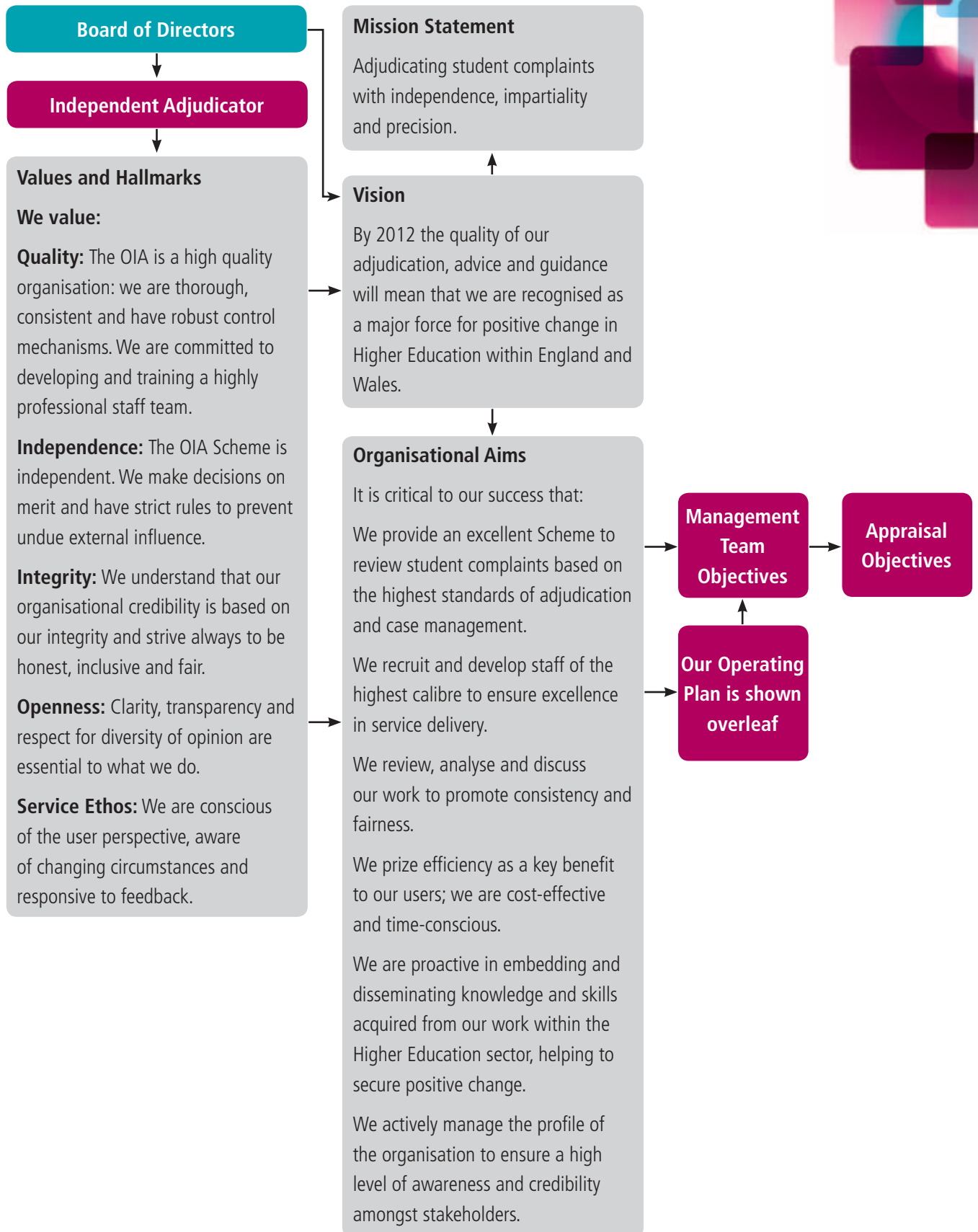


† PA to Chief Executive
 ° Compliance Manager
 * Currently on maternity leave



"I very much appreciate the OIA's decision to look at my case and the manner in which my case was dealt with, especially considering the amount of information involved in it..."

Strategic Plan





Operating Plan 2012

“We provide an excellent Scheme to review student complaints based on the highest standards of adjudication and case management.”

Pathway 3

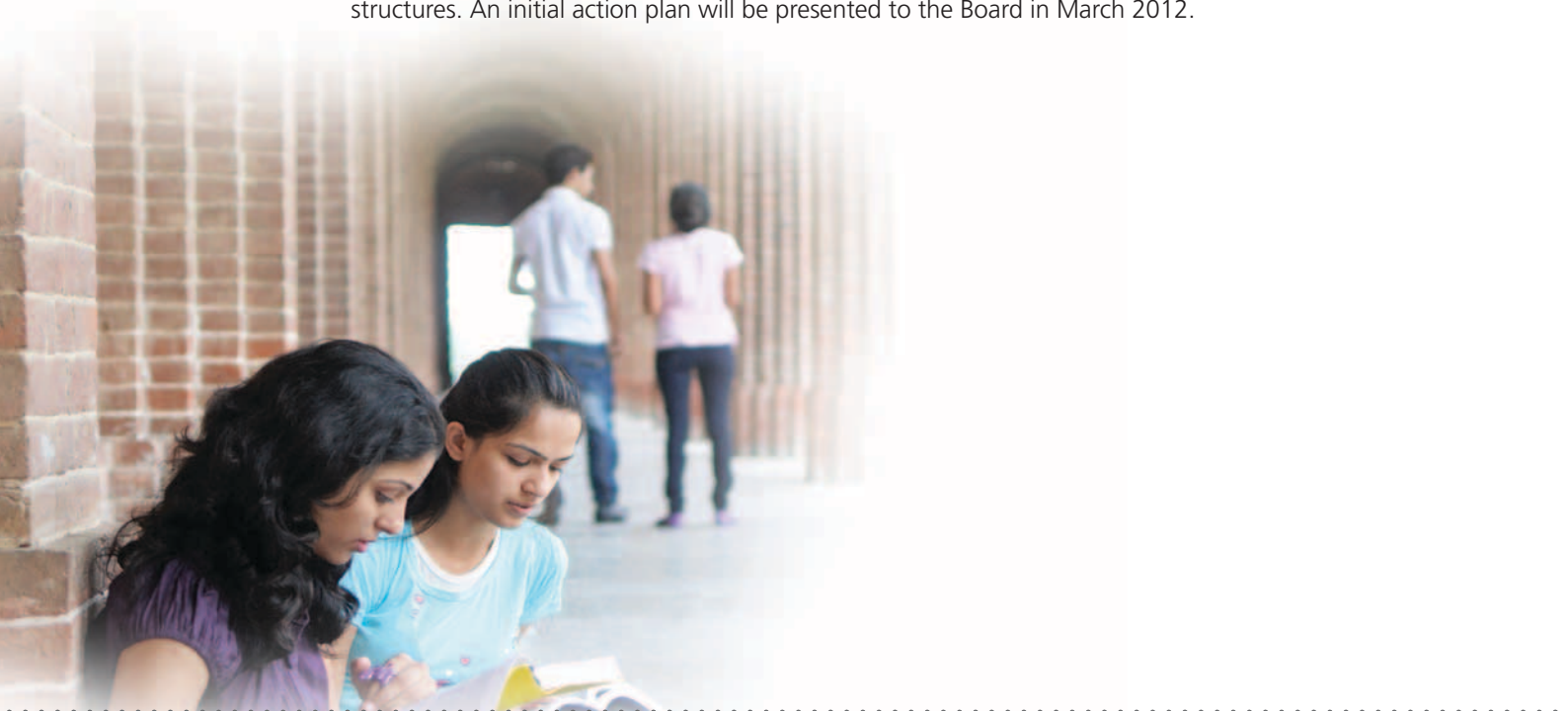
Following the Government’s Higher Education White Paper published in June 2011, the OIA launched a major consultation ‘*Pathway 3 – Towards early resolution and more effective complaints-handling.*’ The consultation focuses on supporting local early resolution processes and will take account of written submissions, contributions at specially-convened regional round-table meetings and other interactions with stakeholders. The OIA will publish a report based on this consultation in summer 2012.

Assessment Team/Triage

Following a review of the structure successfully piloted in 2011, we will continue to develop the Assessment Team as a key resource in dealing efficiently with the growing number of cases coming to the OIA. In particular a triage (initial assessment) function is fully resourced so Assistant Case-handlers can determine the optimum way for any complaint to be progressed. We expect to resolve 60% of cases in 2012 without issuing a Draft Decision.

Review Team Process Review

A review of OIA processes was carried out by an independent consultant in 2011. This project contributed to changes in the ‘front-end’ operation of the OIA. In 2012 the change process will continue with a review of procedures and practices leading to the issue of Draft Decisions in the Review Team in the context of a rising caseload and changing OIA structures. An initial action plan will be presented to the Board in March 2012.



“We recruit and develop staff of the highest calibre to ensure excellence in service delivery.”

Organisational Structure

We will review the organisational structure in the context of major challenges ahead in terms of rising caseloads, increased membership and a new financial structure. The essential increase in capacity provided for in the 2012 budget will be used in part to reduce and keep backlogs to a minimum at all stages in the OIA process. A revised organogram will be published in the *Annual Report 2011*.

Approval Structure

We will, in January 2012, evaluate learning from a trial period initiated towards the end of 2011, where the OIA Approval Team was widened to include, with appropriate support, a number of Adjudication Managers. A revised quality control structure will facilitate further improvements in terms of knowledge management and organisational efficiency.

Staff Survey

We will for the first time contract an external organisation to survey our staff on their experience of working for the OIA and will utilise the report in subsequent action planning. This will inform the continuous improvements of policies relating to staff development, training and working practices.

“We prize efficiency as a key benefit to our users: we are cost-effective and time-conscious.”

Subscription system

We will use the *Pathway 3 consultation* exercise to test out the viability of introducing a new subscription system. The new model will take account of the promotion of a ‘level playing field’ for private providers anticipated in the White Paper and the growth in volumes experienced by the OIA. The intention is to begin to provide some further incentive to good complaints-handling whilst at the same time recognising the diversity of the sector and financial planning implications. It is therefore likely that any revised system will be a hybrid model combining core subscription and case fees.

Less Paper Project

The OIA scheme was launched as essentially paper-based. The OIA ‘less paper’ project recognises the advantages in terms of efficiency and resources of increased ‘e’ communication. In 2011 the electronic complaint form was launched allowing complaints to be registered through the website and a tracker system was installed to allow complainants and universities to track the progress of cases. In 2012 we will review the complaint life-cycle in order to minimise the use of paper wherever possible and to promote the use of e-mail as our default mode of communication.





Aged cases

We recognise concerns raised by complainants and universities about the time taken to review a small proportion of cases. We will focus appropriately on the relevant Key Performance Indicators and by the end of 2012 aim to reduce to 20% cases taking more than 9 months to be dealt with. This indicator will be included in a set of OIA performance measures to be published in June 2012.

“We review, analyse and discuss our work to promote consistency and fairness.”

Publication

Following the *Pathway 2 consultation* exercise in 2011 it was recognised that selective publication of summaries of key Formal Decisions and information on complaints-handling records, by name of university but not complainant, should begin in 2012. Guidance on the approach to publication will be issued via the e-news bulletin in February 2012 and publication will begin after April 2012 (considered only in relation to cases received after 1 April 2012.) In addition Annual Letters to universities setting out quantitative details of their complaints profile will be made public for the first time in respect of 2011 (and will be published in 2012).

Complainants' Experience Survey

We will renew the research, previously carried out as part of the *Pathway Report*, into the complainant experience. This work will be undertaken by an independent research company, with appropriate use of OIA data, and a report will be published by the end of the year.

Compliance

A compliance protocol will be published in Spring 2012 to show how the OIA will continue to monitor compliance and the process to be followed when compliance issues have to be escalated.

“We are proactive in embedding and disseminating knowledge and skills acquired from our work within the Higher Education sector, helping to secure positive change.”

White Paper/ Cross sector initiatives

In line with proposals in the 2011 Government White Paper we will play a full part in ensuring a joined-up approach between the sector regulatory bodies. In particular we will contribute to the work of the HE Regulatory Partnership Board and its sub-committees on the funding and regulatory framework, and the data and information landscape.

Higher Education in Further Education and at Private Institutions

We will, in accordance with the Government White Paper and our previous Pathway consultations, prepare to bring Higher Education students in Further Education Colleges and Private Institutions into the OIA Scheme in accordance with the legislative timetable. In the meantime we will continue to encourage providers to join the OIA Scheme as Non Qualifying Institutions where appropriate.

Refreshing stakeholder engagement

An Independent Director appointed, under rules of fair and open competition, specifically to provide an additional student perspective, will join the Board from the March 2012 meeting. Additionally, following its first cycle of operation, the Higher Education Advisory Panel will be refreshed with the recruitment of new members.

“We actively manage the profile of the organisation to ensure a high level of awareness and credibility among stakeholders.”

Outreach Function

The re-organisation of our outreach function will take place at the start of 2012 and will ensure a strategic and efficient approach to the dissemination of key policy messages and knowledge and skills acquired from case-handling.

Events

We will run a programme of events building on the themes and learning from the *Pathway 3 consultation* as well as explaining and discussing developments at the OIA. As part of this programme we will launch the *Pathway 3 Report* in late summer 2012. We will also participate in external events to build greater awareness of the role and function of the OIA amongst politicians, professional regulators and the legal profession.

Visits Programme

We will maintain our visits programme led by the Independent Adjudicator and involving staff throughout the Office visiting universities and students' unions to discuss key issues arising from complaints coming to the OIA and developments in the sector.





OIA Subscriptions for 2011

Subscriptions to be based on full-time and part-time Higher Education and Further Education students at Higher Education Institutions, according to 2008/09 HESA statistics.

	Band	2011 Subscription Fees
Less than 500 students	A	£495
501 to 1,500 students	B	£1,001
1,501 to 6,000 students	C	£5,382
6,001 to 12,000 students	D	£10,678
12,001 to 20,000 students	E	£17,750
20,001 to 30,000 students	F	£26,830
30,001 to 50,000 students	G	£31,884
50,001 to 100,000 students	H	£39,236
More than 100,000 students	I	£60,283

Statement of Financial Activities

For the year ended 31 December 2011

	Unrestricted Funds £	Total 2011 £	Total 2010 £
Income Resources			
<i>Income for charitable activities</i>			
Subscriptions	2,342,935	2,342,935	1,987,445
Workshop income	11,568	11,568	19,121
<i>Income from generated funds</i>			
Other income	772	772	1,360
<i>Investment income</i>	<i>7,726</i>	<i>7,726</i>	2,501
Total incoming resources	2,363,001	2,363,001	2,010,427
Resources Expended			
Charitable activities	2,373,631	2,373,631	2,037,936
Governance costs	41,581	41,581	48,642
Cost of generating funds	–	–	–
Total resources expended	2,415,212	2,415,212	2,086,578
Net incoming resources/ Net income for the year	(52,211)	(52,211)	(76,151)
Net movement in funds for the year	(52,211)	(52,211)	(76,151)
Total funds at 1 January 2011	566,847	566,847	642,998
Total funds at 31 December 2011	514,636	514,636	566,847

The amounts derive from continuing activities. All gains and losses recognised in the year are included in the statement of financial activities.

Balance sheet at 31 December 2011

	2011	2010
£	£	£
FIXED ASSETS		
Tangible assets	204,029	265,516
CURRENT ASSETS		
Debtors	48,951	41,401
Cash at bank and in hand	2,671,357	1,855,409
	2,720,308	1,896,810
CREDITORS		
Amounts falling due within one year	(2,409,701)	(1,595,479)
NET CURRENT ASSETS	310,607	301,331
TOTAL ASSETS LESS CURRENT LIABILITIES	514,636	566,847
FUNDS		
Unrestricted Funds		
General fund	514,636	566,847
	514,636	566,847

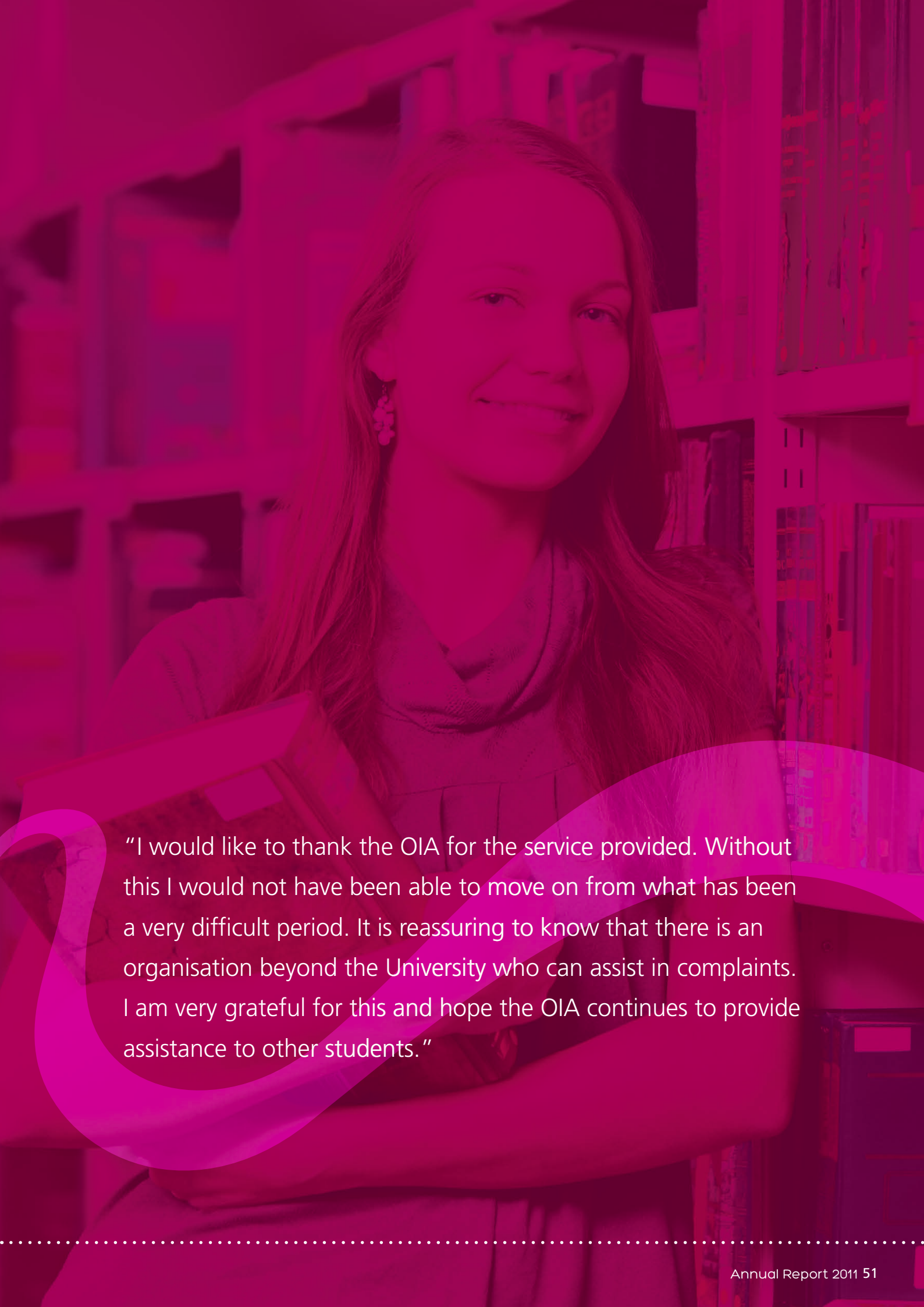
These summarised financial statements may not contain sufficient information to gain a complete understanding of the financial affairs of the Office of the Independent Adjudicator for Higher Education. The full auditors report and financial statements can be found on our website at www.oiahe.org.uk
Independent Auditors Statement: We have examined the summarised financial statements set out on pages 49 and 50.

Respective responsibilities of Trustees and Auditors You are responsible as Trustees for the preparation of the summary financial statements. We have agreed to report to you our opinion on the summarised statements' consistency with the full financial statements, on which we reported to you on 27 March 2012.

Basis of opinion We have carried out the procedures necessary to ascertain whether the summarised financial statements are consistent with the full financial statements from which they have been prepared.

Opinion In our opinion the summarised financial statements are consistent with the full financial statements for the year ended 31 December 2011.

Crowe Clark Whitehill LLP, Chartered Accountants and Registered Auditors,
Reading RG1 1PL. 5 April 2012.



"I would like to thank the OIA for the service provided. Without this I would not have been able to move on from what has been a very difficult period. It is reassuring to know that there is an organisation beyond the University who can assist in complaints. I am very grateful for this and hope the OIA continues to provide assistance to other students."



office of the
independent
adjudicator

Office of the Independent Adjudicator
for Higher Education

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