

Rules 2015

These are the Rules of the student complaints scheme (“the Scheme”) established by The Office of the Independent Adjudicator for Higher Education (“the OIA”). The Rules supersede all previous rules of the OIA and are effective from 9 July 2015. Complaints received by the OIA prior to this date will be dealt with under the Rules prevailing at the time.

All Member Higher Education Providers agree to comply with the Rules, and the governing bodies of all Qualifying Institutions in England and Wales have a statutory obligation under the Higher Education Act 2004 (“the 2004 Act”) to do so. Governing bodies should ensure that their procedures and regulations are compatible with the Rules.

1. Purpose

The main purpose of the Scheme is the independent, impartial and transparent review of unresolved complaints by students about acts and omissions of Member HE Providers and, through learning from complaints, the promotion of good practice.

JURISDICTION

2. Complaints Covered

- 2.1** The Scheme covers complaints about an act or omission of a Member HE Provider (whether or not arising from a consumer contract).
- 2.2** A student may bring a complaint about an act or omission of a Member HE Provider where he or she is undertaking a course of study, or programme of research, at:
 - 2.2.1** that Member HE Provider; or
 - 2.2.2** another provider (whether or not the other provider is a Member HE Provider) and the course of study, or programme of research, leads to the grant of one of the Member HE Provider’s awards.

3. Complaints Not Covered

The Scheme does not cover a complaint to the extent that:

- 3.1** it concerns admission to a Member HE Provider;
- 3.2** it relates to a matter of academic judgment;
- 3.3** the matter complained about was the subject of court or tribunal proceedings and those proceedings have been concluded, or the matter is the subject of court or tribunal proceedings and those proceedings have not been stayed;
- 3.4** the matter complained about was previously considered by another ADR Entity;
- 3.5** it concerns a student employment matter;
- 3.6** in the opinion of the Reviewer the matter complained about does not materially affect the Complainant as a student;
- 3.7** it is made by the personal representatives of a student and the OIA had not received a Complaint Form during the student’s lifetime;
- 3.8** dealing with the complaint would seriously impair the effective operation of the Scheme; or
- 3.9** in the opinion of the Reviewer the complaint is frivolous or vexatious.

4. Time Limits and Exhaustion of Internal Complaints Procedures

- 4.1 The OIA will not consider a complaint where it considers that the substantive event(s) complained about occurred before the Member HE Provider became a Member HE Provider unless, in the opinion of the Reviewer, the event(s) formed part of a course of conduct which continued after the Member HE Provider became a Member HE Provider.
- 4.2 A Complainant must normally have first exhausted the internal complaints procedures of the Member HE Provider complained about before bringing a complaint to the OIA.
- 4.3 The Member HE Provider will promptly, and in any event not more than 28 days after the internal complaints procedures have been exhausted, issue a letter (“Completion of Procedures Letter”) to the student concerned confirming that those procedures have been so exhausted. The issuing of Completion of Procedures Letters shall be in accordance with guidance published by the OIA from time to time.
- 4.4 In exceptional circumstances, and where satisfied there is good reason to do so, a Reviewer may accept a complaint for review where the internal complaints procedures of the Member HE Provider have not been exhausted and/or the Member HE Provider has not issued a Completion of Procedures Letter.
- 4.5 The OIA will not consider a complaint unless the completed Complaint Form is received within 12 months from the date upon which the Member HE Provider has given notice to the student of its final decision on the complaint or appeal. Time under this Rule will normally run from the date of the Completion of Procedures Letter.
- 4.6 Where the Member HE Provider issued a Completion of Procedures Letter before 9 July 2015 the OIA will not consider a complaint where the completed Complaint Form is received more than three months after the date of that Completion of Procedures Letter, unless there is good reason to do so.
- 4.7 The OIA may decline to accept a complaint where it considers that the substantive event(s) complained about occurred more than three years before the Complaint Form is received by the OIA if it considers that to accept the complaint would seriously impair the effective operation of the Scheme.
- 4.8 The OIA will not normally consider a complaint which arises from information or evidence which the student has obtained
 - 4.8.1 after the date of the Completion of Procedures Letter, or
 - 4.8.2 if no Completion of Procedures Letter has been issued, more than 28 days after the student ceases to be a studentunless the student could not reasonably have obtained that information or evidence at an earlier date.

REVIEW PROCESS

5. Initial Consideration of Complaint

- 5.1 A complaint must be made in writing, normally by submitting the completed Complaint Form together with relevant documents.
- 5.2 The Reviewer will send a copy of the Complaint Form and, where appropriate, the accompanying documents to the Member HE Provider for its information.
- 5.3 The Reviewer will determine whether a complaint is within the jurisdiction of the Scheme, as prescribed by these Rules, and will dismiss the complaint if the OIA does not have jurisdiction to review it.
- 5.4 The Reviewer may request such further information from the student and/or the Member HE Provider as is necessary to enable him or her to reach a determination under Rule 5.3.
- 5.5 The Reviewer will notify the student and the Member HE Provider, within three weeks of receiving the Complaint Form or the further information requested under Rule 5.4, of his or her determination under Rule 5.3, and will provide reasons for that decision.

6. Review Procedures

- 6.1** Once a determination has been made under Rule 5.3, the Reviewer will carry out a Review of the complaint to decide whether it is Justified, Partly Justified or Not Justified.
- 6.2** In deciding whether a complaint is Justified the Reviewer may consider whether or not the Member HE Provider properly applied its regulations and followed its procedures and whether or not a decision made by the Member HE Provider was reasonable in all the circumstances.
- 6.3** The Review will normally consist of a review of documentation and other information and the Reviewer will not hold an oral hearing unless in all the circumstances he or she considers that it is necessary to do so.
- 6.4** The Reviewer shall not be bound by legal rules of evidence nor by previous decisions of the OIA.
- 6.5** The nature and extent of the Review will be at the sole discretion of the Reviewer. When the Reviewer has determined that he or she has all of the material he or she considers necessary to make a decision, the Reviewer will issue a Complaint Outcome.
- 6.6** The normal process for gathering information during the Review will be:
- 6.6.1** The Reviewer will decide what further information (if any) he or she needs for his/her Review.
- 6.6.2** The Reviewer will:
- give the Member HE Provider the opportunity to comment on the Complaint Form and any accompanying documents;
 - give the student the opportunity to respond to the Member HE Provider's comments in response to the complaint;
- 6.6.3** The Reviewer may:
- give the parties the opportunity to comment on any representations received during the course of the Review;
 - require the parties to answer specific questions and/or provide additional information. This may include a requirement that the Member HE Provider provide a copy of the information that it considered at the final stage of its internal complaints procedures (and any related records).
- 6.6.4** The parties shall comply with any request for information the Reviewer may make relating to the Review, and with any time limit set out in the request or, where no time scale is indicated, as soon as is reasonably practicable.
- 6.6.5** Unless the review has been concluded at an earlier stage, the Reviewer will determine when he or she has received all the documents containing the relevant information relating to the complaint and will write to the parties to inform them that the complaint file is complete.
- 6.7** The Complaint Outcome shall be sent to the Complainant and the Member HE Provider as soon as reasonably practicable, and within 90 days of the Reviewer's determination that the file is complete under Rule 6.6.5.
- 6.8** Where the Reviewer determines that the complaint is highly complex, the Reviewer may at his or her discretion extend the 90 day period under Rule 6.7. The Reviewer will write to the parties to inform them of the extension and of the expected length of time that will be needed for the conclusion of the Review.
- 6.9** Notwithstanding the above the Reviewer may at any time seek to achieve a mutually acceptable settlement of a complaint (including, with the consent of the parties, through the appointment of a mediator) whenever he or she considers it appropriate. The parties will be given a reasonable opportunity to reflect on any proposed settlement before consenting to it.

7. Recommendations and Suggestions

- 7.1** The Reviewer may, where the complaint is Justified or Partly Justified, make Recommendation(s) that the Member HE Provider should do something or refrain from doing something. Those Recommendation(s) may include, but are not limited to, the following:
- 7.1.1** that the complaint should be referred back to the Member HE Provider for a fresh determination because its internal procedures have not been properly followed in a material way;
 - 7.1.2** that the Member HE Provider should take a course of action that the Reviewer considers to be fair in the circumstances;
 - 7.1.3** that the Member HE Provider should change the way it handles complaints;
 - 7.1.4** that the Member HE Provider should change its internal procedures or regulations;
 - 7.1.5** that a financial remedy should be paid to the Complainant, including, at the Reviewer's discretion, an amount for inconvenience and distress;
 - 7.1.6** that the complaint should be considered in another forum.
- 7.2** Where the Reviewer intends to make Recommendations, the Reviewer will set out in writing the proposed Recommendations together with the reasons for the proposed Recommendations, and shall send them to the parties with the Complaint Outcome.
- 7.3** The parties will be given the opportunity to make representations on the proposed Recommendations within a time limit set by the Reviewer.
- 7.4** After the expiry of the time limit under Rule 7.3, the Reviewer will write to the parties:
- 7.4.1** confirming the proposed Recommendations; or
 - 7.4.2** setting out the Reviewer's revised Recommendations.
- 7.5** The Reviewer may, where the complaint is Not Justified, make Suggestions that the Member HE Provider should consider taking a course of action or amending its internal procedures or regulations.

8. Conclusion of the Review

- 8.1** The Review process is completed:
- 8.1.1** Where (subject to any appeal under Rule 10) a complaint is terminated under Rule 5.3 or Rule 9;
 - 8.1.2** When the parties confirm their agreement to a proposed settlement under Rule 6.9;
 - 8.1.3** Where no Recommendations are made, when the Complaint Outcome is issued under Rule 6.5; or
 - 8.1.4** Where Recommendations are made, when the Reviewer writes to the parties under Rule 7.4.
- 8.2** The OIA may reopen a Review and issue a revised Complaint Outcome and/or revised Recommendations, where it is satisfied there is good reason to do so, and where, within a reasonable period of time after the issue of the Complaint Outcome:
- 8.2.1** new evidence is submitted which is material to the outcome of the Review, and which could not reasonably have been obtained at an earlier date; or
 - 8.2.2** information or representations received give reason to believe there might be a substantive error in the Complaint Outcome.

9. Suspension, Termination and Withdrawal

- 9.1** The Reviewer may terminate or suspend his or her Review, as he or she considers appropriate, if it becomes apparent to the Reviewer that:
- 9.1.1** the complaint falls within Rule 3;
 - 9.1.2** the Member HE Provider has satisfactorily dealt with the complaint;
 - 9.1.3** the Member HE Provider has made a reasonable offer to settle the complaint and the Complainant has refused it. In those circumstances, the Reviewer may require the Member HE Provider to repeat the offer to

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- the Complainant and to hold it open for a reasonable period of time;
- 9.1.4** the Complainant has repeatedly failed to comply with time limits set by the Reviewer or these Rules, or has unreasonably delayed in his or her conduct of the complaint;
- 9.1.5** the Complainant has acted aggressively, or offensively, or abusively, or unreasonably persistently, or has made unreasonable demands in his or her conduct of the complaint;
- 9.1.6** the Complainant can no longer be contacted; or
- 9.1.7** (suspension only) there are other good reasons for doing so.
- 9.2** The Reviewer may suspend his or her Review and/or refuse to permit a Representative to act for the Complainant if in the opinion of the Reviewer:
 - 9.2.1** The Representative is not acting in the best interests of the Complainant;
 - 9.2.2** The Representative has misled the Complainant and/or the OIA;
 - 9.2.3** The Representative has repeatedly failed to comply with time limits set by the Reviewer or these Rules, or has unreasonably delayed in his or her conduct of the complaint;
 - 9.2.4** The Representative has acted aggressively, or offensively, or abusively, or unreasonably persistently, or has made unreasonable demands in his or her conduct of the complaint;
 - 9.2.5** The Representative has been misled by the Complainant.
- 9.3** The student may withdraw his or her complaint at any stage during the course of the Review.

10. Appeal

- 10.1** The Complainant may appeal against the decision of a Reviewer to dismiss or reject the Complaint under Rule 5.3 or to terminate or suspend the Review under Rule 9 by writing to the Reviewer within 14 days of the decision. The appeal will be determined by a different Reviewer.
- 10.2** This Rule 10 does not apply to a Complaint Outcome issued under Rule 6.5 or to Recommendations made under Rule 7.4.

PUBLICATION AND COMPLIANCE

11. Publication

- 11.1** The Independent Adjudicator may in accordance with this Rule from time to time publish summaries of Complaint Outcomes under Rule 6.5 and any Recommendations made under Rule 7.4 where:
 - 11.1.1** in the opinion of the Independent Adjudicator it is in the Public Interest to publish; and
 - 11.1.2** the Review has been concluded.
- The published summaries may identify the Member HE Provider concerned but will not identify the Complainant.

12. Compliance

- 12.1** The Independent Adjudicator expects the Member HE Provider to comply with any Recommendations made under Rule 7.4 in full, and in a prompt manner.
- 12.2** Where Recommendations require the Member HE Provider to take a particular course of action it should do so within the time scale stipulated or, where no time scale is indicated, as soon as is reasonably practicable. The Member HE Provider shall report to the Reviewer on such compliance.
- 12.3** The Independent Adjudicator may report to the Board any non-compliance by a Member HE Provider with a request for information under Rule 6.6, and may publicise it in the Annual Report, or by other means at his or her discretion.
- 12.4** The Independent Adjudicator will report to the Board any non-compliance by a Member HE Provider with a Recommendation made under Rule 7.4, and will publicise it in the Annual Report, and by other means at his or her discretion.

- 12.5** Rules 12.1, 12.2, 12.3 and 12.4 shall continue to apply to a provider which is no longer a Member HE Provider provided that the Member HE Provider was a Member HE Provider at the time the student submitted a Complaint Form to the OIA in accordance with Rule 5.1.

ROLE OF THE BOARD AND INDEPENDENT ADJUDICATOR

13. The Role of the Board

The Role of the Board is set out in [Governance of the OIA Scheme](#). For the purposes of these Rules, the relevant sections are:

- 13.1** Preserving the independence of the Scheme and the role of the Independent Adjudicator.
- 13.2** Considering whether, and if so how, non-compliance by a Member HE Provider referred to the Board under Rule 12 should be dealt with.
- 13.3** Reviewing, and where appropriate, amending these Rules from time to time, subject to the provisions of the 2004 Act.
- 13.4** The Board shall not be involved in the review and determination of individual complaints.

14. The Independent Adjudicator

The Independent Adjudicator is appointed by and responsible to the Board. In determining any complaints under these Rules the Independent Adjudicator shall act independently of the Board, Member HE Providers and Complainants.

The powers of the Independent Adjudicator are set out in [Governance of the OIA Scheme](#). For the purposes of these Rules, the relevant sections are:

- 14.1** The Independent Adjudicator may enter into discussions and memoranda of understanding with any bodies or persons the Independent Adjudicator considers fit on matters of common interest, including the exchange of information. The Independent Adjudicator may provide information concerning the operation of the Scheme, including information on complaints received and/or reviewed and on Complaint Outcomes issued and Recommendations made and on related matters of compliance or non-compliance, including where he or she thinks fit, in relation to any individual complaint, Complaint Outcome and Recommendation, to any body which in the view of the Independent Adjudicator has a relevant right or interest in receiving such information. In particular the Independent Adjudicator shall co-operate with bodies engaged in regulating, financing or supervising standards within the higher education sector in any part of the United Kingdom. The information provided under this Rule 14.1 shall, in relation to personal data, comply with applicable data protection legislation.
- 14.2** The Independent Adjudicator shall prepare each year his or her Annual Report (which shall be distinct from the annual report of the Company) on the discharge of the functions of the Independent Adjudicator during the most recently ended reporting period. The report will include information about:
 - 14.2.1** complaints referred under the Scheme;
 - 14.2.2** the Complaint Outcomes issued and Recommendations made by Reviewers;
 - 14.2.3** the extent to which Recommendations made by Reviewers have been followed (listing any Member HE Providers which have not complied with a Recommendation).
- 14.3** The Independent Adjudicator may publish digests of complaints in anonymised form and statistical information.
- 14.4** The Independent Adjudicator shall issue guidance from time to time as to the timing and content of any publication under Rule 11 and the medium for publication and the opportunity for a Member HE Provider to make comments on a proposed publication (which shall not be binding on the Independent Adjudicator). The Independent Adjudicator shall have power to make all decisions for the purpose of Rule 11. The right to publish summaries of

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Complaint Outcomes (and any associated Recommendations) under Rule 11 shall be in addition to the publication rights under Rules 14.1, 14.2, 14.3 and 14.6.

- 14.5 The Independent Adjudicator may delegate, subject where necessary to the approval of the Board, any of his or her powers to the Deputy Adjudicator and other members of the staff of the OIA.
- 14.6 The Independent Adjudicator may publish an annual letter to each Member HE Provider setting out the number of complaints received by the OIA from that Member HE Provider and the outcome of complaints closed during that period, together with such other information as the Independent Adjudicator shall from time to time determine.
- 14.7 If requested to do so by the Independent Adjudicator, a Member HE Provider shall compile and send to the OIA any relevant information to assist the OIA in discharging its purpose, including but not limited to an annual return stating the number of Completion of Procedures Letters issued in the previous calendar year.
- 14.8 The Independent Adjudicator may publish guidance:
 - 14.8.1 in relation to these Rules,
 - 14.8.2 in order to promote the Scheme,
 - 14.8.3 in order to promote good practice, and
 - 14.8.4 on such other matters as he or she considers appropriate, consistent with the OIA's purpose.

OTHER PROVISIONS

15. Charges and Fees

- 15.1 The Scheme will not make any charges to Complainants for the consideration of their complaints.
- 15.2 Each Member HE Provider is bound to pay a total annual subscription and/or case related element, based on a published scale, for participating in the Scheme. The subscription and/or case related element will be determined by the Board from time to time.

16. Continuation of membership; exclusion of specified courses; and Non-Qualifying Institutions

- 16.1 For the purposes of these Rules, in the event that a Member HE Provider ceases to be a Qualifying Institution under Part 2 of the 2004 Act, it shall continue to be a Member HE Provider for a period of 12 months after that event in respect of acts or omissions that occurred during the academic year in which it ceased to be a Qualifying Institution under Part 2 of the 2004 Act.
- 16.2 The OIA may exclude from the Scheme complaints brought by students studying specified courses at a Member HE Provider which is a Member HE Provider by virtue of paragraphs 17.14 (e), (f) or 17.14.1 hereof.
- 16.3 From time to time the OIA may publish additional Rules which shall apply to Non-qualifying Institutions which have joined the Scheme with the consent of the Board.

INTERPRETATION, AMENDMENT AND GOVERNING LAW

17. Interpretation

Unless the context otherwise requires the definitions and interpretations set out below shall apply to these Rules:

- 17.1 "**ADR Entity**" means any body listed as an ADR Entity under Part 2 regulation 10 of *The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015* (S.I. 2015/542).
- 17.2 "**Annual Report**" means each annual report on the discharge and functions of the Independent Adjudicator in accordance with Rule 14.2.
- 17.3 "**Board**" means the board of directors of the Company and Trustees of the charity.

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- 17.4** “**complaint**” means a complaint in accordance with Rules 2 and 3 and includes part of a complaint.
- 17.5** “**Complainant**” means a student or a former student who is entitled to bring a complaint under the Scheme.
- 17.6** “**Complaint Form**” means an application form in a format approved by the OIA for making a complaint under the Scheme.
- 17.7** “**Complaint Outcome**” means the document issued by the Reviewer setting out:
- the basis upon which the complaint has been concluded (for example, settled; mediated; withdrawn; terminated); or
 - the decision that the complaint is Justified, Partly Justified or Not Justified, and the reasons for the decision following a Review under these Rules.
- 17.8** “**consumer contract**” means a sales or service contract to which Directive 2013/11/EU of the European Parliament on *Alternative dispute resolution for consumer disputes (Directive on consumer ADR)* applies.
- 17.9** “**court or tribunal**” excludes those courts or tribunals which are internal to a Member HE Provider or are established pursuant to the powers of a Member HE Provider.
- 17.10** “**days**” means calendar days.
- 17.11** “**franchised course**” means a course which is subject to an agreement by one provider that another provider may deliver all or part of a programme approved and owned by the first provider.
- 17.12** “**Higher Education qualification**” means any course of study which has not been excluded from the Scheme under Rule 16.2 hereof.
- 17.13** “**internal complaints procedures**” means those complaints and appeals procedures of a Member HE Provider which concern students and for the avoidance of doubt include, but not by way of limitation, procedures concerning student complaints, academic appeals, disciplinary matters, fitness to practise, fitness to study, and breaches of codes of conduct and regulations.
- 17.14** “**Member Higher Education Provider**” or “**Member HE Provider**” means a Qualifying Institution under part 2 of the 2004 Act; that is, any of the following institutions in England or Wales:
- (a) a university (whether or not receiving financial support under section 65 of the Further and Higher Education 1992) (“1992 Act”) whose entitlement to grant awards is conferred or confirmed by an Act of Parliament, a Royal Charter or an order under section 76 of the 1992 Act;
 - (b) a constituent college, school or hall or other institution of a university falling within (a) above;
 - (c) an institution conducted by a higher education corporation, as defined by section 90(1) of the 1992 Act;
 - (d) a designated institution, as defined by section 72(3) of the 1992 Act;
 - (e) (with effect from 1 September 2015) an institution (other than one within paragraphs (a) to (d), above) which provides higher education courses which are designated for the purposes of section 22 of the Higher Education Act 1998 by or under regulations under that section;
 - (f) (with effect from 1 September 2015) an institution (other than one within paragraphs (a) to (e), above) whose entitlement to grant awards is conferred by an order under section 76(1) of the 1992 Act.
- The term Member HE Provider shall also include:
- 17.14.1** Non-qualifying Institutions which have joined the Scheme with the consent of the Board; and
- 17.14.2** Providers to which Rule 16.1 applies.
- 17.15** “**Non-qualifying Institution**” means a Higher Education Provider which is not a Qualifying Institution in accordance with Part 2 of the 2004 Act.
- 17.16** “**Office of the Independent Adjudicator for Higher Education**” or “**OIA**” means the Company limited by guarantee and registered charity which is designated as the operator of the Scheme in accordance with the 2004 Act.
- 17.17** “**Public Interest**” means one or more of the following:
- 17.17.1** publication which can be justified as highlighting either a significant act or omission of the Member HE

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Provider and/or the impact of the case on an individual Complainant or group of Complainants; and/or

17.17.2 publication which can be justified as drawing to the attention of Member HE Providers, students' unions and students the import of the Complaint Outcome for the purpose of providing a wider understanding of the Scheme and its operation and/or good practice relating to complaints between students and their Member HE Providers; and/or

17.17.3 publication which can be justified as ensuring or improving continued public, user and stakeholder confidence in the transparency of the Scheme and the independent nature of decision-making under the Scheme.

17.18 "**Recommendation**" means a recommendation made in accordance with Rule 7.

17.19 "**Representative**" means any individual or body appointed by the Complainant to act on their behalf.

17.20 "**Review**" means the process of considering a complaint to:

- explore means of settlement or other resolution, or refer to mediation; or
- obtain sufficient information to make a decision on the complaint.

17.21 "**Reviewer**" means the individual who is reviewing the Complaint.

17.22 "**student**" means a student who:

17.22.1 is or was registered at the Member HE Provider complained about; or

17.22.2 in the circumstances described in Rule 2.2.2 is or was registered at a Member HE Provider and studying at another provider (whether or not the other provider is a Member HE Provider); or

17.22.3 is or was studying at a Member HE Provider on a franchised course;

on:

17.22.4 any course of study, in the case of a student registered at a Member HE Provider which is a Qualifying Institution by virtue of paragraphs 17.14 (a) to (d) hereof; or

17.22.5 a course of study leading to a Higher Education qualification, in the case of a student registered at a Member HE Provider which is a Qualifying Institution by virtue of paragraphs 17.14 (e), (f) and 17.14.1 hereof.

17.23 "**student employment matter**" means a matter relating to the student's employment by the Member HE Provider rather than their student status.

17.24 A plural word includes the singular and vice versa.

17.25 A reference to a statute in these Rules shall include a reference to that statute as may be modified, amended, re-enacted or supplemented from time to time.

18. Amendments to the Rules

These Rules may be amended from time to time in accordance with Rule 13.3.

19. Law

These Rules shall be governed by and interpreted according to the law of England and Wales.



OIA Scheme Rules July 2015 Consultation Response

The consultation on the OIA's Revised Rules was launched on 27 April and closed on 31 May 2015. This five week timeframe was necessarily tight because the consultation needed to take account of the Government's Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 in March, and the publication of the CTSI's guidance on the ADR Directive on 23 April 2015.

The new Rules should take effect on 9 July 2015, which is the date the Directive comes into force.

We received a total of 39 responses to the consultation and appreciate the thoughtful and constructive comments which those responses contained. This note responds to the main themes arising from the responses.

We are extremely grateful for the time and care respondents have taken in commenting on the proposed Rules, particularly in the light of the tight timeframe.

Section 1

Extended timeframe for submitting complaints

Many of the responses expressed concern about the proposed change in the deadline for submitting a complaint to the OIA. The proposal, which is to change the deadline from three months to 12 months, arises directly from the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015.

We recognise that we did not fully explain the rationale behind this change in the Consultation Document. The OIA applied to become (and has now been appointed) the ADR entity for higher education and will, therefore, be obliged to meet the requirements of the Directive and the ADR Regulations. We include some further information about the Directive and its implications in the Annex to this paper.

The EU Regulations state that an ADR entity may only refuse to deal with a complaint if "the consumer has not submitted the complaint to the body within the time period specified by the body, provided that such time period is not less than 12 months from the date upon which the trader has given notice to the consumer that the trader is unable to resolve the complaint with the consumer".

The consultation responses made a number of sensible comments about what might be the consequences for a student if he or she delayed bringing a complaint by the full 12 months. They highlighted the potential detrimental effects that such a delay might have on the OIA's review and, more significantly, that the remedy sought by the student may no longer be available.

We recognise that it is in the interests of everyone to deal with complaints as swiftly as possible and we will advise and encourage students to submit their complaints to the OIA as soon as they can after the COP letter is issued. We will incorporate this advice in our [Guidance Note on Eligibility and the Rules](#) and in other literature.

Eligibility – complaints that ‘seriously impair’ the effective operation of the Scheme.

A number of respondents requested clarification as to what is meant by the phrase “seriously impair the effective operation of the Scheme”. We include some examples of this in the [Guidance Note on Eligibility and the Rules](#):

- The complaint relates to events which took place over a significant period of time (more than three years) and involves a very high volume of documentation.
- A different forum is better equipped to consider the matter: for example, complaints about data protection issues will normally be better considered by the Information Commissioner’s Office.
- There are other proceedings taking place within the Member HE Provider or elsewhere which are relevant to the complaint. For example, a student complains to the OIA about an academic appeal; she wants to be given a further resit opportunity. The student is also the subject of separate disciplinary proceedings which might result in her exclusion. If she is excluded then she would not be able to take advantage of a further resit opportunity.

Issue of Complaint Outcome within 90 days

Respondents had queries about the OIA’s commitment to issue a Complaint Outcome within 90 days of a determination that the complaint file is complete, except in highly complex cases. This is a requirement relating to the OIA’s application to be the ADR entity for higher education complaints. “Days” is defined in the Rules as “calendar days”. We will be providing guidance on the factors which might lead us to conclude that a complaint is “highly complex”. A decision that a complaint is highly complex can be made at any stage during the review.

Some respondents were concerned that the pressure on the OIA to comply with this timescale might result in providers being put under increasing pressure to meet stringent deadlines. In fact, time only begins to run once the complaint file is complete, that is, once the OIA has obtained all the information it needs from the student and from the provider to make a decision.

Other respondents were concerned that the new timeframe did not affect the time taken to gather information. Work continues internally to improve our processes and to ensure that this information-gathering stage is as efficient as possible. We are preparing some additional guidance to providers to assist them in putting together their response to our requests for information, and to explain our policy on setting timeframes for responses and granting extensions.

ADR Entities

Some respondents asked for more information about which bodies would be considered to be “ADR entities” under new Rule 3.4. The application process for bodies seeking to become an ADR entity is currently under way. Each competent authority (the bodies charged with processing and approving those applications) will have a list of ADR entities. So we will be able to check whether a body is an ADR entity. Providers and students should tell us if the complaint has been considered by a body external to the provider.

Section 2

A number of respondents raised concerns about the wording of revised Rule 2, in relation to complaints involving more than one provider. We have made some changes to the wording of Rule 2, and to the definition of “student” (Rule 17.22) to take account of those concerns.

The principal concern was that the wording of Rule 2 implied that the OIA would consider complaints against either provider, no matter which provider was responsible for the events giving rise to the complaint.

Rule 2.1 states that: “The Scheme covers complaints about an act or omission of a Member HE Provider (whether or not arising from a consumer contract).” Thus, where a complaint involves more than one provider, we will look at which provider is responsible for the matters the student is complaining about. Our starting point will be the agreement between the providers, and we will also consider other guidance issued by BIS and HEFCE, and apply the principles of the QAA Quality Code.

So, the OIA will consider a complaint about an act or omission of:

- A Member HE Provider where a student is registered (whether that is a university, a college, or an alternative provider) (Rule 2.2.1);
- A Member HE Provider which validates a course which a student is studying at another provider (Rule 2.2.2);
- A Member HE Provider which franchises a course which a student is studying at another provider (Rule 2.2.2);
- A Member HE Provider which is delivering a franchised course, even if the student is registered at the franchising provider (Rule 2.2.1);

But in each case, we will only consider complaints about those matters for which the Member HE Provider is responsible.

We have published some information about our approach to complaints involving more than one provider. See for example <http://www.oiahe.org.uk/providers-joining-the-scheme-on-1-september-2015/frequently-asked-questions.aspx> . We will include further guidance in our Guidance Note on Eligibility and the Rules <http://oiahe.org.uk/media/100348/guidance-note-scheme-eligibility-july-2015.pdf> and our Completion of Procedures Guidance Note <http://oiahe.org.uk/media/100365/completion-of-procedures-letter-guidance-july-2015.pdf>.

Some providers asked for further information about the kind of information which the OIA might request under revised Rule 14.7. This might include information about complaints and appeals received, as well as information about the number of Completion of Procedures letters issued, which inform the publication of annual letters, the application of the case-related element and help the OIA to plan and manage resources.

Section 3

Almost all of the respondents welcomed the introduction of new Rule 4.7, which restricts the circumstances in which the OIA will consider complaints arising from information or evidence which the student has obtained after the provider’s processes have concluded. The definition of “complaint” in the Rules includes “part of a complaint”. Thus if a student raises several complaints some of which arise from information which post-dates the Completion of Procedures Letter, the OIA will be able to exclude those parts of the complaint.

Almost all of the respondents agreed with the proposals to change the OIA’s processes so that a complaint will be closed when the Complaint Outcome is issued. One respondent suggested that a better approach would be to give a more structured format for comments on the Complaint Outcome which would encourage the parties to submit their comments in a more concise and focused way. We piloted such an approach in 2013, but it did not result in a significant reduction in the volume of comments received. There was broad acceptance that the proposed new process has sufficient safeguards in place to prevent any disadvantage to Scheme users.

Some respondents expressed concerns about Rule 8.2, which allows for the re-opening of a review where there is good reason to do so. Although the wording of this Rule has been revised, the OIA has always exercised its discretion to reopen a review where a substantive error is identified, and that principle was included as Rule 8.3 in the current Rules, introduced in March 2013.

We will provide further guidance on this Rule, including on what we consider to be a “reasonable period of time after the issue of the Complaint Outcome”, in our [Guidance Note on Eligibility and the Rules](#).

Section 4

We received some very helpful comments, requests for clarification, and wording suggestions in the responses to this section, many of which we have adopted. Others will be addressed in our [Guidance Note on Eligibility and the Rules](#).

Annex: the ADR Directive

The ADR Directive and the consequential regulations are changing the consumer complaints landscape. Although the Directive includes an exemption for “public providers of further or higher education”, the Government has taken the decision not to invoke that exemption.

The Directive defines “consumer” as “any natural person who is acting for purposes which are outside his trade, business, craft or profession”, and “trader” as “any natural persons, or any legal person irrespective of whether privately or publicly owned, who is acting, including through any person acting in his name or on his behalf, for purposes relating to his trade, business, craft or profession”. The Directive applies to sales and service contracts. “Service contract” is defined as “any contract other than a sales contract under which the trader supplies or undertakes to supply a service to the consumer and the consumer pays or undertakes to pay the price thereof”.

Complaints arising from a student’s contract with a Higher Education Institution are, therefore, covered by the Directive.

Once the ADR Directive takes effect, the Government will be obliged to ensure that consumer disputes can be submitted to an ADR entity which meets the requirement of the Directive. The OIA has been appointed as the ADR entity for consumer disputes between students and HEIs.

This means that there will continue to be one body, the OIA, dealing with student complaints that have exhausted internal procedures. Under the Directive higher education providers are obliged to notify students of the available ADR entity. As the OIA will fulfil this role, higher education providers will not have to inform students about a different ADR entity. This will minimise confusion and uncertainty for students, and avoid adding to the regulatory burden on higher education providers.

Office of the Independent Adjudicator for Higher Education
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