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'for students in higher education'

# ANNUAL REPORT 2010

DELIVERY • GROWTH • MODERNISATION • CHANGE



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# Introduction by the Chair

During a year of intense activity, the Pathway Report, setting out Recommendations for the future development of the Scheme, was published in February 2010 and work on its implementation began immediately.

The Board was closely involved with implementing Recommendations relating to further entrenchment of the principle of independence across OIA governance. The Board also worked closely with the Office to look at necessary reforms to the case-handling process in the light of Pathway submissions and the continuing annual rise in complaints received. Finally, the Board took important steps towards securing charitable status for the OIA, and happily this objective was achieved on 11 April 2011.

The OIA goes into the period of consultation on the Government's forthcoming Higher Education White Paper in a strong strategic position to contribute to continuing validation of the student experience.

## Retiring Board Members

The past year has seen the retirement from the Board of four Independent Directors who have

served the OIA with distinction since the inception of the Office.

First, in March 2010 Sophie Holmes completed her term of office. Sophie brought valuable experience of working with students to the OIA as well as her expertise relating to communications. In September 2010 Mark Emerton and Hugh Smith, two of the first Independent Directors to be appointed by the OIA, retired from the Board after six years. Mark was for many years a valued member of the Finance Committee as well as a source of guidance on legal issues. Hugh, a former Deputy Chair of the OIA, played an important role in establishing recruitment and HR procedures for the Office.

Most recently, in March 2011, Cecilia Wells completed her term of office as Independent Director and Deputy Chair. Cecilia has played a pivotal role in the development of the Office, its management and governance structures, as well as overseeing the open recruitment of the Chair in 2009.

I thank all these Directors for their important contribution to establishing the OIA as a functioning



Ram Gidoomal

and well-respected service delivery organisation for higher education.

## Reappointment of the Independent Adjudicator and Chief Executive

I am delighted to report that it was the unanimous decision of the Board in December 2010 that Rob Behrens should be invited to serve a second, three-year term as Independent Adjudicator and Chief Executive following a transformative and outstandingly successful first term. Rob was pleased to accept this challenge and his second term began in May 2011. The Board is extremely grateful to Rob and to all his colleagues for the professionalism, commitment and focused delivery which have characterised all aspects of their work.

**Ram Gidoomal CBE**

# The Independent Adjudicator's Review of the Year

## Introduction

2010 was a year of delivery, growth, modernisation and change for the OIA as we continued to prepare for the new era of higher education in which our role in safeguarding the student experience is central.

The Office received a record number of complaints from student complainants. For the first time, the OIA has named two universities as being non-compliant under the Scheme Rules.

We implemented the vast majority of Recommendations and Quick Wins set out in the Pathway Report.

We welcomed two private providers to the Scheme as 'Non-Qualifying Institutions'.

We consulted further on sensitive issues. These include publication of Formal Decisions, an additional student member of the OIA Board, and the incorporation of Further Education Colleges offering their own Foundation Degrees into the Scheme. We articulated clear, constructive and evidence-based opposition to the regulatory proposals set out in

Lord Browne's review of higher education funding and student finance. We continued our extensive programme of working visits to universities and students' unions.

We also moved offices over two days in June. The move was completed with minimal disruption to our core business and in line with challenging budgetary requirements.

None of the above could have been achieved without the professionalism, commitment and tenacity of OIA staff at all levels. I am most grateful to every one of them. I am grateful to Ram Gidoomal and the OIA Board for their wise advice and partnership and for their determination not to be involved in the adjudication of cases.

I also want to thank the Higher Education Advisory Panel, astutely led by Professor Avrom Sherr, for their consideration of general good practice issues inherent in OIA Recommendations. Their work is much appreciated.

Finally, I am grateful to all the users and stakeholders of the Scheme for their continuing courtesy and



Rob Behrens

cooperation. I want to thank especially Professor Steve Smith (UUK) and Aaron Porter (NUS) for their constructive engagement through turbulent times.

## The policy debate moves on – students as consumers

The publication of Lord Browne's Review of Higher Education Funding and Student Finance<sup>1</sup> marked the beginning of an intense period of policy debate about higher education which is not yet concluded. The OIA supports the much-needed review and simplification of the higher education regulatory framework and is working constructively to support the process.

However, Lord Browne's 'Chapter 6' proposals to create a new, uncosted, 'super-quango' of merged regulatory bodies (including the OIA) failed basic tests of evidence-based policy-making. The review ignored the experience of recent regulatory reform in legal and financial service sectors where policy planning effectively combined the need to create joined-up regulatory arrangements with respect for the integrity of independent complaints resolution. Happily, universities and students' unions have recognised and rallied strongly behind the imperative of a continuing and independent OIA as a central ingredient of validating key aspects of the student experience in the new arrangements.

**Securing the continued independence of the OIA is a necessary but not sufficient condition for future effectiveness. The new policy emphasis on students as consumers, and the doubling and trebling of tuition fees from 2012 create big additional operational challenges to the OIA in the context of existing significant annual rises in complaints received. In policy planning terms, the Pathway strategic review, launched at the end of 2008 was exactly the mechanism needed to plan for the new era.**



### Cases Reviewed by the OIA in 2010

There is change and continuity in the outturn figures for 2010 (see below, p34). The change is manifested in the volume of complaints received, and the increasingly complex nature of the complaints themselves. In addition, and for the first time, complaints from Welsh universities are disaggregated

this year, with the agreement of the Welsh Assembly Minister.

While this new data is important to have in the public domain, there is no significant difference between the performance of Welsh and English universities in the handling of complaints and so

no general comparative conclusions can be safely drawn. However these figures provide a useful baseline for future years and should any significant trends emerge I will report on them.

**We received more than 2,000 enquiries last year and a record 1,341 complaints. This is still a very small proportion of the number of enrolled students at English and Welsh universities, but**

**a big challenge to a small office operating on a turn-over of around £2 million per annum, and an increase of 33 per cent on the previous year.**

During the year, 169 complaints were found either Justified (51) or Partly Justified (118), representing 20 per cent of complaints closed. This represents a small increase in the number of Justified or Partly Justified complaints compared to 2009. Nevertheless, and at the same time, universities should take encouragement from the evidence that, once again, a majority of complaints (53 per cent) were found Not Justified.<sup>2</sup> In 2010, financial settlements totalling £173,959 were offered to

complainants by way of compensation (a small increase on 2009) with the largest settlement being £15,000. 18 per cent of complaints were Not Eligible in 2010 compared with 19.5 per cent in 2009. This suggests a degree of greater understanding amongst complainants about how the Scheme can be used.

There was a further increase in average OIA handling times in 2010 as would be expected with

the increase in complaints received. The average handling time is now just over 6 months. The Office has addressed this challenge directly by piloting and then implementing significant reforms to the case-handling process (see case-handling reforms below, p9). These reforms are designed to ensure that there is sufficient resource available to resolve cases right at the beginning of the OIA process, as well as having a dedicated resource to expedite delayed cases.

There is also a change in the degree of complexity of the cases the OIA adjudicates. For example, complaints in 2010 addressed allegations of the

mishandling of theft and bullying accusations including arrest on campus and the involvement of the police, the status of Accreditation and Experiential Learning credits, appropriate practice for students on teaching placements in denominational schools, acceptable etiquette on distance learning programmes, the dilemma for complainants using traditional medicine and yet needing written evidence of medical intervention,

and regulations relating to the expertise of External Examiners.

The continuity comes in the kinds of issues that students complain about, and the groups of students who are most likely to complain. As in previous years, academic-related issues predominate and the vast majority of complaints are concerned with due process in arriving at degree classification, the handling of mitigating circumstances, and challenges to charges of and penalties for academic misconduct including plagiarism and cheating.

Yet again, post-graduate students, students aged

*“Obviously I am very disappointed but thank you anyway”*

over 25 and international students from outside the European Union are over-represented in OIA cases in comparison to their proportions amongst enrolled students at all universities in England and Wales.

In addition, Business and Administrative studies, Nursing and subjects allied to Medicine, Law and Medicine and Dentistry feature prominently amongst the subjects complained about. It is no accident that a number of these subjects have professional as well as academic tests related to successful course completion, emphasising that Fitness-to-Practise issues remain sensitive and difficult to handle. I expect to see issues relating to Fitness-to-Practise grow in importance in the coming years.

### Compliance and non-compliance

The daily life of the OIA includes routine and disciplined responses by universities to the

Recommendations set out in Justified and Partly Justified Formal Decisions. This year, for the first time, I have decided, with the agreement of the OIA Board, to publish instances of non-compliance by two universities in accordance with Scheme Rule 7.7 (“Any non-compliance by an HEI with a Recommendation will be reported to the Board and publicised in the Annual Report.”)

It is important that Universities understand the Recommendations which the OIA has made in Formal Decisions, and are able to pass on that understanding to members of staff responsible for implementing them. Universities are reminded that they have the opportunity to comment on the practicalities of Recommendations at the Draft Decision stage, and to draw attention to any potential ambiguity.

Once the Formal Decision has been issued, the OIA makes every effort to ensure that universities understand what is expected of them, and is sensitive to reasonable requests for extensions to timescales. For this process to be effective, however, it requires good communication with, and the cooperation of, the universities’ Points of Contact. Those Points of Contact must be properly resourced, and have the necessary authority within the university to ensure the Recommendations are properly implemented.

**I need to make two, important, additional points about the naming of two universities this year. First, and contrary to media assertions, this is not a recourse to what is called ‘naming and shaming’ with all the associations of moral censure that term implies. Rather, it is the application of OIA processes clearly set out in the Scheme Rules. Secondly, I will be reviewing the affected universities’ responses to this development in coming to a wider view about whether or not the current legislation gives the OIA sufficient power in relation to non-compliance issues. I expect to make the OIA position clear in responding to the Higher Education White Paper.**

#### OIA Scheme Rules – compliance and non-compliance

**Rule 6.5** “The parties shall comply promptly with any reasonable and lawful request for information the Reviewer may make relating to the Review.”

**Rule 7.5** “The OIA expects the HEI to comply with the Formal Decision and any Recommendation in full, and in a prompt manner.”

**Rule 7.7** “Any non-compliance by an HEI with a Recommendation will be reported to the Board and publicised in the Annual Report.”

# Universities and non-compliance

## 1. Southampton University

At the 31st OIA Board Meeting on 10 December 2010, the Independent Adjudicator reported that Southampton University was non-compliant under Rule 7.5 in respect of 2 cases and that the University was also in breach of Rule 6.5 in a further case.

After consideration of the evidence including university written submissions and in accordance with Scheme Rule 7.7, the OIA Board agreed unanimously that the non-compliance should be published in the 2010 Annual Report.

The background to the non-compliance was a failure (in one case), despite repeated requests, to provide written confirmation of compliance with a Formal Decision issued in March 2010, and (in the second case) a continuing stated reluctance to comply with a Formal Decision four months after it had been issued. In the third case, the University delayed in responding to requests for evidence in a case over a period of ten months, notwithstanding repeated reminders.

The Independent Adjudicator wrote to the Vice-Chancellor, whose subsequent intervention began a process of constructive engagement in which the University accepted the feedback on the individual cases, confirmed compliance in one case, complied with OIA Recommendations in the second case, and submitted evidence in the third case.

The University reviewed its complaints handling processes in the light of the inadequacies exposed and placed its bilateral relationship with the OIA on a new, positive basis.

## 2. Westminster University

At the 33rd (Special) OIA Board Meeting on 6 May 2011, the Independent Adjudicator reported that Westminster University was non-compliant under Rule 7.5 in respect of 2 cases. After consideration of the evidence, including university written submissions, and in accordance with Scheme Rule 7.7 the OIA Board agreed unanimously that the non-compliance should be published in the 2010 Annual Report.

The background to the non-compliance included significant delay in implementing and demonstrating implementation of OIA Recommendations during 2010 and early 2011. In one case the University failed to provide evidence that it had satisfactorily reviewed the mitigating circumstances of a disabled student. In the other case, the University failed to provide evidence that it had properly conducted an independent review of a contested examination question and its marking scheme.

There followed a constructive engagement between the OIA and the University including the involvement of the Vice-Chancellor. In this process, the University satisfied the Independent Adjudicator that it had complied with some of the outstanding Recommendations and provided a timetable for compliance with others.

The University also agreed to take further steps to comply with two outstanding Recommendations specific to the individual students.

As a result of this process, lines of communication between the OIA and the University have been significantly improved. The University is working with the OIA towards compliance with the Recommendations.

## Meeting the challenges of safeguarding the Student Experience – Pathway Report Implementation

**The Pathway Report**, published in February 2010 and setting out Recommendations for the development of the OIA over the next five years, was widely recognised as an authoritative account of the achievements and challenges faced by the OIA Scheme. Founded on a comprehensive survey of complainants, universities, students’ unions and other stakeholder opinion, the Report revealed that OIA mandates and operations are broadly effective, but there was a clear need for incremental development to meet a new era of financial retrenchment, higher tuition fees and raised student expectations about service delivery.

Immediately following the publication of the Report, the OIA set about implementing the central Recommendations and the considerable progress made is set out in Figure 1. During the year a Protocol was developed to enable private suppliers to join the Scheme. **ifs School of Finance** is now a member of the Scheme and **The College of Law** is in the process of joining the Scheme. This is an important first step in opening the OIA Scheme up to students of all higher education providers. A

**Figure 1 Pathway Implementation**

Theme	Key actions	In progress
Mandates	<ul style="list-style-type: none"> <li>• Extend Scheme to Non-Qualifying Institutions</li> <li>• Consult on extending Scheme to FECs running Foundation degrees</li> <li>• More effective dissemination of mandates and Rules</li> </ul>	✓
Independence	<ul style="list-style-type: none"> <li>• New procedure for service complaints</li> <li>• Change of Quorum Rules</li> </ul>	✓
User Perspective	<ul style="list-style-type: none"> <li>• Additional Student Board member</li> <li>• Revision of Scheme Application Form, OIA literature, and Guidance on Completion of Procedures and Eligibility</li> <li>• Review of Disability Policy and Practice</li> </ul>	✓
Proportionality, Efficient and Effective Approaches	<ul style="list-style-type: none"> <li>• Development of electronic transactions</li> <li>• Review of ‘first contact’ engagement with complainants and use of Fast Track procedure</li> <li>• Review Funding model</li> </ul>	✓
Transparency	<ul style="list-style-type: none"> <li>• Consult further on how to publish Formal Decisions</li> <li>• Publish core information about individual HEI record on complaints</li> </ul>	✓
Quality Outcomes	<ul style="list-style-type: none"> <li>• Publish indicative guidance on Remedies</li> <li>• Review compliance arrangements</li> <li>• Develop written good practice guidance</li> </ul>	✓

second round of Pathway Consultation at the end of 2010 showed widespread support for the admission of Further Education Colleges delivering their own Foundation Degrees.

The Office completed a revision of the key guidance to ensure greater clarity and understanding of when and how the Scheme is used. We commissioned the eminent employment and equalities lawyer, Sue Ashtiany, to undertake an important review of OIA disability policy and practice (to be published later in 2011) and we continued the development of electronic transactions to ensure more effective case-handling.

The Pathway Report heralded important initiatives in relation to three key issues at the core of preserving the integrity of the OIA Scheme: case-handling, greater transparency in the reporting of Formal Decisions, and the funding model best suited to the Scheme at a time of rapid increase in usage.

### **Case-handling reforms**

All users of the OIA Scheme wanted to see a more accelerated route to the issuing of a Formal Decision.<sup>3</sup> The clear view of complainants arising out of the Pathway Consultation Exercise is that they would like direct contact with case handlers and

mediation with the university through the OIA to see if differences can be resolved, even at this final stage.<sup>4</sup>

These clear expressions of opinion, together with a continued and challenging rise of complaints received, prompted Recommendation 14 of the Pathway Report in which the Office pledged a reform of its case-handling. Rather than publishing proposals for reform, we used the extensive feedback from Pathway to devise and trial (from September 2010) a revised, team, approach to the adjudication process. This involved the creation of a new Assessment Team at the front-end of the organization with responsibility for handling complaints from Scheme Application Form through to Preliminary Decision, including making judgments on issues of eligibility and scoping complaints to manage the expectations of complainants. The approach is proactive with an emphasis on telephone communication, conciliation and mediation between the parties where appropriate.

Where cases are judged not suitable for this kind of resolution, and require full review, they are passed to the Review Team to prepare Draft and Formal Decisions.

### **Reform of case-handling procedures**

“The OIA should publish proposals for enhancing its direct contact with users within 6 months. Any proposal should be constructed in the context of the requirement of the OIA to be an independent, impartial adjudicator, subject to the rigours of Judicial Review.”

#### **Pathway Report Recommendation 14**

A Completions Team was also created to clear an identified group of cases older than six months.

This pilot, reviewed and validated by an independent consultant recruited under conditions of competitive tender, was popular with both complainants and universities, who welcomed the direct contact. It proved sufficiently successful to justify a continuation of the team approach, and greater concentration on resolution at the front-end of the process. The OIA's concern is to equip itself with a revised handling process that replicates the quality outcomes and consistent decisions generated up until 2010, but provides an effective mechanism for handling the volumes of complaints now arriving and almost certain to rise in the period to come. We have moved closer to that duality.

### Publication of Formal Decisions

The Pathway Consultation revealed divided views between universities on the one hand and students' unions and complainants on the other, about the merit of publishing Formal Decisions by name of university. While students' unions and complainants were overwhelmingly in favour of this development, universities were more cautious, and especially concerned about the reputational damage associated with the publication of cases where the decision was Justified or Partly Justified<sup>5</sup>.

Rather than move towards immediate change, we decided to consult with the sector a second time, and at the end of 2010, **The Pathway Consultation: Second Round** (December 2010) set out options for change in line with Recommendation 25 in the original Pathway Report.

The second round of consultation attracted a high response rate (152 submissions). Students' union submissions favoured the publication of summaries of all Formal Decisions, although some acknowledged the resource implications of this Option. There was a noticeable movement in university opinion, with a small majority supporting the OIA preferred option of publishing summaries of a limited number of individual Formal Decisions

### Towards greater transparency

"The OIA should consult further with the sector and key stakeholders on how to develop the transparency of the Scheme. A consultation document should present options for increasing transparency including one or both of the following:

In line with general regulatory good practice, the publication of summaries of Formal Decisions made by the OIA, naming the relevant university but retaining anonymity for university staff and individual complainants;

The publication annually of summary data for each member of the Scheme including the number and outcome of complaints dealt with by the OIA, the number of Completion of Procedures Letters published each year, and the total number of complaints and appeals received and heard by the university."

**Pathway Report, 2010, Recommendation 25**

### Publication of summaries

#### OIA Formal Decisions

"A limited number of summaries of Formal Decisions, including Not Justified decisions would be published by the Independent Adjudicator, using a public interest test."

Here 'public interest' refers to one or more of the following:

The significance of the Formal Decision in terms of highlighting an 'omission or commission' of a university and/or the impact of the case on an individual complainant or group of complainants;

The need to draw the attention of universities, students' unions, and students to the decision on grounds of educating for wider understanding and good practice; and

To ensure continued public, user and stakeholder confidence in the transparency of the Scheme and the independent nature of decision-making."

**The Pathway Consultation: Second Round, 2010**

by name of university. Here, decisions about which cases to publish would be taken using a public interest test along the lines set out in the consultation (see previous page) and any publication would be made only after compliance (where it is required) has been established. The published summaries would exclude the names of complainants and of university staff.

The twin imperatives behind the consultation were the creation of proportionate publication arrangements which generate further user and stakeholder confidence and trust in the Scheme without diverting significant and precious resource from the core activity of adjudication. I am clear that the publication of limited numbers of Formal Decision summaries meets these imperatives. The

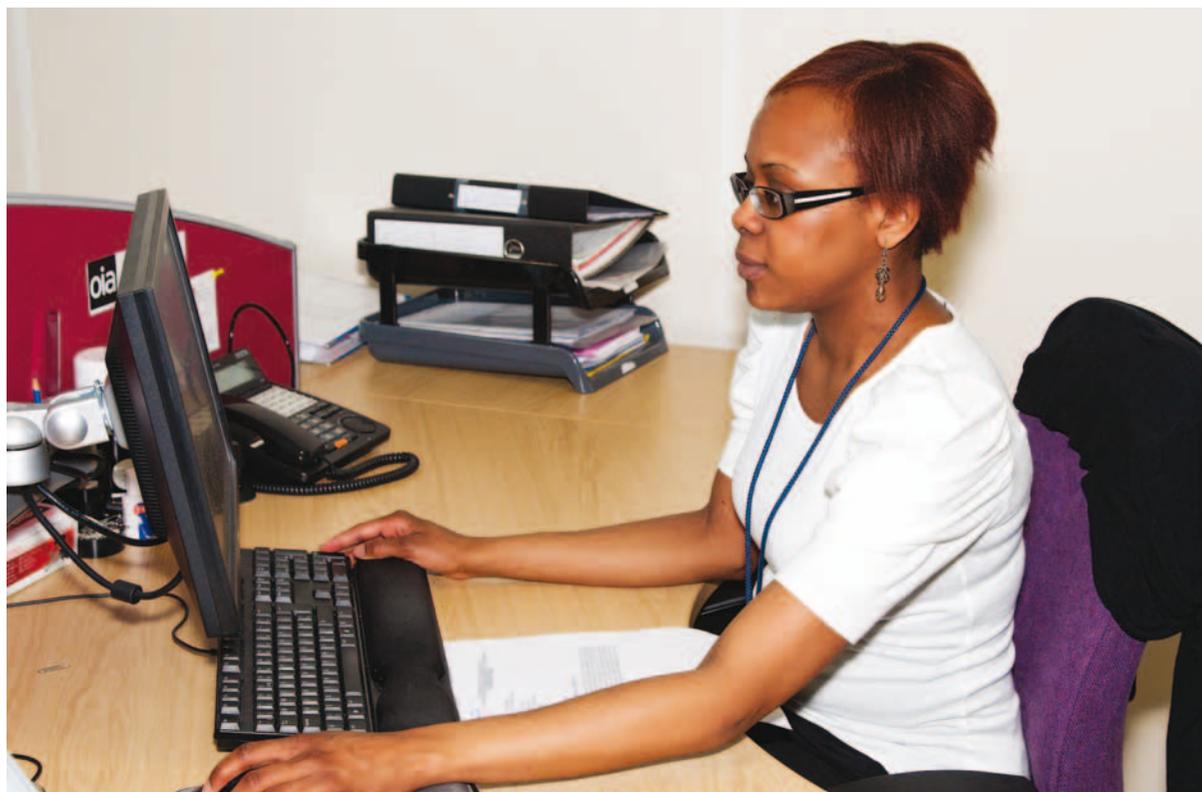
consultation has been extremely valuable in alerting the OIA to a range of issues – university reputation, cost, dangers of increased litigation – which need to be addressed in devising detailed arrangements. These are currently being worked on, and it is anticipated that the new publication arrangements will be in operation from 1 January 2012.

#### **Funding model**

In 2010, the number of complaints received rose by 33 per cent compared to the (previous) record year of 2009. By contrast, there was no membership subscription increase on the previous year as we took account of the uncertain financial position of universities and the level of OIA reserves.

This decision placed further pressure on the capacity of the Office to turn round the increasing level of complaints received. The OIA Board and Finance Committee considered the matter carefully in the summer and autumn of 2010, and agreed to a 15 per cent membership subscription rise for 2011, so that additional resource could be put into case-handling capacity.

Consultation in 2010 showed that the existing model of resourcing the OIA – a membership subscription for universities based on the number of



enrolled students – was viewed by universities as the least worst funding model.<sup>6</sup>

In line with ‘Quick Win’ 9 of the Pathway Report, the Office worked throughout 2010 to examine viable funding alternatives in the light of the Pathway submissions and the developing emphasis on the student experience in higher education. One important context for this work was the development – at the same time – of a Protocol for Non-Qualifying Institutions (NQIs) to join the Scheme on the basis of annual subscription plus a case-fee to reflect actual usage. Clearly, this has an impact on the consideration of a revised funding model for HEIs, not least because of the need for equity between the treatment of qualifying HEIs and NQIs. A draft consultation paper was examined and debated at an all-day Board-Office Away-Day in spring 2011, and it was agreed to publish the consultation paper following the publication of the Government’s own Higher Education White Paper later in 2011.

The consultation will seek views on the contention that the existing model – which is simple, clearly understood, and has worked well – makes no distinction in charges for those universities which use the Scheme extensively and those which do not.

### Alternative funding models

“Exploration of the viability and implications of alternative funding models began in the summer of 2009, and should be complete and published by early summer 2010.”

**Pathway Report, 2010, Quick Win 9.**

It therefore does too little to incentivise universities to resolve their own complaints. Any change to the OIA subscriptions arrangements could not take place before 2013.

### Judicial Review – OIA approach endorsed by the Courts

The Courts have continued to endorse the OIA approach to handling complaints during 2010. This has enabled us to maintain our excellent record in defending challenges to our Decisions.<sup>7</sup>

The judgments, which are available on our website, provide a strong body of support for the OIA’s approach, role and remit.<sup>8</sup>

### Handling complaints about discrimination – the Maxwell case

Ms Shelley Maxwell sought to challenge the approach taken by the OIA in complaints raising the issue of disability discrimination. The OIA found Ms Maxwell’s complaint against the University of Salford to be justified and recommended the payment of compensation of £2,500, 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. Such a finding would, she claimed, have benefited her and the university, and would have informed the level of compensation awarded to her. Mr Justice Foskett dismissed the claim. Ms Maxwell applied for permission to appeal.

On 24 February 2011, the hearing of Ms Maxwell’s application for permission to appeal came before Lord Justice Mummery in the Court of Appeal. Lord Justice Mummery refused permission on the grounds that there was not any real prospect of success but adjourned to the full Court the application for permission to appeal on the grounds that there may be a compelling reason for granting permission. He said:

*"It seems to me that the general public, in particular students who are entitled to make complaints to the OIA, and the OIA itself, might benefit from a full hearing of which all the arguments were presented and a judgment or judgments could be given clarifying the role of the OIA and clarifying its procedures."*

The application for permission will be heard by a panel of three judges on 24 and 25 July 2011.

The OIA welcomes the Court of Appeal's decision that Mr Justice Foskett's judgment regarding the OIA's decision on Ms Maxwell's complaint is not wrong in law, and that the continued challenge to the OIA's decision has no reasonable prospect of success. Further guidance from the Court of Appeal on how schemes such as ours should approach discrimination complaints can only be helpful.

A copy of the judgments of Mr Justice Foskett and Lord Justice Mummery in Ms Maxwell's case can be found on our website.<sup>9</sup>



## The scope of the OIA's review

### – the Budd case

Mr Budd sought to challenge the scope of the OIA's review of his complaint. The question at issue was whether the OIA's Decision was undermined because we did not call for a copy of the exam script. He also claimed that the OIA ought to have held an oral hearing, and ought to have conducted a "full merits review". The case came before Mr C.M.G. Ockelton sitting as a Deputy High Court Judge, who dismissed the claim.

In his judgment, Mr Ockelton said:

*"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."*

## A challenge to the OIA's processes

### – the Sandhar case

Mr Sandhar's judicial review claim was a challenge to the OIA's processes. During the course of the OIA's

review of his complaint, and before a Decision had been issued, he issued judicial review proceedings challenging the manner in which the OIA was conducting its review. The claim also challenged the independence of the OIA scheme.

Mr Sandhar's application for permission came before Mr David Holgate QC sitting as a Deputy High Court Judge on 24 February 2011.

Mr Holgate said that the claim itself was brought well out of time. Nevertheless, he considered the grounds of challenge and rejected them all. He said that there was no improper narrowing of the Independent Adjudicator's powers and that the Claimant had "jumped the gun" by issuing proceedings when he did. He said that the claim that the OIA was not independent "is completely unarguable."

Mr Holgate said,

*"The approach which the adjudicator proposed to take was clearly set out ... , namely the inquisitorial approach involving the sequential posing of questions in order to establish sufficiency of information and to test the position of the respective parties. That was compatible with the statutory scheme. .... "*

*"I say absolutely nothing about the merits of the complaint against the university. What is clear to me however, that this is an unmeritorious and unarguable claim for judicial review against the adjudicator."*

Unusually, the Judge granted the OIA's application for costs of the permission hearing.

A full copy of the judgment can be found on our website.<sup>10</sup>

## Other claims

Four other judicial review claims have been issued against decisions of the OIA since August 2010. In all four of those cases, the judge has refused permission to bring the claim.

## Visits, meetings and training

### Visits to universities and students' unions

The OIA warmly welcomes invitations to visit universities and students' unions. It is our stated ambition to visit all those Higher Education Institutions (HEIs) who are members of the Scheme. In 2010 I visited a further 18 HEIs and students' unions.

These visits offer invaluable opportunities for the OIA to exchange ideas and understand issues and circumstances which may be relevant to a specific institution. When the OIA receives an invitation to visit an HEI, I always endeavour to have a dialogue with the respective students' union in advance of a meeting with the Vice-Chancellor and university staff. This gives everyone an opportunity to make informal suggestions for improving complaints handling across a university for the benefit of the student body as a whole.

I believe such dialogue is essential in helping to improve the way in which issues and complaints raised by students are handled.

I am grateful to all those people who have facilitated visits to HEIs and students' unions in the past year.

#### **Bespoke training opportunities**

The OIA responds regularly to requests for training about complaints handling and the role of the OIA from individual universities and students' unions on a charging basis. We will continue to develop this service (subject to available resources).

If you are interested in receiving training from the OIA please contact us at [workshops@oiahe.org.uk](mailto:workshops@oiahe.org.uk)

#### **Stakeholder meetings and participation in conferences, seminars and training events**

In 2010, together with senior colleagues, I participated in a wide range of meetings within the higher education sector.

These included bilaterals with the National Union of Students, Universities UK, Guild HE, the Quality Assurance Agency, the Higher Education Funding Council for England, successive Higher Education Ministers David Lammy MP and David Willetts MP, Leighton Andrews AM, Minister for Education and Skills in the Welsh Assembly Government, and relevant officials of the Department of Business, Innovation and Skills and the Welsh Assembly Government.

I also gave evidence to the Student Charter Working Group, and the Review of Higher Education Governance in Wales.

2010 saw publication of the Pathway Report and I spoke at a number of events, including conferences run by the Academic Registrars Council, UKISA, and the NUS, to discuss the implementation of the Report.

#### **HEIs and Students' Unions visited in 2010**

- Kingston University
- Queen Mary, University of London
- Sheffield Hallam University
- Leicester University
- Exeter University
- Bath University
- University of Southampton
- University of Chester
- University of Essex
- London Metropolitan University
- Liverpool John Moores University
- University of Oxford
- University of Bristol
- Bradford University
- University of Wales
- Keele University
- Aberystwyth University
- University of Cambridge Students' Union

Colleagues and I also presented papers and spoke at a number of key conferences and events during the year including, amongst others, the AUA Annual Conference at Warwick University, the European Network of Higher Education Ombudsmen (ENOHE) Annual Conference in Vienna, the ASKe Conference on plagiarism at Oxford Brookes University and the QAA Annual Subscribers Meeting in Cardiff.

The OIA was represented at many other leading events in the higher education sector during 2010 including, for example:

- The University Legal Practitioners Northern Forum
- The HE Better Regulation Taskforce Meeting
- The Higher Education Policy Institute seminar, 'Fairness, Funding and Access'
- The AMSU Annual Conference
- The NUS HE Zone Conference

Representatives from the OIA have also attended other relevant conferences and events throughout the year. These have included:

- The International Ombudsman Association Annual Conference
- The British and Irish Ombudsman Association (BIOA) Annual Meeting

- The Blake Laphorn (LLP) Conference on Complaints
- Bates Wells and Braithwaite London LLP Higher Education Law Seminar
- The General Social Care Council National Social Work Stakeholders Meeting

OIA staff have continued to attend British and Irish Ombudsman Association (BIOA) events and interest group meetings throughout 2010. These have enabled us to develop our understanding and awareness of good practice within the complaints handling sector.

Media interviews in 2010 covered topics including the launch of the OIA Annual Report, the publication of the Pathway Report, the continued rise in the number of student complaints, and the OIA's reaction to the Browne Review on Higher Education Funding and Student Finance. The OIA attracted national and sector media coverage on these topics.

### **Policy seminars and workshops**

In 2010 the OIA held a total of five workshops and seminars for HEI staff and students' union representatives.

Two of these seminars were topic-based with the general theme of 'Learning from Complaints' – in the first seminar we discussed Fitness-to-Practise issues. The second focused on postgraduate and international students.

We also ran an Open Forum for students' union advisers and two introductory sessions, one for brand new students' union sabbatical officers and one for our smaller member institutions in partnership with GuildHE.

These seminars are extremely popular amongst university staff and students' union representatives and book up quickly. Spaces often have to be limited to one representative from each HEI or students union. But we will continue to run as many of these seminars and workshops, as resources permit, as we recognise they play an important role in increasing understanding of the issues which arise in student complaints and help everyone to share good practice in how student complaints should be handled.

Following feedback we received in our Pathway Consultation we also now put good practice guidance on our website. This can be found at [www.oiahe.org.uk/uni/good-practice.aspx](http://www.oiahe.org.uk/uni/good-practice.aspx)

### OIA staff training

OIA staff training during 2010 has included:

- Handling difficult phone calls
- Introduction to Mental Health issues
- Who's who in the Higher Education Sector
- BIOA Interest groups and Seminars
- Equality Act 2010 – Law update
- Employment law/Health & Safety updates/seminar
- Minute training made simple
- Word/Excel 2007
- Mentoring skills.

### Disability Review

Arising from Recommendation 16 of the **Pathway Report**, the prominent employment and discrimination lawyer Sue Ashtiany carried out a disability process review of the OIA's operating practices and procedures.

The draft report was discussed with all employees, who showed high engagement in contributing to the dialogue. This should further improve channels of communication and lead to an enhancement of the experience of disabled students with the OIA.

### Rob Behrens

Independent Adjudicator and Chief Executive

#### NOTES:

- 1 **Securing a Sustainable Future for Higher Education: An Independent Review of Higher Education Funding & Student Finance**, 12 October 2010.
- 2 See Chart 7 on page 34.
- 3 **The Pathway Report. Recommendations for the development of the OIA Scheme**, 2010, Chapter 3, paras 3.21-3.24, Chapter 4, paras 4.16-4.19, Chapter 5, Figure 11, p.53.
- 4 Ibid, 2010, Chapter 5, Table 7, p. 45, Figure 7,p.48.
- 5 **The Pathway Report**, 2010 Chapter 11 para 11.11 -11.36
- 6 **The Pathway Report**, 2010, Chapter 10, paras 10.25-10.38.
- 7 [www.oiahe.org.uk/about-us/judicial-review.aspx](http://www.oiahe.org.uk/about-us/judicial-review.aspx)
- 8 The leading case in which the OIA's approach to handling complaints was examined by the Courts is *R (Siborurema) v Office of the Independent Adjudicator for Higher Education* 2007 in which the Court of Appeal decided that Decisions of the OIA are subject to Judicial Review, but the scope of any Review will be limited and it is unlikely that many claims will get through the permission "filter" stage. The Court of Appeal also decided that the OIA has a broad discretion to determine the nature and extent of its own reviews.
- 9 [www.oiahe.org.uk/about-us/judicial-review.aspx](http://www.oiahe.org.uk/about-us/judicial-review.aspx)
- 10 [www.oiahe.org.uk/about-us/judicial-review.aspx](http://www.oiahe.org.uk/about-us/judicial-review.aspx)

“My complaint has been considered by the college and I am very happy to say that they have permitted me to re-sit the year. I would like to thank you and everyone at the OIA that have been involved in my case. I am glad that you appreciated the grounds of my case and am very grateful”

# Case summaries

## Accreditation of Prior Learning

### CASE 1

**ISSUES/KEY WORDS:** Credits for Prior Learning, Progression

**OUTCOME:** Justified

**SUMMARY OF CASE:** S complained about the University's decision, that he could not complete the final year of his course. The underlying issues that he raised with the University were that he believed that he was given insufficient information regarding his Accreditation of Prior and Experiential Learning credits for Level One and as a consequence did not submit a final referral for one module.

**REASONS:** We found that the University was not clear in explaining how the student's previous academic credits were treated and this confusion resulted in S not taking up the opportunity to complete his qualification.

**RECOMMENDATIONS:**

- The OIA found that an incomplete and

incorrect record of S's credits was held by the University and in addition S was not able to access his full record through the Student Portal. The University did not act fairly and reasonably when it was not prepared to review S's final results or to offer him a final referral opportunity for the relevant module in view of this fact. This had resulted in S's understandable mistake regarding his failure to take advantage of the last resit opportunity for a module. OIA therefore recommended that the University should now offer S such a final referral.

- £1,000 in compensation, in recognition of the maladministration of S's student record and of the university's failure to clearly communicate that record to S accurately throughout his time at the University.
- The University should review its procedures to ensure that students have a mechanism for obtaining a full history of their results at any time and report back to the OIA within six months as to the results of that review.

## Contract

### CASE 2

**ISSUES/KEY WORDS:** Complaint; misrepresentation; legitimate expectation

**OUTCOME:** Partly Justified

**SUMMARY OF CASE:** S registered on a short course in textile design at the HEI. S was dissatisfied with her experience on the course and lodged a complaint with the HEI on the following grounds: (a) that she did not receive a CD of course notes as promised in the promotional material for the course; (b) that she was victimised and harassed by staff on the course due to voicing her concerns; and (c) that she did not receive a similar level of support as other students on the course.

The HEI dismissed the student's complaints. It found that there was no evidence to support the student's contention that she had not received the same level of support as other students on the course nor was there evidence that S had been victimised as a result of lodging her complaint.

Whilst the HEI acknowledged that a CD of course notes had not originally been provided to the student (it had been decided not to prepare a CD for the course), one was prepared for S following receipt of her complaint.

**REASONS:** The OIA decided that the student's complaint was **Partly Justified**. We agreed that there was no evidence to support the student's complaints of victimisation and/or lack of support. However, we considered that the publicity material for the course stated that a CD of course notes would be provided. It was clear that having access to a CD of course notes was an important factor in S's decision to enrol on the course and, whilst the University took steps to provide S with a CD when she complained, its contents were not as represented in the publicity material for the course.

**RECOMMENDATIONS:**

- That the HEI offer to refund a portion of the course fee (£300).

## Disability

### CASE 3

**ISSUES/KEY WORDS:** Academic Appeal, DDA

**OUTCOME:** Not Justified

**SUMMARY OF CASE:** S submitted an academic appeal against the award of a 2.2 degree. S said that he was living with depression and body dysmorphic disorder in the first 2 years of the course. This impacted upon his assessments in Years 1 and 2. S said that had this not occurred, he would have been able to achieve a 2:1.

**REASONS:** The OIA looked at this complaint in the context of the DDA although it became apparent that at the time of the relevant events neither S nor the University believed that S had a condition which came within the ambit of DDA protection. The OIA found that S had submitted mitigating circumstances applications and these had been considered by the University in accordance with their procedures.

The final decisions of the University as to S's results and his degree profile were questions of academic judgment but as a point of clarification the transcript showed that his overall mark was determined more by his final year results, which were slightly lower than the marks in previous years, (and when S said that his performance was not impaired) than by the marks in earlier years, when S said that he had been affected by health problems.

## Eligibility

### CASE 4

**ISSUES/KEY WORDS:** Internal Complaints Procedures not complete

**OUTCOME:** Eligible

**SUMMARY OF CASE:** S sent the OIA a Scheme Application Form and accompanying documents. The OIA wrote to the University as it was not clear whether S had completed the internal complaints procedures. The University informed the OIA that the complaint was at the final stage of its procedures namely that the Deputy Vice-Chancellor was responding and that if S was still dissatisfied then the University would issue a Completion of Procedures Letter.

After S raised issue with the response from the Deputy Vice-Chancellor, the University further clarified that the complaints procedure allowed for an appeal against the decision of a Deputy Vice-Chancellor to the Vice-Chancellor and that the process was therefore not yet completed.

**REASONS:** After a 5 month period during which no response from the Vice-Chancellor was forthcoming the OIA intervened and asked that S was issued with a Completions of Procedures Letter or else the complaint would be accepted under Rule 4.1:

“A complainant must have first exhausted the internal complaints procedures of the HEI complained about before bringing a complaint to the OIA. In exceptional circumstances a Reviewer may accept a complaint for review even if the internal complaints procedures of the HEI have not been exhausted if he or she considers it appropriate to do so.”

The OIA accepted the complaint without a Completion of Procedures Letter.

**RECOMMENDATIONS:** N/A

## Disciplinary

### CASE 5

**ISSUES/KEY WORDS:** Disciplinary, Accommodation, Fitness to Practise concerns

**OUTCOME:** Not Justified

**SUMMARY OF CASE:** S complained about the University's decision not to uphold an appeal against the decision of a Disciplinary Panel that S's programme of study (on a health professionals' course) should be terminated with immediate effect and that he should be permanently excluded from the University's Hall of Residence due to allegations of violence and sexually inappropriate behaviour and also allegations of drug and/or alcohol abuse.

S indicated that he agreed that he had been guilty of some misconduct and said that he was prepared to accept the decision as to his exclusion from student accommodation but he complained that there was evidence of bias or prejudice in relation to the decision to exclude him completely from the University.

**REASONS:** The University had legitimate concerns about S's behaviour in communal accommodation which led it to investigate allegations about his behaviour on campus and to take disciplinary proceedings.

The OIA was not provided with any evidence that would lead it to believe that the disciplinary action was initiated for any other reason than concerns that S's behaviour was inconsistent with studentship at the University.

The documentation shows that the manner in which the Disciplinary Hearing was held, the composition of the Panel and the conduct of the meeting was conducted within the prescribed procedures and that the penalty given by the Disciplinary Panel was within the range available to the Panel.

The University had also indicated to S that he could submit to be readmitted to the University at a future date when he had addressed his problems and that such an application would be considered.

**RECOMMENDATIONS:** N/A

## Due Process

### CASE 6

**ISSUES/KEY WORDS:** Internal Complaint Procedure; Procedural Irregularity

**OUTCOME:** Partly Justified

**SUMMARY OF CASE:** S was pursuing a DipHE in Nursing. At the final placement review meeting S was told that she had failed the placement and the course because she had not met the module outcomes for the placement.

S wrote an informal letter of complaint to the Course Leader and her complaint was passed to two other members of staff before being passed back to the Course Leader 8 weeks later. The Course Leader wrote to S stating that she had investigated S's complaint and reviewed the practice documentation, and had concluded that S's complaint was unfounded.

S was not told she had the right to proceed to the formal stage of the complaints procedure or that there was a 5 day time limit for doing so. It instead

asked S to confirm within 14 working days if she was satisfied with the outcome of her complaint or to contact the Course Leader or Students' Union if she was dissatisfied. S rang the Course Leader indicating that she would be seeking advice from the Students' Union. S was not told that she was already out of time to make a formal complaint, nor was she advised how to make one.

8 weeks later, when S learnt she had been given a lesser award, she made an academic appeal. The University issued a Completion of Procedures Letter saying S's academic appeal was out of time and that the complaints procedure had been completed because she had not pursued a formal complaint within the 5 day deadline and the matter had therefore been closed.

**REASONS:** S's complaint to the OIA was found to be Partly Justified because:

- The University acted reasonably and in accordance with its procedures when it determined S's academic appeal was out of time.
- There were a number of shortcomings with the University's handling of S's complaint. In particular, when asked to comment by the

OIA on the delay, the University said that S's complaint was a complex, professional issue which had required consultation with practice partners and a visit to the placement with S's documents. The OIA concluded that S had not been kept informed as to the progress of her complaint or who was dealing with it and how. None of the information provided to the OIA indicated that the Course Leader had received any written information from practice partners or had visited the placement. Any information which had been sought from the practice staff must have been obtained orally and no record of it was kept. That would not, in the OIA's view, be good practice; and would not meet the requirements of the duty to act fairly.

- It was not reasonable, in the circumstances, to rely on the strict timescale set out in the complaints procedure. The OIA noted that, beyond the time limit of 5 working days for students to submit a formal complaint, the University did not give any specific time scales for considering complaints. The University did not deal with S's informal complaint quickly or informally and did not seek to find an early resolution with S. In addition, the response to S's complaint did not make her aware that

if she was dissatisfied with the outcome that she should raise a formal complaint and that there was a time limit for doing so.

- The OIA concluded that the University acted unreasonably when it took 8 weeks to respond to her complaint and then advised her to consult the Students' Union or the Course Leader if she was dissatisfied without ensuring that S was aware that if she could submit a formal complaint and had just 5 working days to do so.

#### **RECOMMENDATIONS:**

- The OIA recommended that the University should accept S's formal complaint for consideration out of time, provided that she submit a formal complaint form within one month of the Formal Decision Letter.
- The OIA did not recommend that the University should reconsider S's academic appeal.

*The University offered S the opportunity to submit a formal complaint for consideration which S subsequently did. After investigation, the University upheld S's complaint. S's profile was reviewed by the Exam Board and S was given an exceptional third attempt at her final year three placement.*

## Postgraduate

### CASE 7

**ISSUES/KEY WORDS:** PhD Examination Regulations, Assessment Irregularity

**OUTCOME:** Justified

**SUMMARY OF CASE:** This case was about the complainant's second academic appeal against the outcome of a viva voce examination. The underlying issues that he raised with the University were that there were irregularities in the conduct of the examination, which caused reasonable doubt about the outcome of the viva, in that both the external and internal examiners did not have sufficient expertise at the appropriate level to examine a PhD, under the University's Regulations.

**REASONS:** We found that the University did not fully comply with the Regulations by ensuring that the examiners had both the required combined and individual experience to examine S's thesis, as required by the Regulations and that as a consequence S may have been disadvantaged in

that the examination of the thesis and the viva voce examination may not have been conducted fairly.

#### RECOMMENDATIONS:

- The University should quash the decision that the complainant had failed his viva and offer him the opportunity to return to the University to undertake a further final examination of his thesis, comprising an initial assessment of the thesis and a viva voce with fresh examiners. If this offer was accepted the University should then appoint new examiners and the fresh attempt should take place within a period of not less than twelve months of the offer and should be without any additional cost to S.
- The University should initially explore with S, in correspondence accompanying the examination offer, and in consideration of the lapse of time, whether S required further supervision sessions prior to submitting a revised thesis as academic work in his area of research may have developed over the intervening period. The University should report back to the OIA on the outcome of this correspondence, and as to the details of any supervision arrangements set up under

this paragraph, within six months of the issuing of the Formal Decision.

- The examination should be conducted by a fresh Board of Examiners appointed in compliance with the relevant Regulations.

## Accommodation

### CASE 8

**ISSUES/KEY WORDS:** Student Complaints Procedure; Accommodation

**OUTCOME:** Not Justified

**SUMMARY OF CASE:** S complained about the University's decision not to uphold her complaint that she should not be obliged to pay the final instalment of university hall fees for the academic year. S did not contend that there was a procedural flaw in the consideration of the complaint and therefore the OIA considered whether the University had acted reasonably and in accordance with procedures in reaching the decision to reject the complaint.

S originally accepted the accommodation on the basis of a forty four week contract and, when she later came to the conclusion that her course finished before the end of that contract, she asked for a refund for the money she had already paid for the redundant period.

The University said that she was liable for the agreement and money owed.

**REASONS:** The OIA concluded that the course required a full academic year for completion. It also concluded that the university had clearly set out in its literature the level of and liability for accommodation and that this was brought to S's attention when she was made an offer of accommodation.

The University felt that releasing S from her financial obligation would have consequential effects on other students and suggested that it would release S from her obligation if she could find a replacement student tenant.

The OIA was therefore satisfied that the University's consideration of S's complaint was fair and reasonable in the circumstances.

**RECOMMENDATIONS:** N/A

## Procedural Irregularity

### CASE 9

**ISSUES/KEY WORDS:** Unfair attempt to influence the outcome of appeal

**OUTCOME:** Justified

**SUMMARY OF CASE:** S was a medical student who had been required to repeat her final year after failing her final examinations. At the end of her repeated year she again failed some of the final examinations, and the Exam Board decided that she should be excluded from the programme, with the offer of a lesser award.

S appealed against the Exam Board's decision on the grounds that she had extenuating circumstances which had adversely affected her performance and that there were procedural irregularities in the conduct of the examinations. As the first stage of the appeal the Chair of the Exam Board was required to confirm whether or not the personal circumstances and/or irregularities had been reported to and considered by the Exam Board which made the decision. A form was sent

to the Chair of the Exam Board, Professor A, for this purpose. He completed the form to say that no personal circumstances or irregularities had been reported to the Board. The form included a request for comments about cases where no irregularities or personal circumstances had been reported, and Professor A sent a covering letter with the form providing further comments on S's appeal. He ended by saying that given the information he had provided and her failure to reach a pass standard in her second attempt at the exams, the Exam Board had decided to exclude S, and concluded "I trust this decision will be upheld".

The university rejected S's appeal following the confirmation received from Professor A, without referring it to an Appeals Panel.

**REASONS:** The OIA concluded that Professor A had gone beyond what was required of him in the confirmation process. It was not unreasonable that the Department should be allowed to provide additional factual information in the confirmation process. However, in expressing a view on what the outcome of the appeal should be in the manner that he did, Professor A was unfairly attempting to influence that decision and this rendered that decision unsafe.

**RECOMMENDATIONS:**

- The University should quash its decision to reject S's appeal and convene an Appeals Panel to consider it.

**Complaints about Course****CASE 10**

**ISSUES/KEY WORDS:** Teaching and Resources, Bullying

**OUTCOME:** Not Justified

**SUMMARY OF CASE:** S complained about the outcome of her complaints regarding a health professionals' course. In summary these were that:

- There were insufficient tutors on the course for the first eighteen months and there were also issues with the quality of the teaching
- The course was poorly resourced
- Bullying was prevalent at a Health Trust placement which she attended
- S asked for financial compensation for her negative experiences.

**REASONS:** The OIA found that when she submitted her complaint S did not provide the University with evidence which was sufficiently persuasive to support her perception that she failed half of her credits because of poor teaching and

inadequate resources. S's case was weakened by a lack of consistent contemporaneous evidence and the fact that she did not submit an individual complaint about inadequate teaching, lack of resources or bullying during the initial two years that she was on the course but waited until three months after she had been informed that she had failed the qualification and needed to retake half the units.

**RECOMMENDATIONS:** N/A

# Case study: University of Southampton

**The University of Southampton has submitted the following account of interaction with the OIA in 2010 (see above, page 6).**

“ At the University of Southampton we have had a three stage complaints process. During 2009/10 there were a total of sixteen, stage 2 complaints (approximately 0.07% of our student population). Of these, six complaints were escalated to stage 3. Whilst in the context of our total student population this is very low, it does not diminish the importance of the individual complaint or that we can still learn to improve.

In 2010 the OIA brought to our attention a small number of cases where delays on our part had become unacceptable. This was the start of what has proved to be a constructive and supportive dialogue with the OIA, focused on learning and improvement. Following contact with the OIA the Vice-Chancellor took decisive action and a small team, led by the Pro Vice-Chancellor Education, instigated immediate steps to resolve the outstanding student complaints.

More importantly the interaction with the OIA has encouraged us to undertake a deeper review of our processes and systems for handling student complaints through the formal stages, but also including intervention and mediation at an earlier stage. Our review has the full engagement of the Students' Union and will be completed, and the recommendations implemented, by the beginning of the academic year 2011/12.

The key review elements are to:

- assess the numbers and types of stages in the current complaints process, to check they are fit for purpose
- develop processes so that mediation is used more effectively at an early stage of the complaints process
- clarify the regulations and procedures to ensure transparency and that the complainant can check progress (similar to the review of student discipline regulations and procedures)
- clarify processes and timescales in relation to the

interface with legal services and the University complaints and academic appeals process

- clarify consistency of the complaints process across the new Faculty and Professional Service structures
- align the complaints process in the new academic structure within each Faculty
- define roles and responsibilities in the new Faculty structure for dealing with student complaints
- plan complaints training for relevant staff in faculties and services
- clarify the necessary monitoring, tracking and 'lessons learned' processes.

Our engagement with the OIA has been productive and with its support and guidance we are able to move from an unsatisfactory starting point, to create a more resilient and effective service for our students. ”

# OIA complaints statistics

## Complaints statistics

The pattern of increasing numbers of complaints continued in 2010. And although the absolute number of complaints received each year remains small (0.05% of students enrolled in higher education in England and Wales in 2010) the increases seen in 2010 create significant challenges for the OIA. These challenges are being met, as has been outlined in the Review of the Year above.

This year the OIA has changed the way it presents some statistics. This is in order to provide a more complete picture of the work carried out by the OIA. The principal difference is in Chart 7 *Outcome of Complaints*. In this chart we have included 'Not Eligible' complaints and those resolved early. This gives a much more complete picture of the outcome of complaints dealt with by the OIA.

We asked HEIs to provide us with the number of Completion of Procedures (COP) Letters they issued to students in 2010. This is the first time we have requested this information. Happily the vast majority of HEIs responded. We would like to take this opportunity to thank all those institutions that

provided us with this information. It gives us an insight into the overall complaints landscape.

Analysis also suggests that on average one in every seven students who exhausts an HEI's internal complaints procedures takes their case to the OIA. However there is huge variation amongst HEIs, both in the number of COP Letters issued and in the proportion of students who appeal their decision to the OIA.

Our analysis suggests there is no obvious correlation between the size of an HEI and the number of COP Letters it issues. We are undertaking further analysis to establish why some HEIs issue far more COP Letters than others of a similar size and student profile. This analysis will enable us to better understand the diverse range of complaints procedures which exist in HEIs and to identify where good practice exists which could be shared.

## Wales

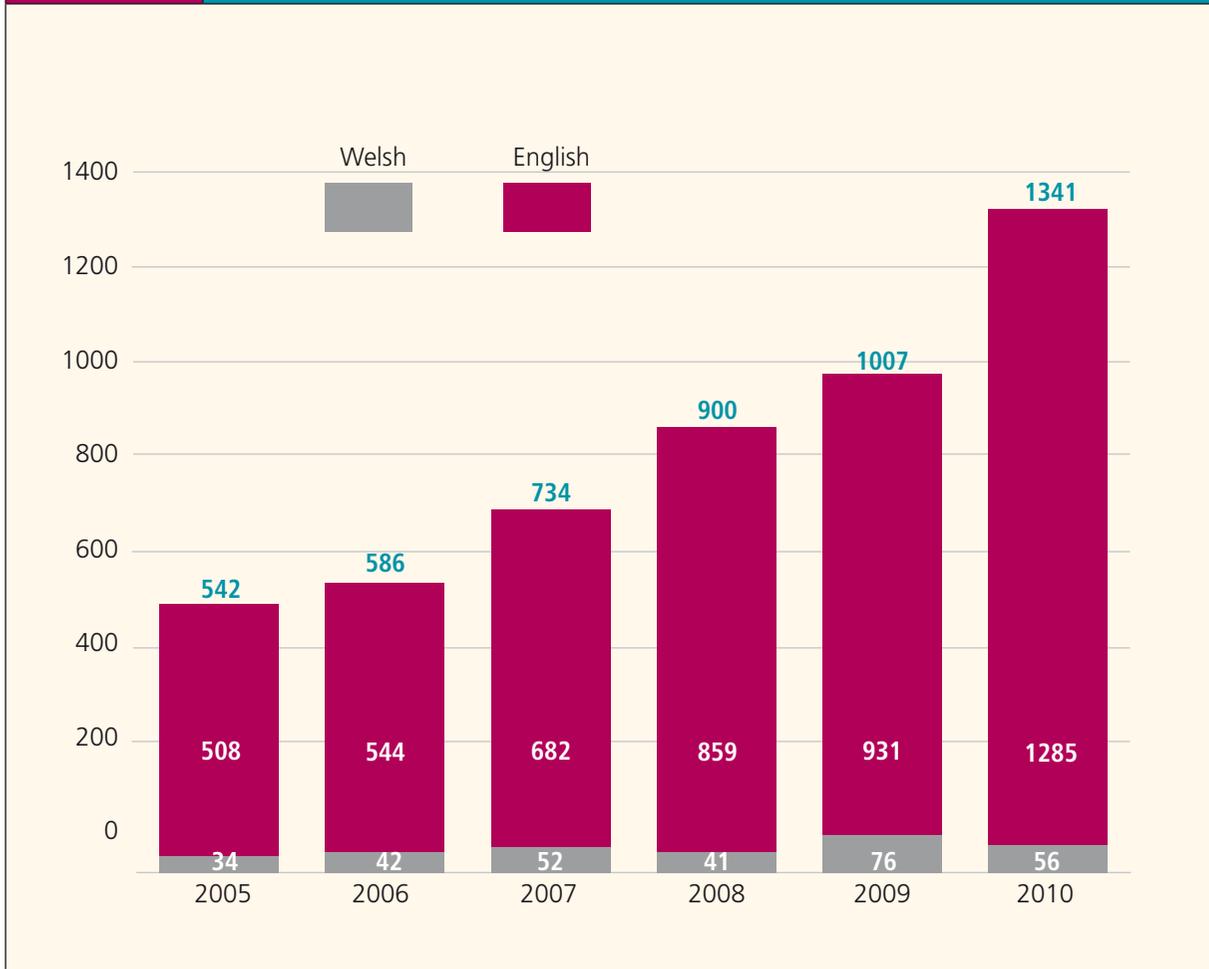
In addition, and for the first time, complaints from Welsh universities have been analysed separately as well as collectively. While this new data is important

to have in the public domain, there is no significant difference between the performance of Welsh and English universities in the handling of complaints and so no general comparative conclusions can be safely drawn.

## Enquiries

In 2010 our Enquiries Team dealt with over 2,000 pre-complaint enquiries. This represents an increase of 25 per cent from 2009. This continuing upward trend has required some adapting of our structures and processes so that we remain accessible and responsive, especially by telephone and e-mail.

**CHART 1** NUMBER OF COMPLAINTS RECEIVED PER YEAR



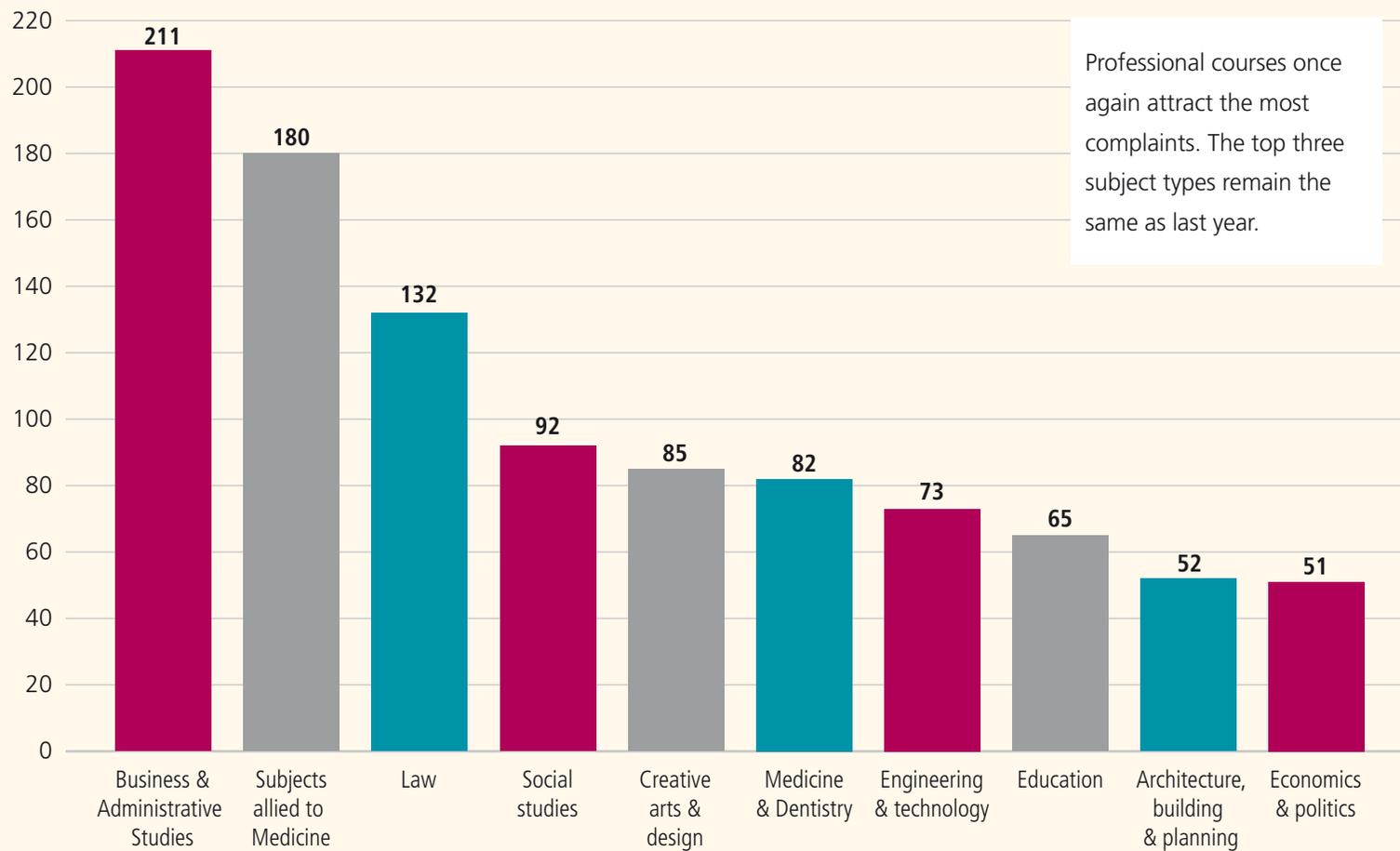
We received 1,341 complaints in 2010, a rise of 33 per cent on 2009. This was a record number of complaints as well as a record margin of increase.

As outlined previously this has highlighted issues of capacity which are being confronted. One inevitable consequence of the dramatic rise has been an increase in average OIA handling times in 2010. The average handling time is now just over six months. We piloted and then implemented significant reforms to the case-handling process. These reforms are designed to ensure that there is sufficient resource available to resolve cases, where possible, at an early stage in the OIA process, as well as having a dedicated completions resource to expedite delayed cases.

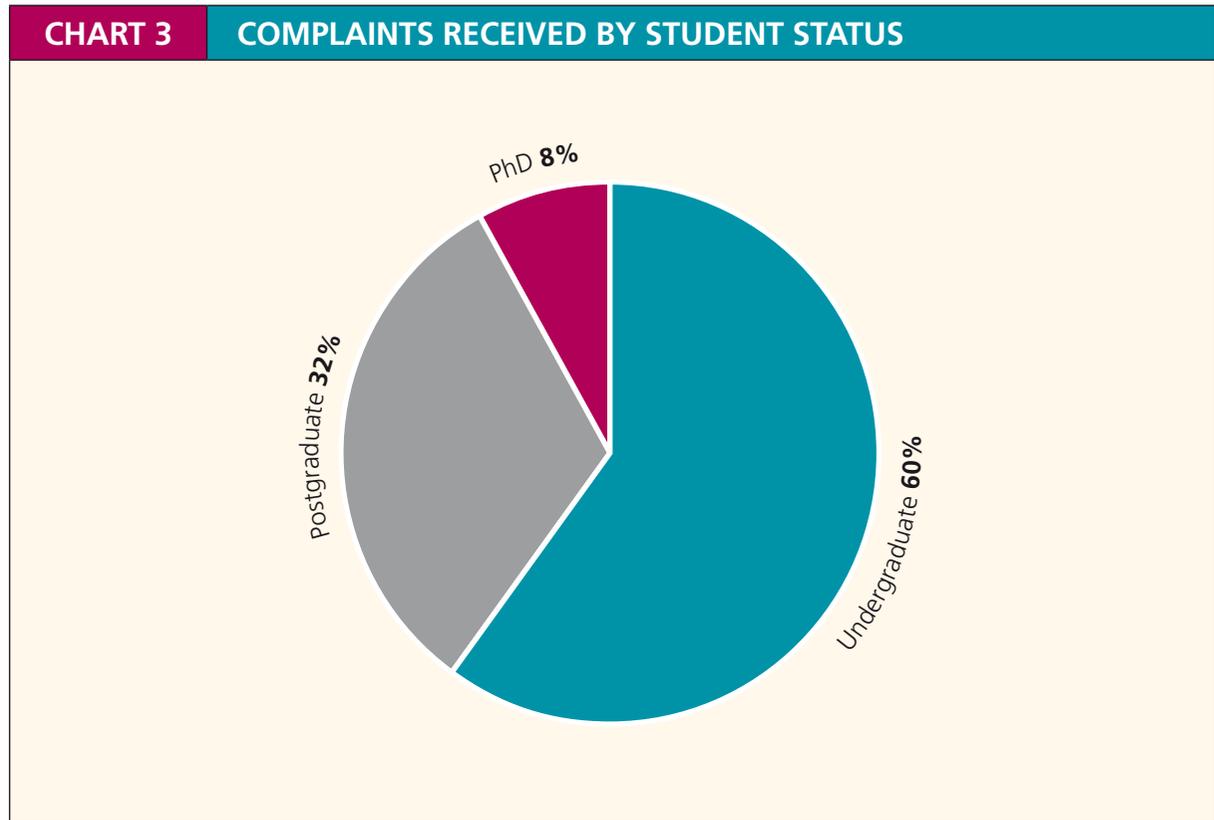
The number of complaints received from Welsh universities has declined but it is too early to tell whether this is an ongoing trend.

CHART 2

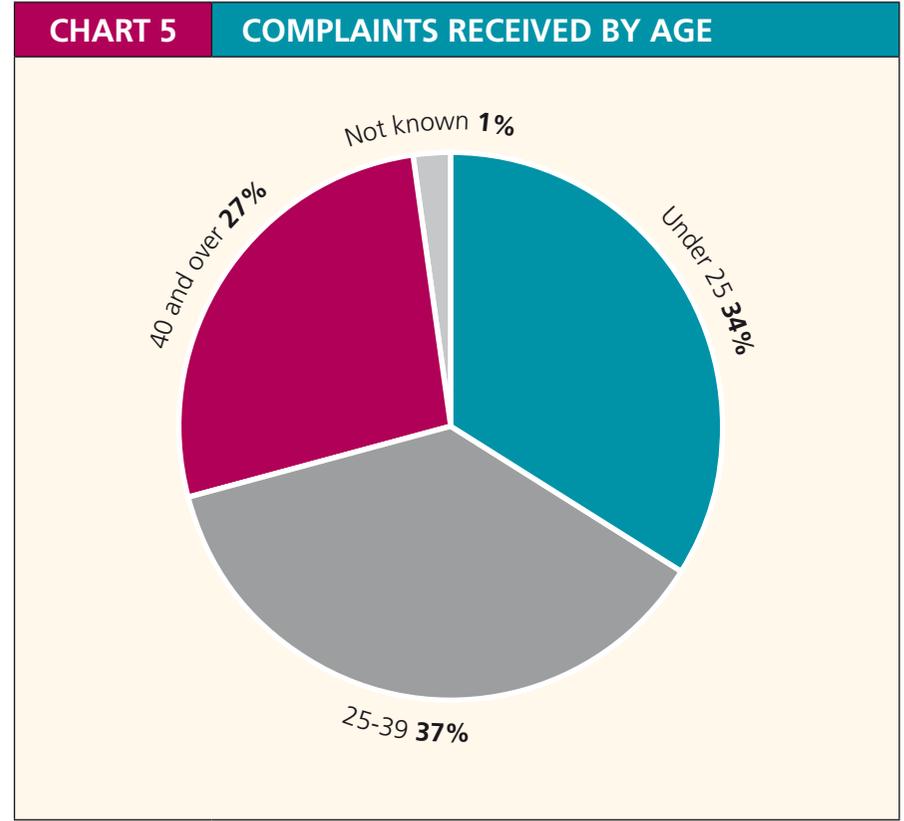
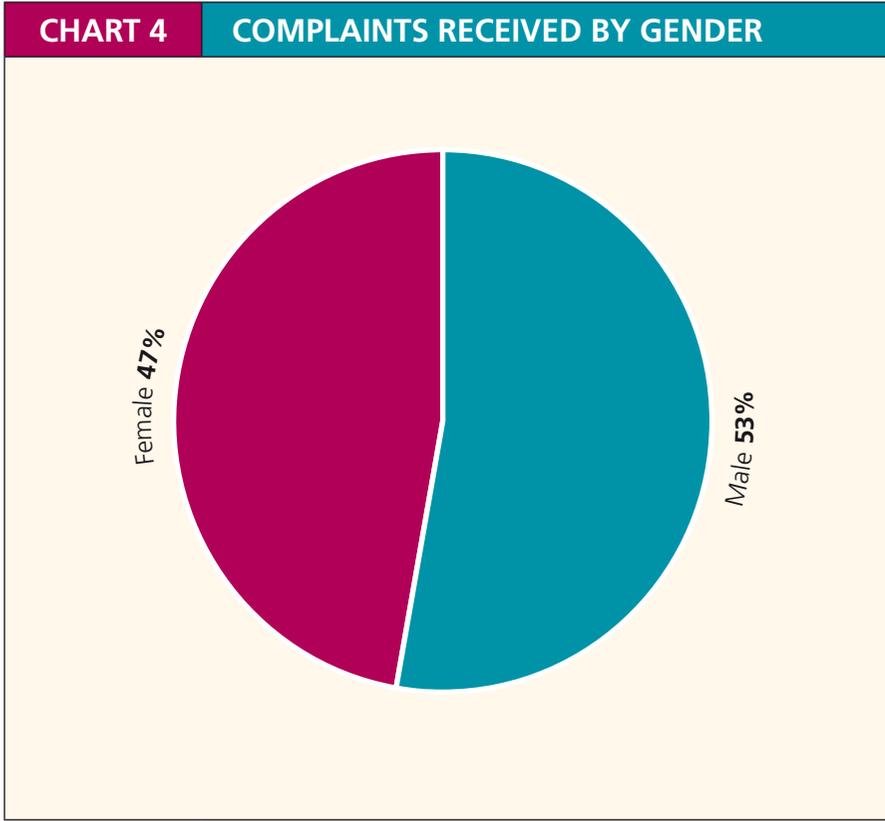
COMPLAINTS RECEIVED BY COURSE TYPE (BY JACS REFERENCE) – TEN MOST FREQUENTLY COMPLAINED ABOUT COURSE TYPES



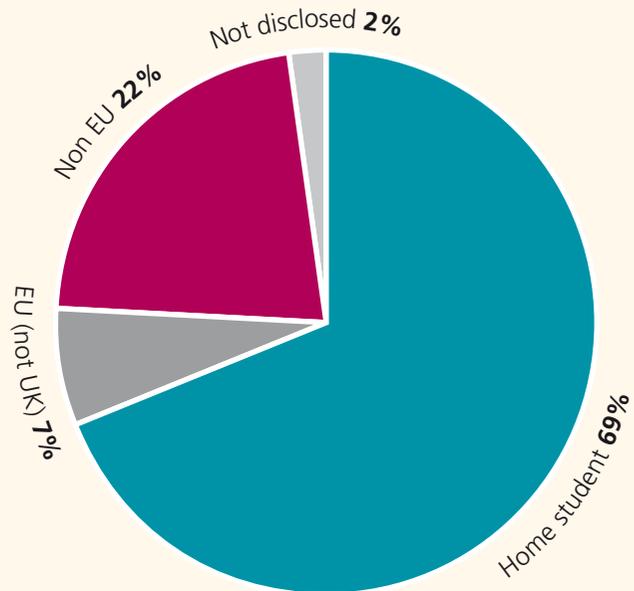
Once again postgraduate students remain disproportionately over-represented in the number of complaints brought to the OIA.



Note: In all graphs some percentages may not total 100% due to rounding.



53 per cent of complaints were received from men. The largest number of complaints was once again from complainants in the 25-39 age group.

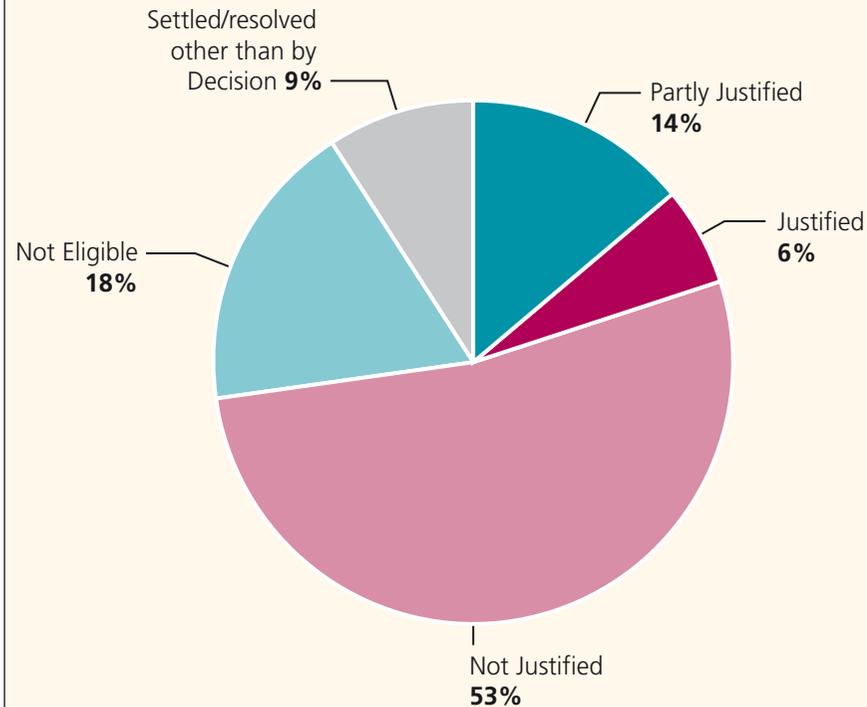
**CHART 6****COMPLAINTS RECEIVED BY FINANCIAL STATUS****TABLE 1****10 MOST COMMON NATIONALITIES OF COMPLAINANTS**

NATIONALITY	NUMBER
British	879
Pakistani	54
Indian	53
Nigerian	46
Chinese	26
Greek	19
Zimbabwean	16
German	15
Irish	15
Canadian	14

Most complaints (69 per cent) received in 2010 were from UK 'home' students, with 7 per cent from elsewhere in the European Union and 22 per cent from international students outside the European Union. This is a similar pattern to previous years with international students continuing to be over-represented in the OIA system.

CHART 7

## OUTCOME OF COMPLAINTS



This year we have changed the way we present the outcome of complaints to include those cases we received which were Not Eligible. This provides a more complete picture of the complaints dealt with by the OIA.

The new category of settled/resolved other than by Decisions reflects the increased focus within OIA structures on early resolution of cases.

The figures for Justified and Partly Justified and Not Justified in previous years were based on the number of eligible complaints and not on the overall number of complaints.

If 2009 figures were presented on a like-for-like basis the figure would be:

<i>Justified and Partly Justified</i>	14%
<i>Not Justified</i>	59%

There has therefore been a 6% (like-for-like) decline in the proportion of cases found Not Justified. This breaks the trend of previous years when the proportion of cases found Not Justified had been increasing until the decline this year.

## Service complaints

During 2010, 15 service complaints were received by the Office, the same number as in 2009.

Service complaints are dealt with by the Company Secretary who assesses the handling of the complaint not its merits. Where appropriate, the complaint is passed to the OIA Board.

## Diversity

In 2010, 171 complainants completed the Equal Opportunities Monitoring form. Of these, 84 were from Black and Minority Ethnic complainants. 76 complainants completing the form stated they had a disability, with 22 of these recording a specific learning difficulty e.g. dyslexia.

*“I would like to sincerely thank the OIA for taking the time and effort to consider my case and arriving at a reasonable conclusion, although I am not happy with the outcome as it did not meet my expectations, I do accept the decision”*

# The OIA Board of Directors



The OIA Board of Directors has 14 members.

Eight, 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.

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

### Deputy Chair

Dr Cecilia Wells OBE – *Until March 2011*

### Independent Directors

- Margaret Doyle – Reappointed November 2008
- Mark Emerton – *Until September 2010*
- Peter Forbes – Appointed March 2011
- Carey Haslam – Appointed September 2010
- Sophie Holmes – *Until March 2010*
- Terry Price – Reappointed June 2010, Deputy Chair from March 2011
- Dr Andrew Purkis OBE – Appointed December 2010
- Hugh Smith – *Until September 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 – Appointed July 2009

*Nominated by the Committee of University Chairs*

- Peter Anwyl – *Until March 2010*
- Peter Hermitage – Appointed August 2010

*Nominated by Guild HE*

- Pauline Aldous – Appointed February 2009

*Nominated by Higher Education Wales*

- Dr Chris Turner – Appointed July 2010

*Nominated by the National Union of Students*

- Usman Ali – Appointed July 2010
- Aaron Porter – *Until July 2010*

*Nominated by Universities UK*

- Professor Mike Thorne – Reappointed August 2010

### Alternate Directors

Alternate Director for Guild HE

- Jenny Share – Appointed May 2009

Alternate Director for the National Union of Students

- Alex Bols – Reappointed November 2010

Alternate Director for Universities UK

- Professor John Raftery – Appointed November 2010

## OIA Higher Education Advisory Panel

The OIA's Higher Education Advisory Panel has completed its second year, having been established in April 2009. The panellists are reaching the end of their first two-year term and all have been invited to take up, and have accepted, a second one- or two-year term.

The panel members are:

- **Professor Avrom Sherr**, Woolf Professor of Legal Education and Director of the Institute of Advanced Legal Studies at the University of London
- **Huw Morris**, Academic Registrar at Swansea University and Chair of the Academic Registrar's Council's Special Practitioner Group for complaints and appeals
- **Janet Pugh**, Educational Quality Coordinator at the University of Southampton
- **Mike Ratcliffe**, Director of Academic and Student Affairs at Oxford Brookes University
- **Joanna Smith**, Senior Advisor, Union of Brunel Students
- **Geoff Stoakes**, Vice Principal and Deputy Chief Executive of University College Plymouth St Mark and St John
- **Andrew West**, Director of Student Services at the University of Sheffield.

OIA staff have made a total of 32 referrals to the panel since its inauguration and thanks to the breadth of experience of the panel members and the quality of their responses have been able to build up an invaluable body of information. The referrals have covered a wide range of topics but there has been particular 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 an extenuating circumstances panel
- Good practice in the record-keeping of meetings between the supervisor and independent marker where a single mark needs to be agreed upon for a postgraduate project and how the work should be re-marked if something goes wrong in the process
- The norms for masters degrees where substantive dissertation work has been carried out before modules have been completed and passed and what should be recorded on the transcripts for outstanding modules/untaken re-sits when a student has failed the course and cannot complete.

All referrals have been conducted on an anonymous basis and panel members' responses have been 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.

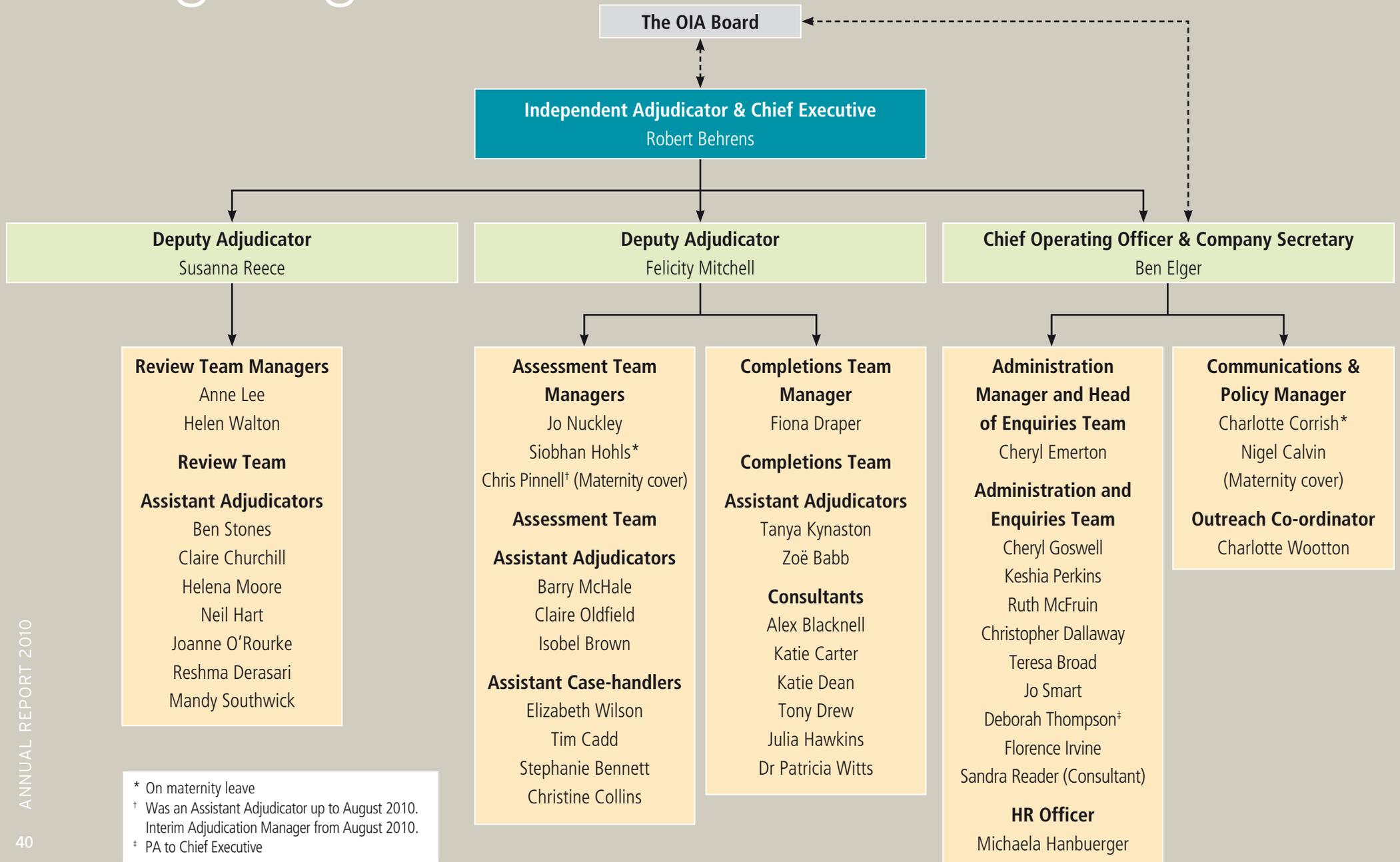
In addition to responding to referrals, the Panel meets with the OIA twice a year to discuss current issues facing the OIA and the sector as a whole.

These discussions are an invaluable exchange of information and help to disseminate shared good practice in complaints handling.

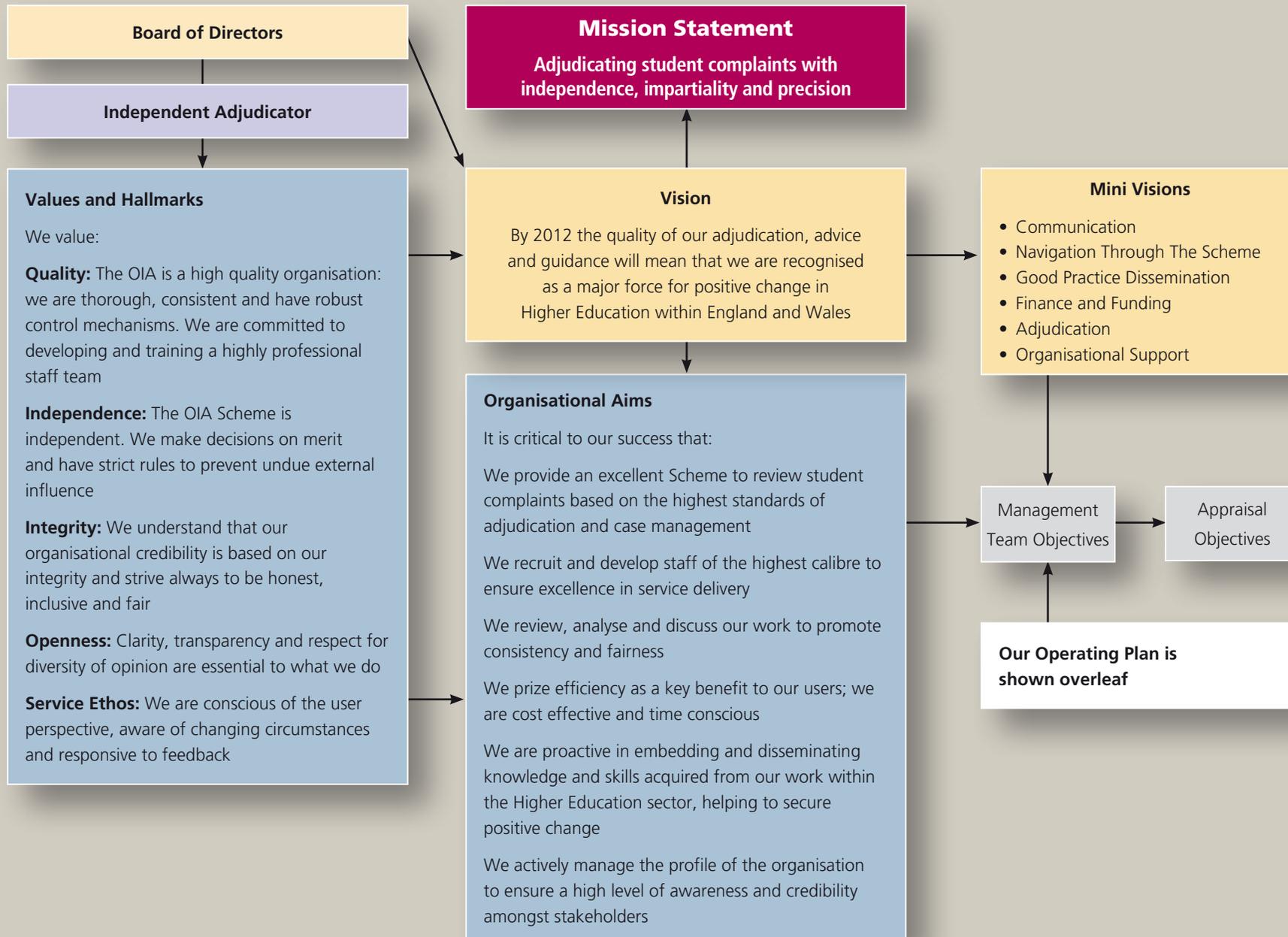
*“I am full of admiration for the role of the OIA and think you perform a very valuable service to the HE sector”*



# Organogram



# Strategic Plan



# Strategic Steps – Operating Plan for 2011

This document outlines ways in which the OIA intends in 2011 to take forward the Organisational Aims defined by the Strategic Plan. The purpose of the document is to help ensure the link between the Strategic Plan and work done at all levels of the organisation and to set clear timescales for priority projects.

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

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**Publication:** By summer 2011, having completed the consultation process begun at the end of 2010, we will begin to publish summaries of certain Formal Decisions naming the relevant university but retaining anonymity for university staff and individual complainants. This increased transparency will promote user confidence in the scheme and further encourage good practice.

**Assessment Team:** Building on the 2010 Pathway Report and the associated review of working method, a pilot structure for an Assessment Team will be evaluated by Easter 2011. The introduction of the assessment function is intended to improve OIA processes in particular by facilitating earlier decisions on complaint eligibility and more straightforward

complaints, increasing the scope for positive OIA interventions other than through full review and further improving our customer service.

**Process Review:** The continuing rise in the number of complaints coming to the Office coupled with the implications of the 2010 Browne review in terms of the future expectations of students as consumers, makes it essential for the OIA to further refine business processes. This will not only involve a higher percentage of cases being resolved other than by full review but also a need to streamline the full adjudication process itself. A step by step review of the OIA process will be undertaken supported by appropriate benchmarking and detailed statistical analysis. The assessment of the process and of changes required will be funded by the special projects area of the budget and will be completed by summer 2011.

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

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**Specialism:** Building on the re-organisation of 2010, the staff structure will continue to be developed in line with changes in process. Increased specialism, for example in dealing with eligibility issues, settling of cases and delayed cases will help drive efficiency.

**Capacity:** In conjunction with the process review and the 2011 budget a small increase in capacity will be carefully targeted to ensure optimum benefit in terms of the turnaround of cases.

**Appraisal/Training:** We will build on the new appraisal system introduced in 2010 to ensure personal development plans are in place for all OIA staff by the end of 2011.

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

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**Remedies:** We will conclude the review of OIA remedies and provide guidance about the methods used in arriving at a remedy and the way that consistency and equity is assured. The report of the Remedies Group will be published in March 2011 and guidance to the sector will be available from Easter.

**Compliance:** Following the designation of the part time post of Compliance Manager in 2010 there will be increased focus on monitoring and disseminating the way in which universities comply with Formal Decisions. A review of progress in this area will take place in June 2011.

**Completions Team:** Building on the creation of the Completions Team in 2010, we will continue to develop systems that identify cases that have become delayed for any reason during the OIA process and to prioritise them. A review of the role of the Completions Team will take place as part of our overall process review during the early part of 2011.

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

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**2011 Budget:** The 2011 budget/subscriptions process has involved an unprecedented level of consultation both through OIA governance structures and externally. The OIA faces severe challenges of capacity, given the need to deal with a much greater volume of complaints than previously without abandoning our commitment to quality, whilst operating in the context of major financial challenges in the HE sector. The subscription rates for 2011 entail:

- A further review of reserves policy especially in regard to judicial review costs
- Significant efficiency savings related to premises
- Significant efficiency savings to be delivered by the process review

**Website:** Following the development of our website in 2010 we will continue to make the organisation more accessible. In particular we will introduce an on-line complaints form and a tracker to allow students and universities to view the status of their complaints in 2011.

**Key Performance Indicators:** Building on the 2010 KPIs project, indicators will be established for principal functions in line with the new structures. These will be in place by June 2011.

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

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#### **Higher Education in Further Education**

**Colleges:** The Pathway Report recognised the anomaly that Higher Education students studying for Foundation degrees in Further Education Colleges cannot always access the OIA scheme. Following further consultation at the end of 2010 proposals relating to this will be set out by June 2011.

**Visits Programme:** We will maintain our visits programme led by the Independent Adjudicator, visiting 25 universities and students' unions. We will apply criteria to ensure that we capture different experiences of complaints handling utilising increased statistical information and considering geography, mission and subscription groups. We will continue to respond positively, wherever possible, to requests from universities and students' unions for a visit or meeting.

**Higher Education Advisory Panel:** We will continue to develop our use of expert practitioners from the higher education sector, including a student advisor. Current Panel members will be asked in February 2011 if they wish to serve for a second two-year term and any replacement members will be recruited in April 2011.

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

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**White Paper:** We will publish a response to the Government's Higher Education White Paper. Our response will consider the implications of a changing HE environment for student complaints and complaint handling procedures.

**Stakeholder Events:** We will hold a major one day stakeholders' conference in June 2011 to consider the future of the independent handling of student complaints in the light of the Higher Education White Paper, the Browne review and our own Pathway Report. In addition we will continue to organise regional events to explain and discuss our work and key issues.

**Charitable Status:** We will have further discussions with the Charity Commission with a view to determining whether it is appropriate and beneficial for the OIA to be a Registered Charity. We would expect to conclude this process by June 2011.

# OIA subscriptions for 2010

Subscriptions to be based on full time and part time higher education and further education students at Higher Education Institutions, according to 2007/08 HESA statistics.

	Band	2010 Subscription Fees
Less than 500 students	A	£430
501 to 1,500 students	B	£870
1,501 to 6,000 students	C	£4,680
6,001 to 12,000 students	D	£9,285
12,001 to 20,000 students	E	£15,435
20,001 to 30,000 students	F	£23,330
30,001 to 50,000 students	G	£27,725
50,001 to 100,000 students	H	£34,118
More than 100,000 students	I	£52,420

For a full list of subscribing universities please see our website <http://oiahe.org.uk/about-us/list-of-hei.aspx>

# An extract from the Statutory Accounts 2010

INCOME AND EXPENDITURE ACCOUNT FOR THE YEAR ENDED 31 DECEMBER 2010

	31 December 2010	31 December 2009
	£	£
<b>TURNOVER</b>	<b>1,986,462</b>	2,017,581
Administration expenses	<u>(2,064,624)</u>	<u>(1,920,217)</u>
<b>OPERATING (DEFICIT)/SURPLUS</b>	<b>(78,162)</b>	97,364
Interest receivable and similar income	<u>2,501</u>	<u>1,496</u>
<b>OPERATING (DEFICIT)/SURPLUS ON ORDINARY ACTIVITIES BEFORE TAXATION</b>	<b>(75,661)</b>	98,860
Tax on (deficit)/surplus on ordinary activities	<u>(490)</u>	<u>(707)</u>
<b>(DEFICIT)/SURPLUS FOR THE FINANCIAL YEAR AFTER TAXATION</b>	<b><u>(76,151)</u></b>	<b><u>98,153</u></b>

## BALANCE SHEET 31 DECEMBER 2010

	31 December 2010		31 December 2009	
	£	£	£	£
<b>FIXED ASSETS</b>				
Tangible assets		265,516		33,069
<b>CURRENT ASSETS</b>				
Debtors	41,401		58,418	
Cash at bank and in hand	<u>1,855,409</u>		<u>1,471,664</u>	
	1,896,810		1,530,082	
<b>CREDITORS</b>				
Amounts falling due within one year	<u>1,595,479</u>		<u>920,153</u>	
<b>NET CURRENT ASSETS</b>		<u>301,331</u>		<u>609,929</u>
<b>TOTAL ASSETS LESS CURRENT LIABILITIES</b>		<u>566,847</u>		<u>642,998</u>
<b>RESERVES</b>				
Income and expenditure account		<u>566,847</u>		<u>642,998</u>
		<u>566,847</u>		<u>642,998</u>

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](http://www.oiahe.org.uk)  
Independent Auditors Statement: We have examined the summarised financial statements set out on pages 46 and 47.

**Respective responsibilities of Directors and Auditors** You are responsible as Directors 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 25 March 2011.

**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 2010.  
**Crowe Clark Whitehill LLP, Chartered Accountants and Registered Auditors, Reading RG1 3BL. 5 April 2011.**

“I would like to thank you for your work in investigating my case, I am extremely grateful to you for the part you have played in securing the positive outcome of my appeal”





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independent  
adjudicator

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Registered Company number: 04823842

Registered Charity: 1141289