

APPG Inquiry: A sustainable future for international students in the UK?

Written evidence submitted by the Office of the Independent Adjudicator for Higher Education (OIA)

Background

The Office of the Independent Adjudicator for Higher Education (OIA) has a perspective on international students in higher education from its role as an independent student complaints review body and as part of the regulatory framework.

We have responded to this inquiry using our learning and experience from complaints handling in the higher education sector.

The OIA is designated under the Higher Education Act 2004 as the operator of the complaints scheme for higher education students in England and Wales.

Our remit has been extended twice over the last 3 years and now all universities, higher education providers with degree awarding powers and those offering higher education courses designated for student support funding are required to join the OIA. In addition, all providers registered with the Office for Students are required to join, as well as those providing higher education courses leading to an award of an OIA member where both are in England. A diverse range of higher education providers are now covered by the OIA Scheme; from small, industry-specific independent providers, to initial teacher training providers, to large further education colleges and universities. Our membership has increased from around 150 providers (2014) to over 800 providers (2018).

Higher education students studying at a provider in England and Wales can complain to the OIA. The OIA has a wide remit to consider complaints from students about any "act or omission" of a member provider. This includes complaints about service quality, course provision, academic appeals and disciplinary and fitness to practise procedures. The OIA cannot look at complaints about academic judgment, but the majority of complaints to the OIA are about process and academic outcomes and are specific to the circumstances of the student (for example, whether marking and moderation procedures were correctly followed or how extenuating circumstances were taken into account).

Part of the OIA's mission is to share good practice which we do through initiatives such as the [Good Practice Framework](#) for Handling Complaints and Academic Appeals, and a comprehensive outreach programme of workshops, webinars, case studies and visits to providers.

The OIA is an ombudsman scheme and not a regulator but it is part of the regulatory framework for higher education in England and Wales. The OIA is independent of Government, regulators, higher education providers and students. However, the OIA liaises regularly with Government and works with other sector bodies to share information which contributes to our respective roles. The OIA is the alternative dispute resolution body for

higher education complaints, approved by the Chartered Trading Standards Institute under the European Directive on Consumer Alternative Dispute Resolution.

Recourse to free, independent redress of unresolved complaints contributes to an improved student experience. It provides students with an opportunity to resolve their concerns at no cost without having to go to court and without the need for legal representation. Dealing with complaints in this alternative dispute resolution context helps to redress the power imbalance between students and providers. Feedback from some students indicates that they are more willing to accept the decision of an independent and impartial review body like the OIA even if they do not agree with it.

Statistics relating to complaints to the OIA from international students

Since 2005, the OIA has dealt with almost 19,000 complaints from higher education students with over a quarter from international students. The majority of those students are postgraduates. It is important to view this number in context. The OIA is an ombudsman of last resort and is not an emergency remedy. Students must usually have complained to their provider, to give it an opportunity to put matters right, before complaining to the OIA. Many complaints will not reach the OIA because they are resolved by the providers concerned, through their own complaints procedures. A student can expect the internal procedures of a provider to take up to 90 days, which includes time to allow the student to make representations and seek advice and support.

The OIA's role is to review acts and omissions of higher education provider and look at whether they have followed correct and fair procedures and reached a reasonable decision.

Each year, we publish in our [Annual Report](#) information about trends in the complaints that we dealt with in the preceding calendar year. We include information about the type of student who is most likely to complain to the OIA. We receive a disproportionate number of complaints from non-EU students in comparison to their representation in the student body studying in UK. These students accounted for 23 per cent of complaints to us in 2017. In many cases international students' complaints to us arise from language difficulties, lack of good induction, or cultural differences, that might have led to the student not following the provider's regulations. The family circumstances and sponsorship arrangements of these students may also mean they are likely to be under greater pressure to 'succeed' on their course.

Broadly the outcomes of the complaints we receive from international students mirror those of home students. Where we find that things have gone wrong, the impact on international students is often significantly greater than for home students.

Students have 12 months to bring a complaint to the OIA (the time runs from the date the provider issues a Completion of Procedures Letter confirming that its internal processes have concluded). International students take slightly longer than home students to bring their complaint to the OIA. This may be because a student has not prioritised bringing a complaint to the OIA because of the need to ensure they are not in breach of their visa conditions or the need to make arrangements to travel home if the provider has terminated their studies. Students can complain to the OIA from outside the UK so if they are required to leave the country they are still able to access the OIA and our processes.

Trends in complaints to the OIA from international students

From our experience of handling complaints from international students there are some commonly occurring themes and, in some cases, the outcomes for international students are different to home students because of the context in which they study.

We have seen a reluctance from international students to inform providers of any physical or mental health issues they have. This may be due to cultural differences in approach to illness. In addition, attendance requirements for international students and the consequences of breaching visa requirements may make students reluctant to admit when they are too unwell to participate in their studies. These factors can also lead to problems if a student wishes to submit extenuating circumstances at a later date since they may have 'no valid reason' for not having told the provider about their difficulties at the time.

Case Example A

A student was unsuccessful in a number of modules during a one year MSc. He appealed his results on the basis of personal illness and family bereavement. The provider exercised its discretion to consider his circumstances even though he had not brought his difficulties to its attention at the time of the exams. The student was allowed a further attempt at the modules.

The student was unsuccessful again, but again only brought his personal circumstances to the attention of the provider after it released his results. He said that he had not wished to be seen as 'weak'. We found the complaint to be Not Justified. The provider had made it very clear that the student should disclose any personal difficulties as they were occurring.

In a situation where students are facing significant difficulty in another area of their life or illness we find that it is common for providers to advise students to take a temporary suspension of their studies. We observe that international students are less likely to take this option both because of the reluctance to inform providers of their difficulties but also because of the practical and financial impact of suspending their studies. There may be many different implications for an international student taking a temporary suspension, for example the costs of flights where their visa depends on being in attendance. It can be difficult for any student to exit accommodation contracts mid-year, particularly with private providers of accommodation. International students who have to leave the UK temporarily may be unable to make any use of the accommodation they are committed to paying for. Depending on where they are in their studies they may be required to pay a whole further year of fees. Additional years of study mean additional living expenses, which may or may not be covered by any sponsorship or loan arrangements available to international students. There may also be an impact on dependants such as children if an international student is required to return home. The wider impact on a decision to suspend their studies is often far greater for an international student than a home student and their choices are often more limited because of these circumstances.

The impact of the changes to visa arrangements/immigration policy can have a detrimental effect on individual students, in particular where changes are implemented quickly, and when those giving advice to students are not clear about the impact of the changes. Providers have a responsibility to the Home Office as a licensed sponsor as well as to the student to ensure there is clear communication of any changes, and this can be a difficult role to balance and can at times lead to mistakes or not treating a student fairly which can have a significant impact on an individual student.

A particular issue we see in relation to international students is where their status as a student has been put at risk because of financial difficulties, administrative errors or a misunderstanding on behalf of the provider or sponsor. For example, students have been suspended or removed from their course because their sponsor has failed to pay tuition fees to the provider. This causes additional stress and anxiety for international students even where it is resolved.

Case Example B

A provider made a mistake about course dates in the paperwork for a PhD student's application to extend his visa under the Tier 4 Doctorate Extension Scheme. The student spotted the mistake and asked the provider to correct it. The provider thought that the mistake would not matter. Unfortunately, this was wrong, and the student's visa was refused.

The provider made another administrative mistake with the paperwork for the student's second application. On the third application the student was granted the visa.

The provider accepted that its mistakes meant that the student had to apply for a visa three times. It had offered to reimburse the student's costs for the second and third applications and for his legal fees. It also offered him a payment of £10,000 for lost earnings and in compensation for the distress and inconvenience he had suffered. The student was pleased that his costs were being met by the provider but complained to us that the provider had not explained how it had decided upon the figure of £10,000. We decided that the complaint was Justified. The student had clear evidence that he had a job offer that he had to delay accepting because of the problems with his visa. We recommended that, in addition to the costs it had agreed to pay, the provider should offer to pay £11,000 compensation for lost earnings, based on the student's lost salary, and compensation for distress and inconvenience.

Case Example C

The provider withdrew a student's visa sponsorship on the basis of lack of academic progress after she failed assessments at the first attempt. The course regulations permitted a second attempt, which was successful. We considered that it was not reasonable for the provider to decide that the student could not progress, given that she met the requirements set out in the student handbook. We decided her complaint was Justified. She was unable to return to her studies as the provider's licence to sponsor international students had been withdrawn. We awarded financial compensation to refund tuition fees and for distress and inconvenience.

We have seen varying practice amongst providers with regards to visa status, for example where there is non-payment of fees, some providers will suspend or terminate the student's registration within a very short time of the fees being overdue where as others may let this continue for the majority of an academic year.

We also see variance in how quickly providers report a student to the Home Office for not being in attendance or not being a student, including when termination has been for debt rather than academic issues. Some students are reported very quickly. In cases where the decision which led to them being reported was subsequently found to have been an error,

the student has been required to go through an additional process to seek a new visa, at further expense. In other cases, students are not reported by the provider or are allowed to maintain student status in an unclear and undefined way. Even though we might ultimately recommend that a student be allowed to return to their studies, there can be issues preventing students remaining in the UK on a visa sponsored by the provider while our processes are continuing. Students may choose not to bring a complaint to the OIA for up to 12 months after a provider has completed its internal procedures. Students may not be in attendance during this time. Providers understandably do not wish to put at risk their license to sponsor international students, which has led some to apply policies which do not flex to individual students' circumstances.

Case Example D

An international research student complained to his provider after it terminated his studies. The provider initially dismissed the complaint and the student complained to the OIA. We identified several procedural failings in the handling of the complaint. We decided the complaint was Justified and recommended that the complaint be reconsidered by a Complaint Panel.

The provider reconsidered the complaint and partly upheld it on the basis that the provider should have withdrawn the student 18 months earlier, due to a lack of progression. The provider offered to refund the student's fees for the relevant period, and pay compensation for distress and inconvenience. It did not offer a refund of living expenses. The student complained to us a second time. He said the provider had not addressed his complaint and should have refunded his living expenses.

We decided that the complaint was Partly Justified. The decision to withdraw the student was a matter of academic judgment, and we were satisfied the evidence supported the provider's conclusion that the student had received regular supervision. However, the provider had not offered a reasonable remedy. The student had experienced distress and inconvenience over a prolonged period and the provider had missed the chance to address this at an earlier stage. The student was in the UK specifically for the purposes of study. If the provider had acted sooner the student would have returned home and would not have incurred higher living expenses in the UK. We recommended that the provider pay 60 per cent of the additional living expenses for the 18-month period, based on the cost of living index for the UK and the student's home country, and the amount the Home Office required international students studying in the UK (outside of London) to have as available funds to cover living expenses. We also recommended that the provider repeat its offer to refund tuition fees for the relevant period and increase its offer of compensation for distress and inconvenience.

Case Example E

An international student was nearing completion of a Masters of Science (MSc) programme at a University. The student applied to study a Masters of Arts (MA) at another provider. He asked the University for a letter saying that he was likely to successfully complete the MSc so that the other provider could sponsor his application for a new visa. The University refused because its policy was to avoid speculating on the likelihood of a student's success in case its prediction was wrong.

The University was concerned that writing such a letter might compromise its position as a Tier 4 sponsor.

We concluded that the student's complaint that University had misunderstood Home Office guidance was Justified. The evidence showed that despite being directed to the relevant part of the Home Office guidance, the University incorrectly believed it was being asked to comment on the likelihood of the student completing the MA which he had not yet started studying. The student had to postpone starting the MA for a year. We recommended that the University offer the student an apology and pay compensation for the distress and inconvenience he experienced because of its errors.

Differences in cultural attitudes towards studying in the UK and how the higher education system awards qualifications is also a factor we see in complaints from international students. An example of this is cases relating to plagiarism. We believe it is important to provide comprehensive education for all students on what constitutes academic misconduct and this can be particularly important for international students who may come from different academic traditions. Some international students may arrive late and miss induction, so it is good practice to deliver catch up sessions for them.

We also find in some cases that international students do not always follow the advice given to them by providers or the Home Office and this can be to their detriment.

Case Example F

A non-EU international student was sponsored by the provider on a Tier 4 immigration visa which allowed him 12 months to complete his studies. The student had to resubmit a project, but the deadline fell after the expiry of his visa. The provider re-registered the student as a "dormant student" to enable him to complete the project. The provider told the student that it could not support an application to extend the visa because he could complete the project from his home country, without attendance. The visa expired but the student remained in the UK. He said that he had made an application for leave to remain.

The provider withdrew the student from the course and did not mark the resubmitted project because he did not have approved immigration status to remain in the UK. The student complained about the decision not to mark the project but the provider rejected the complaint and the student complained to us. We decided that the complaint was Not Justified. The provider had acted reasonably given its responsibilities as a licenced Tier 4 sponsor. The provider had requested evidence to show the student's immigration status, to check that he had the right to remain in the UK. The student did not provide this information. The provider granted the student an ordinary degree on the basis of the credits he had achieved.

Case Example G

The student was a Masters student whose studies were terminated following cumulative academic failure.

At the Appeal Panel hearing she stated that she was not interested in attending teaching sessions, only in receiving her degree, that she did not understand why she had to submit work and that the work she did submit should have passed because

her brother in her home country had “checked it” for her. The Appeal Panel concluded that the student had not engaged with her studies and that she did not understand the ethos of the UK HE system or what was required of her.

We found the complaint Not Justified and we concluded that it was unfortunate that the student appeared to have misunderstood the UK HE system. Payment of tuition fees alone does not in itself result in the award of a degree. Students must of course engage with their programme of study and meet the prescribed academic standards, demonstrated via assessment, in order to be eligible for the award of a degree. The provider also has a duty to maintain its academic standards and the academic integrity of its awards.

Remedies for international students

Providing appropriate remedies for international students can be challenging. The student may no longer be on the course or in the country. Although we apply the same principles to all students, we often make higher financial awards to international students if a complaint is found Justified or Partly Justified. This is because practical remedies may not be available, and wasted expenses, fees and levels of distress are often higher. In some cases we give alternative recommendations if it is not clear what the outcome of a visa issue might be.

Case Example H

An international student complained to the OIA after her provider had terminated her studies and its sponsorship of her visa because of non-attendance. The student had not been permitted to appeal against this decision and no Completion of Procedures Letter had been issued. We decided that the complaint was Justified on the basis that the student had provided substantial evidence of ill-health but there was no evidence that the provider had considered this when making the decision to terminate her registration. We were also concerned that the provider had not given the student sufficiently clear advice about its obligations regarding her visa.

The student’s preferred remedy was to return to her studies but this would be dependent on her ability to obtain a new visa. We therefore made alternative recommendations: if the student were able to obtain a new visa, we recommended that she should be readmitted to her course and that the provider should pay her compensation for distress and inconvenience. Alternatively, if she were unable to secure a new visa, we recommended that the provider should pay her a higher sum in compensation. We also made two good practice recommendations: that the provider should review its procedures to make provision for students to appeal against termination on the grounds of non-attendance; and that the provider should improve its record-keeping.

Case Example I

Towards the end of his first year, an international PhD student with full financial sponsorship raised concerns about his supervisors. They subsequently refused to provide any further supervision. The student was unable to find new supervisors, and the provider terminated his studies because of ‘a lack of engagement’.

We decided that the case was Justified because it was not reasonable for the supervisors to simply stop supervising the student. It was also unclear what procedure, if any, had been used to terminate the student's studies. We recommended compensation for the distress and inconvenience arising from the student's withdrawal and the disappointment of being unable to complete his PhD at his chosen provider. This sum took into account that an international student was withdrawn at short notice, and had to relocate himself and his family back to his home country. The evidence did not show that the student was failing academically, or that his studies would not have continued if he had not complained about his supervision. While his complaint was ongoing, the student had started to study for his PhD elsewhere. We therefore recommended that the provider pay the student's stipend and bench fees for the two years where he had lost his sponsorship and for the time during his first year when he was without supervision. We did not recommend the University pay the student's further tuition fees because he had obtained a new scholarship to cover these costs.

Some complaints brought to the OIA have highlighted that in addition to higher baseline tuition fees, international students may pay more for their experience than home students, as a result of policies which are intended to protect the provider's level of income. For example, if a home student and an international student decide to withdraw from their studies at the same point in the academic year, a provider's policy may state that a home student is entitled to a refund of a greater percentage of their fees than the international student. International students carry an extra level of financial risk. Some international students are sponsored by agencies which will try to recoup the costs if the student does not achieve a certain level of award, and the consequences of not completing the course successfully, can be severe.

Case Example J

A medical school offered international students the opportunity to join the course in year 3 of 5. However, because the provider was obliged to include such students in the overall medical student numbers (which are subject to a cap) as if from year one, such students potentially cost the provider the opportunity to obtain two additional years of tuition fee income. It decided to apply Clinical Placement Fees of £3750 per year, to international students joining in year 3, to recoup this loss. The provider had not made it clear to students that this fee was payable before they enrolled on the course, nor explained the rationale. When students complained, the provider took steps to offer refunds. Following a complaint to the OIA, the provider also took steps to make payments to cover overdraft fees which students had incurred, and to compensate students for the distress and inconvenience caused to them.

Conclusion

The complaints we have received do not indicate that international students overall are offered a different quality of experience in terms of the provision of academic or pastoral support. We have seen many examples of staff at providers offering extensive support to students. However, international students can face different and additional challenges whilst studying from their home student colleagues, and often we see 'administrative' difficulties around visas, finance and understanding how studying at HE level in the UK works, having an impact on an international student's ability to engage fully with their academic study.

Because of the nature of their complaints, or their individual circumstances, we will often recommend different remedies to international students to ensure they are best tailored to the situation the student may find themselves in.

Our work with our regulatory partners helps to inform improvements to the quality of teaching and learning, the student experience and the delivery of better outcomes for students across the higher education sector whether they are international or home students.

It is important to remember that overall statistics are only part of the story. Behind each complaint to the OIA is a student who is not satisfied with something that their provider has done or not done. Each individual complaint is unique and of huge importance to the student concerned. Higher education can and should be life-changing. When things go wrong, the stakes are high; career opportunities, earning potential, lifestyle choices can all be impacted by levels of educational attainment achieved.

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