

# **LESSONS FROM THE PATHWAY CONSULTATION: TOWARDS GREATER TRANSPARENCY**

Paper presented to Meeting Student Expectations Conference

The King's Fund, London, 27 May 2010

***"There is simply no evidence that the Independent Adjudicator is not independent, nor that the Board ..... attempts to influence the Independent Adjudicator"***

Budd and the OIA, The High Court of Justice, 12 May 2010

***"Since its introduction in 2005, we believe that the Office of the Independent Adjudicator for Higher Education has established itself as an essential part of the higher education world, and must continue to play an important role"***

Higher Ambitions – the Future of Universities in a Knowledge Economy. Government White Paper (Department for Business, Innovation & Skills 2009)

**Rob Behrens**



Independent Adjudicator and Chief Executive

Office of the Independent Adjudicator in England and Wales

# OIA – MANDATES AND OPERATION

- National Adjudication Scheme for Higher Education created under Higher Education Act 2004
- All universities required to join, and comply with Scheme Rules
- Independent Scheme without charge to students
- Examines “an act or omission” by a university, and tests are whether the university has abided by its own procedures and/or acted reasonably “in all the circumstances”
- Complaints can only be brought by students or former students
- Complaints must not relate to “academic judgment”, employment issues or matters before a Court
- Subject to Judicial Review (about 25 cases since 2007)
- Received 3500 complaints and made 3000 decisions since inception
- Two-thirds of complaints relate to academic appeals, exam results and degree level
- 40 per cent of complaints come from postgraduates, 22 per cent from international students from outside EU

# WHY HAVE A REVIEW?

- ❑ Scheme had been in operation nearly 5 years
- ❑ First Independent Adjudicator retired after successful completion of term. Good moment for new, incoming IA to take stock
- ❑ Vehicle to legitimise, dramatise and conceptualise the change process to come
- ❑ Strong consensus amongst Ministers, universities and students' unions that a consultative review would be beneficial to:
  - ✓ Review mandate
  - ✓ Address concerns about rising costs
  - ✓ Promote an on-going dialogue
  - ✓ Generate ideas about improving the case-handling process
  - ✓ Discover what complainants believe

# WHAT DID THE PATHWAY REVIEW CONSIST OF?

<b>ISSUES AND QUESTIONS PAPER</b>	16 Questions about the OIA Scheme including mandate, accessibility, impact, funding and governance 3 months consultation, October-December 2008	91 submissions from universities 15 from students' unions 19 from key stakeholders including National Union of Students and Universities UK All published at <a href="http://www.oiahe.org.uk">www.oiahe.org.uk</a>
<b>QUANTITATIVE STUDY SURVEY</b>	Postal survey commissioned from King's College London under competitive tender, conducted December 2008-June 2009	215 completed surveys from 31 per cent of 776 in sample
<b>COMPARATIVE STUDY</b>		Studies of Scotland, Northern Ireland, Austria, Australasia and other parts of Europe
<b>ADDRESSING FELT NEED</b>	One-to-one interviews with key stakeholders	

# WHAT WERE THE RISKS?

RISKS	MITIGATING ACTION
<b>Major strategic review deflects attention from adjudicating cases</b>	Clear PID (Project Initiation Document) with detailed costing, process and role allocation and time management.
<b>Ministers agree to review but disagree about consultative element</b>	Careful advance scoping of and consultation about review, including use of external consultants.
<b>Unflattering user views of OIA given publicity and prominence</b>	Incorporating transparency (full publication of Report and evidence) builds trust in integrity of process.
<b>Consultation reveals unrealistic expectations and/or unbridgeable gap between users and stakeholders</b>	Use evidence-based approach, setting out benchmarks for success and distinguishing between Wants and Needs.

## BENCHMARKS TO MEASURE OIA AGAINST

**Clarity of Purpose**

**Independent**

**User Perspective**

**Proportionality**

**Transparent**

**Accessibility**

**Flexibility**

**Efficient and Effective**

**Quality Outcomes**

**Developed from:**

**Guide to Principles of Good Complaint  
Handling (BIOA, 2007)**

**QAA Code of Practice Section 5 (2007)**

**KRC Bar Standards Board Survey 2009**

## CONTEXT OF PATHWAY FINDINGS



## WHAT WERE THE REVIEW FINDINGS? (1)

- Strong, widespread support for mandate and operation of Scheme
- Consensus amongst universities and students' unions that Scheme is independent and produces competent consistent decisions
- But review process is too burdensome, and remedies disproportionate
- Complainant view dependent on outcome of their individual complaint
- Complainants angry at university handling which is perceived as too slow, with procedures unclear and complaints not taken seriously
- Complainants want face-to-face contact with OIA case-handlers and expanded mediation.
- Complainants have no confidence that universities comply with OIA Recommendations

## **REVIEW FINDINGS (2) – SCHEME USERS**

### **Universities and students' unions**

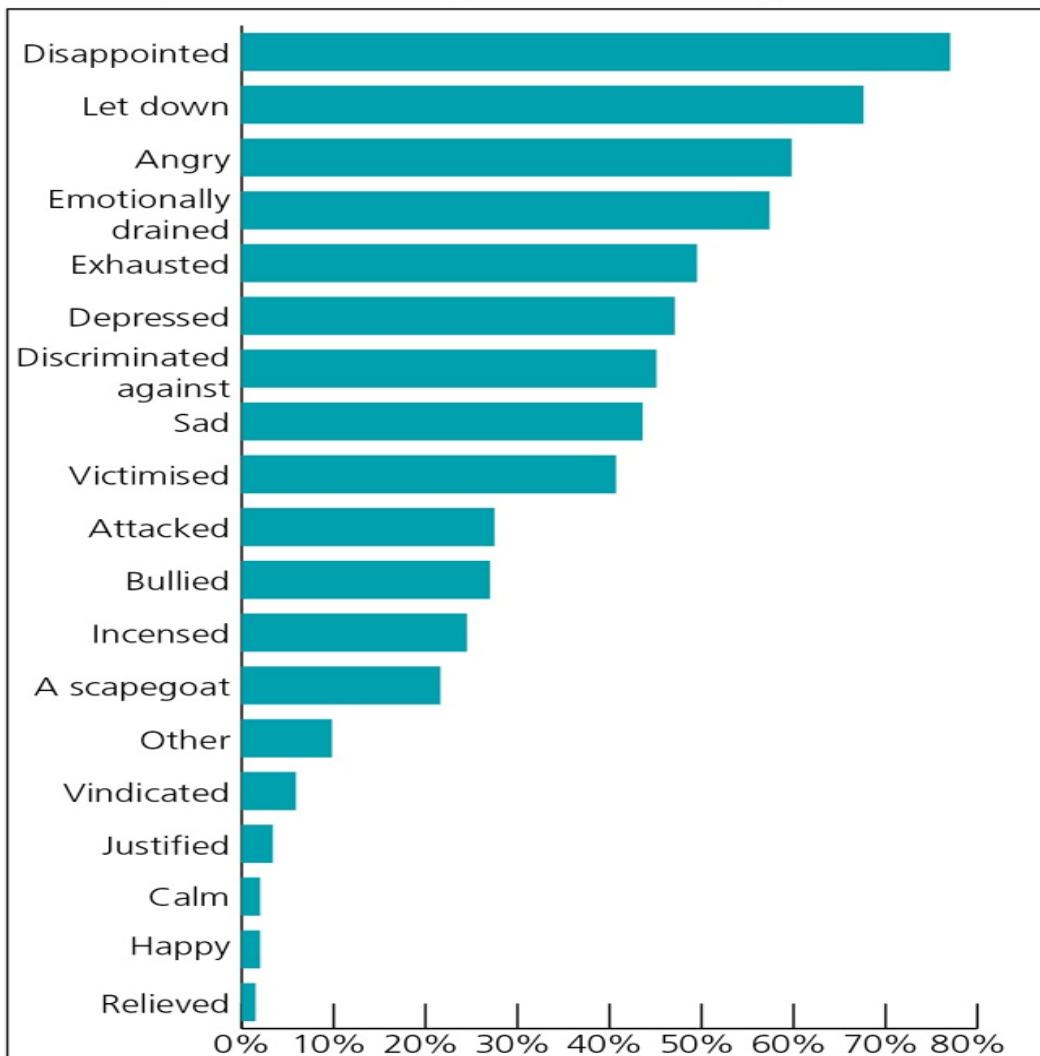
- Widespread agreement amongst universities and students' unions that mandate is appropriate, Scheme is independent, Decisions are consistent and that Scheme has improved university practice

### **Complainants**

- 64 per cent of complainants thought that university handling time was too slow
- 79 per cent of complainants believed they had not had a fair hearing
- 81 per cent felt unsupported during proceedings
- 60 per cent of complainants believed their issue was not taken seriously by university
- 58 per cent discovered university documents through the OIA process they had not previously seen
- 48 per cent had not been kept informed during the course of their complaint
- 39 per cent of complainants not confident that OIA Recommendations would be implemented by the university

## REVIEW FINDINGS (3): COMPLAINANT FEELINGS

**Figure 4: How did you feel at the end of the whole procedure at your university?**



Source: Report of the OIA Student Survey 2009, Figure 6

## REPORT IMPLEMENTATION (1)



# REPORT IMPLEMENTATION (2)

QUICK WINS	IMMEDIATE IMPLEMENTATION	FURTHER CONSULTATION
<ul style="list-style-type: none"><li>• New website</li><li>• New corporate branding</li><li>• New procedure for service complaints against the Office</li><li>• New policy on vexatious complaints</li><li>• New Guidance on when the OIA process begins</li><li>• Continued review of funding mechanisms</li><li>• Continue to take policy seminars outside Southern England</li></ul>	<ul style="list-style-type: none"><li>• Implement strategy for better communicating role and function</li><li>• Invite 'private universities' to join the scheme</li><li>• Publish proposals for enhancing direct contact with users</li><li>• Review disability policy and practice</li><li>• Review remedies and compensation</li><li>• Implement new arrangements for monitoring compliance</li></ul>	<ul style="list-style-type: none"><li>• Consult sector about how to increase Scheme transparency including option of naming universities when publishing summaries of compliance</li><li>• Consult on bringing Higher Education in Further Education Colleges more fully into Scheme</li><li>• Consult on how to increase student presence on OIA Board</li></ul>

# LESSONS LEARNED

1. Change is a process which must be rigorously planned and executed
2. Clarity of purpose is a pre-requisite for effective communication
3. What students want most is resolution of their complaint. This requires joined-up action by sovereign universities and independent OIA
4. Effective consultation, continuous not periodic, has the capacity to strengthen complaints handling schemes
5. User Wants are not necessarily deliverable, desirable or objectively ‘correct’. They should still be heard and debated
6. Diversity in approach across Europe and beyond is a strength to be interrogated not a weakness to be ignored
7. Transparency is an essential ingredient of user trust and organisational reputation