

***‘Effective Governance of Ombudsman
schemes: Nose In – Fingers Out’
A Case study based on the OIA Model***

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NOSE IN – FINGERS OUT

“There’s nothing worse than letting an inexperienced cook into the kitchen when it’s time to make the sauce.” (Anonymous)

GOVERNANCE AND LIFE-EXPERIENCE

History of an 'Outsider'

- **Refugee**
- **Business Background**
- **Experience of Public Sector Governance**
 - Better Regulation Task Force
 - UK Border Agency Complaints Audit Committee (Home Office)
 - Epsom and St Helier University NHS (hospital) Health Trust
 - Equalities & Human Rights Commission Audit & Risk Committee
- **Non-Executive University Appointments**
 - Court and Council of Imperial College, London
 - St Georges, University of London
 - Middlesex University (visiting professor)
 - Cambridge University (Hon. Member Faculty of Divinity)
- **Non-Executive Chair of OIA since 2009.**

BACKGROUND TO THE OIA AND IT'S GOVERNANCE

- **OIA Scheme is a hybrid (public/private), overseeing Scheme**
 - **created under national legislation**
 - **operates under the 7 Principles of Public Life: Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership**
- **Non-Executive Board:**
 - **9 Independent members including the Chair**
 - **6 members nominated by sector stakeholders**
 - **An additional independent student representative was appointed in 2011.**
- **Board appoints Independent Adjudicator**
- **Chief Executive and approves the Accounts.**

BACKGROUND TO THE OIA AND IT'S GOVERNANCE

- Board has oversight of policy and business process but
- Has duty to uphold independence of complaints Scheme
- and of Independent Adjudicator whose operational decisions must not be interfered with
- Leaves Executive actions to Independent Adjudicator but requires him to be accountable for them.
- Quarterly Board Meetings and sub-committees of the Board dealing with finance, audit, remuneration policy and appointments.
- Monthly meetings between Chair and Independent Adjudicator

WHAT DOES EFFECTIVE GOVERNANCE REQUIRE?

Focus on organisation's purpose and outcomes

- **Performing effectively in clearly defined functions and roles**
- **Promoting and demonstrating values for the whole organisation**
- **Taking informed, transparent decisions and managing risk**
- **Developing the capacity of the governing body to be effective**
- **Engaging stakeholders and making accountability real**

*The Independent Commission on Good Governance in Public Services,
The Good Governance Standard for Public Services, 2004.*

WHAT DOES EFFECTIVE GOVERNANCE REQUIRE?

- **Freedom from interference in decision-making on complaints**
- **Appropriate and proportionate structure and financial arrangements**
- **Appointment, re-appointment and remuneration of office-holder consistent with ensuring independence**
- **Governance arrangements which ensure and safeguard the independence of the office-holder and scheme**
- **Those involved in governance of scheme to conduct themselves at all times in scheme's best interests**

Source: BIOA, 2009.

PRINCIPLES OF GOOD GOVERNANCE

(to ensure trust and confidence in the scheme)

- **Independence**
- **Openness and Transparency**
- **Accountability**
- **Integrity**
- **Clarity of Purpose**
- **Effectiveness**

*Guide to principles of good governance,
British and Irish Ombudsman Association, 2009*

NOSE IN – FINGERS OUT

- **What does it mean?**
 - **Nose In - sniff around, understand the business & the environment and what is working**
 - **Fingers out – don't meddle**

INDEPENDENCE, RISK & ACCOUNTABILITY: 'Nose in Fingers Out'

- 1. Independence is a necessary not sufficient condition for effective governance.**
- 2. Independence without Clarity of Purpose, Transparency or Accountability does not guarantee effective governance.**
- 3. Independence is not an absolute concept in governance. Judgements need to be made about when recent experience becomes a conflict of interest**

INDEPENDENCE, RISK & ACCOUNTABILITY: 'Nose in Fingers Out'

4. There is:

i) Independence from → Governance

Actions which protect Executives from undue interference

ii) Independence to → Governance

Actions which question Executives about what the organisation is doing and how it does it.

INDEPENDENCE, RISK & ACCOUNTABILITY: *‘Nose in Fingers Out’*

- 5. Need for working philosophy of governance. “Nose in, fingers out” principle is essential for managing Risk and making the organisation Accountable.**
- 6. Independent nature of Non-Executive allows the ‘Elephant in the Room’ to be confronted.**
- 7. Need for role clarity between Non-Executives and Executives.**
- 8. Need for Trust between Board and Executives, especially between the Chair and Chief Executive.**

LIMITS OF INDEPENDENCE?
Tough decisions in Public Office

*An Example from the Crown Prosecution
Service*

BUT HOW INDEPENDENT IS INDEPENDENCE?!

Tough decisions in Public Office An Example from the Crown Prosecution Service

“It is to her credit that the DPP has not shied away from publicly defending her decisions. She acknowledges that they are difficult and will inevitably make her unpopular amongst certain sections of society. And she stresses the importance of maintaining her independence when making legal judgements.

Nevertheless, it is not enough for Britain’s top prosecutor to be a good lawyer – she must also possess good political judgement, which means understanding the impact of her decisions in society.

She should not be so independent that she is completely detached from the court of public opinion.”

Robert Verkaik, INDEPENDENT on Saturday (25th April 2015),

Convicted in the court of public opinion:

Commenting on the failure of Alison Saunders to prosecute Lord Janner over child abuse allegation

IS 'NOSE IN – FINGERS OUT' (NIFO) OUT-DATED?

- When the dam is about to break, “nose in, fingers out” is not only unacceptable, it’s indefensible.
- If board members must insert their fingers, bodies, minds, hearts, and souls to assure shareholder value, then that’s what the shareholders are paying them to do at that point in time.
- This doesn’t really violate the standard of nose in, fingers out:

“fingers out” does not mean “mouths shut.”

NOSE IN FINGERS OUT

Managing the balance

Some Tips

- **Ask Questions**
- **Form Mentor Manager Relationships**
- **Topic Focused Board Discussions**

‘NOSE IN – FINGERS OUT!’ in practice

**An example from
The Office for Legal Complaints**



WHEN AND HOW SHOULD THE BOARD BY PASS ‘NOSE IN – FINGERS OUT!’ ?

The Context

- **A Whistle-blower anonymously reported potential issues with expense claims and credit card expenditure incurred by the OLC’s CE and Accounting Officer.**
- **The Chair of the OLC alerted the Permanent Secretary at the Ministry of Justice and an independent investigation was instigated.**

WHEN AND HOW SHOULD THE BOARD BY PASS ‘NOSE IN – FINGERS OUT!’ ?

The Consequence

- *The issues identified by the independent investigation caused significant concern and raised questions as to whether Mr Sampson was a ‘fit and proper person’ to continue in his role as Accounting Officer of the OLC resulting in his suspension*
- *A decision was taken to formally remove Mr Sampson’s delegation as Accounting Officer of the OLC on 8 January 2015 on the basis that he was not considered a ‘fit and proper person’ to retain this responsibility.*

‘NOSE IN FINGERS OUT’

When to involve the board

The Board is engaged if a University:

- **Ignores a recommendation**
- **Fails to implement a recommendation**
- **Refuses to implement a recommendation**
- **After the Ombudsman and his team have exhausted all possible avenues**

‘NOSE IN FINGERS OUT’ *When to involve the board*

What can the OIA do GIVEN THAT IT DOES NOT HAVE ANY LEGAL ENFORCEMENT POWERS?

The chair on behalf of the board directly engages with the Chair of the institution concerned reminding them for example of the recourse of the OIA to name them in our Annual Report as Non-Compliant.

Results have been encouraging!

Three Universities have been named so far. Details are in previous Annual Reports and feature as positive Case Studies with all agreeing to comply with and implement OIA recommendations.

A RISK BASED APPROACH

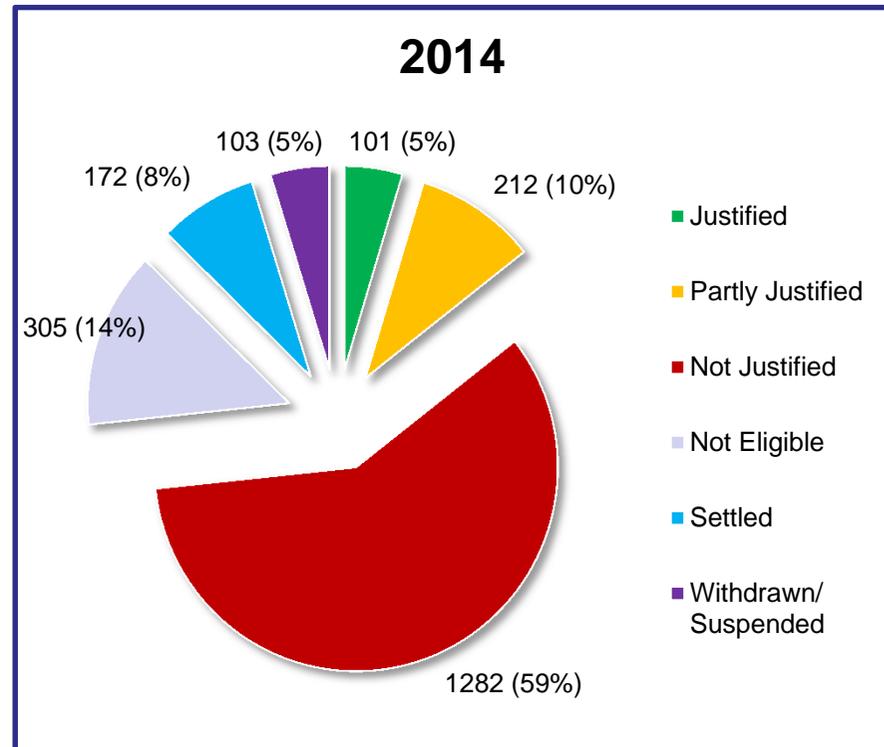
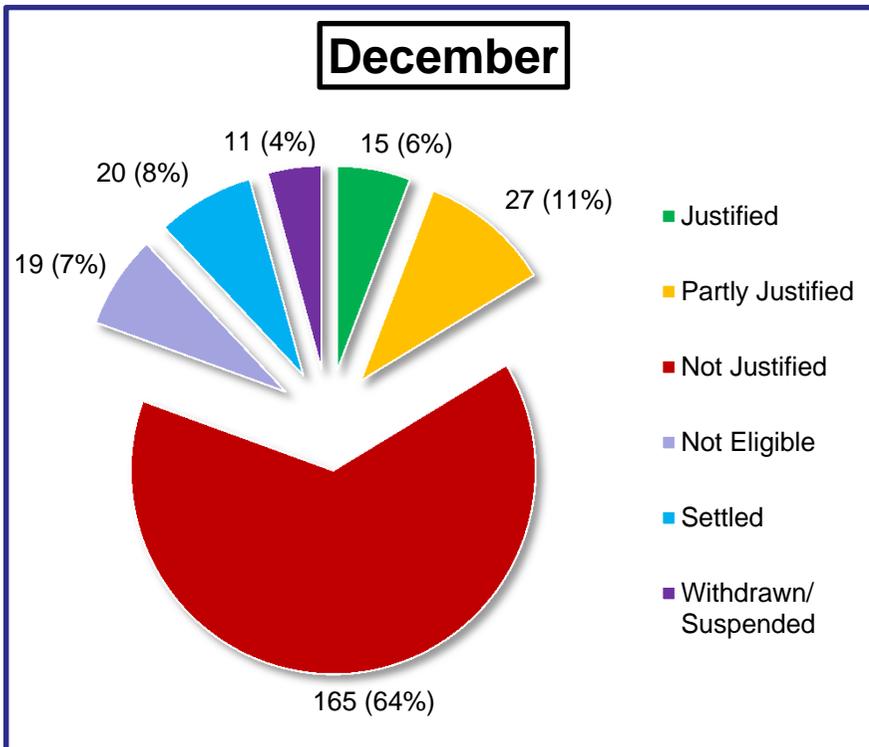
KPIs for Monitoring performance (to ensure timely and good quality service delivery)

- **Complaints Received & Complaint Closures**
- **Proportion of Complaints Closed Within 6 Months of Receipt Date and Average Days to Close**
- **Proportion of Complaints Over 9 Months from Receipt Date**
- **Complaints Held and Awaiting Allocation (as at last day of given month)**
- **Proportion of Enquiries Responded to Within 2 Days of Receipt Date and Average Days to Respond**
- **Proportion of Eligibility Decisions Made Within 10 Working Days (or info requested) of Receipt of Complaint and Average Days Taken to Decide Eligibility**
- **Proportion of Complaints Settled**
- **Proportion of Recommendations Implemented by Target Date Set and Average Number of Days Taken to Implement Recommendations**

A RISK BASED APPROACH

KPIs for Monitoring (to ensure timely and good quality service delivery)

Breakdown of complaints by outcomes



A RISK BASED APPROACH

- ***Communication with key stakeholders (sharing and exchanging good practice internally and externally)***
- ***Identifying and tracking emerging trends political developments and opportunities (seminars and workshops with board and senior management and with external input as appropriate).***

ANY QUESTIONS?