

The OIA: the Equality Challenge, 10 years of cases

ABOUT THE OIA

- **2004 Higher Education Act :**
 - **framework for the student complaints scheme in England and Wales**
- **OIA appointed the ‘designated operator’ from 2005**
- **Duties set out in Schedule of the Act, and in the Scheme Rules www.oiahe.org.uk**

10 years ago

- George W Bush started his second term
- Lance Armstrong wins record seventh straight Tour de France and retires...
- Tony Blair elected for his third term
- Hurricane Katrina
- UK implements Civil Partnership Act granting civil partnerships 'which include same sex' with same rights as civil marriage

2015 Extended jurisdiction - Consumer Rights Act

- Amends the Higher Education Act 2004
 - Changes the definition of “Qualifying Institution” from September 2015
- Approximately 500 new members*
- Any institution with one or more students taking a programme that is designated for public funding
 - FE Colleges
 - Private Providers
 - School-Centred Initial Teacher Training providers

ABOUT THE OIA

- **The OIA is overseen by an independent Board**
- **A classic ombudsman scheme**
- **Free to students**
- **Experience of over 12,000 cases**
- **Promotes good practice in handling complaints and academic appeals**

ABOUT THE OIA continued

- **Annual number of complaints received now around 2,000**
- **Complaint themes consistent – about 70 per cent relate to academic status**
- **Excellent record of compliance**

WHAT TYPE OF COMPLAINTS CAN THE OIA LOOK AT?

➤ We review complaints about any act or omission of a university.

➤ Common areas of complaint include:

Academic status

Mitigating circumstances

Teaching and facilities

Accommodation

Supervision

Breach of procedures

Discrimination

Fees and funding

Academic misconduct

Procedural fairness

Fitness to practise

Non-academic disciplinary

WHAT KIND OF COMPLAINTS CAN THE OIA NOT LOOK AT?

We cannot look at complaints about:

Admissions

Student employment

Academic judgment

**Matters subject to Court
proceedings**

We won't normally look at:

**Complaints that have not
been through university's
internal procedures**

**Complaints which are more
than three years old**

TYPES OF RECOMMENDATIONS WE CAN MAKE

- **University to rehear an appeal, reconsider a decision or allow another opportunity to take an assessment**
- **Financial compensation**
- **University to change its internal procedures**
- **Parties to undertake formal mediation**
- **The principal aim is to put students back in the position they were in before whatever they complained about happened**

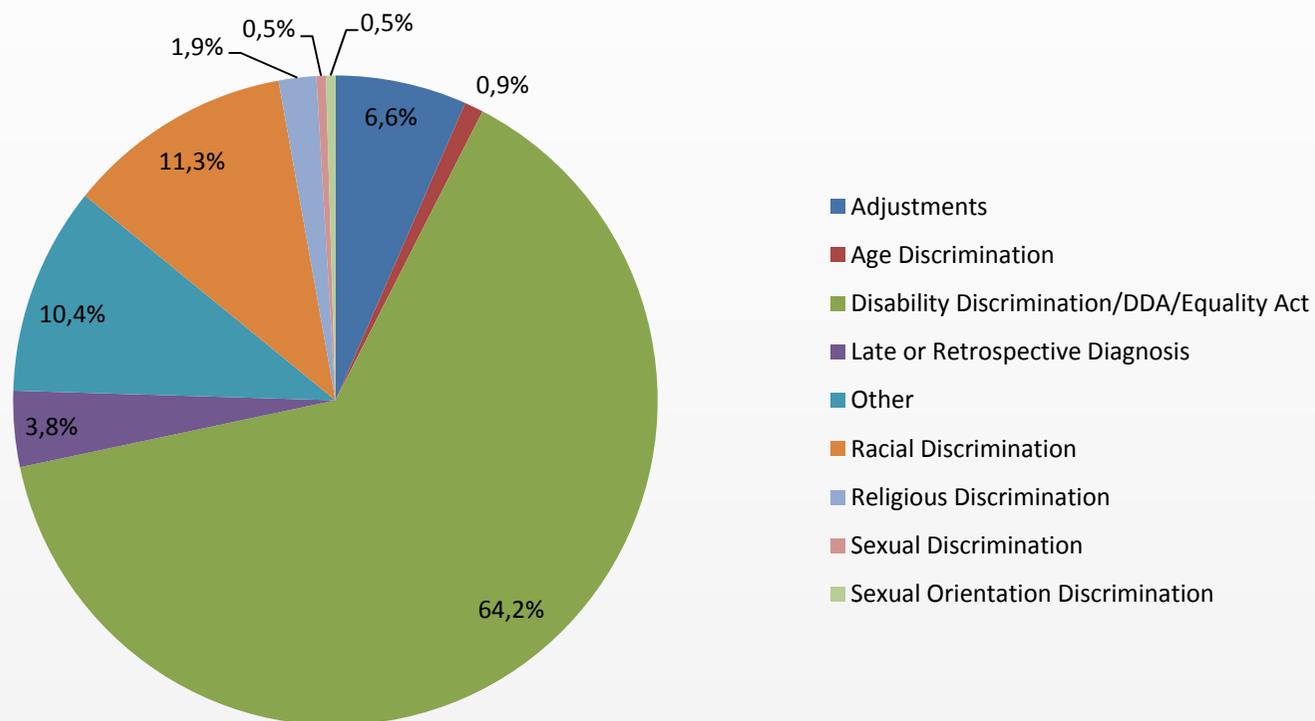
OUR APPROACH

- **We review complaints to see whether they are Justified, Partly Justified or Not Justified :**
 - **Did the universities properly apply regulations and follow procedures?**
 - **Were those procedures reasonable?**
 - **Was the university's decision reasonable in all the circumstances?**

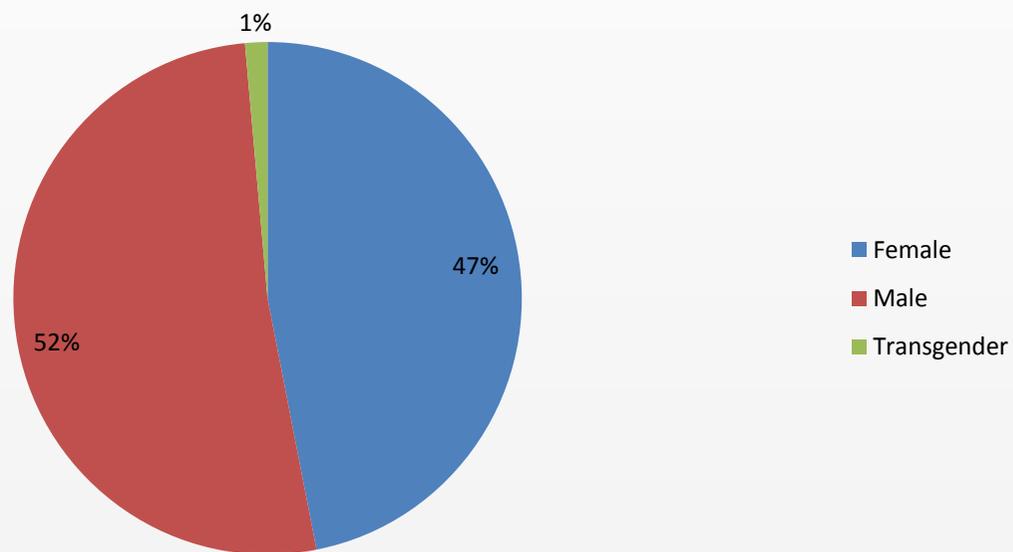
Equality Act: Protected characteristics

- Sex
- Race
- Disability
- Age
- Religion or belief
- Pregnancy/maternity
- Marriage/civil partnership
- Gender reassignment
- Sexual orientation

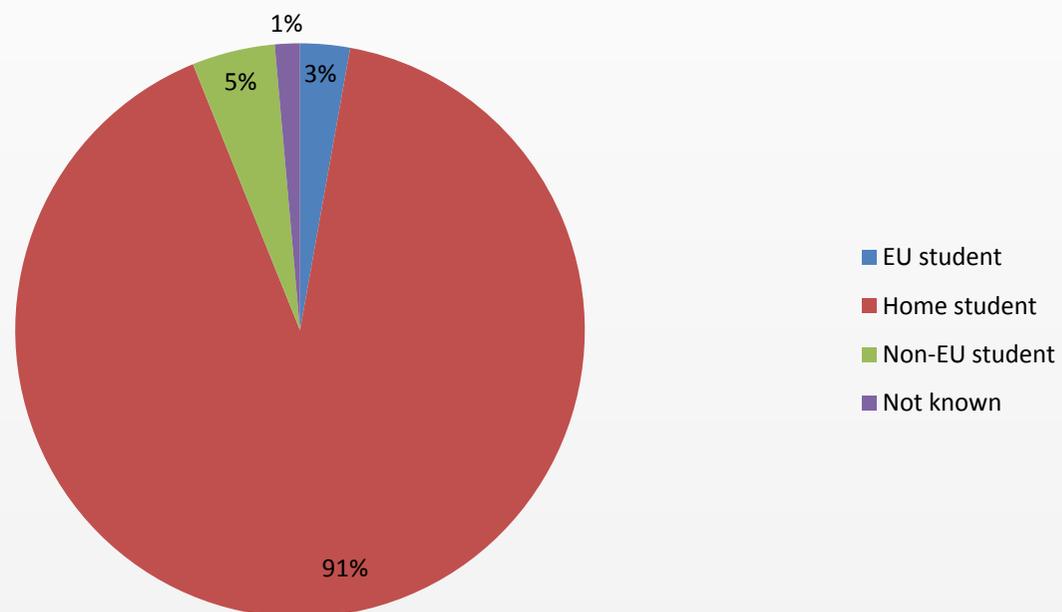
Discrimination complaints by category (2013-2014)



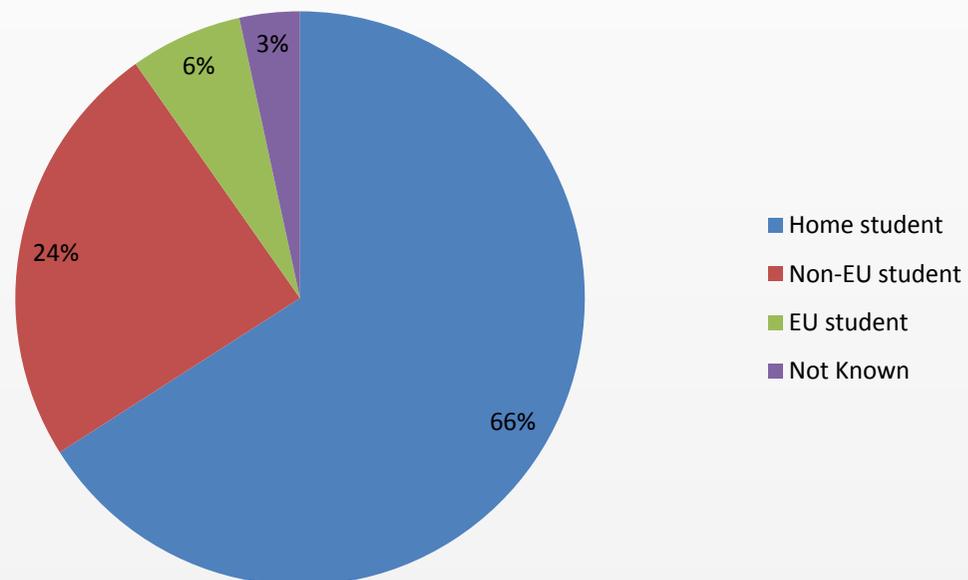
Discrimination complaints by gender (2013-2014)



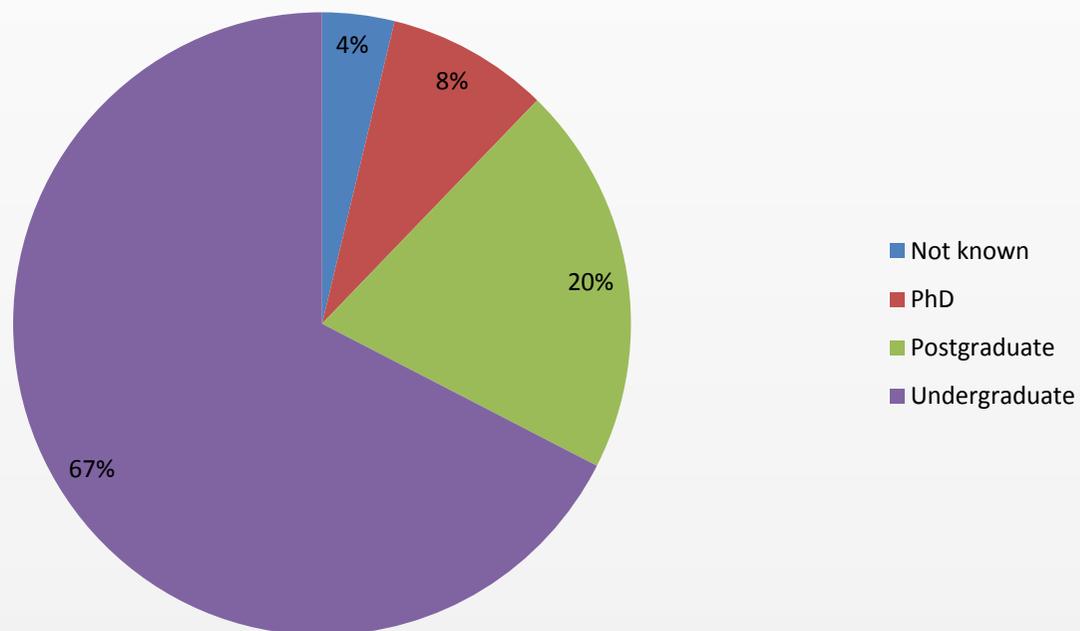
Discrimination complaints by domicile (2013-2014)



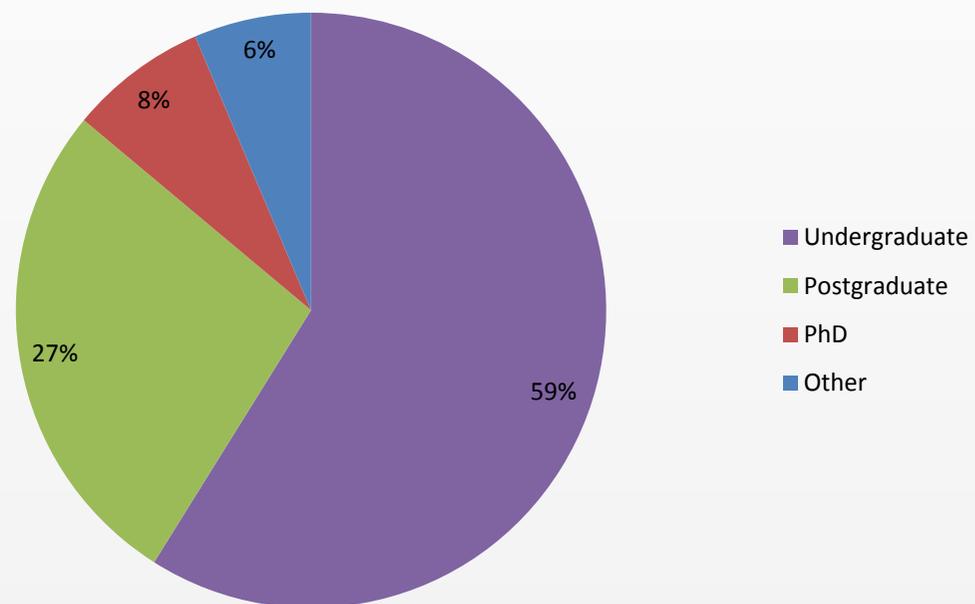
Complaints received in 2014 by domicile



Discrimination complaints by level of study (2013-2014)



Complaints received in 2014 by level of study



APPROACH TO DISCRIMINATION

- OIA
 - Does not act as a court
 - Doesn't make findings
 - Refers to law and guidance on discrimination
 - Is this good practice?
 - Has the HEI acted fairly?

First Contact

- Website: BrowseAloud, web accessibility
- Enquiries Team can take complaints in different formats
- Most common requests around disability – SpLD: dyslexia, dyspraxia, Asperger Syndrome
- Deal on case by case basis: ask people what they will find helpful

Cases brought by students

- Failures by HEI to take adequate steps in relation to a student's maternity leave and subsequent breastfeeding
- Nursing student wanting adjustment to competence requirement because of dyslexia (drugs list)
- PhD student taking viva in Ramadan
- Student alleging rape by other student: no criminal prosecution. How should HEI investigate and what policies should it have in place about sexual harassment?
- Bar Vocational Course (BPTC) student alleging racial discrimination demonstrated against non-English speakers (advocacy, conference skills exams)
- Transgender student's accommodation entered when student abroad

Has the University asked itself:

- Is the student disabled?
- If so, what provisions are we now applying to him/her?
- Do those provisions place him/her at a substantial disadvantage?
- What could be done to prevent that disadvantage?
- Would it be reasonable for us to take those steps?

Case A

H agreed special arrangements for C's exams on the basis of his Statement of Support Needs. These arrangements included an extra 15 minutes per hour, access to a PC, the use of a reader, an ergonomic chair, rest breaks, an accessible venue and separate room. C asked H to reconsider these arrangements in February 2013, providing a letter from his GP asking if he could be assessed by coursework rather than written exam. H discussed a range of further adjustments with C but did not agree to the request that the exams be replaced by coursework on the grounds that (a) the learning outcomes could only be assessed by invigilated exam; and (b) the need to maintain academic standards. C appealed against this and subsequently brought his complaint to the OIA, complaining that H's decision indirectly discriminated against him on the grounds of disability.

Outcome Case A:

Not Justified. Whilst the Equality Act 2010 requires universities to consider a disabled student's individual needs and to make reasonable adjustments, it does not require a university to put in place every adjustment a student might request. Universities are not required to make adjustments to competence standards. The University had put in place the adjustments recommended in C's Statement of Support Needs (which was based on a detailed assessment by an experienced assessor) – this did not indicate that C's disability was such that he could not sit invigilated exams or required alternative assessment methods. The GP's letter requesting that C be assessed by coursework rather than exam was very brief and, whilst the GP would have been well-placed to advise on C's health conditions, it was reasonable for H to base the adjustments on the expert assessment of his educational needs via the Statement of Support Needs.

Case A continued:

C did not provide evidence to H to explain why the adjustments made by H (or the further adjustments discussed with him in February 2013) would not be sufficient for his needs. H had demonstrated that it had considered carefully whether the learning outcomes of C's degree could be assessed by coursework only but concluded that the elimination of all invigilated elements would compromise the academic standards of the course, particularly as certain learning outcomes tested "thinking and decision making under a degree of pressure and urgency." This is essentially a matter of academic judgment.

Case B:

C has a severe visual impairment and requires the assistance of a Study Support Worker. For her UG degree (at the same university), H had agreed to provide lecture notes / reading materials in advance in font size 60. For her PG degree, it was agreed that lecture notes / reading materials would be provided in advance in electronic format so that C / her Study Support Worker could enlarge them. C stated that she had asked for materials to be sent to her 7 days in advance. C's course also required her to read a small number of core textbooks but there were delays in accessing these as the Library had to secure electronic versions from the publishers. C complained to H about these issues and also complained about being provided with handwritten (rather than typed) feedback on her work which she was unable to read. C subsequently complained to the OIA. We settled her complaint by referring the matter back to H for reconsideration. H reconsidered the matter and partly upheld C's complaint, but she remained dissatisfied and so submitted a further complaint to the OIA.

Outcome Case B:

Partly Justified. Whilst C's assessment of needs did not specify how far in advance materials needed to be provided to her, H had arbitrarily decided that 48 hours would be sufficient, without discussing it with C. This was unreasonable. Whilst H acted reasonably in eventually accepting that feedback should have been provided to C in typed format, it should not have been necessary for C to have to pursue this to the final stage of H's procedures – it should have been obvious, given that she needed everything electronically in 60 point font, that she would not be able to read handwritten feedback. It was reasonable for C to expect that H would provide her with feedback in a format which was accessible to her. Even after H had accepted this point, and had promised that feedback would be typed in future, it continued to provide her with feedback in handwritten form. This was unreasonable and would have caused C further distress and inconvenience. Given that there were certain core textbooks C required as part of her degree, H should have taken steps at an earlier stage to alert the Library so that electronic versions could have been sourced ready for the start of C's degree – the delays in providing electronic versions meant that she did not have access to these resources until several weeks after each module had started. This was unreasonable, especially as H was aware of C's needs and the core resources she would need quite some time before she commenced the course. In our view, H was under a duty to ensure that C had a comparable level of access to these texts, to level the playing field and to prevent her being placed at a substantial disadvantage.

Case B continued:

Recommendations:

H to apologise to C for the failings identified in our review and to offer her £4,000 in compensation for the distress and inconvenience caused by its failure to ensure that course materials and feedback were provided in a timely manner in an accessible format and for the length of time taken to consider her complaint.

H also to review how its academic departments manage and coordinate the provision of reasonable adjustments for students with complex needs.

Judicial review:

Maxwell – Court of Appeal

- Mummery, Hooper, McFarlane LLJ
- Upheld OIA's approach to discrimination cases
- OIA's task is to review complaint to see whether University's decision was reasonable
- Judicialisation of OIA would not be in interests of students

Contact details



- Second Floor, Abbey Gate, 57-75 Kings Road, Reading, RG1 3AB
- 0118 959 9813
- www.oiahe.org.uk
- enquiries@oiahe.org.uk
- anne.lee@oiahe.org.uk



office of the
independent
adjudicator