

Office for
Students

The logo for the Office for Students, featuring a dark blue square with a yellow square in the top right corner containing the letters 'OfS' in white.

OfS

Insight event

Protecting students as consumers

15 June 2023

#OfSInsight

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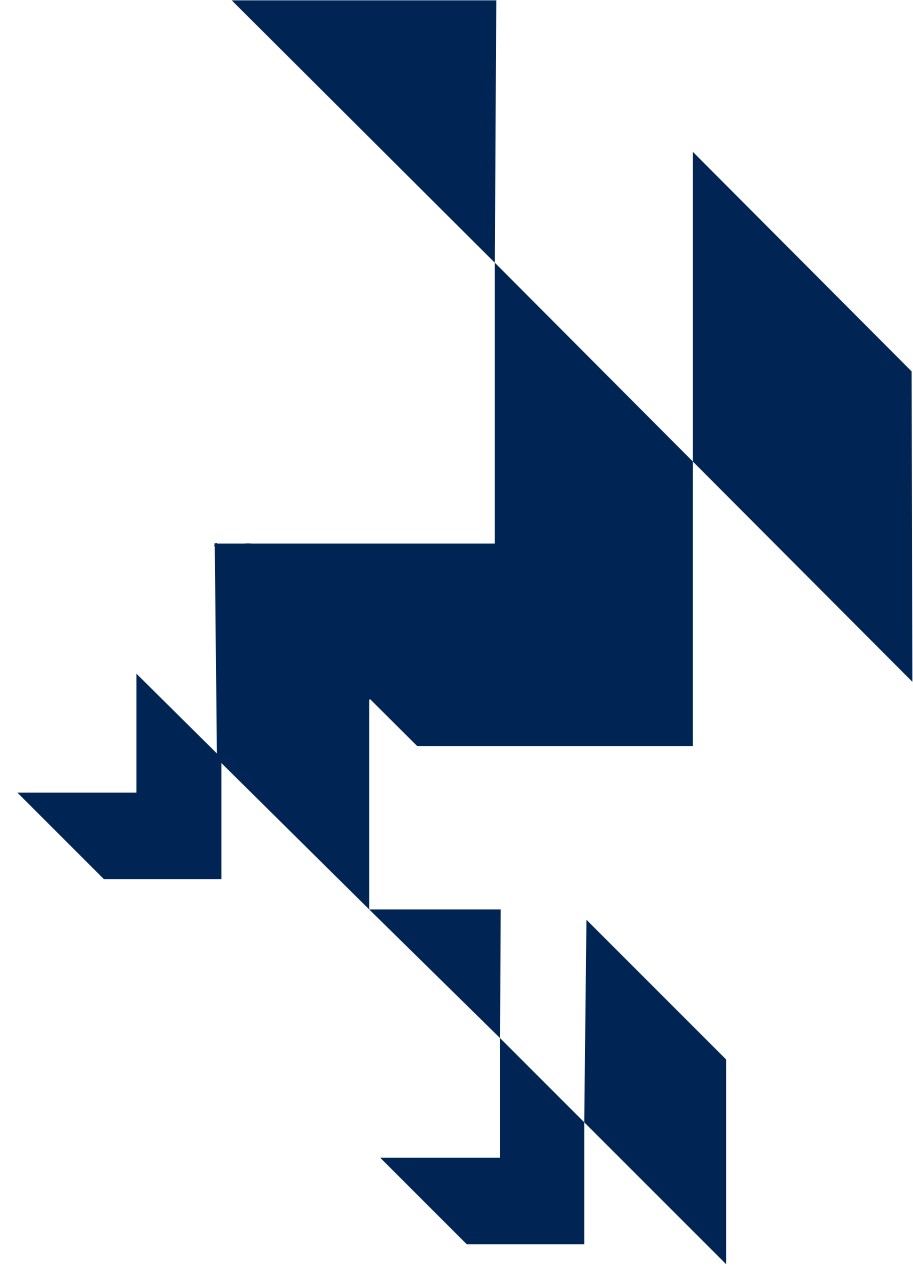
Event notices

- Closed captions are available – please click the CC icon
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Agenda

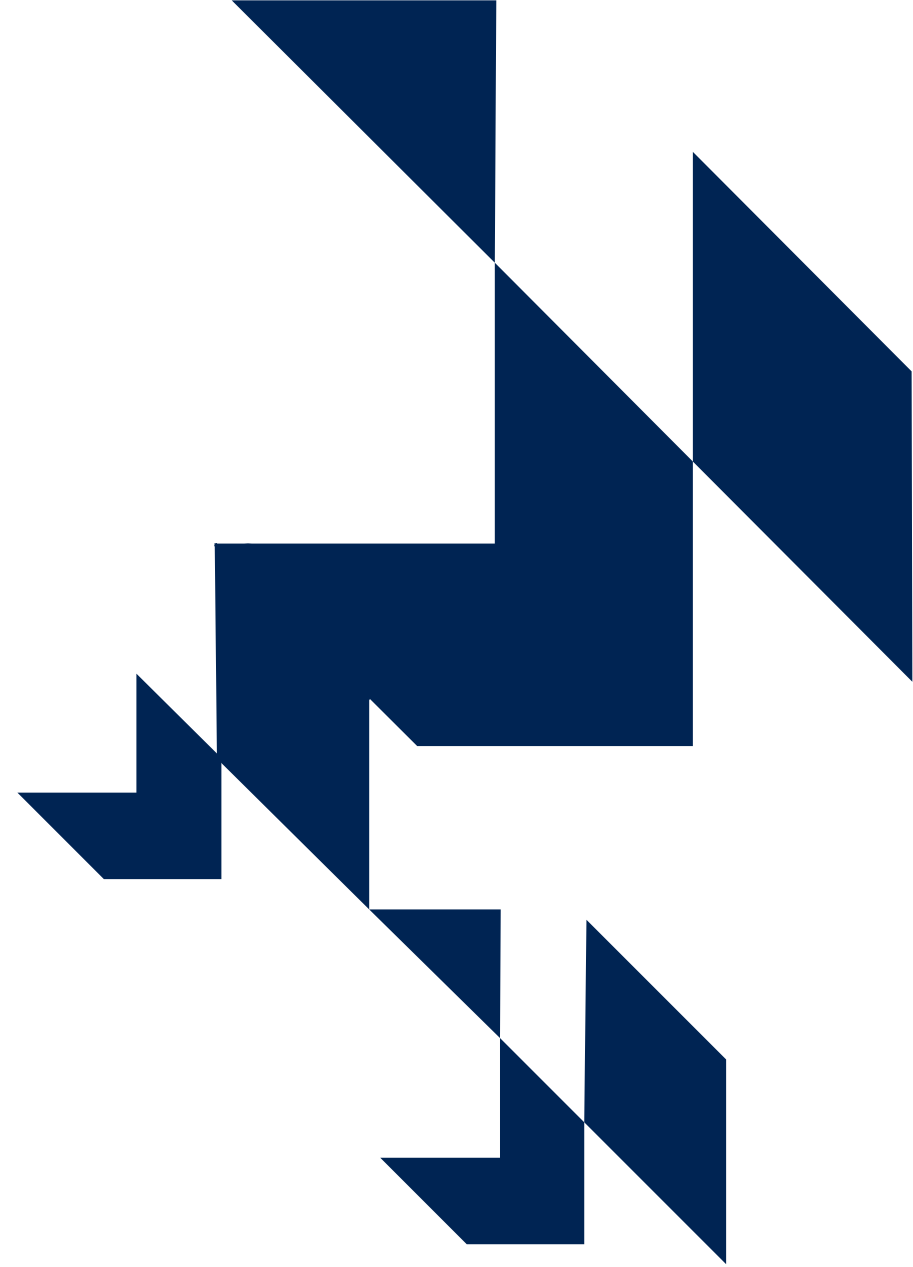
- Welcome by Lord Wharton of Yarm, chair of the Office for Students (OfS)
- Keynote address by Susan Lapworth, chief executive of the OfS
- Audience questions
- External keynote briefing one: Gordon Ashworth of the Competition and Markets Authority (CMA)
- Audience questions
- Short break
- External keynote briefing two: Jo Nuckley of the Office of the Independent Adjudicator for Higher Education (OIA)
- Panel discussion
- Closing remarks, Susan Lapworth, chief executive of the OfS

James Wharton,
Lord Wharton of Yarm
Chair of the Office for Students

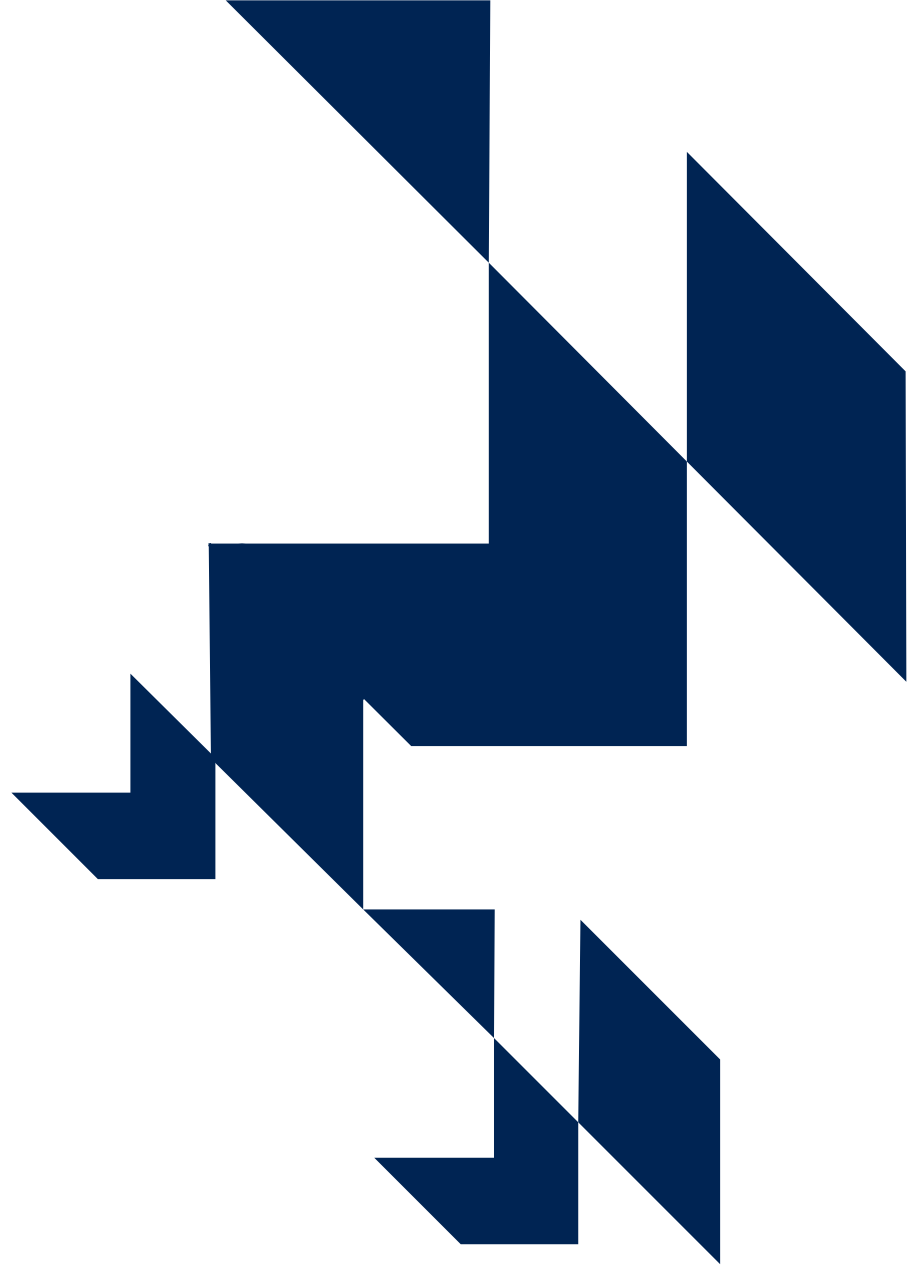


Susan Lapworth

Chief executive, Office for
Students



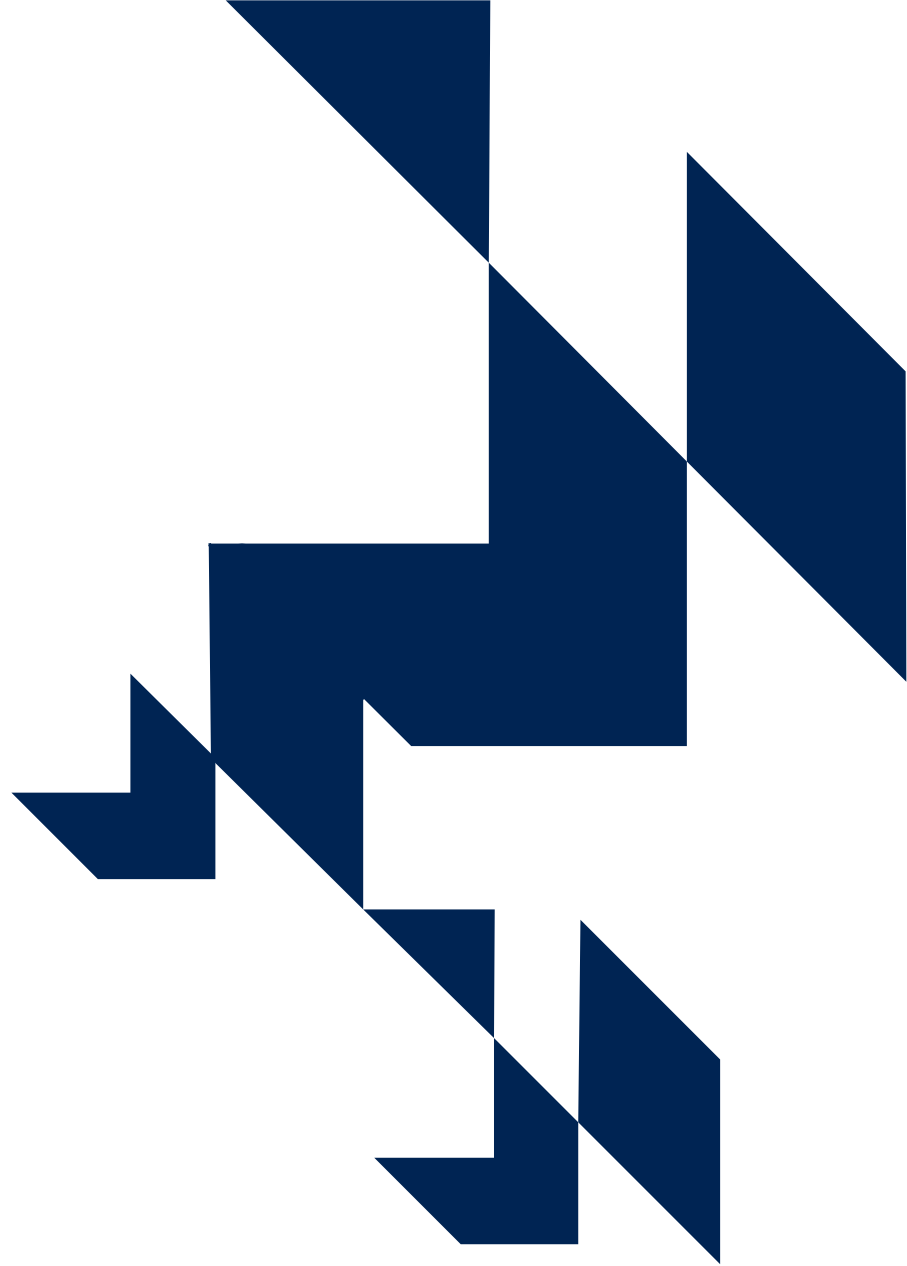
Questions and answers



Gordon Ashworth

Director Consumer Protection,
Competition and Markets
Authority

Applying consumer law in higher
education



HIGHER EDUCATION (HE) HOW CONSUMER LAW APPLIES IN THIS SECTOR

Gordon Ashworth

Director Consumer Protection

OfS Insight Event

15 June 2023



About the CMA

- An independent non-ministerial UK government department.
- Has many functions, some of which are statutory with statutory deadlines, covering all sectors of the economy.
- These functions include mergers, competition law investigations and markets studies. Especially relevant to this talk, as set out in the CMA's Annual Plan for 2023 to 2024, are the functions to:
 - provide information and advice about obligations and rights under competition and consumer law (not individual advice about individual circumstances).
 - enforce a range of consumer protection legislation, including in cases where the unfair treatment of consumers or the challenges they face suggests a systemic market problem.

Background to the CMA's higher education work

- March 2014: the Office of Fair Trading published the findings from its call for information into the undergraduate sector in England.
- This recommended that the CMA clarify higher education providers' obligations under consumer law.
- March 2015: following a public consultation, the CMA published consumer law advice for the undergraduate sector.
- July 2016: the CMA published its compliance review findings.
- CMA has taken enforcement action on issues such as terms dealing with course changes, increasing fees, additional course costs and complaint handling as well as academic sanctions for non-tuition fee debts.

Background to the CMA's higher education work

- In response to the pandemic(s) two restatements about CMA views were published in November 2020 and November 2021 - covering
 - admission offers and the provision of information to prospective students about potential changes to the courses they may be considering applying for.
 - terms which could allow providers to withdraw or cancel an offer after a student has accepted it (and met any entry conditions) and terms which limit or exclude liability if providers seek to withdraw or cancel an offer.
 - terms which allow providers a wide discretion to vary aspects of the agreed educational service and terms which exclude or limit liability for a failure to deliver the agreed educational service or for delivering a different educational service.

CMA updated consumer law advice

- 31 May 2023: the CMA published updated consumer law advice for the undergraduate sector in the UK ([CMA182](#)).
- Much of the advice remains the same, changes have been made to:
 - update any out-of-date references to consumer protection law and to stakeholders, stakeholders' policies or sector regulation.
 - incorporate the published findings of the CMA's compliance review and the published restatements of the CMA views.
 - include references, where relevant, to other more recent guidance by the CMA, for example the CMA's general unfair contract terms guidance ([CMA37](#)).

CMA updated consumer law advice

- The updated advice focuses on the following legislation:
 - **Consumer Protection from Unfair Trading Regulations 2008 (CPRs)** – sets out broad rules which prohibit providers from engaging in unfair commercial practices in their dealings with prospective and current students and prohibit misleading actions, misleading omissions and aggressive practices.
 - **Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CCRs)** – requires that certain relevant pre-contract information must be provided by providers before students accept an offer.
 - **Part 2 of the Consumer Rights Act 2015 (CRA)** – applies a fairness test to consumer contracts and notices (i.e. those between providers and students).
- The advice, as before, sets out the CMA's views. Only a court can decide if there has been a breach.

CMA updated consumer law advice

- The focus of the updated advice remains on the provision of educational services to the undergraduate sector.
- As before, it explains how consumer law applies in this sector and focuses on the following three topics, in this order:
 - Information provision: giving prospective and current students the clear, accurate, and timely information needed to make an informed decision about what and where to study.
 - Fair and balanced terms and conditions between providers and students.
 - Complaint handling processes that are accessible, clear and fair.

How consumer law applies to the HE sector

- Consumer law is UK wide (not a devolved matter).
- Consumer law will generally apply to the relationship between higher education providers and students as:
 - A provider will be a ‘trader’ or ‘seller’ for the purposes of consumer law (even if operating on a non-profit and charitable basis)
 - A student will be a ‘consumer’ for the purposes of consumer law if they are acting for purposes wholly or mainly outside their trade, business or profession.
- Consumer law sets out minimum standards that apply to various aspects of providers’ dealings with students.
- Consumer law sits alongside the requirements and guidelines of others e.g. sector regulators.

Information provision

- Consumer law applies to all information provided in writing, verbally or visually, which must be clear, accurate, easily accessible and not misleading.
- As set out in the CMA's advice, information provision covers 3 distinct stages (1) research and application stage, (2) offer stage and (3) enrolment stage).
- Higher education providers must give prospective students the required 'material information' and necessary 'pre-contract information' before a contract is formed to comply with the CPRs and CCRs.
- There is a significant overlap between the required 'material information' and necessary 'pre-contract information'.
- 'Material information' under the CPRs is the information needed to make an informed decision.

Information provision

- Once an offer is accepted, a contract for admission to a course will be formed – albeit the offer may be subject to certain conditions being met by the students e.g. required grades.
- Material information includes information about e.g:
 - the course content and structure
 - how it will be delivered
 - the total course costs (including tuition fees and any extra costs associated with the course, such as field trips, lab equipment)
- Failing to provide material information to make an informed decision at all, or at the wrong time, or information that gives a false impression could be a ‘misleading omission’ or ‘misleading action’ under the CPRs.

Examples of Misleading Omissions & Actions

- Misleading Omissions

- A provider fails to provide information about total tuition fees and any additional course costs up front, in a timely way, or at all.
- A provider fails to make prospective students aware at the earliest opportunity of changes to any of the material information provided.

- Misleading Actions

- A provider presents information (e.g. in course materials) that suggest the course is accredited when it isn't.
- A provider gives a misleading impression about the number of optional modules that will be available.

Terms and conditions

- Consumer terms and notices under the CRA are required to be fair and transparent.
- ‘Terms’ in the CMA advice, mean all contracts, rules and regulations documents that students are bound by, which together form the contract terms between a higher education provider and a student.
- Terms must be easily located and accessible and written in plain and intelligible language.
- Students should be able to understand the terms, how they affect their rights and obligations and how the terms could impact them.
- Terms should strike a fair balance between the rights and obligations of the higher education provider and student.
- If terms are found to be unfair, they cannot be enforced.

Terms and conditions

- Terms are easily located and accessible: examples of poor practice
 - Terms are referred to in an offer letter or are deemed to be accepted when a student accepts an offer, but the terms are in different documents in different places on a website, making them difficult to find and review.
 - Very lengthy documents are used to set out the terms that apply to students.
 - The terms are written in language that is difficult to understand (e.g. using jargon or unfamiliar expressions).
 - Terms are only provided at the time of the enrolment.
 - Terms are only available on a student intranet, which can only be accessed by current and not prospective students.

Terms and conditions

- Examples of terms that could be challenged as unfair
 - Terms allowing a higher education provider an unreasonably wide discretion to vary course content and structure.
 - Terms seeking to limit the higher education provider's liability for failure to comply with their contractual obligations, in particular where providers provide something different to their contractual obligations, or in cases of non-performance or sub-standard performance.
 - Terms that allow a provider to impose academic sanctions against students in a blanket and disproportionate fashion for non-payment of non-tuition fee debts.

Complaint handling

- Complaint handling processes must be transparent and easily accessible:
 - prospective students must be provided with information about the complaints process before they accept an offer of a course.
 - the complaints process must be easily located and accessible to current students e.g. on website or intranet.
 - students should be provided with clear and accurate information about the complaint handling procedures, including who deals with their complaint if courses are provided in partnership, and details of any external complaint scheme students can access – OIA, SPSO and NIPSO.
- Complaint handling processes must be fair e.g. reasonable timescales, no barriers, students able to escalate complaints.

If students are unhappy with the educational service

- If looking for redress, they can consider:
 - Seeking advice about their situation from e.g. a student officer, student union, local Citizens Advice Bureau or lawyer.
 - Seeking advice about their consumer law rights from e.g. consumer telephone helplines.
 - In England and Wales - 03454 04 05 06, in Scotland - 0808 800 9060 and in Northern Ireland - 0300 123 6262
 - Complaining, including to third party redress schemes and/or to regulators.
 - Civil action for certain breaches of the CPRs or breach of contract.

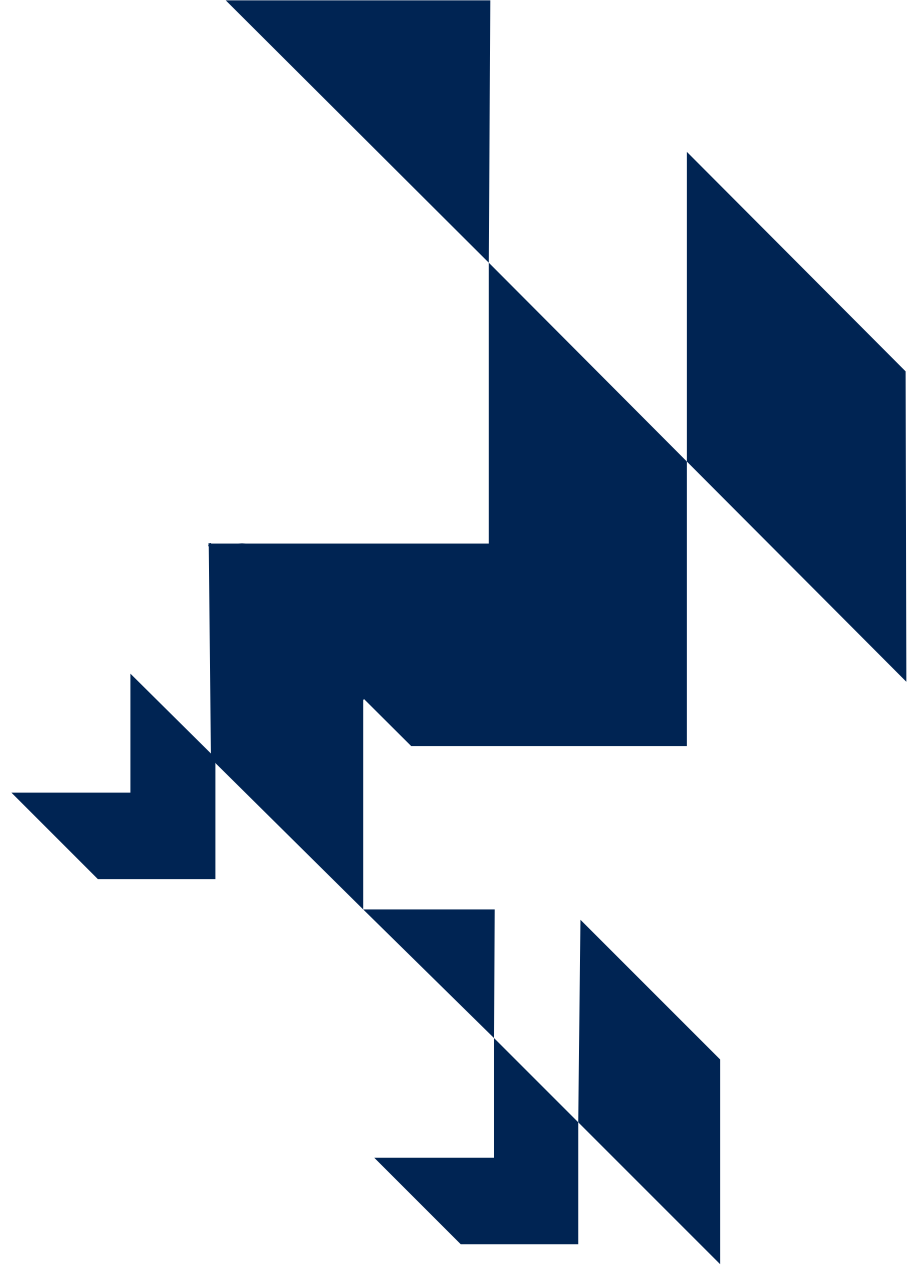
The regulatory action that providers may face

- Higher education providers may face action from e.g.:
 - The Advertising Standards Authority – its codes cover advertising and marketing communications - which are likely to include course information/prospectuses/leaflets and posters directed at prospective students.
 - Sector regulators – if it is suspected that a provider has not met e.g. the requirements of registration or breached regulatory requirements. Sector regulation is a devolved matter.
 - The QAA – if there are concerns about the academic standards and the quality of higher education provision, where those concerns raise broader issues about the management of quality, standards and/or the information that providers make available.

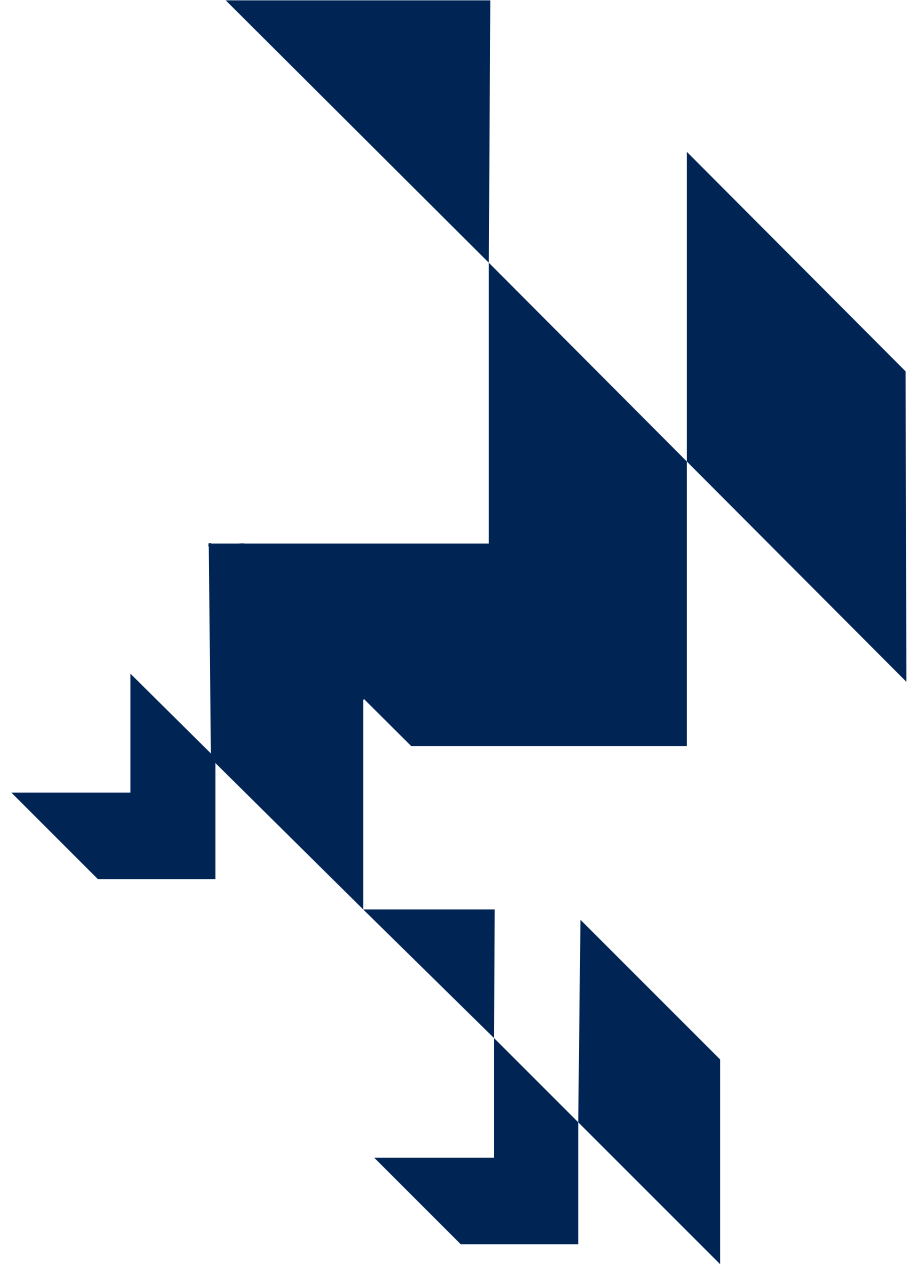
The regulatory action that providers may face

- Higher education providers may face action from e.g:
 - The CMA, local authority trading standards services or Department of Enterprise (Northern Ireland) – all have powers to enforce consumer law.
 - The Office for Students recently formed a relationship with National Trading Standards (TS). This enables them to refer cases to TS that raise consumer protection concerns.
 - Certain enforcers have powers to seek ‘Enhanced Consumer Measures’ (ECMs) in relation to breaches which harm or are likely to harm the collective interests of consumers.

Questions and answers



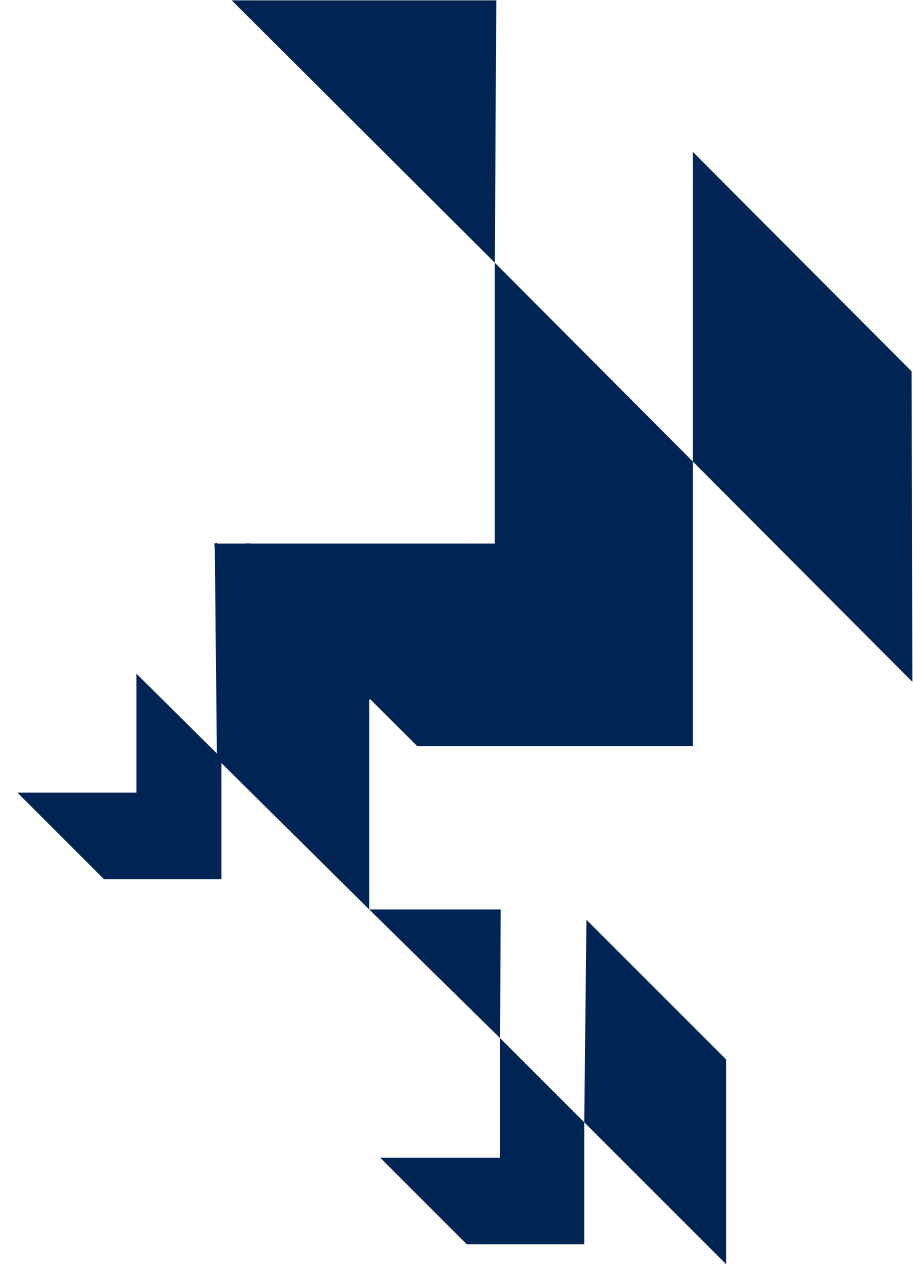
Short break



Jo Nuckley

Head of Outreach and Insight,
Office of the Independent
Adjudicator

Trends in student complaints



Trends in Student Complaints

Jo Nuckley – Head of Outreach & Insight

15 June 2023

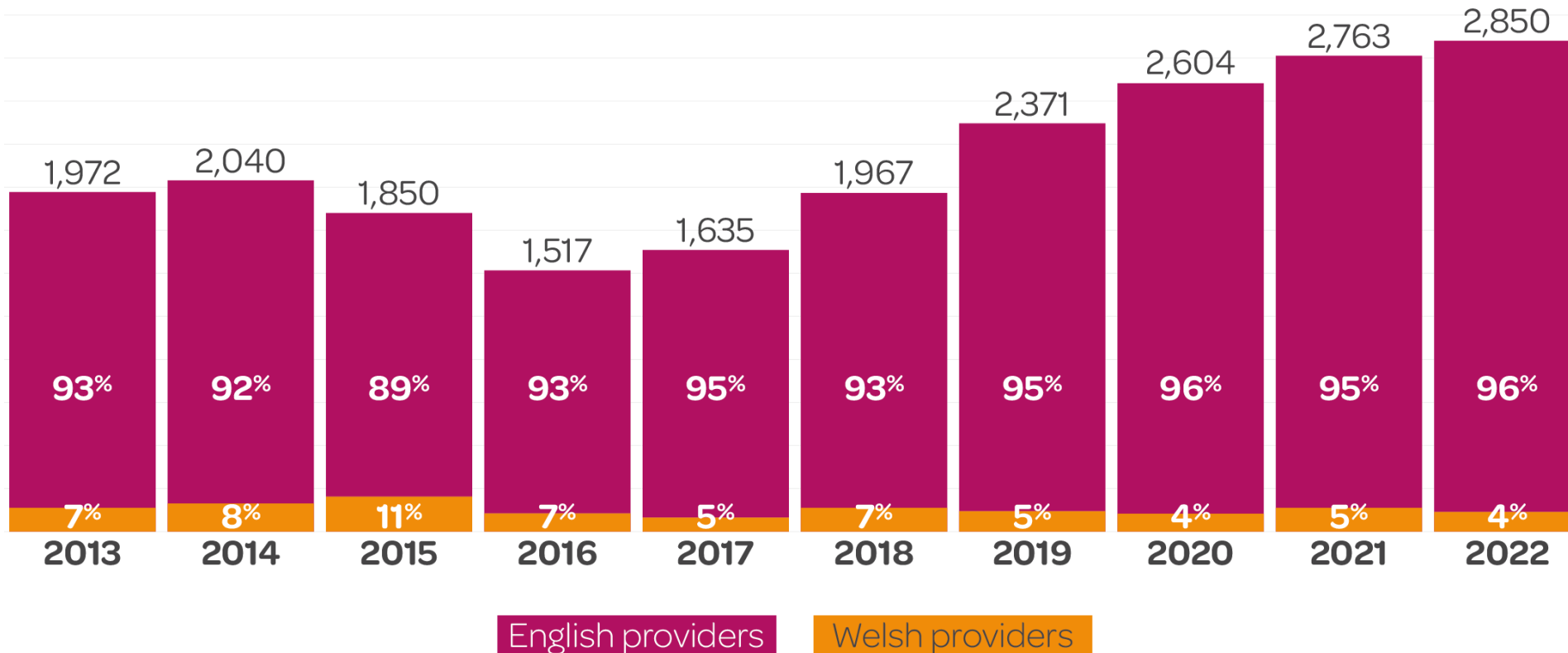


Complaints received: last 10 years



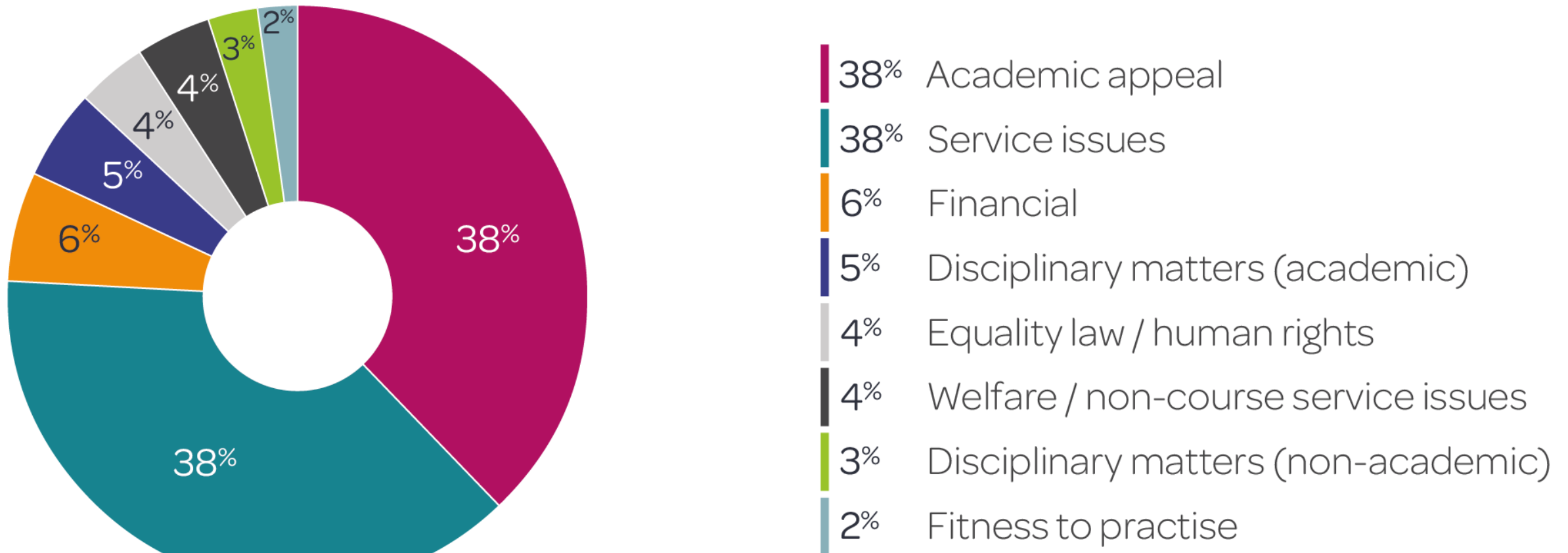
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Number of complaints received per year



Complaint category: 2022

Complaints received by complaint category

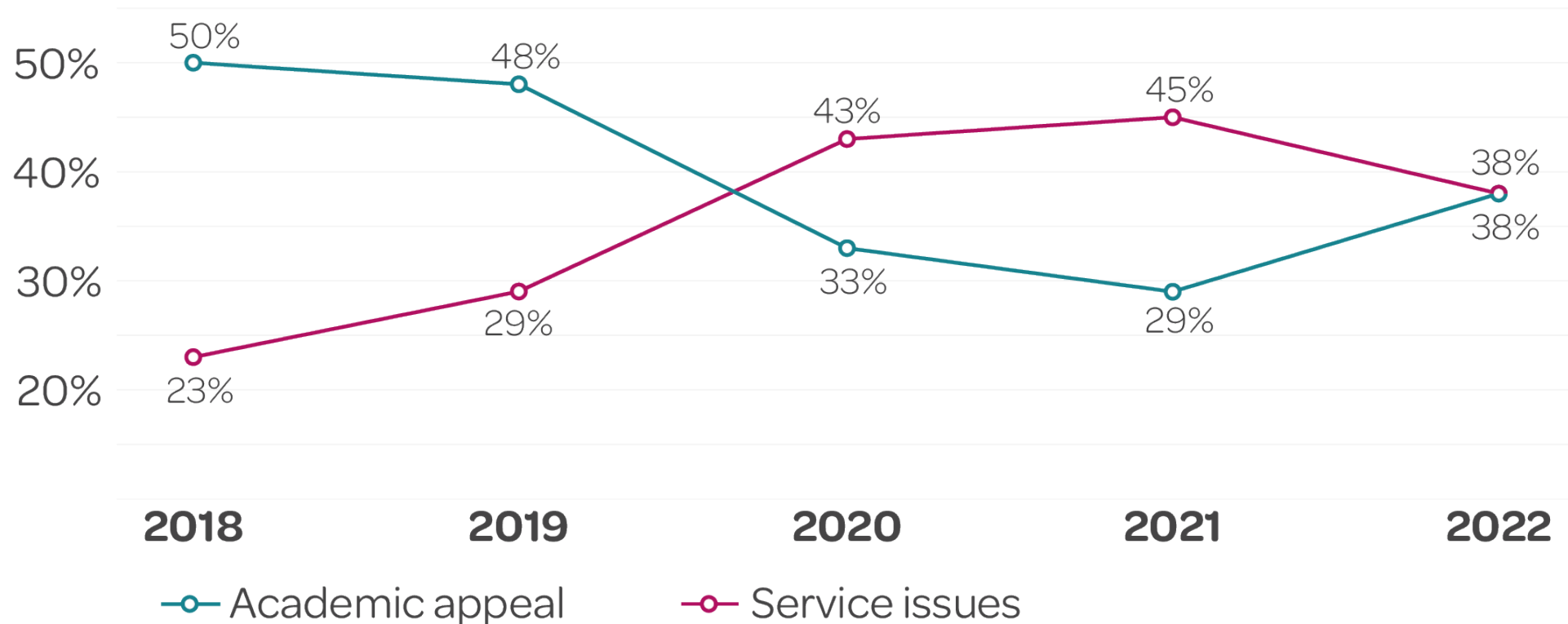


Complaints received for academic appeals and service issues



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Complaints received for academic appeals and service issues since 2018

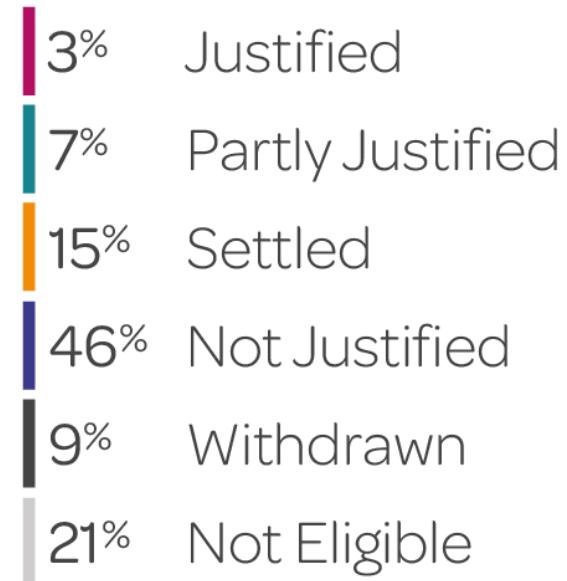
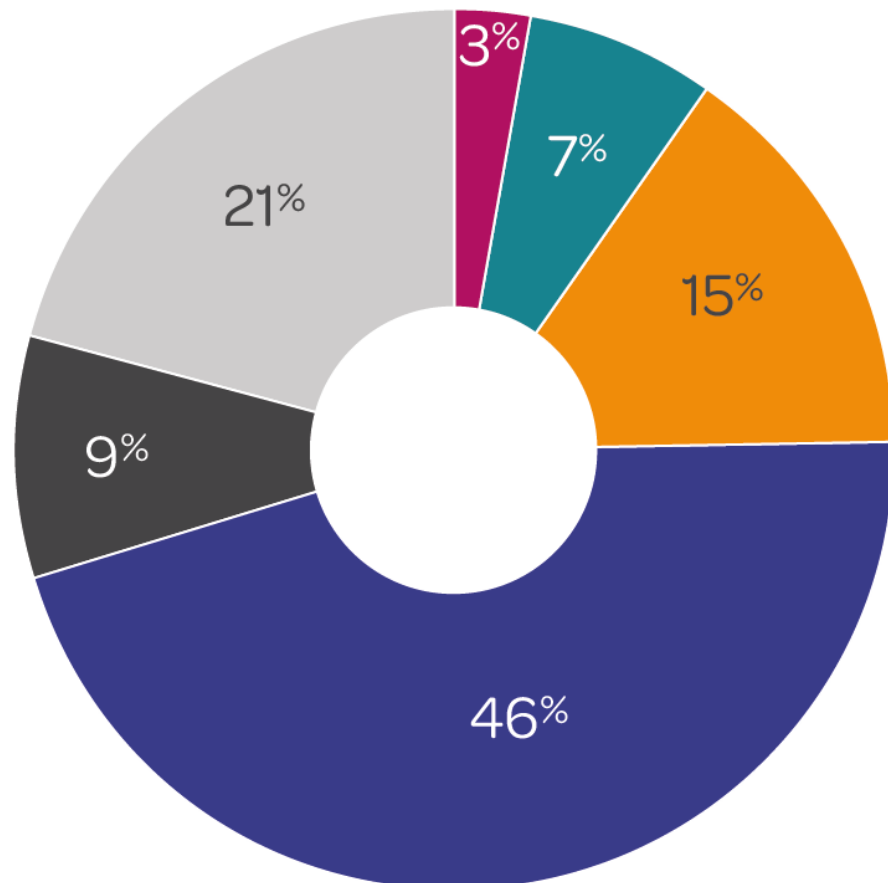


Outcome of complaints



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The outcome of complaints



*Figures do not total 100% due to rounding

Service issues raised with the OIA include



- Non-delivery of teaching, learning and assessment
- Changes to delivery of teaching, learning and assessment
- Course, campus or provider closure
- Communication about delivery of the course
- Availability of academic staff
- Misleading information about a course, especially around professional accreditation and practical skills

Good practice

- Stay solution focused
 - It is not always possible, or necessary to establish 'who is right'
 - Accepting responsibility for finding a solution is not the same thing as accepting liability
 - Effort and effect are not the same
 - Intention and effect are not the same
- Propose solutions early, and explore what the student wants
 - Sometimes financial remedy is the only thing left
 - We can't always make assumptions about what students really value
 - Students do not all want the same things

Case example A



A student on a one year Masters complained that there had been a failure to deliver what had been promised. The student set out their expectations that the course would include 900+ hours of practical skills, work experience and industry collaborations, and access to specific studios. The student felt that they had not gained experience of a number of specific skills. The student also complained about a lack of tutorial support for their dissertation and about delays in providing feedback. The student was also disappointed that they had been unable to participate in the end of year postgraduate showcase, because their visa had expired before this took place. The provider acknowledged that there had been some delays in providing feedback, and that it had been unable to cover some areas because staff with that area of expertise had left. It accepted that some aspects of the prospectus could have been clearer, but stressed that the course was an academic one, not vocational training in the particular field. It offered £750 in compensation. The student rejected this and complained to the OIA.

Our approach



We considered:

- The information gathered by the provider in responding to the student's complaint, which included information available to the student in the prospectus, in pre-arrival correspondence, in course and module descriptors.
- Whether there was additional relevant evidence, about what was said in the course induction and about delivery of timetabled sessions
- Emails about arranging additional support for students writing their dissertations
- CMA guidance available to providers at the time

Our decision: Partly Justified



- The student's expectations about the course content and structure were reasonable based on the way the provider had emphasised practical course elements in its information available to applicants and in the further information it provided to the student as an offer holder
- It was reasonable for the complaint to be made at the end of the course of study, as it was not until late in the course that it became apparent that some teaching would not be delivered.
- The provider had taken practical steps to replace dissertation support and had extended deadlines for submission. The student had been able to achieve the academic outcomes required to be awarded the qualification
- It was reasonable for the student to be disappointed at the lack of access to a particular studio after the departure of staff
- It was reasonable for the student to be disappointed that they could not participate in the showcase fully

Case example B



A student enrolled on a full time Master of Fine Art (MFA) course, which consisted of 300 credits taken over two years, 180 credits in year 1 and 120 credits in year 2. After two months, the student transferred to a 180 credit MA course on a part time basis. After 5 months, the student asked to transfer again to another MFA course on a full time basis, with the intention of completing 150 credits in the current academic year, and 150 credits in the next academic year. This request was agreed.

The student had some conversations with the office responsible for chasing outstanding fee payments. The student then complained that the provider misled them about the fees that were payable to complete the MFA.

Our decision: reasonable offer made- Not Justified



The provider set its fees based on the number of credits studied. The two MFA courses fees were the same amount, for 300 credits, whether studied full time or part time. The MA course was less, because it has only 180 credits. This general information about fees was available to students on the provider's website.

The provider accepted that the information it provided about fee liability to this student could have been clearer. There was confusion about the outstanding amount due at the point when the student requested their second transfer, and the actual amount that the student would be liable for in that academic year.

The provider offered the student a reduction of £2000 from their total fees in recognition of a lack of clarity and the distress this had caused.

The student rejected the offer and complained to the OIA. We considered that the offer was reasonable.

Contact us

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Protecting student consumer rights: what more could and should be done?

Jo Nuckley, Office of the Independent
Adjudicator

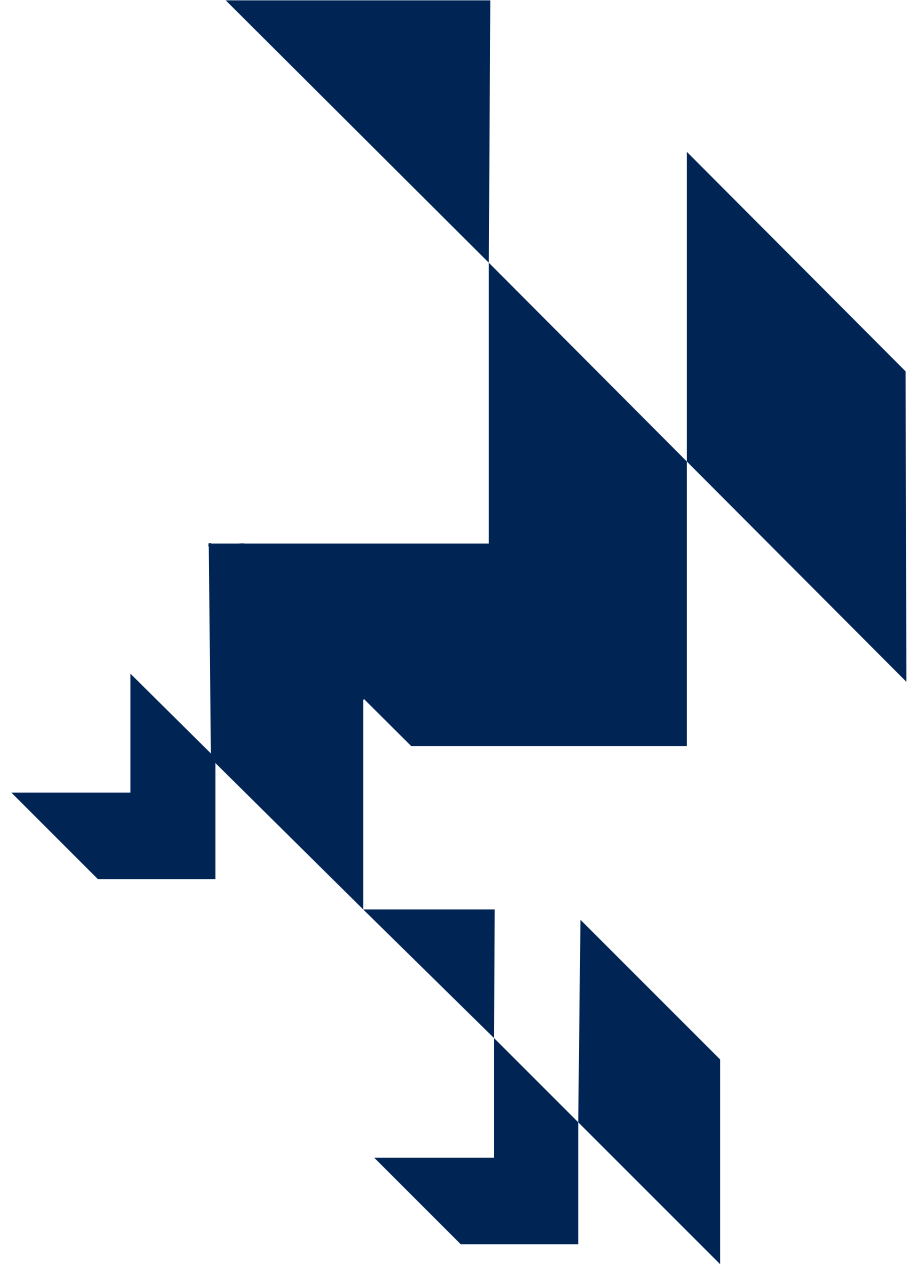
Emma Leech, university marketing leader

Nisha Arora, Financial Conduct Authority

Aimee Yeoman, York St John Students'
Union



Questions and answers



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Thank you for listening

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