

UTS:INSEARCH

**ANALYSIS OF COMPLAINTS TO THE
OVERSEAS STUDENTS OMBUDSMAN
APRIL 2011 TO APRIL 2016**

AUGUST 2016

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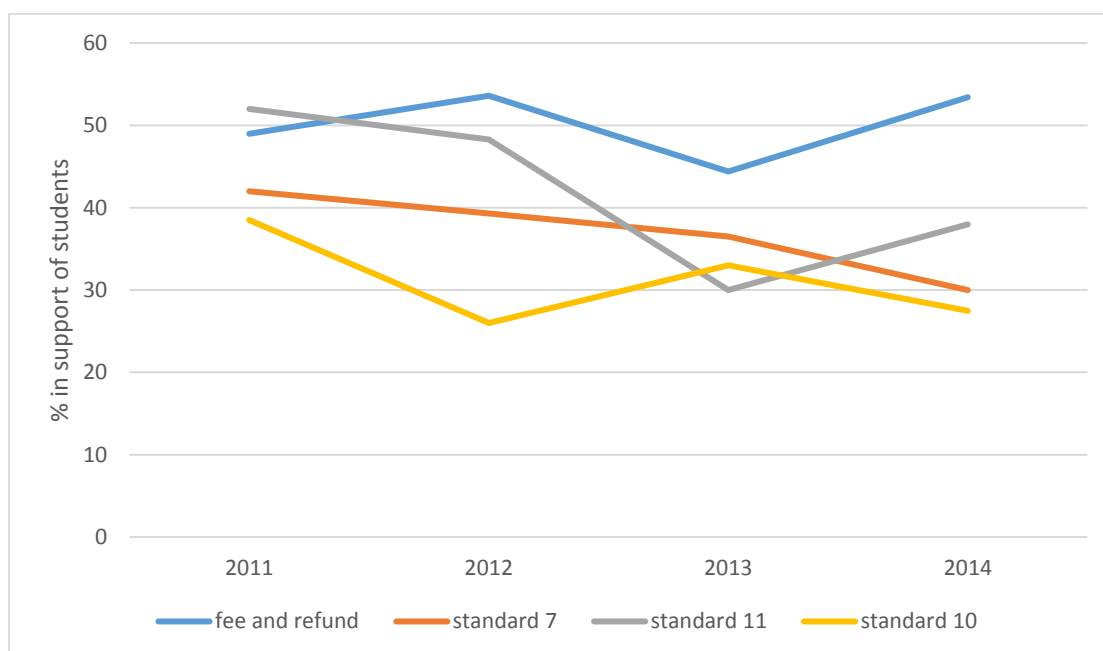
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INTRODUCTION

The Overseas Students Ombudsman (OSO) provides an independent and impartial external complaints and appeals process for intending, current and former international students studying with private registered providers. The OSO also provides best practice complaints handling advice and training to private providers and reports on trends and issues identified through complaints to inform government and the international education sector.

The OSO commenced operations in April 2011. In November 2015, we published a report on our first four years of operations¹. The outcomes trends for our top four complaint issues over that period showed that providers had been improving in some areas (course progress and provider transfer appeals) but we had been increasingly finding in support of students in other areas (attendance, fees and refunds), due to provider errors.

Figure 1: Outcome trends for top four complaint issues to the OSO, April 2011- 2014²



We decided to analyse the complaints data in more detail, to answer the questions:

- Why do providers appear to have improved in some areas and not others?
- Does this trend apply across the board or only for some providers?
- Have providers implemented our recommendations and maintained those improvements over time or started to make the same mistakes again?

We chose to start by examining the education providers that we have received the most complaints and external appeals about. UTS:INSEARCH is the provider we have received the most complaints and appeals about to date.

¹ http://www.ombudsman.gov.au/_data/assets/pdf_file/0024/37329/Overseas-Students-Ombudsman-report-on-first-four-years-of-operation,-November-2015.pdf

² There was insufficient outcome data at time the OSO four years of operation report was prepared to include results for 2015.

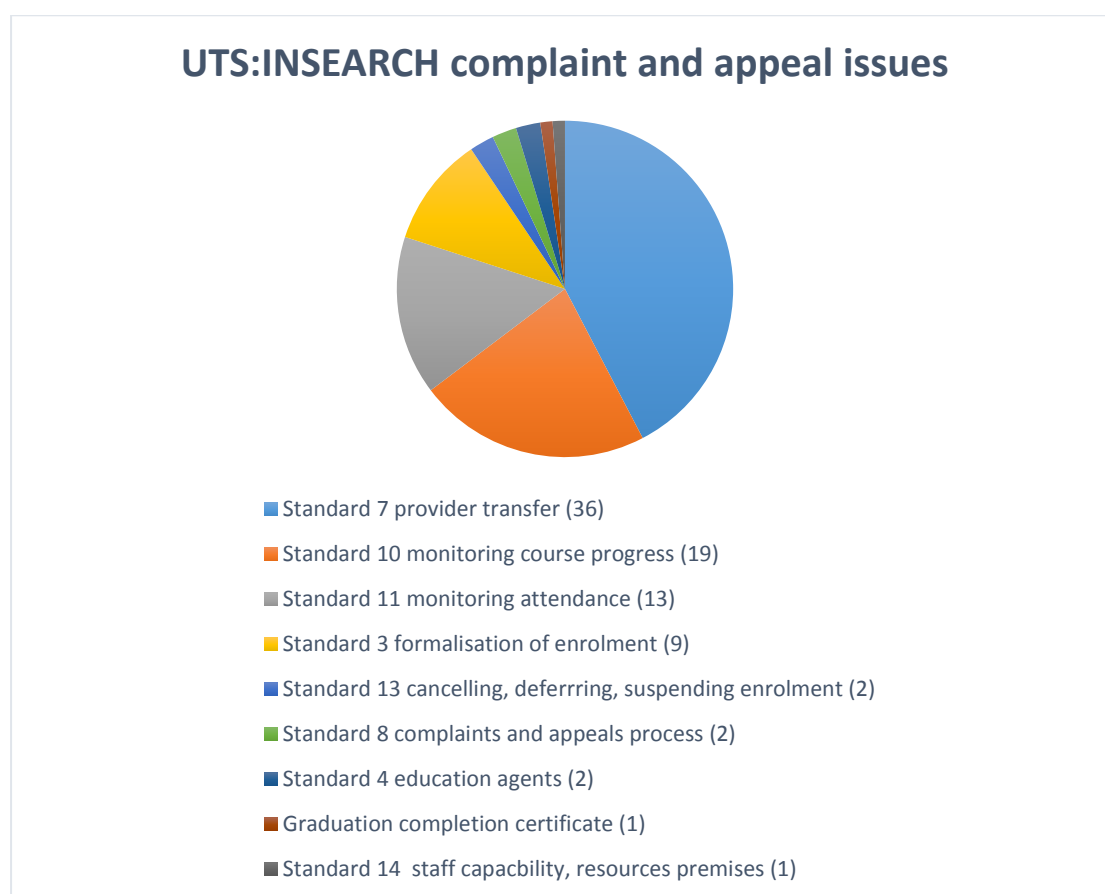
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We believe this is a positive indication that UTS:INSEARCH proactively advises its international students of their right to complain or appeal a decision to the OSO if the student is not satisfied with the outcome.

COMPLAINT ISSUES

The OSO finalised 75 complaints and appeals about UTS:INSEARCH in our first five years of operation, which raised 85 issues. The chart below shows the main complaint and appeal issues for UTS:INSEARCH.

Figure 2. UTS:INSEARCH complaint and appeal issues³



The top four complaint issues are the same top four issues for all providers we have investigated, with some variations in their order. Overall, refund/fee disputes are the number one complaint issue the OSO receives. UTS:INSEARCH had fewer refund/fee disputes and more provider transfer refusal appeals. A detailed analysis of complaints data by issue is attached.

³ For complaints and appeals finalised between 9 April 2011 and 11 April 2016.

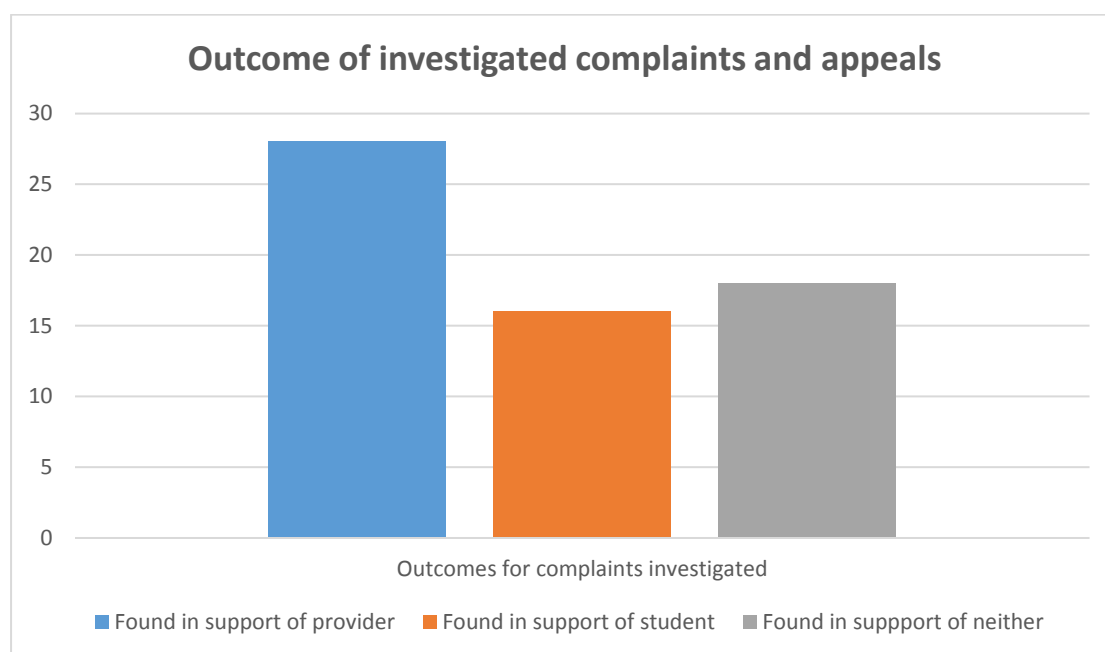
COMPLAINT OUTCOMES

Generally, when we investigate a complaint we reach an outcome at the end that supports either the student or the provider. For example, if a student appeals UTS:INSEARCH's decision to refuse their request for a release letter to transfer to another provider and we find UTS:INSEARCH's transfer policy is compliant and its decision was reasonably open to it to make under Standard 7 of the National Code and its transfer policy, then the outcome will favour UTS:INSEARCH and not the student.

In the first Standard 10 course progress appeals we received, we found UTS:INSEARCH did not have an intervention strategy in place to assist students at risk of failing to meet course progress, as required by Standard 10 of the National Code. Therefore, in these cases, we found in favour of the student.

The outcome will support neither party where we refer the student back to the provider's internal complaints and appeals process. This happens if we identify that the student has given us additional evidence that the provider has not had the benefit of seeing first. In these cases, we refer this information back to the provider to consider at the internal appeal stage.

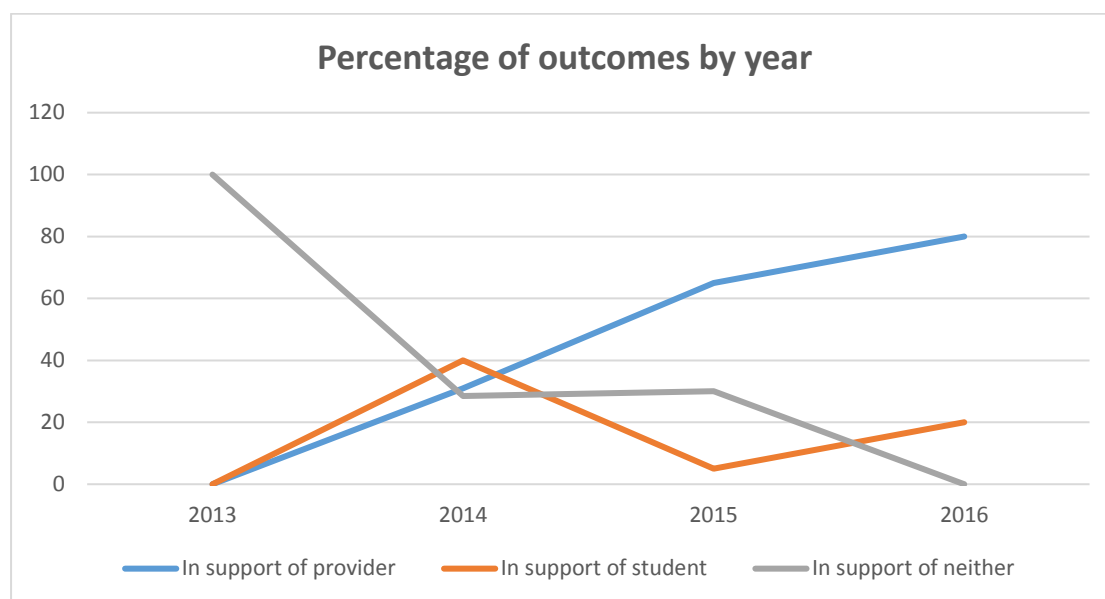
Figure 3: Outcomes for investigated UTS:INSEARCH complaints and appeals



An analysis of our complaints data for UTS:INSEARCH shows the OSO has increasingly found in support of UTS:INSEARCH over time. In a number of areas, the OSO initially found in support of the student, due to systemic issues that the OSO identified. We made recommendations for improvements, which UTS:INSEARCH has implemented and maintained over time, resulting in more decisions in its favour, as the chart on the following page shows.

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Figure 4. Outcomes of investigated UTS:INSEARCH complaints, by year



When OSO investigated the first Standard 10 course progress external appeals from UTS:INSEARCH international students, we found that UTS:INSEARCH did not have an intervention strategy in place as required by Standard 10 of the National Code. We found in support of the students and recommended UTS: INSEARCH develop and implement an intervention strategy. Once it did, we generally found in support of UTS:INSEARCH after that, depending on the student's individual circumstances.

Similarly, when we investigated the first Standard 11 attendance external appeals, we found that UTS:INSEARCH had not sent the warning letter to the student early enough. Our findings prompted UTS:INSEARCH to investigate, identify and correct a systems issue that was causing the letters to be sent at the wrong time. This enabled UTS:INSEARCH to resolve a major systemic issue that had not been identified up to that point.

UTS:INSEARCH has also assisted the OSO to improve our practices. In 2014, UTS:INSEARCH questioned our advice to students that they did not need a release letter to transfer to another provider if their original provider had cancelled their enrolment (see Appendix A).

UTS:INSEARCH's query prompted us to seek advice from the then-Department of Education, Employment and Workplace Relations (DEEWR). DEEWR clarified that CoE cancellation does not equal a letter of release and cancelling a CoE does not absolve the provider from assessing the student's request for transfer. This meant the OSO still needed to conduct external appeals for students refused a release letter, even if their provider had already cancelled their CoE. The OSO adjusted its procedures to reflect the policy position.

We appreciated UTS:INSEARCH alerting us to this change, which not only enabled us to improve our practices but also prompted the department to provide updated advice to all education providers to clarify the requirements.

CONCLUSION

By responding positively and cooperatively to our recommendations, UTS:INSEARCH made improvements that have benefited not only the students who initially complained/appealed, but also its broader international student population as policies and practices have been improved over time.

UTS:INSEARCH is a good example of the way the OSO can add value to private registered education providers who choose to take on board the lessons learnt from our investigations. By using our expertise in complaints investigations, we identified errors that UTS:INSEARCH had not identified through its own internal complaints and appeals process.

APPENDIX: OVERVIEW OF ISSUES AND OUTCOMES

Provider transfers (Standard 7)

The OSO received 36 external appeals from UTS:INSEARCH students who had been refused a release letter to transfer to another provider. The OSO referred the 17 students to UTS:INSEARCH's internal appeal process and investigated the other 19 appeals. The outcome supported UTS:INSEARCH in 10 cases and the student in one case. In eight cases, the outcome supported neither party.

Table A: Provider Transfer Appeal (Standard 7) Outcomes

Total Standard 7 transfer external appeals finalised by 11 April 2016 36	Not investigated 17	Investigation not warranted 4
		Referred back to UTS:INSEARCH's internal processes 10
		Lapsed 2
		Withdrawn 1
	Investigated 19	Outcome supports UTS:INSEARCH 10
		Outcome supports student 1
		Outcome supports neither 8

In six cases, we advised the student that as UTS:INSEARCH had cancelled their Confirmation of Enrolment (CoE), the student did not need a letter of release. We based this view on the then Department of Education, Employment and Workplace Relations (DEEWR)'s Fact Sheet, which stated that:

"a release letter is not required in the following circumstances:

...

- Where a student's enrolment may have been cancelled under Standard 13 of the National Code ("Deferring, suspending or cancelling the student's enrolment"), there is no need for the provider to also issue a release letter – in this situation the cancellation would be sufficient."*

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In 2014, UTS:INSEARCH questioned our advice to students, which prompted us to seek advice from DEEWR. DEEWR clarified that CoE cancellation does not equal a letter of release and cancelling a CoE does not absolve the provider from assessing the student's request for transfer. This meant the OSO still needed to conduct external appeals for students refused a release letter, even if their provider had already cancelled their CoE.

Based on this information, the OSO changed its advice to students and conducted appeals for those refused a release letter regardless of whether their enrolment had been cancelled or not. We appreciate UTS:INSEARCH alerting us to this change, which enabled us to improve our practice in this area.

Course progress (Standard 10)

We received 19 external appeals from UTS:INSEARCH students who had been notified of UTS:INSEARCH's intention to report them for unsatisfactory course progress. We investigated all of these cases by requesting information from UTS:INSEARCH.

Table B: Course Progress Appeal (Standard 10) Outcomes

Total Standard 10 course progress monitoring external appeals finalised by 11 April 2016 19 (All investigated)	Outcome supports UTS:INSEARCH 8
	Outcome supports student 9
	Outcome supports neither 2

When we investigate a course progress and/or attendance appeal from an international student, we consider whether the provider has complied with each part of the relevant National Code standard and its own policy.

In 2014, we conducted nine external appeals relating to unsatisfactory course progress. We found UTS:INSEARCH did not have an intervention strategy in place, as required by Standard 10 of the National Code. We found in support of the students and recommended UTS:INSEARCH develop and implement an intervention strategy. We also recommended that UTS:INSEARCH include the timeframe for students to contact the OSO in its internal appeal outcome letters.

UTS:INSEARCH implemented these recommendations. In 2015, we conducted eight external appeals about course progress. In all of these appeals, the outcome supported UTS:INSEARCH, as we found UTS:INSEARCH's course progress policies and procedures were now compliant with Standard 10 of the National Code and had been followed correctly.

Attendance (Standard 11)

In our first five years, the OSO received 13 external appeals from UTS:INSEARCH students who had been notified of UTS:INSEARCH's intention to report them for unsatisfactory attendance. We investigated all but one, which was referred back to UTS:INSEARCH's internal appeals process.

Table C: Attendance Appeals (Standard 11) Outcomes

<p>Total Standard 11 attendance monitoring external appeals finalised by 11 April 2016</p> <p style="text-align: center;">13</p>	<p>Not investigated</p> <p style="text-align: center;">1</p>	<p>Referred back to UTS:INSEARCH's internal processes</p> <p style="text-align: center;">1</p>
	<p>Investigated</p> <p style="text-align: center;">12</p>	<p>Outcome supports UTS:INSEARCH</p> <p style="text-align: center;">6</p>
		<p>Outcome supports student</p> <p style="text-align: center;">4</p>
		<p>Outcome supports neither</p> <p style="text-align: center;">2</p>

In 2014, we investigated five attendance external appeals from UTS:INSEARCH international students at risk of being reported. In one instance we supported UTS:INSEARCH's decision. In another case we did not support UTS:INSEARCH or the student - we recommended that the student's CoE be cancelled for non-commencement of studies rather than unsatisfactory attendance as the student had never started the course.

In the other three cases, we found that UTS:INSEARCH had not sent the warning letter to the student before their attendance fell below 80%, as required by Standard 11 of the National Code and UTS:INSEARCH's attendance policy. Our findings prompted UTS:INSEARCH to investigate its attendance monitoring system. It was discovered that the system was calculating student's attendance starting from 0% and counting up to 100% rather than starting from 100% and reducing this percentage as it deducted absences recorded.

The practical effect of this system issue was that students at risk of falling below the satisfactory attendance level were not being warned beforehand, while they still had time to correct their behaviour. It also placed UTS:INSEARCH in breach of Standard 11 of the National Code.

By highlighting this in our investigation outcome, UTS:INSEARCH was able to identify and resolve a major systemic issue that had not been identified up to that point. This benefited all international students at risk of failing to meet satisfactory attendance from then on, as it

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meant they could be warned before it was too late for them to maintain satisfactory attendance and avoid being reported to the Department of Immigration and Border Protection for breaching their visa conditions.

Again, the data shows that since UTS:INSEARCH implemented our recommendations for improvement, in all but one case where the student was not warned before reaching 80%, our decisions supported UTS:INSEARCH as having complied with Standard 11. We appreciate how promptly UTS:INSEARCH communicated with our office about this issue and implemented the necessary changes in response to our recommendations.

Refunds and Fees (Standard 3)

Complaints about refunds occur where a student is seeking reimbursement of money already paid to the provider. A fee dispute occurs where a provider is pursuing the student for outstanding fees and the student claims they do not owe or should not have to pay those fees.

Refund complaints and fee disputes are the most common cause of complaints to the OSO. However, it is only the fourth most common issue raised in complaints about UTS:INSEARCH.

Table D: Refund and Fee Disputes (Standard 3) Outcomes

Total Standard 3 fee and refund disputes finalised by 11 April 2016 9	Not investigated 4	Referred back to UTS:INSEARCH's internal processes 4
	Investigated 5	Outcome supports UTS:INSEARCH 1
		Outcome supports student 1
		Outcome supports neither 3

In one case we investigated, our decision supported UTS:INSEARCH. In another case, UTS:INSEARCH re-assessed the refund request against its updated UTS:INSEARCH refund policy, where it was determined that the student was eligible for a refund.

The outcome in three cases supported neither the student nor UTS:INSEARCH. In one case, the student was advised to return to UTS:INSEARCH to go through the complaints and appeal process. In the second case, the student decided to withdraw the appeal and

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continue studying at UTS:INSEARCH. In the third case, we had been conducting a provider transfer external appeal (standard 7) and we noted that UTS:INSEARCH had already stated that it intended to refund the student.

We received one complaint about a fee dispute, where we referred the student back to UTS:INSEARCH's internal appeal process to raise compassionate circumstances for UTS:INSEARCH to consider. During the investigation of this complaint we discussed the difference between *refunding* money already paid to a provider and *charging* a cancellation fee where a student withdraws early from a course.

It is our view that providers who wish to charge a cancellation fee must explicitly provide for this in their written agreement with the student. We discuss this issue in further detail in our Written Agreements Issues Paper⁴, which is available on our website.

Education agents (Standard 4)

We received two complaints about education agents. In both cases, the students were advised to contact UTS:INSEARCH to access its internal complaints and appeals process first.

Complaints and appeals (Standard 8)

We received two complaints and we investigated both, our decisions supporting UTS:INSEARCH. In one complaint, the student raised allegations of agent misconduct and, as discussed in the paragraph above, the Investigation Officer referred the student back to UTS:INSEARCH. In this case we made comments to UTS:INSEARCH about the way in which it managed the complaint made about the agent's conduct.

Deferring, suspending or cancelling the student's enrolment (Standard 13)

We received and investigated two complaints. One case was in relation to cancelling a student's enrolment for non-payment of fees. We agreed that UTS:INSEARCH was entitled to report the student for non-payment of fees. However, we referred the student to UTS:INSEARCH for consideration of whether the student had compassionate and compelling circumstances.

The other complaint raised the issue about the status of a cancelled CoE in a Standard 7 appeal. This matter is discussed in the Standard 7 section above.

Completion certificate

We received and investigated one complaint in which the student advised us that UTS:INSEARCH had not issued them with a completion certificate. We advised the student to provide current contact details to UTS:INSEARCH in order to obtain the certificate.

⁴ http://www.ombudsman.gov.au/data/assets/pdf_file/0023/37346/Written-Agreements-Issues-Paper-January-2016.pdf

Staff capability, educational resources and premises (Standard 14)

We received one complaint from a UTS:INSEARCH student about provider quality. Generally, our office does not investigate complaints that raise issues under Standard 14. Instead, we transfer these issues to the relevant regulator. In this particular case, we investigated the student's course progress appeal based on Standard 10 and transferred the student's concerns about Standard 14 to the Tertiary Education Quality and Standards Agency.

Out of jurisdiction complaints

We have also received complaints and appeals that are out of the OSO's jurisdiction to investigate. Approximately 15 international students have contacted our office for an external appeal which we or UTS:INSEARCH have determined to be an appeal about a decision made by the University of Technology Sydney (UTS) in relation to a Foundation Studies course.

As UTS is a public education provider, the appeals were outside our jurisdiction to investigate. In these instances, we referred the student to the New South Wales Ombudsman, which has jurisdiction to investigate complaints and appeals from UTS students.

We appreciate the ongoing communication with UTS:INSEARCH when these issues arise to ensure the student is directed to the correct appeal body.