

A New
Complaints Landscape
for Further and Higher Education in Scotland

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A NEW COMPLAINTS LANDSCAPE FOR FURTHER AND HIGHER EDUCATION IN SCOTLAND



Ministerial Foreword

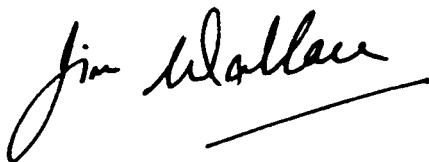
Lifelong learning is at the heart of the Scottish Executive's commitment to create a Scotland where enterprise can flourish, where opportunity exists for all, and where everyone living and working in Scotland has the confidence to face the challenges of a global society.

Our lifelong learning strategy, launched earlier this year, sets out the Executive's ambition for the next five years and five people-centred goals. Our goals include "a Scotland where people demand and providers deliver a high quality learning experience". To achieve this requires a commitment to continuous quality improvement with a focus on the customer.

An open and robust complaints procedure is a hallmark of an organisation striving for quality. When the bodies concerned receive significant levels of public funds there is also an expectation of transparency and accountability. When things go wrong the public must be assured that they can - and will - be put right.

That is why in our Partnership Agreement 'Partnership for a Better Scotland', published after the Scottish Parliamentary Election in May 2003, we articulated our intent to give students in further and higher education the right to refer matters to the Ombudsman when institutional mechanisms fail them.

I would encourage you to respond to this consultation paper and help shape the new complaints landscape.

A handwritten signature in black ink that reads "Jim Wallace". The signature is written in a cursive style and is underlined with a single horizontal line.

Jim Wallace MSP
Deputy First Minister and Minister for Enterprise and Lifelong Learning

INTRODUCTION

1. Scotland's further education colleges and higher education institutions (HEIs) can be rightly proud of the levels of reported student satisfaction with the quality of their learning experience and with their experience of university/college as a whole. In a recent 'Survey of Student Experience'¹, published by the Scottish Funding Councils for Further & Higher Education in April 2003, both sectors achieved satisfaction ratings of 93% on these matters. However, such findings do not mean that more cannot be done. Instilling greater confidence in the complaints process is an important way in which we can seek to achieve greater levels of customer (principally, but not exclusively, student) satisfaction and transparent accountability of institutions.

2. This consultation paper sets out and seeks comment on some of the issues surrounding extending the work of the Scottish Public Services Ombudsman to consider complaints about provision in further and higher education institutions² in Scotland.

How to respond:

By post to : Margaret McLachlan
Scottish Executive
Enterprise, Transport and Lifelong Learning Department
2nd Floor, Europa Building
450 Argyle Street
Glasgow G2 8LG

By e-mail to : margaret.mclachlan@scotland.gsi.gov.uk

When by:

Responses to this paper are required by 1 April 2004.

3. This paper can be found on the Scottish Executive's web site at www.scotland.gov.uk/publications .

4. We will make all responses available to the public on the Scottish Executive website and in the Scottish Executive Library³ unless confidentiality is requested. Any confidentiality disclaimer generated by your computer system in an e-mail will not be treated as such a request. Confidential responses will be included in any statistical summary of numbers or comments received or views expressed. All responses not marked confidential will be checked for any potential defamatory material before being logged in the library or placed on the website.

¹ Available online at: www.sfefc.ac.uk/publications/sfefc_publications.html

² For HE, this will not include the Open University's activities in Scotland. Although funded by the Scottish Higher Education Funding Council, the OU's headquarters are in England and it is subject to English student complaints procedures. The proposals do include the Scottish Agricultural College (SAC), which is a Central Institution under the Education (Scotland) Act 1980. SAC is funded by Scottish Executive Environment and Rural Affairs Department.

³ K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD. Telephone 0131 244 4552

SCOTTISH PUBLIC SERVICES OMBUDSMAN

5. The Scottish Public Services Ombudsman Act 2002⁴ established a one-stop shop ombudsman service, headed by the Scottish Public Services Ombudsman, to deal with complaints formerly handled by the Scottish Parliamentary Ombudsman, the Scottish Health Service Ombudsman, the Scottish Local Government Ombudsman and the Housing Association Ombudsman for Scotland. The new Ombudsman also took over the Mental Welfare Commission's function of investigating complaints relating to mental health and complaints against Scottish Enterprise and Highlands and Islands Enterprise whose External Complaints Adjudicators were abolished.

6. The Ombudsman can in principle investigate **complaints from aggrieved persons that they have sustained injustice or hardship as a result of maladministration or service failure** on the part of an authority within the Ombudsman's jurisdiction.

7. Maladministration is generally taken to mean a failure in administrative procedures or processes, and service failure, as defined in statute, as "any failure in a service provided by the authority, or any failure of the authority to provide a service which it was the function of the authority to provide". Accordingly service failure does not cover discretionary decisions by an authority such as decisions *whether* to provide a service which an authority is not statutorily required to provide or decisions on *how* to provide a service.

8. Further information about the work of the Ombudsman can be found on the Ombudsman's website⁵ and in the Scottish Executive Circular 'A modern complaints system: the new Scottish Public Services Ombudsman'⁶.

LOCAL RESOLUTION OF COMPLAINTS

9. Complaints are more likely to be resolved quickly when they are dealt with locally, though it is recognised that this is not always possible. All FE colleges and HEIs have their own internal complaints procedures in place, details of which should be readily available to their students. In most instances complaints can be resolved satisfactorily by those closest to the issues. That will not change.

10. However, both the Executive and the Ombudsman have considerable experience of assisting in such processes by, for example, working up model complaints procedures or by assisting with good practice on complaint procedures. There may therefore be scope for either of these bodies becoming more closely involved.

Q1 Are existing arrangements and local procedures for investigating complaints about further education colleges and higher education institutions effective?

Q2 Would there be value in giving the Executive or the Ombudsman a role in ensuring a certain level of consistency across institutions and what might this role entail?

⁴ Available online at: www.hmso.gov.uk/legislation/scotland/acts2002/20020011.htm

⁵ Available online at: www.scottishombudsman.org.uk

⁶ Available online at: www.scotland.gov.uk/library5/government/amcs-00.asp

EXTENDING THE OMBUDSMAN'S REMIT

Further Education Colleges

11. There are already a number of quality assurance systems in place to audit the effectiveness of our institutions' **systems**, such as the oversight of the further education sector by the Scottish Further Education Funding Council (SFEFC). However, the creation last year of the post of the Scottish Public Services Ombudsman presents an opportunity for independent consideration of complaints which remain unresolved at local level when things go wrong for **an individual student or other relevant person**.

12. In the absence of such a route at present, the Scottish Executive and SFEFC have sought to review and resolve complaints from those dissatisfied with the outcome of local procedures. However, these bodies have not had the necessary statutory locus to investigate complaints fully. The Ombudsman can in principle already investigate the actions of the Scottish Executive, SFEFC, the Scottish Further Education Unit and the Scottish Qualifications Authority. The Ombudsman would seem to be the person best placed to provide independent consideration of complaints about the public services provided by FE colleges, which the recent review of governance and accountability in the FE sector concluded was necessary.

13. In reaching this view, the Executive has considered carefully whether extending the Ombudsman's remit might compromise the independent status of FE colleges (and HEIs). Given that the Ombudsman can already investigate the actions of health providers such as GPs who work under contract to the NHS, we do not consider that the involvement of the Ombudsman in itself would undermine an institution's status. Nevertheless, as outlined later in this paper, we believe it would be necessary to exclude certain aspects such as academic appeals from the scope of the Ombudsman's work in order to safeguard the independence of institutions to exercise academic judgment.

14. The Ombudsman's powers would extend to all services delivered by FE colleges across all aspects of their work. The Ombudsman's role would not be dependent on the particular funding or other arrangements for the delivery of specific courses. In other words, it would make no difference whether a student was attending college as part of a Modern Apprenticeship or was studying full-time for a degree validated by a University; the services delivered by the educational institution directly or indirectly would fall in principle within the Ombudsman's jurisdiction.

Q3 Views are invited on the Executive's plan to give the Scottish Public Services Ombudsman powers to investigate complaints about provision at Scotland's 46 FE colleges.

Higher Education Institutions

15. The 1997 report of the Committee of Inquiry into Higher Education (Dearing)⁷ recommended to HEIs that they review and, if necessary, amend their procedures for handling complaints from students to ensure that they reflect the principles of natural justice; are transparent and timely; include procedures for reconciliation and arbitration; include an independent, external element; and are managed by a senior member of staff.

⁷ "Higher Education in the Learning Society" HMSO 1997, available online at: www.leeds.ac.uk/educol/ncihe/

16. Universities Scotland, the body that represents Scottish HEIs, introduced a new Independent Reviewer⁸ system in December 2002 - the first such scheme in the UK. The Independent Reviewer is a member of the Faculty of Advocates, and is wholly independent of the higher education sector. Students who have exhausted the institution's internal complaints and remain dissatisfied can appeal to the Independent Reviewer. The Reviewer can investigate complaints about procedural matters, and alleged contraventions of basic principles of justice. Complaints about academic judgements are excluded (though the *procedures* of making academic decisions could be covered). As with other Ombudsman systems, the Reviewer's recommendations cannot be enforced, but reports of investigations will be publicly available.

17. Universities Scotland's system is *voluntary*. That means that institutions can opt not to subscribe to the Independent Reviewer. In practice the vast majority of higher education institutions have done so. Universities Scotland is committed to a limited review of the system after 1 year, and a comprehensive review in 2004-05. There will be student involvement in both reviews, which will be chaired by an independent person.

Q4 Views are invited on the Executive's plan to give the Scottish Public Services Ombudsman powers to investigate complaints about provision at Scotland's HEIs.

NEED FOR PRIMARY LEGISLATION

18. The 2002 Act contains certain provisions inherited under earlier statutes, including provisions contained in the Parliamentary Commissioner Act 1967 that prevent the Ombudsman investigating the actions of persons whose sole or main activities are the "provision of education". It would be necessary to amend the 2002 Act to extend the Ombudsman's remit to Scottish further and higher educational establishments.

EXISTING LEGISLATIVE FRAMEWORK

19. The Ombudsman has no powers to enforce recommendations. This will not change. In extending the Ombudsman's remit, we do not intend to alter the fundamental characteristics of the Ombudsman's work. In particular, the Ombudsman can only investigate a complaint if the Ombudsman is satisfied that local procedures have first been exhausted (unless it is unreasonable in the circumstances to expect this) (section 7(9) and (10) of the 2002 Act refers). The Ombudsman is also unable to investigate "action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters" (paragraph 8 of schedule 4 to the 2002 Act refers).

20. Paragraph 10 of Schedule 4 to the 2002 Act prevents the Ombudsman from investigating "action concerning-

- (a) the giving of instruction, whether secular or religious, or
- (b) conduct, curriculum or discipline,

in any educational establishment under the management of an education authority."

⁸ Further information on the Independent Reviewer is available at www.universities-scotland.ac.uk

21. This provision is there to prevent the Ombudsman from questioning matters which are professional judgments about education. "The giving of instruction" would cover the method by which a topic is taught. "Conduct, curriculum or discipline" have self-explanatory meanings.

Q5 Should this exclusion apply similarly to FE colleges and HEIs?

ACADEMIC APPEALS

22. Because of their very nature, FE colleges and HEIs have well-established procedures for dealing with matters of academic judgment, including appeals about markings and examinations. Since the consideration of academic matters is an integral facet of the independent nature of further and higher education institutions, we believe it would be necessary to exclude the substance of such complaints from the Ombudsman's remit. However, in order to bolster students' confidence in the institutions' handling of such complaints, we consider that it may be appropriate to allow the Ombudsman to investigate associated procedural matters.

Q6 Should matters of academic judgment be excluded from the Ombudsman's remit?

Q7 Should the Ombudsman have powers to investigate procedural matters associated with academic appeals?

RESOURCE IMPLICATIONS

Office of the Ombudsman

23. Any extension of the Ombudsman's remit would have resource implications for the Ombudsman's office. The Scottish Executive, in consultation with the Ombudsman, will separately seek information from educational establishments in order to estimate the impact on the Ombudsman's workload before introducing any necessary legislation.

Educational Establishments

24. The Executive recognises that there are likely to be resource implications (in terms of staff time etc.) for educational establishments brought within the Ombudsman's jurisdiction. Clearly the more investigations the Ombudsman conducts into the activities of a particular institution, the higher those indirect costs will be for that institution. There is no such thing as an "average" Ombudsman investigation, so attempting to produce such a figure would be meaningless. There is a wide range of public bodies already within the Ombudsman's remit. Those bodies bear the discipline of meeting the resources implications from within their own budgets. We believe the further and higher education sectors should be treated no differently.

OTHER MATTERS

Q8 Are there any other matters not referred to above which you wish to bring to our attention?

SUMMARY OF QUESTIONS

Q1 Are existing arrangements and local procedures for investigating complaints about further education colleges and higher education institutions effective?

Q2 Would there be value in giving the Executive or the Ombudsman a role in ensuring a certain level of consistency across institutions and what might this role entail?

Q3 Views are invited on the Executive's plan to give the Scottish Public Services Ombudsman powers to investigate complaints about provision at Scotland's 46 FE colleges.

Q4 Views are invited on the Executive's plan to give the Scottish Public Services Ombudsman powers to investigate complaints about provision at Scotland's HEIs.

Q5 Should this exclusion [giving of instruction, curriculum issues etc.] apply similarly to FE colleges and HEIs?

Q6 Should matters of academic judgment be excluded from the Ombudsman's remit?

Q7 Should the Ombudsman have powers to investigate procedural matters associated with academic appeals?

Q8 Are there any other matters not referred to above which you wish to bring to our attention?

LIST OF CONSULTEES

Association of Managers of Student Services in Higher Education (Scotland)
Association of Scottish Colleges
AUT
Beattie Resources for Inclusiveness in Technology and Education Centre
Citizens Advice Scotland
Coalition of Higher Education Students in Scotland
Commission for Racial Equality
Disability Rights Commission
EIS
Equality Network
Equal Opportunities Commission
46 Further Education Colleges
46 Further Education Student Associations
Her Majesty's Inspectorate of Education
20 Higher Education Institutions
20 Higher Education Student Associations
Highlands and Islands Enterprise
Linking Education and Disability Scotland
32 Local Education Authorities
National Association of Managers of Student Services
NUS (Scotland)
QAA Scotland
Royal Society of Edinburgh
Scottish Consumer Council
Scottish Enterprise
SFHEA
Scottish Agricultural College
Scottish Agricultural College Student Association
Scottish Civic Forum
Scottish Faith Council
Scottish Further Education Funding Council
Scottish Further Education Unit
Scottish Higher Education Funding Council
Scottish Parliament Corporate Body
Scottish Parliament Enterprise and Culture Committee
Scottish Public Services Ombudsman
Scottish Qualifications Authority
Scottish Refugee Council
Scottish Science Advisory Committee
Scottish Youth Parliament
SKILL
STUC
UNISON
Universities Scotland.