

## **PE1769/B**

Scottish Public Services Ombudsman submission of 26 February 2020

Please pass on my thanks to the Committee for inviting me to comment on petition PE1769 which refers directly to this office in the context of broader concerns about the way Higher Education is set up and delivered in Scotland. This was reflected in the Committee's discussion of the petition which included reference to quality assurance and the importance of public confidence in the student experience.

I was pleased that complaints were being considered as part of a broader discussion about quality. Complaints and how an organisation responds to (and acts upon) them provide helpful indicators of the culture of the organisation and, when put together with other data, help to build a holistic picture about the quality of the service being delivered. In my complaints standards role, this is something SPSO actively encourages as reflected in the recently updated model complaint handling procedures for higher education which has put an increased focus on supporting vulnerable complainants and seeking resolution.

In the specific reference to this office, the petition questioned the legal restriction which prevents me from considering matters of academic judgement. I thought it might be helpful to provide some background detail about the reasons for this and what that means in practice.

### **Restriction on considering academic judgement**

SPSO's involvement with Higher Education complaints dates back to 2005 when the Further and Higher Education (Scotland) Act 2005 extended the Ombudsman's remit to cover those sectors. As I understand it, at the time, a specific restriction was deliberately put in place which means I have no jurisdiction to investigate matters relating strictly to academic judgement.

The reasons for this were explained in a consultation document issued in 2003 which said:

*"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."*

SPSO considers the impact of this restriction on a case-by-case basis, taking into account the specific facts and circumstances. My legislation limits what I can say about individual cases but where I can, I report publicly. I attach a short annex to this letter, containing copies of two publicly reported examples of SPSO's work.

- The first is a case where the academic judgement restriction applied
- The second is a much more complicated case and, as well as giving an indication of the difference between a simple and a complex cases, also provides an example of the steps we would expect organisations to take when courses change at short notice. We upheld that case because appropriate support and redress had not been considered.

My current view is I have seen no compelling evidence that SPSO is unduly restricted by the limitation on academic judgement. However, the legislation is now 15 years old and I would be open to further discussion if there was support for a review of this position from the sector and students. Also, if there were moves to consider more generally how quality is assessed, it would be prudent to look at complaints and redress mechanisms as part of any broader review.

Please do not hesitate to contact me if you have any questions.

## **Annex: Example cases**

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### **Example 1**

*Case number:* 201704550

*Published:* September 2018

#### *Summary*

Mr C complained about his university's handling of a personal circumstances application and academic appeals. Mr C said there had been breaches of university regulations.

We found no evidence of breaches of university regulations. We considered that Mr C disagreed with the academic judgement of staff assessing his work, and he disagreed with the decisions taken by the relevant committees and university staff about his personal circumstances application and academic appeals. However, his disagreement with the university's interpretation of his evidence and their decisions was not evidence of an administrative failing on their part. We did not uphold Mr C's complaints.

### **Example 2**

*Case number:* 201802084

*Published:* July 2019

#### *Summary*

Mrs C complained on behalf of her daughter (Miss A) about the support the university provided to Miss A. Miss A had lost two grandparents, following an extended period of illness. This affected her time at university and she did not pass one of the modules necessary to progress to fourth year. After having an academic appeal turned down, Miss A returned to university to retake the module. The module was due to take place in the first semester but was cancelled due to an unexpected staff absence and rescheduled to take place in the second semester. This meant that Miss A did not have any tutorials or classes during the first semester but still had financial outlays relating to her rented flat and living away from home.

Mrs C complained that, throughout this time, Miss A did not receive sufficient support from the university. She highlighted concerns about Miss A's experience of the university's personal academic tutor provision. She also complained that the university failed to provide appropriate support or guidance following the cancellation of the module.

The university had partially upheld Mrs C's original complaint and had acknowledged that they had not provided sufficient support and guidance following the cancellation of the module. In respect of the personal academic tutor provision, the university initially did not identify any failings; however, in a subsequent response, they outlined

a number of improvements relating to the department's personal academic tutor provision.

We found that the personal academic tutor provision Miss A had received had not been delivered in line with the university's internal policies and guidance. In particular, we identified a lack of sufficient record-keeping and structure. We concluded that there was insufficient evidence that the delivery of the personal academic tutor provision was adequate or in line with the university's own policies and procedures.

Overall, we concluded that the university did not provide Miss A with an appropriate and reasonable level of support. The university had acknowledged some failings in response to Mrs C's complaint but had not identified failings in other areas. Furthermore, where the university had identified failings, it was not clear that a reasonable level of reflection, learning or service improvement had taken place as a result. For these reasons, we upheld this complaint.

### Recommendations

What we asked the organisation to do in this case:

- Apologise to Miss A for failing to provide a sufficient personal academic tutor service and for failing to provide an appropriate level of support and guidance to her following the cancellation of the module. The apology should meet the standards set out in the SPSO guidelines on apology available at [www.spsso.org.uk/information-leaflets](http://www.spsso.org.uk/information-leaflets).
- Address Mrs C's point about the accommodation/living costs incurred while Miss A did not have any classes to attend or academic work to undertake. This response went directly to Mrs C.

What we said should change to put things right in future:

- Department staff members who act as personal academic tutors should be aware of their duties and responsibilities, in line with the university's policy and guidance.
- The university should learn from Miss A's experience. When a module is cancelled, the university should make every attempt to meet the terms and conditions contained in 'essential information for students'. This includes taking steps to “mitigate any disruption arising from the change and to identify appropriate alternative arrangements.”