

Submission from NUS-USI to the Ad Hoc Committee on Northern Ireland Public Services Ombudsperson Bill

1 Summary of NUS-USI's concerns about the Bill and introduction

1.1 NUS-USI's mission statement is

- to promote, extend and defend the rights of students
- to develop and champion strong students' unions

1.2 We would like to express gratitude to the Ad Hoc Committee for the opportunity to provide a submission on the Northern Ireland Public Services Ombudsperson.

1.3 NUS-USI has significant concerns about this Bill because we believe that it does not go far enough to help students address the wide and varied nature of problems which they need addressed through complaints and appeals procedures.

1.4 NUS-USI wants to see an independent adjudicator/ombudsperson which addresses the broadest possible range of complaints and appeals from students, not simply maladministration.

1.5 We also want the Ombudsperson to address all complaints and appeals from further education students, as well as higher education students.

1.6 The Higher Education Act 2004 contained a legal requirement for an independent complaints organisation for England and Wales. Northern Ireland is still waiting for a

similar type of body being created here, so both that FE and HE students (outside of Open University) can have one independent body investigating their complaints and appeals.

1.7 The Office of the Independent Adjudicator (OIA) addresses a wide range of complaints and appeals from HE students in the England and Wales, and we want a similar system for Northern Ireland, but which addresses a wider range of complaints and appeals for both HE and FE students.

1.8 We believe that students in Northern Ireland deserve the best treatment possible and deserve the best possible support during their studies to help them reach their potential. Making robust amendments to this Bill could help deliver this support for students. Without a strong, and independent complaints and appeals process, covering the broadest possible base of issues, for students in HE and FE in here, they could be left with an education system that doesn't meet their needs, and they might have no way of addressing this. NUS-USI believes that the Ombudsperson only looking into HE matters would be unacceptable, and we also think it would be unacceptable if the body only covered possible matters of maladministration.

1.9 NUS-USI would like the Ad Hoc Committee to consider tabling amendments to the Bill as regards clause 18 which addresses "Matters which may be investigated: universities". We would like amendments to be made which ensure that all complaints and appeals listed in 2.1 can be addressed by the ombudsperson, along the lines of the OIA, but for both HE and FE students.

2 The Office of the Independent Adjudicator in England and Wales

2.1 Here is an excerpt from the OIA website which outlines some of the issues that the OIA can currently address:

"

- Any final decision of the university
- A service provided by the university
- Teaching and facilities
- Student accommodation

- Research supervision
- Welfare
- Discrimination - race, sex, disability, age, sexual orientation or religious belief
- Bullying and harassment
- Placements
- Maladministration
- Procedural irregularities
- Unfair practices
- Disciplinary matters, including plagiarism
- Fitness to practise issues

Examples of complaints we cannot look at include:

- Admissions
- **Academic judgment**
- Student employment
- Matters which have already been considered by a court or tribunal and where the proceedings have been concluded
- Matters which are being considered by a court or tribunal where the proceedings have not been **stayed**.
- Matters which we consider have not materially affected the complainant as a student
- Matters which the OIA has already dealt with
- We will not normally look at complaints where the main issues complained about took place more than three years before the complaint is received by the OIA"

2.2 Currently Open University Students based in Northern Ireland can utilise the Office of the Independent Adjudicator, but other students based in Northern Ireland cannot use the body.

2.3 It is absolutely vital that there is joined up government on the issue of student appeals and complaints. This Bill comes from the Committee for the Office of the First and deputy First Minister, and the Department for Employment and Learning's higher education strategy project 5 examines the issues of grievances and complaints, and it is important that they work in concert to deliver the best outcomes for students and for the operation of, and public confidence in any public services ombudsperson.

2.4 The Office of the Independent Adjudicator published a good practice framework for handling complaints and appeals. Here is an excerpt from the document around the role of the OIA: "The OIA considers complaints from students who remain dissatisfied at the conclusion of the university's internal procedures. The OIA is an independent review body, external to the university. It looks at issues such as whether the university followed its procedures, whether these procedures were reasonable, and whether the university's final decision was reasonable in all the circumstances. The OIA requires the university to inform students of their right to go to the OIA. For joint-degree students whose review is considered by an international partner, the external review stage falls under the national practices of the degree-awarding university which carried out the review.

In line with the language of the Higher Education Act 2004, all submissions to the OIA are called 'complaints' whether they relate to a complaint or an academic appeal.

The OIA cannot normally look at complaints:

- where the student has not gone all the way through the university's complaints or academic appeals procedures
- where the complaint refers to matters occurring three years or more previously
- where the Completion of Procedures letter is received by the OIA outside the three month time limit
- where matters have been or are being considered in court."

This provides a useful insight into the role of the OIA and sets down a market around issues that we believe the Ad Hoc Committee should consider.

2.5 NUS-USI believes that it is absolutely essential that politicians raise in the Assembly the issues which we have articulated to you within this paper. We also believe that it is vital that politicians examine the concerns we have articulated within this paper and deliver the amendments to this Bill needed to deliver the changes that we have outlined for FE and HE students.

3 Reservations around this stage of the consultation and scrutiny process

3.1 NUS-USI also wishes to articulate our very significant reservations around the deadline for submissions to the Ad Hoc Committee, because we believe that the deadline, which was around 2 weeks, was very tight timetabling. We are also extremely concerned around the scheduling of the public consultation event, because NUS-USI does not see how an event can attract a broad range of stakeholders if it is being organised, publicised and is taking place at potentially short notice. NUS-USI believes that the opportunities for effective consultation with the public and with key stakeholders may have been very severely damaged, as a result of what could be seen as restrictive timetabling and a potentially insufficient amount of time given to stakeholders wishing to comprehensively examine the Bill and previous evidence or research on the issue from the Committee for the Office of the First and deputy First Minister.

3.2 The Committee for the Office of the First and deputy First Minister took around four years or so to produce this legislation; therefore, seems unreasonable that stakeholders only have the time period provided to deliver a submission for the Ad Hoc Committee. We would like to ask members of the Ad Hoc Committee whether this stage of the consultation process meets the high democracy, accountability and scrutiny standards that they believe in, because it does not meet NUS-USI's expectations of how a progressive and open democracy should operate. We do not however think that this is the Ad Hoc Committee's fault, because it was not them who took around four years to contemplate this Bill before passing it to the Ad Hoc Committee. If around four years or so was taken by the Committee for the Office of the First and deputy First Minister on this, then why does it feel that this stage has to be rushed. The Assembly needs to get this legislation right, and that may not be possible if stakeholders are not given adequate time and notice to respond in detail.

4 Complaints and appeals in further education

4.1 The OIA does not address FE student complaints, but we want the system in Northern Ireland to be independent and address both FE and HE student appeals and complaints. NUS's publication called [Unresolved](#), examined student complaints in further education in England and Wales. In the research carried out, 60.9% of respondents said that they were slightly aware of the complaints and appeals procedure at their college, 34.8% said that they were reasonably aware, and only 4.3% said that they were fully aware. 60.9% of respondents said that in some cases they considered their college

complaints procedure to be fair, transparent and just. 34.8% said they did in the majority of cases and only 4.3% said yes they considered their college complaints procedure to be fair, transparent and just.

4.2 The strength of feeling in favour of an independent complaints body for FE is clear, as 0% of respondents did not think students should be able to appeal against the college's decision to an independent body beyond the college. 71.4% of respondents thought that there should be, and 28.6% thought that there sometimes should be.

5 Possible amendments which NUS-USI would like made to the Bill

5.1 Here is a list of possible amendments that NUS-USI would like the Ad Hoc Committee to consider tabling:

5.2 Amend the title of clause 18 to make it "Matters which may be investigated: higher education and further education institutions"

5.3 Amend clause 18, section 1 to: (1) This section applies where the listed authority is—

- (a) The Queen's University of Belfast,
- (b) Ulster University,
- (c) Belfast Metropolitan College,
- (d) Northern Regional College,
- (e) North West Regional College,
- (f) South Eastern Regional College,
- (g) Southern Regional College,
- (h) South West College,
- (i) College of Agriculture, Food & Rural Enterprise,
- (j) St Mary's University College,
- (k) Stranmillis University College.

5.4 Remove clause 18, section 2, to try ensure that the ombudsperson can deal with far more than simply maladministration for students. The section that should be removed is: "(2) The Ombudsperson may investigate alleged maladministration through action taken by the university in respect of students."

5.5 Remove clause 18, section 4: "But the Ombudsperson has no jurisdiction to investigate a matter to the extent that it relates to a matter of academic judgement."

5.6 Add an amendment to ensure a wide variety of complaints can be addressed, rather than simply just maladministration. Here is an excerpt the Higher Education Act 2004, which might enable this to happen:

"Qualifying complaints

(1) In this Part "qualifying complaint" means, subject to subsection (2), a complaint about an act or omission of a qualifying institution which is made by a person—

(a) as a student or former student at that institution, or
(b) as a student or former student at another institution (whether or not a qualifying institution) undertaking a course of study, or programme of research, leading to the grant of one of the qualifying institution's awards.

(2) A complaint which falls within subsection (1) is not a qualifying complaint to the extent that it relates to matters of academic judgment."

5.7 Here is another idea for an amendment, which may need to be adapted itself. This text is from the Higher Education Act 2004:

"Duties of qualifying institutions

(1) The governing body of every qualifying institution in England and Wales must comply with any obligation imposed upon it by a scheme for the review of qualifying complaints that is provided by the designated operator.

(2) The duty imposed by subsection (1) applies from the effective date of the designation and ceases to apply only if the designation is terminated.

(3) The obligations referred to in subsection (1) include any obligation to pay fees to the designated operator."

5.8 Here is a further idea for an amendment, which might enable complainants to give evidence and discuss a complaint freely within the process, unfettered by the law of defamation. This section is also from the Higher Education Act 2004:

"Privilege in relation to law of defamation

(1) For the purposes of the law of defamation, any proceedings relating to the review under the scheme of a qualifying complaint are to be treated as if they were proceedings before a court.

(2) For those purposes, absolute privilege attaches to the publication of—

(a) any decision or recommendation made under the scheme by a person responsible for reviewing a qualifying complaint, and

(b) any report under paragraph 6 or 7 of Schedule 3.

(3) In this section "the scheme" means the scheme for the review of qualifying complaints provided by the designated operator."

5.9 Clause 23 of the Bill should be removed, to enable not only maladministration but other student complaints and appeals to be investigated. Here is the text of the clause that should be removed:

"Decisions taken without maladministration

23.—(1) Nothing in this Act authorises the Ombudsperson to question the merits of a decision taken without maladministration by a listed authority in the exercise of a discretion.

(2) But this is subject to—

(a) section 15(2)(b) and (c),

(b) section 16(2)(b), and

(c) section 17(2)(b) and (c)."

6 Conclusion

6.1 NUS-USI would ask the Ad Hoc Committee to create robust amendments for the Bill which would deliver powers of complaint and appeal similar to that which the OIA delivers, but we want both FE and HE students to be able to use the system.

6.2 We want the Bill amended to look at the broadest possible range of complaints and appeals from students, not simply maladministration.

6.3 Students have had to wait so long for legislation to be produced on this issue. It is important that the Assembly ensures that this legislation delivers as much as possible in terms of scope for appeal and complaints for students in both FE and HE.

6.4 NUS-USI would hope that the Ad Hoc Committee will look to the Higher Education Act 2004 legislation, to help them form amendments that will deliver an independent body which will enable FE and HE students in Northern Ireland to make appeals and complaints on a wide range of issues.

6.5 NUS-USI believes that politicians here should aspire to create the gold standard of complaints and appeals procedure for all students, as well as for all public services. This legislation has taken a very long time to create, and it is vitally important that this legislation creates the most comprehensive and ambitious level of protection for students and the wider public. There is little point in creating a complaints-lite style of organisation.

6.6 NUS-USI would encourage the Ad Hoc Committee to take pro-active and decisive action to amend this Bill to try make it as robust as possible on complaints and appeals for FE and HE students.

6.7 NUS-USI would be happy to speak with members of the Committee and appear at the committee, to discuss our concerns or further scope and plan any potential amendments that MLAs might wish to put forward to address the concerns outlined within this document. We would very much like to work together positively, pragmatically and constructively with MLAs to help make this legislation as robust, responsive and effective as it can be.