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Lord Morrow of Clogher Valley MLA  
Chairperson, Ad Hoc Committee on the Public Services Ombudsperson Bill  
Parliament Buildings  
Stormont  
BELFAST  
BT4 3XX

25 May 2015

Dear Lord Morrow,

### **The Northern Ireland Public Services Ombudsperson (NIPSO) Bill**

Ulster University welcomes the opportunity to comment on the Committee's consideration of Northern Ireland Public Services Ombudsperson (NIPSO) Bill.

In response to the original consultation on the proposal to bring forward legislation to reform the Office of the Northern Ireland Ombudsman, the then Vice-Chancellor, Professor Sir Richard Barnett, wrote to the Chair of the Committee for the Office of the First Minister and deputy First Minister (OFMDFM) on 12 January 2012. Professor Barnett clearly outlined the University's view that our system for student complaints and appeal is robust, fair, impartial and affordable and there is no case for reform. I enclose Sir Richard's correspondence of 12 January 2012 for your convenience (Appendix 1).

Ulster University strongly supports and defends the right of students to have recourse to an independent and impartial complaints system where they believe there has been malpractice or irregularities in the exercise of the University's policies, procedures or services. Current and former students are well served by the existing external, independent, transparent, effective and efficient Visitor process.

The University is generally in favour of the Bill but we do not agree that the Ombudsperson should have jurisdiction over the University to investigate student complaints. I have set out in detail below the University's concerns about particular clauses within the NIPSO Bill, making reference to the Bill and the Explanatory and Financial Memorandum. In summary, it is the University's position that the Bill (i) is unclear on the definition of maladministration; (ii) introduces confusion in relation to matters of jurisdiction and decision making; (iii) will not improve the complaints procedure for students as, for example, it removes the current right of students to make oral presentations and (iv) it has the potential of leading to delays in a student's case being dealt with.

I trust this response clarifies the position of the University and assists the Committee. We welcome the opportunity to speak with members of the Ad Hoc Committee on 28 May 2015 and look forward to providing further clarification, if required, at the Stakeholder Event.

Yours sincerely

A handwritten signature in black ink that reads 'Alastair'.

Professor Alastair Adair  
Acting Vice-Chancellor

# **The Northern Ireland Public Services Ombudsperson (NIPSO) Bill**

## **Written evidence from Ulster University**

**(p7) Part 2, Section 18.—(1) This section applies where the listed authority is—**

- (a) The Queen's University of Belfast,**
- (b) The University of Ulster.**

**(p7) Part 2, Section 18 (2) The Ombudsperson may investigate alleged maladministration through action taken by the university in respect of students.**

**The Explanatory and Financial Memorandum clarifies further;**

**42. ... the Committee [ ] agreed that complaints of maladministration from students or former students should be made to the NIPSO and that university visitors would continue to deal with other categories of complaint.**

1. Ulster University does not agree that the Ombudsperson should have jurisdiction to investigate student complaints. A robust, fair and impartial complaints system already exists for Ulster University students, as enshrined within the Charter, Statutes, Ordinances and Regulations of the University.
2. Ulster's internal student complaints procedure complies fully with the requirements of the Quality Assurance Agency for Higher Education (QAA). It defines a three stage process covering informal resolution, a formal investigation stage where informal resolution is unsuccessful, and a review stage. Many student complaints are resolved informally and speedily at the local level and this has proved to be very successful. The internal review stage provides an appeal mechanism to the student, or group of students, who consider that their complaint has not been adequately addressed in the previous stages.
3. Any student has the right to complain to the QAA in respect of the quality of academic provision.
4. Once a student has exhausted the internal complaints procedure, the student may appeal to the University Visitor. The Visitor is wholly independent of the University, and is appointed by Her Majesty the Queen, sitting in Council on the nomination of the presiding Lord Chief Justice in Northern Ireland. The current Visitor is the Honourable Mr Justice Horner. He does not receive payment from the University and gives his time pro bono as and when required.
5. The Visitor covers a wide range of complaints such as failure by the University to meet its obligations including those outlined in the Student Charter, misleading or incorrect information provided by the University, concerns about administration or services provided directly by the University.
6. The Bill states that 'the Ombudsperson may investigate alleged maladministration through action taken by the university in respect of students'. The term

'maladministration' is not clearly defined within the Bill or the Explanatory and Financial Memorandum. It is likely that the proposed extension of the jurisdiction of the Ombudsperson to include higher education will correspond directly with the scope and function of the current Visitor. If the Bill is passed in its current form, with the Ombudsperson dealing with alleged maladministration and the University Visitor dealing with other categories of complaint, a confusing parallel and multiple complaints handling systems for current and former students will exist. The variation in possible complaints 'pathways' will lead to inconsistencies of approach as it is not clear how the proposed NIPSO and existing student complaints procedure fits together. It will also create a potential imbalance between the experiences of complainants and increase the administrative and bureaucratic burden on the University.

7. It is not accepted that the Ombudsperson should have jurisdiction over the University, however, in the event that the Bill becomes legislation, we recommend that the term 'maladministration' is clearly defined to avoid confusion on which matters will be presented to the Visitor and which will be referred to the NIPSO. A signposting service, with a single point of contact, should be established to provide clarity on the complaints 'pathways' and general advice and guidance to students on complaining.

**(p7) Part 2, Section 18 (4) But the Ombudsperson has no jurisdiction to investigate a matter to the extent that it relates to a matter of academic judgement.**

8. The Bill makes explicit that the NIPSO has no jurisdiction to investigate a matter to the extent that it relates to a matter of academic judgement. It should be noted that the Visitor does not consider matters of academic judgement. Student complaints will not normally cover decisions made under other specific regulations such as Fitness to Practice; complaints regarding admissions decisions or allegations of bullying or harassment (these are dealt with under the Bullying and Harassment Policy).

**(p32) Schedule 3, Listed Authorities, the University of Ulster is listed under the heading Education and Training and that the footnote to the Schedule states the following;**

**(p35) References to a university include references to a constituent college, school or hall or other institution of a university.**

9. The University has two branch campuses outside of Northern Ireland, in Birmingham and London. Branch campus students are students of Ulster University. The Bill does not make it clear if the Ombudsperson would have jurisdiction over students at Ulster's London and Birmingham campuses. These students can make complaints to the University Visitor (as enshrined within the Charter, Statutes, Ordinances and Regulations of the University) and may also make complaints to the Office of the Independent Adjudicator. The University does not support different approaches to handling complaints from students in different jurisdictions.

#### **Other comments**

10. The current Visitor process provides an accessible, fair and straightforward system which enables students to raise concerns and which ensures an effective, timely and appropriate response. The Visitor makes recommendations to the University whether or not he finds in favour of a student and a detailed comprehensive report is produced

following an investigation. Complaints are monitored and reviewed annually and the lessons learned are applied widely to improve internal policies and procedures.

11. At Ulster where cases proceed to the Visitor there is an oral hearing where students are able to put their case in person supported by a representative (legal representation is not precluded). The Visitor has the authority to adjourn matters, seek further information from either party and to seek specialist advice. This is a much fairer system for students compared to the largely paper-based approach to assessing complaints proposed by the NIPSO.
12. The University has timescales for dealing with complaints to ensure that issues will be dealt with appropriately and as quickly as possible. Once a complaint has been made to the Visitor, the University response is completed within six weeks. The appellant is requested to reply to the University's response within one month. Following any resulting oral hearing the Visitor normally makes a decision within three months. On average the complaints process will take between six and twelve months, although there will still be some complaints that are so complex that they will require careful consideration over a longer period of time. Additionally, some complaints may need to be resolved quickly, for example, if they affect graduation, job offers or acceptance onto a postgraduate course.
13. The University has not been provided with any evidence to indicate that the Visitor is not independent, that the process is not operating effectively and efficiently, or that it is failing to deal with student complaints in an acceptable manner. Furthermore there is no evidence that students are dissatisfied with the Visitor process. This raises the question of why the Ombudsperson should have jurisdiction over the University and whether the Ombudsperson will be capable of providing the quality, standard or speed of response currently provided pro bono by the Visitor.
14. The vast majority of students have a highly satisfactory experience at Ulster University and a very small proportion of the overall number of students bring a complaint to the Visitor. Since September 2011, the Visitor has reviewed seven student complaints. Two of the complaints were found to be partly justified. Three cases were settled/ resolved / closed without a formal decision from the Visitor. The low volume of complaints progressing beyond the formal internal procedures would not justify an extension of the jurisdiction to higher education.
15. The proposal for the Ombudsperson to have jurisdiction over student complaints within higher education will involve significant costs, for example, through staff training, developing complaints processes, dealing with enquiries and complaints and preparing reports. In a time of economic difficulties and cuts in public expenditure the creation of an alternative type of complaints procedure for students is unjustifiable. Direct savings can be made with a continuation of the existing fit for purpose complaints procedure for students through the University Visitor. It is the University's view that a longer and more formal process will not improve the complaints procedure and will not make dealing with complaints simpler, quicker, or more easily accessed.

Mr Tom Elliot MLA  
Chairman, Committee for the OFMDFM  
Room 435  
Parliament Buildings  
Ballymiscaw  
Stormont  
Belfast  
BT4 3XX

12 January 2012

*Dear Tom,*

### **Proposals to legislate to reform the Office of the Northern Ireland Ombudsman**

Thank-you for the opportunity to comment on the Committee's consideration on whether the NI Ombudsman's jurisdiction might be extended to Higher Education institutions. For the avoidance of doubt it is assumed that the Committee's intention in this regard, should it proceed, would be to extend the jurisdiction of the Ombudsman's Office to consideration of student complaints in a manner similar to that exercised by the Office of the Independent Adjudicator (OIA) covering Higher Education Institutions (HEIs) in England and Wales, and the Scottish Public Services Ombudsman (SPSO) <sup>1</sup>.

In prefacing our response I would emphasise that the University of Ulster (Ulster) strongly supports and defends the right of students to have recourse to an independent and impartial complaints system where they believe there has been malpractice or irregularities in the exercise of the University's policies, procedures or services. In this context I would stress that such rights are already, and very effectively, in place in the Northern Ireland universities and I would strongly contend that there is no need or justification for changing the system at this time. In support of this opinion I would make the following points:

- 1 **Student Complaints Procedure:** Ulster has in place a robust, three stage student complaints procedure which complies fully with the requirements of the Quality Assurance Agency for Higher Education in the UK's *Code of Practice for Assurance of Quality and Standards in Higher Education*. This procedure seeks to provide an accessible, fair and straightforward system which enables students to raise concerns and which ensures an effective, timely and appropriate response and it is widely communicated and promoted to students. It comprises informal, formal and review/appeal mechanisms. It is the University's practice to try to have complaints resolved informally and speedily at the local level and this has proved to be

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<sup>1</sup> That is it would exclude matters relating to *inter alia*: student admission, academic judgement, personnel/employment related issues including equality and disability, quality of teaching and learning, qualification grades and awards and matters that are the subject of on-going court or tribunal proceedings.

very successful (figures for the numbers of complaints proceeding to stages 2 and 3 are set out below in paragraph 3). The final stage provides an appeal mechanism to the student, or group of students, who consider that their complaint has not been adequately addressed in the previous stages. It is conducted by means of an oral hearing by a panel where the student can present their case supported, if they wish, by a Students' Union representative or another member of the University. The panel comprises: a lay member of the University's governing body, the Council, who chairs the panel; a Dean or Associate Dean of a Faculty not implicated in the complaint; a Head of an Administrative Department not implicated in the complaint; and the Students' Union President. Thus, this appeal stage gives the student recourse to an impartial panel uninvolved in the original complaint or the previous complaints procedure stages. The University's Quality Management and Audit Unit is responsible for co-ordinating the handling of complaints and ensuring that recommendations for changes or procedural enhancements to improve the quality of the student experience as a result of complaints are implemented across the institution.

- 2 The University Visitor: A student who remains dissatisfied after exhausting all internal complaints procedures may appeal to the University Visitor whose role is enshrined in the University's Royal Charter. The Visitor is commonly a legally qualified person of high standing appointed, on behalf of Her Majesty the Queen, by the Privy Council upon representation from the University's Council. The Visitor, who is wholly independent of the University, has the right to inspect the University and to enquire into the academic and general affairs of the University, ensuring that the Statutes, Ordinances and Regulations of the University have been properly observed and implemented and that natural justice is observed within the institution. Our current Visitor, recommended to us by the Lord Chief Justice and appointed by the Privy Council in 2004 and reappointed in 2009, is the Honourable Sir Ronald Weatherup, a High Court Judge of high standing and a member of the NI Judicial Appointments Panel amongst other things. His independence and integrity are beyond question and he gives his time *pro bono* as and when required.
- 3 Volume of activity, expertise, cost and sustainability: At Ulster only a small number of student complaints proceed to the Stage 3 formal appeal. To illustrate this, the figures for each year from 2008/09 to 2010/11 were:

	2008/09	2009/10	2010/11
Complaints resolved at the formal Stage 2 level	9	11	7
Complaints considered at Stage 3 appeal	0	1	1

Only one student complaint was considered by the Visitor over these three years. Colleagues at Queen's Belfast and in the University Colleges will be able to provide comparable figures. For comparative purposes, the OIA covers over 140 HEIs in England and Wales, and the SPSO in Scotland 16. It is likely that the volume of activity in these other regions enables the respective offices and officers to develop the specialist knowledge needed and is adequate to justify the provision of sufficient resources to deliver the quality and standard of judgements in timely manner and in an affordable way. For example, the OIA's Annual Report for 2010 records that the Office, with a turnover of some £2 million per annum and over 40 staff funded by subscriptions from the universities, received over 2,000 enquiries and 1,341 complaints (including 56 from Welsh HEIs) which, they add '*is still a very small proportion of the number of enrolled students at English and Welsh universities*'. Nonetheless, the average time taken by the OIA to conclude the cases was over 6 months which is not a particularly speedy response

time and has led to complaints. In 2010/11, the SPSO handled 7 enquiries and 115 complaints relating to HEIs there. It is contended that the small number of HEIs in Northern Ireland (two universities and two university colleges) together with the low volume of complaints progressing beyond the formal internal procedures could not justify the creation or the cost of a separate, specialist branch within the Ombudsman's Office capable of providing the quality, standard or speed of response currently provided *pro bono* by the Visitor. In a time of economic difficulties and cuts in public expenditure the creation of an alternative type of review is, in my opinion, unjustifiable, unaffordable and unsustainable.

- 4 Process: A final, but important consideration relates to the respective processes adopted in the two systems. The OIA and SPSO both adopt a largely paper-based approach to assessing complaints. At Ulster where cases proceed to the Visitor there is invariably a formal oral hearing where students are able to put their case in person before a High Court judge supported by a representative including a legal representative. This is, I would suggest, a fairer system in terms of natural justice.

In conclusion, while I welcome the OFMDFM's review of the current arrangements for handling student complaints in the NI HEIs, we, at Ulster, are strongly of the view that the current system is robust, fair, impartial and affordable and there is no case for reform at this time. I would, of course, be happy to meet in person to elaborate on any of the points set out above. Might I also suggest that you approach our Visitor directly to obtain his independent view of the current arrangements? Should you wish to do so my Office would be available to assist with the arrangements.

Yours sincerely

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Richard Barnett