



**Northern Ireland  
Assembly**

**Committee for Employment and Learning  
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**To: Paul Gill, Clerk to the Ad Hoc Committee for the Northern Ireland Public Service Ombudsperson Bill**

**From: Cathie White, Clerk to the Committee for Employment and Learning**

**Date: 20 May 2015**

**Subject: Northern Ireland Public Service Ombudsperson Bill**

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Paul,

At its meeting today the Committee for Employment and Learning considered responses from Colleges NI, The Open University, Queen's University Belfast and Queen's University Belfast Students' Union regarding the Northern Ireland Public Service Ombudsperson Bill and agreed to forward them to you for your information.

I should be grateful if you would bring this correspondence to the attention of your Committee.

Regards,

**Committee Clerk**

**Enc.**



**Colleges Northern Ireland**  
Hawthorn Office Park  
First Floor, 39 Stockmans Way  
Belfast, BT9 7ET

Mr Robin Swann MLA  
Chairperson of the Employment and Learning Committee  
Parliament Buildings  
Ballymiscaw, Stormont  
Belfast BT4 3XX

18<sup>th</sup> May 2015

**Re: Public Services Ombudsman Bill**

Dear Mr Swann

Thank you for your letter requesting views from the Further Education (FE) sector on the individual clauses in the NI Public Services Ombudsman Bill.

We have consulted briefly with representatives across the six regional FE Colleges and have received some comments.

Given the quick turnaround required for our response, I have attached the lists of clauses and comments from the sector in the attached Appendix. I hope this is helpful.

If you need any further information please do not hesitate to contact me.

Yours sincerely,

Gerard Campbell  
**CEO, Colleges Northern Ireland**



OMBUDSMAN BILL

COMMENTS FROM FE SECTOR

SECTION of BILL	Comment
<p><b>Criteria for own initiative investigations</b>  <b>9.</b>—(1) The Ombudsperson must establish (and may from time to time amend) criteria to be used in determining whether to commence an investigation under section 8.            (2) The Ombudsperson must publish these criteria.</p>	<p>Should the Ombudsman be required to consult on the criteria prior to publishing?</p>
<p><b>Matters which may be investigated: general</b>  <b>14.</b>—(1) The Ombudsperson may investigate alleged maladministration through action taken by a listed authority.            (2) This section does not apply to—            (a) health and social care bodies,            (b) general health care providers,            (c) independent providers,            (d) the universities referred to in section 18.</p> <p><b>Matters which may be investigated: universities</b>  <b>18.</b>—(1) This section applies where the listed authority is—            (a) The Queen’s University of Belfast,            (b) the University of Ulster.            (2) <b>The Ombudsperson may investigate alleged maladministration through action taken by the university in respect of students.</b>            (3) <b>Where the investigation is under section 5 or 6, the complaint must have been made by a student, or a person who has been a student.</b>            (4) <b>But the Ombudsperson has no jurisdiction to investigate a matter to the extent that it relates to a matter of academic judgement.</b>            (5) If the Ombudsperson has jurisdiction in respect of a complaint, the visitor of a university has no jurisdiction in respect of that complaint.            (6) Where, before this section has come into operation, a complaint has been made to the visitor but has not been resolved by the visitor, the visitor has jurisdiction to deal with that complaint as if the other provisions of this section had not come into operation</p>	<p>Role of FE Colleges in respect of Clause 18?</p>

SECTION of BILL	Comment
<p><b>Exclusion: public sector employment</b>  <b>20.</b> The Ombudsperson must not investigate action taken in respect of appointments or removals, pay, discipline, superannuation <b>or other personnel matters</b> in relation to—</p> <p>(a) service in any office or employment under a listed authority,  (b) service in any office or employment under the Crown,  (c) service—</p> <p>(i) in any office or employment; or  (ii) under any contract for services,  in respect of which power to take action, or to determine or approve the action to be taken, in such matters is vested in a listed authority.<b>Exclusion: other</b></p>	<p>Welcome this exclusion but would it be useful to add “grievances arising from their employment rather than just other personnel matters or alternatively define “personnel matters”</p>
<p><b>Exclusion: other remedies available</b>  <b>21.—</b>(1) The Ombudsperson must not investigate—</p> <p>(a) any action in respect of which the person aggrieved has or had a right of appeal, complaint, reference or review to or before a tribunal constituted under any statutory provision or by virtue of Her Majesty’s prerogative,  (b) any action in respect of which the person aggrieved has or had a remedy by way of proceedings in a court of law.</p> <p>(2) But this is subject to—</p> <p>(a) section 78 of the Northern Ireland Act 1998 (investigations involving discrimination or making oaths or declarations), and  (b) subsection (3).</p> <p>(3) The Ombudsperson may investigate—</p> <p>(a) <b>notwithstanding that the person aggrieved has or had such a right or remedy as is mentioned in subsection (1), if the Ombudsperson is satisfied that in the particular circumstances it is not reasonable to expect the person aggrieved to resort to or have resorted to it, or</b>  (b) notwithstanding that the person aggrieved had exercised such a right as is mentioned in subsection (1)(a), if the person aggrieved complains that the injustice sustained remains unremedied thereby and the Ombudsperson is satisfied that there are reasonable grounds for that complaint.</p>	<p>This appears to be a very wide discretion with no real boundaries. Surely any decision to investigate where there is an option to appeal to a tribunal or court of law, should only be in very exceptional and clearly defined circumstances.</p>
<p><b>Complaint procedure to be invoked and exhausted</b>  <b>24.—</b>(1) The Ombudsperson may investigate a complaint under section 5 only if satisfied that the person aggrieved has invoked and exhausted the listed authority’s complaints procedure.</p> <p><b>(2) But the Ombudsperson may investigate a complaint despite the requirements of this section not being met, if it is reasonable to do so in the circumstances.</b></p>	<p>This appears to be a very wide discretion with no real boundaries. Surely any decision to investigate where the internal procedure has not been exhausted should only be in very exceptional and clearly defined circumstances.</p>

SECTION of BILL	Comment
<p><b>Duty to inform person aggrieved about the Ombudsperson</b>  <b>25.—</b>(1) This section applies where a listed authority’s complaints procedure is exhausted.  (2) The authority must, within 2 weeks of the day on which the complaints procedure is exhausted give the person aggrieved a written notice stating—  (a) that the complaints procedure is exhausted, and  <b>(b) that the person aggrieved may, if dissatisfied, refer the complaint to the Ombudsperson.</b>  (3) A notice under subsection (2) must—  (a) inform the person aggrieved of the time limit for referring the complaint to the Ombudsperson, and  (b) provide details of how to contact the Ombudsperson.</p>	<p>Does this place the authority in the position of determining if the complaint falls within the jurisdiction of the Ombudsman?</p>
<p><b>Form and time limit for making complaint</b>  <b>26.—</b>(1) The Ombudsperson may specify—  (a) the form in which complaints must be made, and  (b) any particulars which complaints must contain.  <b>(2) Where the complaints procedure has been exhausted, the complaint must be made to the Ombudsperson within 6 months of the day that the notice under section 25 is sent.</b>  (3) Where the complaints procedure has not been exhausted but section 24(2) applies, the complaint must be made to the Ombudsperson within 12 months of the day on which the person aggrieved first has notice of the matters alleged in the complaint.  <b>(4) But the Ombudsperson may investigate a complaint, despite the requirements of subsections (1) to (3) not being met, if there are special circumstances which make it proper to do so.</b></p>	<p>6 months is a significant period of time – suggest this should be aligned with industrial tribunal timeframes of 3 months.</p> <p>This appears to be a very wide discretion with no real boundaries. Surely any decision to investigate outside the stipulated timeframe should only be in very exceptional and clearly defined circumstances.</p>
<p><b>Procedure for own initiative investigations</b>  <b>29.—</b>(1) Before commencing an investigation under section 8, the Ombudsperson must—  (a) prepare an investigation proposal, and  (b) submit that proposal to any listed authority which it is proposed be investigated.  (2) The investigation proposal must set out—  <b>(a) the reasons for the proposed investigation, and</b>  <b>(b) how the criteria referred to in section 9 have been met.</b></p>	<p>Would it be useful for the authority to be given an opportunity to comment on 2a and b before the investigation commences.</p>

SECTION of BILL	Comment
<p><b>Investigation procedure</b>  <b>30.—</b>(1) It is for the Ombudsperson—  (a) to decide whether to begin, continue or discontinue an investigation,  (b) to determine if the requirements of sections 5, 6 or 8 have been met.  <b>(2) The Ombudsperson may begin or continue an investigation into a complaint even if the complaint has been withdrawn.</b></p>	<p>Surely if a complaint is withdrawn that should end the investigation process?</p>
<p><b>Investigation procedure</b>  <b>30.—</b>(1) It is for the Ombudsperson—    7b) determine whether any person may be represented in the investigation by counsel, solicitor or otherwise.</p>	<p>Suggest there should be a consistent approach to the issue of representation in the investigation for all parties.</p>

## **The Open University response to the Public Services Ombudsperson Bill**

1. The Open University welcomes the opportunity to respond to the Committee for Employment and Learning regarding our views on the Public Services Ombudsperson Bill.
2. The Open University particularly welcomes the Committee for the Office of First Minister and deputy First Minister's decision not to include The Open University within the remit of the Northern Ireland Public Services Ombudsperson (NIPSO) in the Bill.
3. As noted by the Committee within the Bill's Explanatory and Financial Memorandum, Open University students in Northern Ireland currently have access to the Office for the Independent Adjudicator for Higher Education (OIA). The Committee acknowledged that, "different approaches to complaints handling for OU students in different jurisdictions was undesirable" (para. 43).
4. The Open University operates within all four nations of the United Kingdom (UK). Each nation's administration takes a different approach to handling complaints of maladministration within higher education. If different approaches to handling maladministration complaints about The Open University were taken across Northern Ireland, England, Scotland and Wales, it would lead to an uncertain situation for students in terms of responsibility for addressing a complaint. It could also conceivably lead to a situation where there were differences in the type of complaints that could be taken to independent adjudication, depending on where the OU student lived.
5. The cross-jurisdictional nature of The Open University can also make it difficult to ascertain where responsibility for a complaint should lie; a student can have aspects of their teaching and support provided by Open University staff based in a number of different locations across the UK.
6. The most effective way to resolve the issues outlined above has been to allow all Open University students across Northern Ireland, England, Scotland and Wales to have access to the OIA.
7. The OIA has jurisdiction over all types of complaints that the Bill proposes students of Queen's University Belfast (QUB) and Ulster University (UU) should be able to bring to the NIPSO. As is proposed in clause 18 (4) of the Bill, the OIA has no jurisdiction to investigate a complaint that is deemed to be a matter of academic judgement.
8. Open University students arguably have access to much greater range of issues that they can take to the OIA than those that students of QUB and UU would be able to take to the NIPSO, presuming the Bill becomes law in its current state. Bringing The Open University under the remit of the NIPSO could lead to a reduction of the number of issues that students are currently able to bring to independent adjudication through the OIA. The remit of the OIA includes:

- 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; and
  - Fitness to practise issues.
9. The Open University is therefore satisfied that our students within Northern Ireland currently have access to a sufficiently rigorous and independent adjudication process, in the rare event that it is required. We believe that the status quo leads to a more coherent and holistic complaints procedure for our students in Northern Ireland and across the UK.
10. The Open University is happy to provide a further briefing to the Committee for Employment and Learning and/or the Ad Hoc Committee on the Public Services Ombudsperson Bill about the OIA complaints procedure if either committee feels it would be of benefit.

**For more information, please contact:**

Michael Bower, Policy and Public Affairs Manager

The Open University

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13 January 2012

Mr T Elliott MLA  
Chairman  
Committee for the Office of the First Minister and deputy First Minister  
Room 435  
Parliament Buildings  
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Stormont  
Belfast  
BT4 3XX

Dear Mr Elliott

**Proposals to Legislate to Reform the Office of the Northern Ireland Ombudsman**

Thank you for your letter, dated 12 December 2011, in relation to the above.

The University is aware that the Committee for the Office of the First Minister and deputy First Minister is considering options to bring forward legislation to reform the Office of the Northern Ireland Ombudsman. The University notes that, as part of this review, the Committee is considering bringing both further education and higher education within the Ombudsman's jurisdiction and welcomes the opportunity to comment on this proposal.

Having consulted with relevant colleagues, I can confirm that the University would be extremely concerned at any proposal to replace its existing Board of Visitors. In its response to the 2003 White Paper on the Future of Higher Education, the University confirmed that, in its Board of Visitors, it had in place a unique and effective independent mechanism for dealing with student complaints. This position remains unchanged.

Where there is clear evidence that a given process or service is not operating effectively, the University is more than willing to review existing provision to ensure our students continue to enjoy an outstanding student experience. We have not been provided with any evidence to indicate that the Board of Visitors is not independent, is not operating effectively and efficiently, or that it is failing to deal with student complaints in an acceptable manner.

For the Committee's benefit, I have detailed below some of the key features of the Board of Visitors:

1. **Ordinance**

Queen's University Belfast was founded by Royal Charter in pursuance of the Irish Universities Act 1908. Provision for the Board of Visitors is detailed within Paragraph 3 of this Royal Charter, which states:

"We, Our Heirs and Successors shall be and remain the Visitor and Visitors of the University acting through such Board of Visitors as We or They may from time to time on the representation of the University by order in Council appoint for such period as We or They shall think fit."

2. **Independence**

The Board of Visitors is independent of the University. The present Board was appointed by Her Majesty, on the advice of her Privy Council, on 9 July 2008, to serve for a period of five years. The Board is chaired by The Honorary Mr Justice Higgins (Northern Ireland Lord

Elliott T/MS

Justice of Appeal) and comprises Judge Gemma Loughran, Mrs Ann Shaw and Mr Denis Wilson (Convenor).

Each member is held within the highest esteem, both within their own profession, and more widely across Northern Ireland society.

The Committee may wish to seek evidence directly from the Board in respect of its independence from the University and, in so doing, you should contact Mr Denis Wilson – his contact details are set out below:

Mr. D. Wilson,  
Convenor,  
Board of Visitors,  
c/o Mrs. P. McKnight,  
Doorway Q,  
Lanyon South,  
Queen's University Belfast

Tel: 028 9097 3090  
Email: deniswilson425@btinternet.com

### 3. Costs

The Board of Visitors represents excellent value for money to the University. Members of the Board are not remunerated. They are entitled to claim expenses for any expenditure properly incurred in carrying out their responsibilities - a breakdown of the total expenses claimed for the period 2008-11 is provided below:

Board of Visitors: Expenses Claimed		
2008-09	2009-10	2010-11
£212.72	£74.80	£0

The University also meets the costs of any Board of Visitors' meetings/hearings held on University premises, including refreshments.

These costs are substantially less than the subscriptions payable under other independent appeals bodies – for example, a subscription to the Office of the Independent Adjudicator (OIA) for Higher Education in England and Wales, would cost the University some £17,750 per annum.

### 4. Transparency

The Board of Visitors is effectively promoted to all new and returning students in a dedicated section "Information for Intending Appellants" within the University Calendar. The Calendar provides comprehensive detail on all Regulations, processes and procedures aimed at supporting and enhancing the student experience.

The Information for Intending Appellants clearly details how those wishing to raise a complaint may petition the Board and provides clarification on the procedures through which any appeal lodged with the Convenor of the Board will be heard. Each stage of the procedure is time bound to ensure that all complaints received by the Board are resolved in a timely and effective manner.

### 5. Student Access to Formal Hearing

Any student lodging an appeal to the Board of Visitors is entitled to have his/her case heard by the Board at an oral hearing – the purpose of this informal hearing is to enable the student and/or the representative(s) of the University, to explain any points which may require explanation, and to assist the Board's understanding of the student's grievance and the University's position on the matters being considered.

A student may be accompanied at this hearing by a friend, representative, or legal representative.

The opportunity for students to meet directly with, and to have their case heard in person by, the Board of Visitors is critical. The consideration of a student complaint, by the Ombudsman, would be paper-based which is the model operated by the OIA and the Scottish Public Services Ombudsman (SPSO) – it is our view that this would be entirely detrimental to the transparency and effectiveness of this complaints process.

#### 6. Supporting Processes

A student is entitled to lodge an appeal with the Board of Visitors when all internal complaints procedures have been exhausted.

The University has, in place, a comprehensive suite of quality assurance mechanisms, to ensure that it achieves and maintains the highest possible standards in dealing with its student body. These are detailed in the University Calendar and comply 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".

Under the main Student Complaints Procedure, complaints are investigated under three specific stages, as set out below:

- (i) An informal stage – this allows complaints to be quickly and satisfactorily resolved, at a local level, using informal means.
- (ii) A first stage complaint – this applies where a student is dissatisfied with the outcome of the informal process, or has substantive reasons for not wishing a complaint to be handled at a local level.
- (iii) Appeal Stage – this enables a student to appeal the outcome of the first stage investigation to a panel comprising senior staff and student representatives.

All complaints are monitored centrally and, where substantiated, are used by the University as an opportunity to not only address the complainants' concerns but to apply lessons learned more widely to further improve the quality of the internal processes. In this context, the nature and outcome of all student complaints received is reported to the appropriate Head of School, Dean or Academic Support Director and to the Academic Affairs Directorate.

The Academic Affairs Directorate prepares a summary report of all student complaints and appeals, preserving anonymity, and this is presented to Academic Council on an annual basis.

The number of complaints, received by the University, over the past three years, is detailed below:

Student Complaints					
2008-09		2009-10		2010-11	
Heard	Upheld	Heard	Upheld	Heard	Upheld
3	1	7	1	10	3

In addition, there are other internal processes dealing with Student Appeals and Student Discipline – at the end of these processes, students also have the right of recourse to the Board of Visitors.

As detailed above, the Board of Visitors system provides students with the opportunity to present their cases to an independent body, both in writing and in person, and to receive timely and comprehensive responses. The University maintains its position that it has in place, in its Board of Visitors, a unique and effective mechanism for dealing with student complaints which is both independent and efficient.

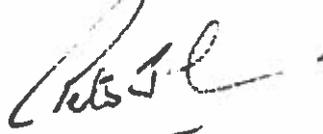
Mr T Elliott MLA

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12 January 2012

I trust this response is helpful and I am happy to clarify, or discuss further, any issues relating to the above.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Peter Gregson', written in a cursive style.

Professor Sir Peter Gregson  
President and Vice-Chancellor



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20 May 2015

Mr Robin Swann MLA  
Chairman  
Committee for Employment and Learning  
Room 375  
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Stormont  
Belfast  
BT4 3XX

Dear Mr Swann

**Public Services Ombudsperson Bill**

Thank you for your letter, dated 13 May 2015, in relation to the 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 Peter Gregson, wrote to the Chair of the Committee for the Office of the First Minister and deputy First Minister (OFMDFM) on 12 January 2012. Sir Peter outlined Queen's University's concerns about the extension of the role of the Ombudsman to include Higher Education, thereby replacing the existing independent, effective and efficient Board of Visitors process as the mechanism for complaints from members of the University. I enclose Sir Peter's correspondence of 12 January 2012 for your convenience.

Having considered the Bill, the accompanying Explanatory and Financial Memorandum and official report of the second stage reading of the Bill, the University remains extremely concerned.

The University understands the importance of the accountability within sectors which receive public funding. Queen's also understands the need to ensure that all members of the University, which includes staff, students and graduates, have robust and effective mechanisms to raise concerns and have these addressed in an efficient and effective manner. It is the position of the University that;

- I. The Bill introduces a number of complexities and potential confusion in relation to matters of jurisdiction and decision making
- II. The Bill is unclear on the definition of maladministration and what this means in the context of the seven internal student appeal or complaint procedures which come under the remit of the Board of Visitors
- III. The Bill removes the current right of students to make oral presentations to the Board of Visitors
- IV. The Bill does not cover all students in Higher Education in Northern Ireland

I have set out below in some detail the University's concerns about the NIPSO Bill, referring to the relevant clause and / or section of the Explanatory and Financial Memorandum.

**(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.**

The University notes that Section 18 "universities" only refers to students of The Queen's University Belfast and the University of Ulster.

Although independent, St Mary's University College and Stranmillis University College are constituent Colleges of Queen's University and their students are academically integrated. This means that students of these two colleges can use, or be referred to, Queen's University's Central Student Appeals, Academic Offences and Fitness to Practise procedures and are notified of their right to Petition the Board of Visitors following completion of internal procedures. Clarification is required about whether the extension of the role of the Ombudsperson is intended to cover University College students, on completion of internal procedures, or are they to be referred to the Board of Visitors, as they are not listed in Section 18 of the Bill?

**(p32) Schedule 3, Listed Authorities, Queen's University Belfast 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.**

As previously stated, St Mary's University College and Stranmillis University College are independent of the University both by Statute, governance and funding arrangements and do not fall within the definition of the Bill. This is also true of other Colleges for which Queen's validates some but not all of their teaching provision, including the four theological colleges in Northern Ireland.

It is not accepted that the Ombudsperson should have jurisdiction over the University. In the event, however, that the Bill becomes legislation, the wording should reflect that it covers all Further and Higher Education provision in Northern Ireland with the exception of the Open University. By extension, this should include other Higher Education courses taught in Northern Ireland but validated by institutions based in other devolved administrations and subject to the Office of the Independent Adjudicator or the Scottish Ombudsman.

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

**And**

**(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.**

The Bill states that the Ombudsperson will consider complaints of maladministration. 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. The Bill also makes explicit that the NIPSO has no jurisdiction to investigate a matter to the extent that it relates to a matter of academic judgement.

In relation to the definition of maladministration, the Memorandum goes on to say;

126. This clause reiterates that the prime function of the NIPSO is to investigate maladministration, save in the cases where the investigation concerns clinical or professional judgement. There is no definition of maladministration in the Bill. There was no definition in previous legislation in Northern Ireland, England, Scotland or Wales on the meaning of maladministration. When the Parliamentary Commissioner Act 1967 was being debated in Westminster Richard Crossman MP made this statement "A positive definition of maladministration is far more difficult to achieve. We might have made an attempt in this Clause to define, by catalogue, all of the qualities which make up maladministration, which might count for maladministration by a civil servant. It would be a wonderful exercise—bias, neglect, inattention, delay, incompetence, inaptitude, perversity, turpitude, arbitrariness and so on. It would be a long and interesting list." (HC Deb 18 October 1966 vol 734 cc42 – 172)

What has become known as the Crossman catalogue is normally taken to be a fair summary of what comprises maladministration.

On the issue of academic judgement, it should be noted that the Board of Visitors does not consider matters of academic judgement. The role of the Board of Visitors is set out in the University Regulations and is repeated below for reference;

'In dealing with appeals made to it by any member of the University, the function of the Board of Visitors is to see that the Statutes and Regulations of the University are in themselves fair, have been properly observed and carried out and that natural justice is observed wherever it may apply between the appellant and the University. As has been said by a former Chairman of the Board, Lord Scarman, in his ruling on a previous appeal to it: "Questions of fact, especially those involving the exercise of specialised judgements in the life and work of the University are primarily for the University and not, save in exceptional circumstances, for the Visitor or a court to decide." Appellants should be aware that, although the Board may enquire into the conduct of examinations, it does not have the power to re-mark papers or to re-classify degrees; academic judgements are the sole preserve of the University.'

It is clear, therefore, that the proposed extension of the jurisdiction of the Ombudsperson, to include Higher Education, will correspond directly with the function already adequately undertaken by the Board of Visitors. This presents confusion on how to differentiate matters which should be referred to the Board of Visitors and those which, should the legislation be implemented, be referred to the NIPSO. The Bill also opens the way for parallel, sequential and multiple applications for consideration of a case.

**Part 2, Section 18 (3) Where the investigation is under section 5 or 6, the complaint must have been made by a student, or a person who has been a student**

Section 18 of the Bill covers students or a person who has been a student. The University's various appeals and complaints procedures already permit individuals who have completed their studies to submit a complaint or appeal within certain time frames.

**(p7) Part 2, Section 18 (5) If the Ombudsperson has jurisdiction in respect of a complaint, the visitor of a university has no jurisdiction in respect of that complaint**

The Board of Visitors is a matter of Common Law which has existed for over 300 years. The Visitorial process for Queen's University Belfast is derived directly from the Charter granted by Her Majesty, Queen Elizabeth II, which states:

We, Our Heirs and Successors shall be and remain the Visitor and Visitors of the University acting through such Board of Visitors as We or They may from time to time on the representation of the University by order in Council appoint for such period as We or They shall think fit. In the exercise of the Visitorial Authority We, Our Heirs and Successors for the time being shall think fit, to direct an inspection of the University, its buildings, laboratories and general equipment, and also of the examinations, teaching and other work done by the University.

Recently, in an application for leave for a judicial review of a decision by Queen's University and which the appellant had declined to take to the Board of Visitors, Mr Justice Horner ruled that the Board of Visitors had exclusive jurisdiction to hear an appeal from a student. In his summation, Mr Justice Horner noted that the Board of Visitors was a flexible procedure where matters could be expedited to meet the timescales of an academic year, where hearings can be in person at the request of the student and can be heard in public mitigating any fears of impartiality<sup>1</sup>.

The University believes the Board of Visitors offers a more flexible alternative remedy for students. Students can Petition the Board up to six months after completion of the internal proceedings. Students submit their Petition with evidence and, on receipt of the University's response, are permitted to submit a rebuttal. Unlike the Ombudsperson, students can request an oral hearing. Hearings are inquisitorial rather than adversarial, and give the opportunity for the student and the University to clarify issues before a finding is made. Students can be accompanied at the Board and legal representation is not precluded. Where a finding is in favour of the University, the Board can still make recommendations to the University on process and procedure. Whether or not the finding is in favour of the student, in part or whole, the

<sup>1</sup> Comments have been made about the independence of the Board of Visitors. It is a statement of fact that the Board of Visitors is independent of the University. Members of the Board of Visitors of Queen's University Belfast are not appointed by the University but are appointed by Her Majesty the Queen, on the advice of the Privy Council, who seek the views of the Department for Employment and Learning (DEL). Members are not paid, though can receive expenses. The Convenor also receives some secretarial support from the University.

Board can make recommendations to compensate for any procedural failings of the University. The University respects the findings of the Board.

**(p7) Part 2, Section 18 (6) Where, before this section has come into operation, a complaint has been made to the visitor but has not been resolved by the visitor, the visitor has jurisdiction to deal with that complaint as if the other provisions of this section had not come into operation.**

Notwithstanding the fact that the University does not support the extension of the jurisdiction of the Ombudsperson to include Higher Education, the University has no objections to this point. The University notes that the Bill states that Higher Education will come under the jurisdiction of the Ombudsperson on 1 October 2016.

In summary, the University does not believe that the replacement of a validated, effective, efficient and impartial alternative remedy for members of the University by a lesser alternative is warranted. It is the position of the University that, where a Board of Visitors exists and is proven to be working, it should remain in place and the University should be excluded from this Bill.

I trust that this response clarifies the position of the University. I am happy to provide further information to the Committee, if required, as part of their deliberations.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Patrick Johnston', written in a cursive style.

Professor Patrick G Johnston  
President and Vice-Chancellor

Enc

Copied to Dr Stephen Farry, Minister for Employment and Learning



Queen's University  
Belfast

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13 January 2012

Mr T Elliott MLA  
Chairman  
Committee for the Office of the First Minister and deputy First Minister  
Room 435  
Parliament Buildings  
Ballymiscaw  
Stormont  
Belfast  
BT4 3XX

Dear Mr Elliott

**Proposals to Legislate to Reform the Office of the Northern Ireland Ombudsman**

Thank you for your letter, dated 12 December 2011, in relation to the above.

The University is aware that the Committee for the Office of the First Minister and deputy First Minister is considering options to bring forward legislation to reform the Office of the Northern Ireland Ombudsman. The University notes that, as part of this review, the Committee is considering bringing both further education and higher education within the Ombudsman's jurisdiction and welcomes the opportunity to comment on this proposal.

Having consulted with relevant colleagues, I can confirm that the University would be extremely concerned at any proposal to replace its existing Board of Visitors. In its response to the 2003 White Paper on the Future of Higher Education, the University confirmed that, in its Board of Visitors, it had in place a unique and effective independent mechanism for dealing with student complaints. This position remains unchanged.

Where there is clear evidence that a given process or service is not operating effectively, the University is more than willing to review existing provision to ensure our students continue to enjoy an outstanding student experience. We have not been provided with any evidence to indicate that the Board of Visitors is not independent, is not operating effectively and efficiently, or that it is failing to deal with student complaints in an acceptable manner.

For the Committee's benefit, I have detailed below some of the key features of the Board of Visitors:

1. **Ordinance**

Queen's University Belfast was founded by Royal Charter in pursuance of the Irish Universities Act 1908. Provision for the Board of Visitors is detailed within Paragraph 3 of this Royal Charter, which states:

"We, Our Heirs and Successors shall be and remain the Visitor and Visitors of the University acting through such Board of Visitors as We or They may from time to time on the representation of the University by order in Council appoint for such period as We or They shall think fit."

2. **Independence**

The Board of Visitors is independent of the University. The present Board was appointed by Her Majesty, on the advice of her Privy Council, on 9 July 2008, to serve for a period of five years. The Board is chaired by The Honorary Mr Justice Higgins (Northern Ireland Lord

Elliott T/MS

Justice of Appeal) and comprises Judge Gemma Loughran, Mrs Ann Shaw and Mr Denis Wilson (Convenor).

Each member is held within the highest esteem, both within their own profession, and more widely across Northern Ireland society.

The Committee may wish to seek evidence directly from the Board in respect of its independence from the University and, in so doing, you should contact Mr Denis Wilson – his contact details are set out below:

Mr. D. Wilson,  
Convenor,  
Board of Visitors,  
c/o Mrs. P. McKnight,  
Doorway Q,  
Lanyon South,  
Queen's University Belfast

Tel: 028 9097 3090  
Email: deniswilson425@btinternet.com

### 3. Costs

The Board of Visitors represents excellent value for money to the University. Members of the Board are not remunerated. They are entitled to claim expenses for any expenditure properly incurred in carrying out their responsibilities - a breakdown of the total expenses claimed for the period 2008-11 is provided below:

Board of Visitors: Expenses Claimed		
2008-09	2009-10	2010-11
£212.72	£74.80	£0

The University also meets the costs of any Board of Visitors' meetings/hearings held on University premises, including refreshments.

These costs are substantially less than the subscriptions payable under other independent appeals bodies – for example, a subscription to the Office of the Independent Adjudicator (OIA) for Higher Education in England and Wales, would cost the University some £17,750 per annum.

### 4. Transparency

The Board of Visitors is effectively promoted to all new and returning students in a dedicated section "Information for Intending Appellants" within the University Calendar. The Calendar provides comprehensive detail on all Regulations, processes and procedures aimed at supporting and enhancing the student experience.

The Information for Intending Appellants clearly details how those wishing to raise a complaint may petition the Board and provides clarification on the procedures through which any appeal lodged with the Convenor of the Board will be heard. Each stage of the procedure is time bound to ensure that all complaints received by the Board are resolved in a timely and effective manner.

### 5. Student Access to Formal Hearing

Any student lodging an appeal to the Board of Visitors is entitled to have his/her case heard by the Board at an oral hearing – the purpose of this informal hearing is to enable the student and/or the representative(s) of the University, to explain any points which may require explanation, and to assist the Board's understanding of the student's grievance and the University's position on the matters being considered.

A student may be accompanied at this hearing by a friend, representative, or legal representative.

The opportunity for students to meet directly with, and to have their case heard in person by, the Board of Visitors is critical. The consideration of a student complaint, by the Ombudsman, would be paper-based which is the model operated by the OIA and the Scottish Public Services Ombudsman (SPSO) – it is our view that this would be entirely detrimental to the transparency and effectiveness of this complaints process.

#### 6. Supporting Processes

A student is entitled to lodge an appeal with the Board of Visitors when all internal complaints procedures have been exhausted.

The University has, in place, a comprehensive suite of quality assurance mechanisms, to ensure that it achieves and maintains the highest possible standards in dealing with its student body. These are detailed in the University Calendar and comply 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".

Under the main Student Complaints Procedure, complaints are investigated under three specific stages, as set out below:

- (i) An informal stage – this allows complaints to be quickly and satisfactorily resolved, at a local level, using informal means.
- (ii) A first stage complaint – this applies where a student is dissatisfied with the outcome of the informal process, or has substantive reasons for not wishing a complaint to be handled at a local level.
- (iii) Appeal Stage – this enables a student to appeal the outcome of the first stage investigation to a panel comprising senior staff and student representatives.

All complaints are monitored centrally and, where substantiated, are used by the University as an opportunity to not only address the complainants' concerns but to apply lessons learned more widely to further improve the quality of the internal processes. In this context, the nature and outcome of all student complaints received is reported to the appropriate Head of School, Dean or Academic Support Director and to the Academic Affairs Directorate.

The Academic Affairs Directorate prepares a summary report of all student complaints and appeals, preserving anonymity, and this is presented to Academic Council on an annual basis.

The number of complaints, received by the University, over the past three years, is detailed below:

Student Complaints					
2008-09		2009-10		2010-11	
Heard	Upheld	Heard	Upheld	Heard	Upheld
3	1	7	1	10	3

In addition, there are other internal processes dealing with Student Appeals and Student Discipline – at the end of these processes, students also have the right of recourse to the Board of Visitors.

As detailed above, the Board of Visitors system provides students with the opportunity to present their cases to an independent body, both in writing and in person, and to receive timely and comprehensive responses. The University maintains its position that it has in place, in its Board of Visitors, a unique and effective mechanism for dealing with student complaints which is both independent and efficient.

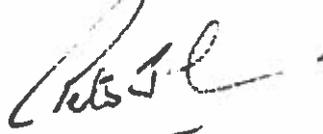
Mr T Elliott MLA

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12 January 2012

I trust this response is helpful and I am happy to clarify, or discuss further, any issues relating to the above.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Peter Gregson', written in a cursive style.

Professor Sir Peter Gregson  
President and Vice-Chancellor

# Public Services Ombudsperson Bill

Comment for Consideration by Committee for Employment and Learning (20/05/15)

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Queen's  
Students'  
Union

## ABOUT US

Queen's University Belfast Students' Union (QUBSU) is the democratic representative body of the students of The Queen's University of Belfast.

## CONTACT

- [studentsunion@qub.ac.uk](mailto:studentsunion@qub.ac.uk)
- [www.qubsu.org](http://www.qubsu.org)

## **Introduction**

Queen's University Belfast Students' Union welcomes this opportunity to provide input into the consideration of the Public Services Ombudsperson Bill by Committee for Employment and Learning.

We note that this Bill, and the matters it considers, has been deliberated on by the Assembly for the duration of the current Assembly mandate. It is our hope that this important piece of legislation will have achieved Royal Assent, in an appropriate form, by the completion of the current Assembly mandate.

## **General Comments on the Bill [as introduced]**

Queen's Students' Union is broadly in favour of the contents of the Bill. It provides a foundation for the creation of a truly external and independent complaints process for students in Northern Ireland, gives an independent body the power to initiate its own investigations and challenge any systemic maladministration and injustice that may come to its attention.

It is our view that public services, including all services paid for from the 'public' purse' should be accountable, should provide services in to the highest standard and all users of these services should be entitled access an appropriate mechanism for resolving complaints against these services.

Queen's Students' Union's comments on the Bill will focus primarily on the impact that NIPSO will have on students, with particular regard to the students of The Queen's University of Belfast.

It is our view that the current 'visitor' system employed in Northern Ireland is outdated, not 'fit-for-purpose', is relatively inaccessible to the majority of students and is not in keeping with best practice across the higher education sector. The proposed Bill should be amended to enhance the powers and jurisdiction of The Ombudsperson in relation to universities.

Queen's Students' Union would welcome further opportunities to provide future feedback and input to the Bill as it progresses through the Assembly.

### **Clause 18 and SCHEDULE 3**

#### **Higher Education and Further Education Remit**

1. The capacity to avail of an external complaints procedure should not be limited to students of The Queen's University of Belfast and Ulster University.
2. References to the 'University of Ulster' could be updated to refer to 'Ulster University'.
3. SCHEDULE 3, Note 1, states: "References to a university include references to a constituent college, school or hall or other institutions of a university." This is similar to the definition in the Further and Higher Education Act 1992.
4. The relationship between universities and other education providers is complex.
5. Despite having legal independence in terms of finance and governance, St. Mary's University College and Stranmillis University College are designated Colleges of Queen's University Belfast, whose academic provision is integrated into the structure of the University. Many of these students are also registered as students of Queen's University Belfast.
6. If it is the intention of the Bill to include St. Mary's University College and Stranmillis University College under the jurisdiction of NIPSO, the Bill should explicitly state this.
7. If it is not intended to include these two Colleges, the result will be that students of these two Colleges will have multiple complaints mechanisms open to them, depending on the nature of their complaint. These mechanisms may, or may not, overlap with the jurisdiction of NIPSO.
8. Queen's is precluded from employing staff to teach Theology (Irish Universities Act 1908) and has relationships with recognised Colleges to conduct this teaching function: Union Theological College; Belfast Bible College; Irish Baptist College; Edge Theological College.
9. Additionally, Queen's has collaborative partnerships with other institutions in Northern Ireland, such as: Belfast Metropolitan College; North West Regional College; South Eastern Regional College; Southern Regional College; South West College; College of Agriculture, Food and Rural Enterprise.
10. Students of these colleges may be registered students of Queen's but receive teaching and other elements of education provision through these colleges. Once again, some matters of complaint may fall under the jurisdiction of NIPSO, some may not.

11. Queen's operates, and has co-ownership of, a commercial educational partnership with INTO University Partnerships, to provide pre-university education to some international students. These students are not students of the University, but of the commercial partnership, and therefore do not fall under the jurisdiction of NIPSO, even if they have a complaint against the University.
12. A single system of complaints would standardise service provision across the sector and increase accessibility of complaints procedures.
13. The Committee may wish to review the scope of the proposed legislation such that, after appropriate consultation, it includes all higher education and all further education institutions in Northern Ireland, with the exception of the Open University (whose students may already complain to the Office of the Independent Adjudicator, as already noted in the Explanatory and Financial Memorandum).
14. Queen's Students' Union recommends that Clause 18 subsection (3) be amended to include reference to students from other institutions, in a manner similar to that of the Higher Education Act 2004, Clause 12 subsection (1).
  - (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.

## Matters Which May Be Investigated

1. Clause 18 limits the matters which may be investigated by the Ombudsperson to “alleged maladministration through action taken by the University in respect of students”, which appears to be similar to the powers of the Scottish Public Services Ombudsman as detailed in the Scottish Public Services Ombudsman Act 2002.
2. While ‘maladministration’ is not defined in the Bill, the helpful description in the Explanatory and Financial Memorandum, gives an indication as to what may be considered as ‘maladministration’.
3. Queen’s Students’ Union is not seeking an extension of the remit of the Ombudsman to include matters of academic judgement.
4. The General Regulations of The Queen’s University of Belfast state: *“In dealing with appeals made to it by any member of the University, the function of the Board of Visitors is to see that the Statutes and Regulations of the University are in themselves fair, have been properly observed and carried out and that natural justice is observed wherever it may apply between the appellant and the University. As has been said by a former Chairman of the Board, Lord Scarman, in his ruling on a previous appeal to it: ‘Questions of fact, especially those involving the exercise of specialised judgements in the life and work of the University are primarily for the University and not, save in exceptional circumstances, for the Visitor or a court to decide.’ Appellants should be aware that, although the Board may enquire into the conduct of examinations, it does not have the power to re-mark papers or to re-classify degrees; academic judgements are the sole preserve of the University.”*
5. Additionally, the General Regulations of The Queen’s University of Belfast state: *“In certain cases, a member of the University who is aggrieved by an act or omission of the University may Petition the Board of Visitors for redress (hereafter referred to as an appeal).”*
6. The powers and jurisdiction of the Board of Visitors, with regard to its jurisdiction to consider complaints extends far beyond ‘maladministration’. It extends to any “act or omission”.
7. The Office of the Independent Adjudicator (OIA) (for England and Wales) has jurisdiction to consider complaints related to any “act or omission”. [Education Act 2004, Clause 12 subsection (1)]
8. The OIA publishes the following list of matters which fall under its jurisdiction to investigate as student complaints:

- 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

9. It is clear that 'maladministration' only one of a number of matters that falls under the jurisdiction of the OIA.

10. Queen's Students' Union is of the view that jurisdiction, in relation to complaints from students, should be transferred completely to The Ombudsperson and that the 'Board of Visitors' should be excluded from considering any complaints in concerning student matters.

11. The Committee could consider the Higher Education Act 2004, Clause 20, which details the removal of jurisdiction of a 'visitor' in institutions in England and Wales, in this context.

12. A member of the public, making an application to be a student at a university may not make a complaint to NIPSO under the provision of the proposed Bill, even if they are of the view that there has been alleged maladministration. For England and Wales, the Higher Education Act 2004, applications to universities fall under the jurisdiction of the Office of the Independent Adjudicator.

13. Queen's Students' Union recommends that members of the public seeking to make an application to a university should have recourse to NIPSO.

## **Clause 42**

1. The Bill does not provide for consultation and cooperation with the Office of the Independent Adjudicator for Higher Education (OIA), for England and Wales. It does provide for consultation in the case of the Scottish Public Services Ombudsman.
2. It would be advisable to empower the Ombudsperson to consult and cooperate with the OIA.
3. It is not unknown for HE programmes to be delivered jointly by more than one institution, most notably in the provision of postgraduate programmes. Including reference to the QIA in Clause 42 enables NIPSO to work with the OIA in the event that there is a complaint regarding a university programme jointly delivered by HE institution based in Northern Ireland and an institution based in England and Wales.

## **Additional Comments**

1. The Bill does not have a Clause which states that no fee will be charged upon members of the public, or students, for use of the service, or if a fee is to be charged, what the maximum limit of that fee will be.
2. Queen's Students' Union recommends that the NIPSO service be free to use by the general public and by students.
3. There is no requirement in the proposed Bill for NIPSO to have an internal complaints procedure to consider complaints against NIPSO itself. In addition, there is no requirement for NIPSO to report to the Assembly on complaints against NIPSO.
4. Queen's Students' Union recommends that the NIPSO be required to have an internal complaints procedure and report on this to the Assembly.