

02/06

GUIDANCE FOR COLLEGES
ON EFFECTIVE
STUDENT COMPLAINTS
MANAGEMENT

October 2006

Introduction

The purpose of this Guidance Note is to provide guidance to Boards of Management of Colleges of Further Education, covering the requirements of Colleges to have a student complaints procedure in place; the principles behind such a student complaints procedure; and how to implement effective student complaints management.

This Guidance Note covers the following topics:

1. An introduction to student complaints;
2. Key aspects of student complaints procedures;
3. The role of the Scottish Public Services Ombudsman;
4. Complaints about the Board of Management; and
5. Status of Guidance Note.

1. An introduction to student complaints

- 1.1 The obligations a College owes towards its students originates from its statutory duties. Under Section 12 of the Further and Higher Education (Scotland) Act 1992, a Board of Management has a duty of ensuring that its College provides suitable and efficient further education to students of the College.
- 1.2 The relationship between a College and its students is also based on contract. A College may be considered to be in breach of its contract with a student if it:
- refuses to admit a student to a promised course;
 - withdraws or makes changes to the course in circumstances where no effective disclaimer of liability applies; or
 - fails to comply with any implied or express terms about the quality or quantity of teaching to be provided etc.
- 1.3 Similarly, the College's ability to administer the student while at the College, including disciplinary procedures against the student, will also be governed by contract. The student will have the right to sue the College for breach of contract in the courts, unless the terms and conditions of the contract oblige the student to follow the College's own student complaints procedures.
- 1.4 The fact that the relationship between the student and the College is contractual raises the question of those students without the capacity to contract (for example students under the age of legal capacity, or certain students with learning difficulties). If the contract cannot be legally made with the student in question, then the contract will require to be made with the student's parent, guardian or representative, as appropriate. The legal requirements of the complaints procedure shall remain the same, save that where a complaint is being made on behalf of a student who lacks the capacity to contract with the College, that student should be entitled to representation on their own behalf.
- 1.5 It should also be remembered that students are now regarded in law as "consumers" of educational services where courses, accommodation and materials are supplied to them by the College. The standard terms between the student and the College, contained within sources such as course prospectuses, disciplinary rules etc, form a consumer contract and may therefore also be a target for intervention by the Office of Fair Trading if they are in breach of the legal requirements of consumer regulations.
- 1.6 Student complaints may arise from an academic decision made by the College. A student may complain of an irregularity in the conduct of an examination or assessment. The examination or assessment may have been inadequate, leading to an academic decision being prejudicial or biased against the student. There may also be personal circumstances behind a student complaint (for example medical or compassionate reasons).

1. An introduction to student complaints (continued)

- 1.7 It is important that a College should distinguish its non-academic student complaints on the one hand, and its academic appeals and student complaints on academic matters on the other. Non-academic student complaints deal with specific concerns about the provision of a programme of study or related academic service (including teaching and academic facilities). An academic appeal is a request for a review of the decision of an academic body charged with making decisions (including student progression, assessments and awards).
- 1.8 A College's Complaints Policy and Procedure should provide the framework within which students who have experienced dissatisfaction with the College's services can raise their concerns. Staff should have a policy and procedure in place which allows them to deal with complaints. As mentioned above, the complaint need not only come from the students themselves, but may also come from a student's parent, guardian, or any other individual who may be acting on behalf of the student as the student's representative. For students other than those who 'lack the capacity to contract', the representative must have the written permission of the student to make the complaint.
- 1.9 The Principal of the College is responsible for resolving complaints that have reached the appeals stage and can nominate a College manager who has not been previously involved with the student's complaint to investigate.
- 1.10 The College's Board of Management is responsible for ensuring that the Complaints Policy and Procedure is operating effectively, and may become directly involved if a complaint is directed against the Principal of the College, or members of the College's Board of Management.

2. Key aspects of student complaints procedures

- 2.1 To avoid legal challenge, a student complaints procedure must be fair in the way that it applies to students, and also the way in which it operates. A student may challenge any procedures that are unclear or in any way unfair (for example, if the procedure denies the student the right to put forward their own version of events). A student may also challenge the unfair application of a complaints procedure.
- 2.2 Procedures must comply with the wishes of the Scottish Ministers that they be clear, unambiguous and workable in practice. Those individuals responsible for implementing the procedures must also be able to understand and follow these procedures in practice.
- 2.3 If a student complaints procedure is implemented and operated effectively, it should be possible to prevent student complaints from being referred to the SPSO, the Office of Fair Trading, or from reaching the courts.

2. Key aspects of student complaints procedures (continued)

2.4 A student complaints procedure should adhere to a number of basic principles, including the following:

- There should be no fear of recrimination against the student for having made a complaint.
- Any student complaints procedure should be conducted confidentially. All complaints should be treated in the strictest confidence, and in accordance with the provisions of the Data Protection Act 1998.
- Any student complaint should be given unbiased consideration by those responsible for considering the complaint.
- The student complaints procedure should be published and accessible to the entire student population of the College. A good example of this would be to publish the procedure on the College website. Colleges should also consider any potential accessibility problems that may be faced by disabled students.

2.5 A good student complaints procedure should include the following key elements:

- The College should have internal complaints machinery for students, which is widely known and can be easily invoked. Initially, the College must have in place a method for identifying whether the student complaint should be dealt with as either a formal or informal complaint. If the matter complained of requires to be dealt with on a formal basis, then the College's formal procedure should be adopted. The formal procedure should aim at the rapid resolution of complaints and encourage the College to learn lessons from complaints where appropriate.
- The College should provide some form of independent check that the internal procedures are adequate, and that the procedure has been properly applied and observed in the case in question.
- An initial determination of the student complaint should be made, following which a decision should be taken to dispose of the complaint in an appropriate manner.
- A student should be given the opportunity to appeal against either the initial determination, the pursuant disposal of the complaint, or both. The College's student complaints procedure should therefore make provision for student appeals.
- Where a student is still dissatisfied with the determination or disposal of the complaint after appeal, the student may seek to pursue a further appeal (such as through an independent tribunal or the courts).
- Where appropriate, the student may – be able to bring a complaint before the Scottish Public Services Ombudsman ("SPSO"). The SPSO will not normally investigate a student complaint unless the formal complaints procedure of the College has been exhausted and if it is not reasonable for the complaint to be pursued by way of legal or other remedy.

The College should keep a record of all complaints that have been received by students (whether formal or informal), including all those that have gone through the College's student complaints procedure. The College should also ensure that the student knows the procedure that has been adopted, is kept informed of progress during the complaints procedure, and is given the opportunity to express his/her complaint fully.

2. Key aspects of student complaints procedures (continued)

- 2.6 The College should allow the student to be represented by an individual of their choice during the complaints procedure. Once a decision has been reached regarding the student's complaint, the student should be given a reason for the decision. The decision should also be confirmed to the student in writing.
- 2.7 The College should also consider having an Appeals and Complaints Monitoring Group in place, which would meet at regular intervals (for example quarterly or six monthly) throughout the year. Having such a Group in place allows any decisions regarding student complaints and appeals to be considered by the Group on an equal basis. The role of the Group must be restricted to monitoring the decisions reached regarding student complaints and appeals. The Group cannot re-open any previous student complaint or appeal.

3. The role of the Scottish Public Services Ombudsman

- 3.1 SPSO was an office created by the Scottish Public Services Ombudsman Act 2002 ("the 2002 Act") to investigate complaints about organisations providing public services in Scotland.
- 3.2 Section 27 of the Further and Higher Education (Scotland) Act 2005 introduced an amendment to Section 3 of the 2002 Act, providing for the SPSO to take over the role of final arbiter for complaints about maladministration or service failure in Colleges from the Scottish Further Education Funding Council. This change duly came into effect on 3rd October 2005, bringing complaints about further educational institutions within the remit of SPSO.¹
- 3.3 Students must be made aware of the SPSO, and the College must take reasonable steps to publicise this. The College should provide students with this information, and has a legal obligation to include such information in its complaints material. This information must also be included in any response to student complaints. Any publication on complaints by the College must include:
- The student's right to make a complaint to the SPSO;
 - Any time limit the student has to make a complaint to the SPSO; and
 - Details of how to contact the SPSO.
- 3.4 In the event of a complaint being made to the SPSO, both the student and the College will be informed that the SPSO will be investigating the complaint. The SPSO will look at the complaint impartially, collecting and examining evidence in a variety of ways, including:
- Seeking written answers to questions;
 - Interviews;
 - Obtaining copies of documents;
 - Site visits; and
 - Taking expert advice.

The SPSO must then come to a decision on the complaint based on what it believes to be fair and reasonable in the circumstances of the complaint.

¹The SPSO will take complaints from members of the public, including students.

3. The role of the Scottish Public Services Ombudsman (continued)

- 3.5 Once a decision has been made, the SPSO will send a proposed report to both the student and the College to give both parties an opportunity to draw its attention to any information that either party feels may have been missed or misunderstood. The SPSO may revise the report if the suggested changes are significant. The proposed report will set out the complaint, the investigation process and the conclusions of the SPSO. The proposed report may also make recommendations to the College about what it should do in response.
- 3.6 After receiving the suggestions of both the student and the College, the SPSO will publish a final report. None of the people involved will be named in the report, save for exceptional circumstances. The report will be a public document, and will be sent to the student, the College and the Scottish Parliament. Once the report has been sent to the Parliament it cannot be changed. Any follow-up recommendations made by the SPSO in the report must be carried out by the College.
- 3.7 The SPSO can consider complaints of maladministration about a College or complaints that it has provided a poor service, delivered a service badly or failed to provide a service which it was the function of the College to provide, where it has been claimed that the student has suffered injustice or hardship as a result of this. In exceptional circumstances, the SPSO may also deal with complaints that have not been through the College's own student complaints procedure; where the aggrieved student first had notice of the matter complained of more than 12 months previous; or when there is a right to appeal through a tribunal or the courts.
- 3.8 The SPSO cannot consider:
- Academic judgments made by the College;
 - Most personnel matters (such as appointments of staff, pay or discipline); and
 - Any contracts and commercial transactions (SPSO can consider a complaint made by a student if it relates to the contract between the student and the College. However, while the SPSO can consider complaints made by a student about the services provided by or on behalf of the College, it cannot consider any complaints concerning any underlying contractual legal dispute.)
- 3.9 Colleges should note that in the near future, upon receiving a complaint about a College, SPSO will also assess the student complaints procedure against its published principles of good complaint management, 'Valuing Complaints'. For more information, please visit the SPSO website at <http://www.scottishombudsman.org.uk>

4. Complaints about the Board of Management

- 4.1 Where a student makes a complaint about the conduct of a member of the College's Board of Management, the student may be entitled to take the complaint to the Standards Commission for Scotland ("the Standards Commission").
- 4.2 The Standards Commission is an independent body set up by the Ethical Standards in Public Life etc. (Scotland) Act 2000 ("the 2000 Act") to encourage high ethical standards in public life through the promotion and enforcement of Codes of Conduct. Complaints are investigated by the Chief Investigating Officer ("CIO"), who reports to the Standards Commission. On receipt of the CIO's report, the Standards Commission may decide to either take no further action, direct the CIO to carry out further investigations, or hold a Hearing.
- 4.3 A member of the public is entitled to complain about misconduct by a "Member of a Devolved Public Body" as designated under the 2000 Act, whose Codes of Conduct have been approved by the Scottish Ministers. These bodies include the Boards of Management of Colleges of Further Education.
- 4.4 All members of Boards of Management are expected to follow the Code of Conduct for that College. If a student thinks that a member of the Board of Management has not followed the Code, the student is entitled to make a complaint to the Standards Commission.
- 4.5 The following are examples of misconduct that would breach the Code of Conduct:
- Failure to declare a personal interest;
 - Failure to register an interest;
 - Financial misconduct (such as allowances, gifts, hospitality, and misuse of College facilities);
 - Disrespect towards staff and students;
 - Disrespect towards other members of the Board of Management; and
 - Breach of confidentiality.
- 4.6 The Standards Commission cannot look into:
- Complaints about misconduct of other staff or employees of the College;
 - Complaints where the alleged misconduct took place before 1st May 2003; and
 - Complaints which are not a breach of the College's Code of Conduct.
- 4.7 For more information, please visit the Standards Commission for Scotland website at <http://www.standardscommissionscotland.org.uk>

5. Status of Guidance Note

- 5.1 This Guidance Note is intended to give general advice only. It should not be treated or relied upon as specific legal advice. Professional advice should be sought before acting on the material contained in this Guidance Note as it may not be appropriate to your circumstances.
- 5.2 This Guidance Note relates only to the specific obligations applicable to College Boards of Management in relation to the requirements for a student complaints procedure, and does not cover other legal obligations which may apply to Colleges under this and any other legislation referred to in this Guidance or otherwise.

Thorntons Law LLP on behalf of ASC
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