

10 October 2013

David Stewart MSP
Convener of the Public Petitions Committee
The Scottish Parliament
EDINBURGH
EH99 1SP

Dear Convener,

Petition PE1484

Thank you for the opportunity to comment on Mr Thow's petition. As the letter from the Committee noted there are two main aims in the petition: to establish an independent examinations regulatory body and to consider the limitations of our legislation.

I will deal more briefly with the first of the two and then look in some detail at the specific question about our own legislation.

1. Establishing an independent examinations regulatory body.

The petitioner has argued that there is a need for a regulatory body separate from the role the SQA have in awarding exams. As pointed out in the SPICE briefing, the SQA is in the unusual position of being both an awarding body and an accrediting body.

The Committee will be aware that there have been two reviews of scrutiny and regulation in the last few years in Scotland – the Crerar Review which looked at the landscape, and the Sinclair Review which looked at complaints handling.

Neither review looked specifically at the SQA. However, they did provide some general principles that the Committee may find useful. Crerar in particular highlighted five key principles to govern the application and use of external scrutiny: independence; public focus; proportionality; transparency and accountability. Sinclair pointed to the need to ensure the landscape was not cluttered and for simplicity and ease of access to any complaints system. We would recommend that these principles and the approach taken by these reviews are included in any consideration of the scrutiny landscape.

Following these reviews, new responsibilities were given to this office by the Scottish Parliament to help establish a Complaints Standards Authority. In this role, we have worked with public organisations across Scotland to introduce standard, simple complaints processes and to improve how organisations handle and learn from complaints.

As part of this process, we have worked with SQA. As a result we have developed with them some signposting information to help make it easier for the public to know who to complain to about issues relating to SQA and other qualifications. This includes complaints

about the services provided by learning centres (such as colleges and schools) and complaints about the SQA. One aim of the leaflet is to help clarify their different roles for complainants. We have agreed with SQA to keep signposting arrangements under review.

2. The Scottish Public Services Ombudsman Act 2002

Mr Thow refers to limitations which restrict our ability to consider complaints made by individual teachers or schools. I would like to explain what these restrictions are.

Under section 5 of our legislation we can consider a complaint from a member of the public who claims to have sustained injustice or hardship as a result of maladministration or service failure. The term 'member of the public' is given a broad definition and includes a group, company or organisation. The Act, however, also includes restrictions excluding certain organisations from being members of the public and such organisations, therefore, cannot complain to us.

The categories are set out in section 5 (6) and, in practical terms, generally prevent one public organisation complaining to us about another public organisation. This means we could not take a complaint from a school or council about the SQA. Nor could we take a complaint from a health board about the Health Inspectorate.

The position for individual teachers is more complex and we have sought legal advice on this in response to the very small number of such complaints we have received. Given our restriction in taking a complaint from the school, we have to be able to ensure that a complaint from a teacher is not, in effect, the school's complaint.

This means that, in such cases, the requirement for the member of the public to show that they can claim that they have suffered an injustice or hardship becomes critical. The individual does not require to provide definitive evidence that they have suffered before we investigate, they only need to claim they have. However, they do need to be able to point to some link between the action they complain about and a likely impact on them, which is personal to them and not simply that experienced by the school or wider education community (i.e. all teachers or pupils).

Mr Thow has suggested in his petition that it is our view that no teacher could ever complain about the SQA as they did not sit the exam. That is not quite the position. We accept that it is difficult for a teacher to bring us a complaint about the SQA that we could look at, but it is theoretically possible that an individual teacher could point to a specific impact on them, such as a personal detriment to their reputation or career that would meet this criterion. To date, this remains a theoretical possibility. We receive very few complaints about SQA and have not yet had one from a teacher that we were able to fully pursue. One reason for this could be that there may also be other routes for an individual teacher to pursue (through their employer for example) that would be more appropriate for them to use than SPSO.

We appreciate that the limitation on who we can accept complaints from can cause frustration. Mr Thow suggests that it be changed.

The reason behind the limitation was that when this office was founded it was not the intention of Parliament that our resources should be used to deal with disputes between competing public organisations. Mr Thow's argument is, in effect, that an unintended consequence of this is that there are important issues that cannot be raised with us. It should be noted that these issues could be raised by a student; by a representative, including a teacher, on behalf of a student with the student's consent; or by a teacher who could show a direct, personal impact.

It is also worth noting that SQA do have a complaints process, and we can consider and investigate their complaints handling as a separate issue from the underlying complaint. This means we can look at how they have responded to a complaint by a teacher, even in cases where we could not look at the complaint itself. Mr Thow's complaint is a good example of this - there was no claim of personal impact that would allow us to pursue the main complaint but we did look at his concerns about SQA's handling of his complaint and he notes that we upheld some of his concerns.

We accept that, for practical reasons, it is very hard for a teacher to demonstrate they have suffered an injustice individually and we cannot accept complaints from schools. Mr Thow would like us to be able to look at such complaints. While I hear the frustration expressed by those who are unable to access my office or can do so to only a very limited extent, it should be noted that our main role is to help ensure justice between powerful public bodies and individual members of the public outside those bodies on whom their decisions impact. Organisations such as schools and professionals within the public sector do have alternative routes they can use to raise concerns. Ultimately, whether the limitation needs to be changed is a matter for Parliament. We are a body supported by and accountable to Parliament, and it is legitimate for the Parliament to review whether the limitations they have placed on SPSO remain appropriate

I hope the Committee find this response helpful and would be very happy to assist further.

Yours sincerely

Jim Martin
Ombudsman

Tel: 0131 240 8850 (Fiona Paterson, Personal Assistant)

Email: fpaterson@sps.org.uk