

**Case 200501034: Student Awards Agency for Scotland**

**Introduction**

1. In July 2005 the Ombudsman received a complaint from a man (Mr C) that the Student Awards Agency for Scotland (SAAS) were demanding a £2,000 Graduate Endowment payment from him and threatening legal action if he failed to pay. Mr C was aggrieved because, despite providing SAAS with information which he considered showed that he was clearly not liable, they continued to pursue him for payment.

2. Following investigation of the matter, I am satisfied that Mr C is liable to pay the Graduate Endowment under the terms of the relevant Regulations and, to that extent, his complaint is not upheld. However, Mr C is justified in feeling aggrieved because information on the SAAS website in 2005 was incomplete. This is a shortcoming that SAAS have now remedied but the Ombudsman recommends that they should formally apologise to Mr C to acknowledge his part in bringing the matter to their attention and for any confusion that their administrative error may have caused him.

3. SAAS have accepted the recommendations and will act on them accordingly.

**Investigation and findings of fact**

4. The investigation of this complaint involved obtaining and reading the correspondence between Mr C and SAAS, the relevant legislation relating to Graduate Endowment (the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 and The Graduate Endowment (Scotland) Regulations 2001. I considered documentation which included extracts from the SAAS website, a copy of form SAS5 (Application form for fees, loans, Young Students' Bursary and supplementary grants 2001-2002) and SAS6 (the guide issued to students who were entering higher education for the first time in 2001-2002).

5. My findings of fact and conclusion for the complaint are set out below and, while I have not included every detail investigated in this report, I am satisfied that no matter of significance has been overlooked. Mr C and SAAS have also been

given the opportunity to comment on a draft of this report.

### **Legislative background**

6. The Graduate Endowment is a fixed sum that some graduates will be liable to pay after they have completed their degree. The principals of the Graduate Endowment are set out in the Education (Graduate Endowment and Student Support) (Scotland) Act 2001. The detail of the scheme is set out in the Graduate Endowment (Scotland) Regulations 2001. Paragraph 3(2) of the Regulations makes reference to the requirement for continuous study if the course commenced prior to August 2001 before an exemption can be applied. It states:

‘A graduate who has undertaken a full-time course of higher education which commenced on or after 1 August 2001 shall not be liable to pay the graduate endowment if that course is undertaken as part of a continuous programme of higher education which commenced prior to 1 August 2001.’

7. The student support guide for session 2001-2002 made reference to the introduction of the Graduate Endowment. Paragraph 3.8 of the guide states:

‘The Executive proposes that the amount payable by new entrants to higher education in academic year 2001-02 will be £2,000. The amount will increase by the amount of inflation for those entering higher education in future years.’

### **The complaint**

8. Mr C started his full-time degree course in September 1997 at the University of Strathclyde, where he continued until 1999 before having a two year break in studies. His studies resumed at the University of Glasgow in 2001. Session 2001-2002 was a repeat year of study. His studies continued in 2002-2003 until 2003-2004 and he graduated in the summer of 2004.

9. In July 2004, SAAS wrote to Mr C requesting payment of a £2,000 Graduate Endowment. They wrote further on 13 October 2004. As Mr C did not make arrangements to pay, SAAS wrote to him again on 30 June 2005 with a further request and advice that debt recovery action would be taken within 21 days of the date of the letter if payment was not made.

10. Mr C responded by e-mail on 6 July 2005 stating that he had replied to previous letters and, as stated in his previous replies, he contended that he was not liable. He referred to the SAAS website which stated that Graduate Endowment was not applicable to him as it was for 'Scottish domiciled students and EU students who started their first full-time degree course at a Scottish institution on or after 1 August 2001' and pointed out that, further on in the website text, there was advice that:

'You will not have to pay the endowment if you....have studied for a degree in a publicly-funded higher education institution before.'

As he began his degree course in September 1997, he considered that he was exempt from paying the endowment.

11. In response, SAAS informed Mr C that they had no record of having received any earlier correspondence from him on the matter. However, according to their records, he did not attend his course during sessions 1999-2000 and 2000-2001 and, when he returned to his studies in session 2001, he entered under the new arrangements, which included the liability to pay the Graduate Endowment. He was, therefore, liable to pay and he was asked to return his payment options forms to SAAS.

12. Mr C formally complained to the Chief Executive of SAAS on 13 July 2005. He explained that he had responded in 2004 stating that he was ineligible for the endowment and would not be paying and, having heard nothing further, he considered the matter closed. He was surprised, therefore, to receive another request in June asking for payment. He had pursued the matter by e-mail and phone and was told that continuous study was essential to provide exemption to the Graduate Endowment payment. However, despite the explanation given by the officers he had spoken to, he queried why the insistence on continuous study was not detailed on the SAAS guide to the Graduate Endowment and claimed that its omission was contrary to good practice, particularly when a large sum of money was involved and being sought after a long period of time. The officers he had spoken to informed him that details would have been in the guide with his student application form and in the relevant regulations. However, he had checked his own records, the application form, guide and the website, all of which he stated

appeared to make it 'extremely clear' that the endowment was only payable by new students and 'at no time is continuous study mentioned as a precursor for exemption'. In support of his complaint, he claimed that he was ineligible according to the guidance issued at the time, half of his four years of support had been under a previous support system, and he had received no grants or benefits under the new system.

13. I made an enquiry to SAAS about the complaint in September 2005. In particular, I requested clarification of the advice given on their website about exemption from the payment of Graduate Endowment. I also asked for their comments on Mr C's claim that no other guidance was issued to students on this, albeit he had recently received advice that to be exempt, a period of continuous study was essential.

#### **SAAS comments on an enquiry about the complaint**

14. In his response of 10 October 2005, the Chief Executive provided copies of the relevant legislation (referred to in paragraph 3), an extract from the SAAS guide 2002-2003 giving some of the detail of the scheme, an extract from their website in August 2005, the Graduate Endowment FAQ section and the reply sent in August 2005 to Mr C's formal complaint.

15. The Chief Executive commented that his colleague's response, in August 2005, to Mr C had explained that SAAS could not explain the detail of the Graduate Endowment scheme in the 2001-2002 edition of their '*Guide to student support*'. This was because the legislation to establish it was still subject to Parliamentary approval: while the principals of the Graduate Endowment were set out in the Act which was passed in March 2001, the detail was in the Regulations approved by the Scottish Parliament in the summer of 2001.

16. The August 2005 response also explained that, in practice, the literature for the next session is printed in the first few months of the year. However, once they knew the detail of the scheme, this was communicated to all universities and colleges in Scotland, to student representative bodies and to student advisers. The 2002-2003 edition of the guide contained details of the scheme and clearly indicated that students, who returned to higher education after a break of study of at least one academic year, would be liable for the endowment. It was further

explained that 'this is a matter of law and neither this Agency nor the Scottish Ministers have any discretion to set it aside'. As Mr C had returned in session 2001-2002 after a gap of two years, he became liable to pay the endowment when he completed his degree.

17. The Chief Executive also commented on Mr C's point that he had received no grants or benefits since he had returned to higher education. Mr C's position was that, as he had previously been funded for two years of a degree course, he was only entitled to receive tuition fees from SAAS from the third year of his new course. It was explained that the tuition fees are only a proportion of the full cost of course provision which can be over £5,000 a year – over £20,000 for a typical four year degree course. Although they had not paid fees in 2001-2002, his institution would have received funding from the Scottish Education Funding Council. Their previous study rules did not apply to the living-costs support that was available to him and he was eligible to apply for a student loan and travel expenses in each year from 2001-2002. Although he chose not to apply for a loan in session 2001-2002, he did so in the subsequent two years and also received travel expenses from SAAS.

18. However, in his comments on the complaint, the Chief Executive acknowledged that Mr C had correctly pointed out the information available on the SAAS website in July 2005 did not highlight that students who returned after a break in study might also be liable for the endowment. He commented that this was 'clearly an oversight on our part' and the website had been updated in August to include the information as a result of Mr C's letter. An extract from the corrected website was enclosed which confirmed the update.

19. The Chief Executive referred to the extract from the 2002-2003 guide as clearly indicating that students returning to higher education after a break in study might also be liable for the endowment:

'Higher education graduates, who first had funding under the new regulations in 2001-2002 or 2002-2003, will be liable to pay a fixed amount in recognition of the higher education benefits received. The funds raised will go towards student support for future generations of students. The amount payable by students who started in higher

education in academic year 2001-2002 or students who returned to higher education in 2001-2002 after a break in study of at least one academic year is £2,000. ....'

### **Mr C's comments on the SAAS response**

20. Mr C was given an opportunity for further comment. In his e-mail of 31 January 2006 he commented that, on the basis of the information available to him at the time of his return to study in 2001, he believed that he was not eligible to pay the Graduate Endowment; and the SAAS response confirmed that this was not mentioned in their application pack for 2001-2002. Although SAAS had given notice of this to the universities, student advisers and student council groups during the 2001-2002 academic year, he questioned why notice was not given to him and any other affected students directly as this would 'surely have provided a more direct and effective means of communication'.

21. Although the Graduate Endowment was detailed in full within the application pack from 2002-2003, Mr C commented that this was not of any direct use to him as he had invested time and money in making a commitment to return to studies which he could not be expected to abandon at this point.

22. He understood that Graduate Endowment was intended for students who have been assessed under the Cubie funding scheme<sup>1</sup> for the duration of their studies. He had entered university in 1997 under the Dearing funding scheme and received payment of his tuition fees for two years and, if his studies had continued, he would have received similar funding. His application for funding during 2001-2002 – which triggered the Graduate Endowment demands – was rejected. He received funding of his tuition fees for the years 2002-2003 and 2003-2004, travelling expenses for both years and a student loan. However, he did not receive a student loan in his final year, although this was his understanding of what SAAS was saying in their most recent letter. He summed up the total difference between his expected funding under the old scheme and what he actually received under

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<sup>1</sup> In its Report published in 1999, the Cubie Committee proposed that graduates should make a payment in recognition of the benefits of having had a publicly funded course of higher education and that the money so raised should be used to help support future generations of students. Scottish Ministers carried out consultations on the Report's findings prior to introducing legislation that received Royal Assent as The Education (Graduate Endowment and Student Support) (Scotland) Act 2001

the new scheme as a student loan of around £800. To add a £2,000 payment seemed to him to 'somewhat negate the benefit'.

23. He concluded by commenting that he did not believe that he was eligible for the payment in either the letter or spirit of the Regulations. He was not informed of it upon entering into an agreement with SAAS, nor had he greatly benefited under the Cubie scheme.

### **Conclusion**

24. It is clear that, when Mr C returned to study in 2001 he was not aware that the Graduate Endowment would apply to him. However, the student support guide for session 2001-2002 in Part 3.8 makes reference to the introduction of the Graduate Endowment and that it was subject to Parliamentary approval.

25. The Regulations came into force on 1 August 2001 and, according to the letter to Mr C from SAAS in August 2005, once they knew the details of the new scheme, this was communicated to all universities and colleges in Scotland, student representative bodies and student advisers. Mr C stated that he did not see the guidance at this time and commented that it should have been sent direct to students. This is a matter for the discretion of the authority.

26. Mr C took a two year voluntary break. SAAS explained to Mr C that by this action, he was removed from the Dearing scheme and that when he re-applied for funding in 2001, he entered under the Cubie scheme and this activated his eligibility for the Graduate Endowment payment. I note Mr C's reasoning that he has not benefited financially from application to SAAS for funding if a payment of endowment is set against what he received directly in the form of loans. However, I have seen nothing which suggests that payment of the Graduate Endowment is dependent on a student making application for financial assistance and such an application being successful. SAAS have explained that the funds raised go towards support for students in the future.

27. In the circumstances, while I agree that Mr C was not made aware when he applied for funding in 2001-2002 that a Graduate Endowment would be payable by him, once SAAS knew the details regarding liability, this was communicated to all relevant establishments. Mr C made the point that it would have been better if this

cascading of information had been made direct to the students involved and this may be something which SAAS could consider for the future. However, I cannot conclude that this would have made a difference to Mr C's decision to return to study as the details were not available until after he applied. He was in no different a position than any other student who was returning to study under similar circumstances.

28. I can understand why Mr C was confused about his liability when the information on the SAAS website should have been updated sooner. This was clearly an administrative shortcoming which SAAS have acknowledged and taken steps to correct. But this was not the only source of information available to Mr C and I am satisfied that the proper steps were taken to correct this when it was brought to the attention of SAAS last year following Mr C's representations. However, it is appropriate that Mr C's role in this is recognised and the Ombudsman recommends that SAAS should acknowledge his part in bringing the matter to their attention and apologise to him for any confusion this may have caused him.

29. Under the terms of the Regulations, Mr C is liable to pay the endowment because, although his course of study started before these came into force, it was not undertaken as part of a continuous programme of higher education. I do not, therefore, uphold Mr C's complaint that SAAS are acting incorrectly in pursuing him for payment of the Graduate Endowment.

27 June 2006

**Explanation of abbreviations used**

Mr C

The complainant

SAAS

Student Awards Agency for Scotland