

7 December 2009

[REDACTED]

Our ref: 200800985

Dear [REDACTED]

**Complaint against HM Inspectorate of Education (HMIE)**

As you may be aware, I became Scottish Public Services Ombudsman in May 2009. I have recently reviewed the office's caseload and your complaint came to my attention during a discussion with Colin Wotherspoon. As Mr Wotherspoon told you, I have been looking into your complaint. In particular, I have been considering: how your complaint has been handled by this office to date; the legal advice this office received in relation to Section 5(6) of the Scottish Public Services Ombudsman Act 2002 (the Act); and, the decision in April 2009 by the Acting Ombudsman, Mr Eric Drake, to accept your complaint.

When I became aware of your complaint, I did not think it was a matter for this office. I discussed it with a number of colleagues, including Mr Wotherspoon, his manager and my Director of Complaints and Investigations. I also sought legal advice and discussed it with our solicitors on a number of occasions.

Having considered the information available to me, I am of the view that there are alternative means of pursuing your complaint and the outcome you are seeking that are more appropriate than this office. In particular, it is open to you to:

1. seek further assistance from your employer in pursuing the matter with HMIE, or if you believe that there has been negligence on the part of your employer to exercise their implied duty of care, consider pursuing this matter through internal procedures, ACAS and/or ultimately at tribunal;
2. initiate an action for defamation in the courts.

My own view is that you should explore the matter through your employer in the first instance. Your employer potentially could take the matter up with HMIE on your behalf to try to get the inspection report amended, if appropriate. I am also convinced that your approach to this office is an appeal against an HMIE report which I consider would effectively require me to take on the role of a regulator for HMIE, but that role is not within my remit.

I am sorry that it has taken so long for us to reach a final position on your complaint. However, as I hope you will appreciate, your case raised several complex jurisdictional issues which I needed to consider very carefully and having regard to the legal advice I received.

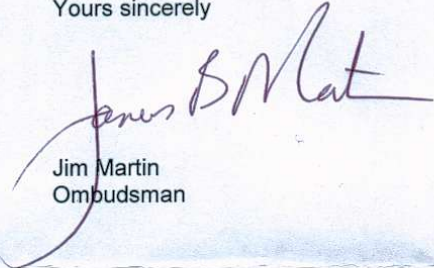
I am aware that this office's involvement has delayed you pursuing this matter with your employer. I also apologise for this, especially as I am aware from your correspondence that you have had a difficult time dealing with this matter.

I am exercising my discretion under Section 2 of the Act to take no further action on your complaint. Therefore, I have instructed Mr Wotherspoon to close the file.

I would also suggest that, if you pursue your complaint against HMIE by other means, you may wish to approach the General Teaching Council for Scotland or the Scottish Government's Education Directorate for assistance. I am aware that previously you had support from your trade union.

I understand that you will feel frustrated and disappointed by this decision, as I know that you have had a long, anxious wait for the outcome of this office's examination of your complaint. However, I have carefully considered your complaint and have made my decision.

Yours sincerely

A handwritten signature in dark ink, appearing to read "Jim Martin". The signature is written in a cursive style with a large, sweeping initial "J".

Jim Martin  
Ombudsman