

**Case 200602414: Student Awards Agency for Scotland**

**Summary of Investigation**

***Category***

Scottish Executive & Devolved administration: Student Awards; Policy/administration

***Overview***

The complainant (Mr C) was unhappy that, despite recent changes in Age Discrimination legislation, the Student Awards Agency for Scotland (the SAAS) would not award grants to any person over 55.

***Specific complaint and conclusion***

The complaint which has been investigated is that the SAAS would not award a grant to Mr C because of his age (*not upheld*).

***Redress and recommendation***

The Ombudsman recommends that the SAAS, when explaining their position to students, inform them that they have taken into account current guidance when reaching their decision and what this guidance says.

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

## **Main Investigation Report**

### **Introduction**

1. Mr C enrolled on a Higher Education course in Autumn 2006. He applied for a student loan but was told that he did not qualify because of his age as student loans were not given to anyone over 55.

2. Mr C asked the Student Awards Agency for Scotland (the SAAS) whether they had taken into account the new Age Discrimination legislation and was informed that they considered that the legislation did not apply to student support. However, even if it did, they maintained that it was still permissible as the restriction could be objectively and reasonably justified. Mr C complained to the Ombudsman on 6 November 2006.

3. The complaint from Mr C which I have investigated is that the SAAS would not award a grant to Mr C because of his age.

### **Investigation**

4. In investigating this complaint, I reviewed correspondence between Mr C and the SAAS, made an enquiry of the SAAS and considered information made available by the UK Government about the Age Discrimination legislation.

5. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr C and the SAAS were given an opportunity to comment on a draft of this report.

### **Complaint: The SAAS would not award a grant to Mr C because of his age**

6. The Employment Equality (Age) Regulations 2006 (the Regulations) implement a European Union directive on equality (the Equality Directive). They came into effect on 1 October 2006. The Regulations apply mainly to employment but also prohibit unlawful discrimination on the grounds of age in vocational training. Vocational training is given a broad interpretation and applies to most Further and Higher Education courses.

7. The notes on the Regulations state that these differ from other discrimination legislation in that they do provide for a defence against a claim of discrimination if the discrimination can be objectively justified.

8. In their response to Mr C the SAAS said that, although access to education was covered by the Regulations, they took the view that this did not extend to student support and that their policy was not, therefore, in breach of the Regulations. However, even if the Regulations had applied, they said that they felt the discrimination was objectively justified because it was significantly less likely that students over 55 would be able to repay the loan and also less likely that they would have the financial responsibilities of younger students and would be more likely to have other resources to help fund their education.

9. In response to my query about their interpretation of the Regulations, the SAAS said that they were implementing Scottish Executive policy (see paragraphs 11 and 12) and provided me with a copy of a minute from the Higher Education Learner Support Division of the Scottish Executive which set out their position on the issue.

10. The minute detailed a case taken to the European Court in 2004 by an English student who had argued that a similar rule in England was discriminatory. The Court had decided that the provision of a student loan was not sufficiently linked to the provision of education as defined in the European Convention of Human Rights to bring this within the Equality Directive.

11. The minute also set out the Scottish Executive's position that this policy could be objectively justified even if their interpretation of the European case law was wrong and the Regulations did apply. They said that as the majority of support was loan based it needed to be paid back to ensure that the scheme remained affordable. As outstanding debt under the scheme was written off at the age of 65 they felt that the age limit of 55 provided for a reasonable time to repay the loan. They suggested that it was possible if loans were provided to older applicants that younger, borrowers could argue that they were being discriminated against as they would almost always have time to repay the loan in full while the older borrowers would be more likely to have the debt written off.

12. The minute concluded by saying that Ministers had recently agreed to keep the age limits in place until 2007-2008 but that this position would be kept under review.

*Conclusion*

13. Whether a particular action (or inaction) by a public authority constitutes a breach of the Regulations can ultimately only be determined by the Courts. In considering Mr C's complaint I have looked at whether the SAAS had in place appropriate measures to ensure that they had fully considered the implications of the Regulations for their policy on student loans.

14. On the basis of the evidence that the SAAS have taken into account Executive policy and, further, that the Executive have provided detailed reasons for their interpretation of the appropriate legislation, I do not uphold this complaint.

15. Although I am not upholding this complaint, I am recommending that, when explaining their position to students, the SAAS confirm that they have taken into account current guidance when reaching their decision and what this guidance says.

16. The SAAS have accepted the recommendations and will act on them accordingly. The Ombudsman asks that SAAS notify her when the recommendations have been implemented.

20 June 2007

**Explanation of abbreviations used**

|                        |   |
|------------------------|---|
| Mr C                   | The complainant                                       |
| The SAAS               | The Student Awards Agency for Scotland                |
| The Equality Directive | The Employment Equality (Age) Regulations 2006        |
| The Regulations        | Council Directive 2007/78/EC (the Equality Directive) |

**List of legislation and policies considered**

The Employment Equality (Age) Regulations 2006

Council Directive 2007/78/EC (the Equality Directive)