

*Complaint handling mechanism in
higher education sector in selected places*

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Prepared by

Vicky LEE

Research and Library Services Division
Legislative Council Secretariat

5th Floor, Citibank Tower, 3 Garden Road, Central, Hong Kong

Telephone : (852) 2869 9602

Facsimile : (852) 2509 9268

Website : <http://www.legco.gov.hk>

E-mail : library@legco.gov.hk

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Executive summary

Availability of legislation or code of practice relating to the handling of staff complaints in the higher education sector

1. Among the three places under study, i.e. the United Kingdom (UK), the State of Queensland of Australia (Queensland) and Taiwan, only Taiwan has legislation, the *Teachers' Act*, which specifically protects rights of teachers and stipulates channels for making complaints and appeals. It also has the *University Act* which provides for the establishment of a Teacher's Appeal Review Committee in individual higher education institutions to handle teachers' complaints and grievances on dismissal, suspension and other detrimental decisions. For the UK and Queensland, they have legislation protecting rights of the general public from disclosing information relating to official misconduct and maladministration that adversely affects a person's interest.
2. In the UK, the *Guide for Members of Higher Education Governing Bodies in the UK* provides guidance on handling whistleblowing, complaint and grievance procedures in the higher education sector. Meanwhile, the *Code of Practice on Discipline and Grievance* published by the Advisory, Conciliation and Arbitration Service also provides guidance for handling disciplinary and grievance situations in the workplace in the UK. In particular, complaint and grievance procedures within higher education institutions are required to be established in accordance with this *Code*.

Complaint handling mechanism within higher education institutions

3. Among all the places under study, only Taiwan has the statutory requirement of setting up a committee within each higher education institution to deal with staff complaints and grievances relating to dismissal, suspension and other detrimental decisions.

Availability of an external organization that helps staff in the higher education sector to resolve complaints and grievances

4. The selected places under study do not have the setup of an independent inter-institutional organization that helps staff in the higher education sector resolve complaints and grievances. Instead, they all have a national teachers' union or organization providing general and/or financial assistance to members involving in disputes.

Public agency that handles complaints and grievances made by staff in the higher education sector

5. In the three places under study, there is no dedicated public agency that handles complaints and grievances made by staff in the higher education sector. Instead, in both the UK and Queensland, there are public agencies that operate a redress system for the general public, namely the Advisory, Conciliation and Arbitration Service in the UK and the Crime and Misconduct Commission in Queensland. In Taiwan, while staff at higher education institutions can lodge their complaints and grievances with the Ministry of Education, staff at public higher education institutions can also put forward their complaints and grievances to the Civil Service Protection and Training Commission.

Ombudsman or organizations alike handling complaints from staff at higher education institutions

6. Both the UK and Queensland have ombudsmen in place to handle complaints relating to maladministration in the public sector. In Taiwan, the Control Yuan is the government body considered functionally equivalent to an independent ombudsman.

Review or study on complaint handling in the higher education sector

7. Among all the selected places, only the UK has conducted a recent study on improving dispute resolution in the higher education sector, aiming at exploring with higher education institutions ways of enhancing resolution practices. A website serving as a 'project handbook' for resolving disputes in higher education institutions has been created.

Complaint handling mechanism in higher education sector in selected places

Chapter 1 – Introduction

1.1 Background

1.1.1 In May 2001, the then Secretary for Education and Manpower commissioned the University Grants Committee (UGC) to launch a comprehensive review of higher education in Hong Kong, and the review report was published in March 2002. The Government accepted most of UGC's recommendations, and announced in November 2002 the blueprint for further development of higher education in Hong Kong.

1.1.2 Under the blueprint, the UGC-funded institutions were required to review their governance and management structures including the grievances and complaints mechanisms. The governing bodies of the UGC-funded institutions completed their internal reviews on governance and management structure in 2008.

1.1.3 During the period of review conducted by the UGC-funded institutions, the Panel on Education (Panel) held a number of meetings to discuss and receive views from deputations on matters relating to the governance structure and grievances and complaints mechanisms of the institutions. Some staff associations of the institutions opined that the existing mechanisms for handling complaints lodged by staff against their respective institutions were ineffective. As such, they proposed the establishment of an independent inter-institutional redress mechanism and the exploration of the feasibility of extending the jurisdiction of the Ombudsman to cover the UGC-funded institutions.

1.1.4 This proposal was backed by some members of the Panel. However, the Government, UGC and the Heads of Universities Committee did not support the proposal, stating that the implementation of the proposal would undermine individual institutions' autonomy in handling staff matters and complaints having regard to their own policies, practices and individual circumstances.

1.1.5 At the meeting of the Panel on 9 February 2009, members agreed that the Research and Library Services Division (RLSD) be requested to conduct a research on the external complaint handling mechanism for the higher education sector in overseas places. After a preliminary research on the United Kingdom (UK), the State of Queensland of Australia (Queensland), Taiwan, the United States, Canada and Singapore, RLSD proposed to study the mechanism in the UK, Queensland and Taiwan as these places had either legislation or independent public bodies or both in place to deal with complaints arising from staff of the higher education sector.

1.1.6 Both the UK and Queensland have legislation protecting the rights of the general public, including staff at higher education institutions, from disclosing information relating to official misconduct and maladministration that adversely affects a person's interest. The UK also has specific guidelines on handling whistleblowing, complaint and grievance procedures in the higher education sector. In Taiwan, there are legislation stipulating channels for making complaints and appeals in the higher education sector as well as the establishment of a dedicated committee in individual higher education institutions to handle teachers' complaints and grievances on dismissal, suspension and other detrimental decisions. An interim comparison table summarizing the preliminary findings of the subject was published for members' deliberation at the meeting held on 6 July 2009.

1.2 Scope of research

1.2.1 As there are strong views from staff of the UGC-funded institutions on the establishment of an independent inter-institutional redress mechanism with an arbitration system under which respectable persons from individual institutions should be appointed as arbitrators to resolve complaints concerning tertiary institutions, and members considered that it is important for the staff of the institutions to have the right to bargain collectively and for staff associations and unions to participate in the complaints handling system, the scope of research covers the following areas:

- (a) legislation and code of practice relating to the redress system for staff in the higher education sector;
- (b) complaint handling mechanism within higher education institutions;

- (c) independent inter-institutional and other external organizations that handle complaints and grievances of staff in the higher education sector; and
- (d) public agencies that operate a redress system for staff in the higher education sector.

1.3 Situation in Hong Kong

1.3.1 As at June 2010, Hong Kong had 13 degree-awarding higher education institutions: eight UGC-funded institutions, the publicly-funded Hong Kong Academy for Performing Arts¹ and four self-financing institutions. By the end of 2009, the eight UGC-funded institutions employed 13 525 staff, with 52% of them being academic staff, 15% being research staff and 33% being administrative, technical and other staff.²

1.3.2 Despite the existence of review and appeal mechanisms in all UGC-funded institutions for handling staff and student grievances and complaints, and University Union or Staff Association³ being in place to assist their members to deal with the complaints and grievances, some cases were brought to the court, or referred to the Legislative Council for handling, as widely reported in the media.

1.3.3 In May 2010, UGC completed a study on the redress mechanisms adopted by universities and institutions in other jurisdictions and would explore with the UGC-funded institutions on ways to improve their established mechanisms on the basis of the findings, including coming up with best practices of local and overseas institutions.

1.4 Methodology

1.4.1 This research adopts a desk research method, which involves Internet research, literature review, documentation analysis and correspondence with relevant authorities and organizations.

¹ Education Bureau (2010).

² University Grants Committee (2010).

³ Examples are the Hong Kong Professional Teachers' Union and the Federation of Hong Kong Higher Education Staff Association.

Chapter 2 – The United Kingdom

2.1 Overview

2.1.1 As at August 2010, there were 165 higher education institutions⁴ in the United Kingdom (UK), 115 of which were universities.⁵ England was host to most of the higher education institutions, accounting for 131 (79.4%). In 2008-2009, the higher education institutions in the UK employed 179 040 academic staff.⁶

2.1.2 In general, the university council or board of governors is the governing body of a higher education institution, which is responsible for the management and development of the institution, and addressing complaints and grievances raised by its staff. In the event that a complaint or grievance cannot be resolved internally within the institution, the staff may seek assistance from some external organizations. Such organizations include the University and College Union (UCU) and the Advisory, Conciliation and Arbitration Service (ACAS). In addition, while there are some 20 ombudsmen in the UK responsible for handling various kinds of complaints relating to maladministration of public agencies,⁷ the Scottish Public Services Ombudsman has its mandate covering colleges and universities as well. The staff is also protected by the *Public Interest Disclosure Act 1998 (PID Act)*⁸ to his or her detriment for public interest disclosures.

⁴ Higher education institutions include universities, university colleges, specialist higher education institutions and other higher education colleges.

⁵ The number does not account for the foreign and private higher education institutions operating in the UK.

⁶ *Universities UK* (2010).

⁷ The majority of such recognized Ombudsman schemes are set up by statute and have a defined jurisdiction.

⁸ The *PID Act* received the Royal Assent in July 1998 and came into force in July 1999.

2.2 Relevant legislation and code of practice

Code of Practice on Discipline and Grievance

2.2.1 While there is no prescribed requirement that a complaint or grievance handling mechanism should meet, the *Code of Practice on Discipline and Grievance*⁹ published by ACAS provides practical guidance to employers, employees and their representatives, stipulating the principles for handling disciplinary and grievance situations in the workplace. As such, individual higher education institutions, in line with the *Code*, establish their own complaint and grievance procedures for handling staff complaints and grievances.

2.2.2 Since the *Code* provides only guidance for handling disciplinary and grievance situations, a failure to follow the *Code* does not, in itself, make a person or the higher education institution concerned liable to proceedings. Nevertheless, employment tribunals will take the *Code* into account when considering relevant cases. Unreasonable failure by either party to comply with the *Code* will result in an adjustment up to 25% to awards made by employment tribunals.

Public Interest Disclosure Act 1998

2.2.3 Under the *PID Act*, a person is protected from disclosing information in the public interest relating to the following aspects:

- (a) criminal offences;
- (b) failure to comply with legal obligations;
- (c) miscarriages of justice;
- (d) dangers to the health and safety of an individual;
- (e) damages to the environment; and
- (f) act of concealing information on any of the above.

⁹ The *Code of Practice on Discipline and Grievance* was originally issued under Section 199 of the *Trade Union and Labour Relations (Consolidation) Act 1992*. Following the Dispute Resolution Review conducted by the government, the most recent revised version of this *Code* came into effect by order of the Secretary of State on 6 April 2009.

2.2.4 When there is a reprisal against a higher education institution staff for whistleblowing, the staff is protected by the *PID Act*, provided that he or she:

- (a) makes the disclosure in good faith;
- (b) reasonably believes the information to be substantially true;
- (c) does not act for personal interest; and
- (d) acts reasonably.

2.2.5 In the event of a reprisal, the higher education institution staff accused of whistleblowing can put forward his or her complaints to the following parties:

- (a) the corresponding higher education institution;
- (b) a legal adviser;
- (c) a Minister; or
- (d) a person prescribed by the Secretary of State.

2.2.6 Under the *PID Act*, the staff can also seek protection through the employment tribunal system. Remedies include unlimited financial compensation and orders requiring the corresponding higher education institution to retain the whistleblower in his or her job.

Employment Protection Act 1975

2.2.7 The *Employment Protection Act 1975* sets out the powers of ACAS. It also stipulates the duties of employers to disclose information for the purposes of collective bargaining and to consult over redundancies.

Scottish Public Services Ombudsman Act 2002

2.2.8 The *Scottish Public Services Ombudsman Act 2002* provides for the appointment and functions of the Scottish Public Services Ombudsman, who carries out, among others, a complaint handling duty based on the devolution principles of power-sharing, accountability, access and participation, and equal opportunities.

2.3 Complaint handling mechanism within higher education institutions

Complaint and grievance handling procedures

2.3.1 According to the report entitled *Disputes in your institution: Lessons to be learned*, published by the Higher Education Funding Council for England (HEFCE)¹⁰ under the Improving Dispute Resolution Project¹¹, the principles underlying the complaint and grievance handling, and disciplinary procedures of higher education institutions are established on the basis of:

- (a) equality;
- (b) fairness;
- (c) legal compliance;
- (d) resolving disputes as early as possible without concern for blame;
- (e) value of the *Code of Practice on Discipline and Grievance*;
- (f) good practice review of higher education institutions; and
- (g) negotiation with local UCU and UNISON¹² branch officers.

¹⁰ HEFCE is a non-departmental public body responsible for distributing public money to universities and colleges in England. It also plays a key role in ensuring accountability and promoting good practice in the higher education sector.

¹¹ The project, to be discussed in Section 2.6, aims at improving the resolution of disputes in the higher education sectors.

¹² UNISON is the largest public sector union in both the UK and Europe with more than 1.3 million members. It strives to work towards protecting and improving public services, securing equal pay and employment rights, improving safety in the workplace and preventing discrimination and harassment at work. It also supports external campaigns on issues such as fuel poverty and fair trade.

2.3.2 The *Guide for Members of Higher Education Governing Bodies in the UK*, published by the Committee of University Chairs¹³ in March 2009, provides guidance on the procedures for handling whistleblowing, complaints and grievances in higher education institutions. The *Guide* states that allegations about the behaviour of a senior officer of a higher education institution, or a lay/independent member of the governing body, or the propriety of committees of the governing body¹⁴ or other collective decisions should be made to the Vice-Chancellor, the Secretary or the Chair of the governing body, or the Chair of the Audit Committee¹⁵.

2.3.3 The allegation will be investigated either by the person to whom the allegation is made or by a Grievance Committee. Where there is a decision that no investigation is carried out and the allegation is dismissed, the person making the allegation will be informed and given the opportunity to lodge the complaint with another person or authority within the institution. The person against whom the allegation is made will also be informed, and he or she will be allowed to comment before the investigation is concluded and a report is made. The results of the investigation will be reported to the Audit Committee as well. In the event that the complaint or grievance cannot be resolved internally, assistance can be sought from either UCU or ACAS.

Grievance Committee

2.3.4 In general, the Grievance Committee reports to the University Council and is responsible for hearing complaints and grievances raised by academic staff in accordance with the Statute or the grievance procedures of the higher education institution. The Grievance Committee is normally chaired by the Deputy Vice-Chancellor and comprises a member of the University Council not being employed by the institution concerned and at least one member of the academic staff. The Grievance Committee will conduct hearings, where the attending complainant is allowed to be accompanied by a friend, colleague or trade union representative. The decision of the Grievance Committee (including proposals for redress of a grievance) and the right of appeal against the decision will be conveyed to all parties concerned by the Chair.

¹³ Established in 1986, the Committee of University Chairs provides a forum for discussion among university chairs. By sharing their knowledge and experience, university chairs are able to act more efficiently in helping their councils and boards to discharge their responsibilities as well as to consider matters of concern.

¹⁴ These committees include the Audit Committee, the Employment Committee, the Nominations Committee and the Remuneration Committee.

¹⁵ The Audit Committee is a small authoritative body responsible for examining the risk management control and governance of the higher education institution, and reporting areas of concern to the governing body.

2.4 External organizations that handle complaints and grievances of staff in higher education sector

2.4.1 Although the UK does not have an inter-institutional organization that handles complaints and grievances of staff in the higher education sector, UCU provides advices and assistances to staff of higher education institutions for resolving their complaints and grievances.

University and College Union

2.4.2 Established on 1 June 2006 by the amalgamation of the Association of University Teachers and the University and College Lecturers' Union, UCU represents more than 120 000 academics, lecturers, trainers, instructors, researchers, managers, administrators, computer staff, librarians and postgraduates in universities, colleges, prisons, adult education and training organizations across the UK. Any person working for a higher education institution is eligible for joining UCU. Membership fees range from £2.23 (HK\$27)¹⁶ to £16.47 (HK\$200) per month, depending on an individual's earnings.

Role and functions

2.4.3 UCU protects and promotes its members' interests both individually and collectively, monitors the terms and conditions of their employment, and advocates a good relationship between its members and their employers. It also advises and acts on behalf of its members against all forms of harassment, prejudice, discrimination and other personnel matters. UCU conducts its work through collective bargaining, campaigning, education and training, and publication of information.

¹⁶ The average exchange rate of Hong Kong Dollar per Pound Sterling in 2009 was 12.16.

Assistance to members

2.4.4 In an event relating to disciplinary actions, unfair dismissal or redundancy, the member involved can request a representative from UCU to accompany him or her to attend the related hearings or act on his or her behalf to negotiate with the corresponding higher education institution to ensure that all complaint and grievance handling procedures are followed properly by the institution concerned. In some instances, UCU will take industrial actions, such as lobbying, protest or strike, with the intention of forcing the higher education institution concerned to reinstate the staff to his or her position immediately.¹⁷

2.5 Public agencies that handle complaints of staff in higher education sectorAdvisory, Conciliation and Arbitration Service

2.5.1 Established in accordance with the *Employment Protection Act 1975* in 1975, ACAS is a non-departmental public body responsible for improving organizations and working life through better employment relations.

Role and functions

2.5.2 The role and functions of ACAS include:

- (a) promoting best practice in the workplace;
- (b) dealing with disputes between groups of workers and their employers;
- (c) dealing with disputes where individuals claim that their employer has denied them a legal right; and
- (d) providing advice and guidance on employment and work policies to the government and social partners such as trade unions and employers or their representative organizations.

¹⁷ An example showing how UCU defends the right of its members is the declaration of a series of one-day strikes at the Epping Forest College due to an alleged unfair dismissal of a construction lecturer of that College, who is also a UCU branch chair.

2.5.3 ACAS offers free advice on all employment rights issues, and its services cover England, Scotland and Wales. Although ACAS has a statutory duty to exercise the power to conciliate in potential employment tribunal claims, it has no power to force parties to agree to arbitration, and agreements reached in mediation are normally not legally binding.

Accountability and leadership

2.5.4 Largely funded by the Department for Business, Innovation and Skills, ACAS is governed by an independent Council, which is responsible for determining the strategic direction, policies and priorities of ACAS, and ensuring that its statutory duties are carried out effectively. The ACAS Council consists of leading figures from business, unions, independent sectors and academics, where the Chair and the 11 Council members, appointed by the Secretary of State for Business, Enterprise and Regulatory Reform, serve in a part-time capacity.

2.5.5 The day-to-day operations of ACAS are managed by the Chief Executive, and a management board that contains both national and regional directors.

Major types of complaints handled

2.5.6 ACAS has a statutory duty to promote the settlement of all claims to employment tribunals. These claims may arise from unfair dismissal, employment terms and conditions, breach of contract or discrimination. In 2009-2010, ACAS received 87 421 such cases, among which 45.8% were relating to unfair dismissal.¹⁸ Unresolved complaints and grievances after all necessary formal grievance procedures within higher education institutions have been invoked may also be directed to ACAS. Nonetheless, information on the number of cases under this category is not available.

2.5.7 There are cases deemed not suitable for the arbitration services of ACAS, namely:

- (a) disputes over whether an employment tribunal has jurisdiction to hear the case;

¹⁸ ACAS (2010).

- (b) concerned parties being unclear about the complex legal issues involved; and
- (c) cases raising questions of the law of the European Commission, such as unfair dismissal claims based on a citizen's right in the European Union, like sex discrimination or working time.

Complaint handling procedures

2.5.8 Following the Dispute Resolution Review¹⁹, the government has modified the way that ACAS deals with problems at work, emphasizing the flexibility to resolve problems at an early stage and the suitability for and applicability to all parties involved.

2.5.9 As a first step, ACAS will suggest the parties concerned to resolve the dispute through mediation. In the event that both parties have exhausted all internal procedures without reaching an acceptable outcome and mediation is not considered feasible, pre-claim conciliation service will be provided by ACAS, which may be extended to the provision of conciliation services if necessary. The ACAS Arbitration Scheme is an alternative to employment tribunal hearings for cases of alleged unfair dismissal and claims under flexible working legislation.

2.5.10 In essence, mediation is an informal way of resolving disputes in the workplace, avoiding the use of more formal or legal procedures. Conciliation is similar to mediation, but conciliation is normally used when there is a potential or actual claim to an employment tribunal, rather than for general employment problems. Arbitration differs from both conciliation and mediation as it is a more formal procedure in which the arbitrator acts like a judge, making a firm decision on a case.

¹⁹ In 2006, the government conducted the Dispute Resolution Review to review the options for simplifying and improving all aspects of employment dispute resolution with a view to making the system work better for employers and employees while preserving existing employee rights.

(A) Mediation

2.5.11 The mediation procedure in ACAS is a voluntary process. Most disputes can be mediated if the parties involved aim at maintaining the employment relationship instead of enforcing a legal right of a particular issue. As such, ACAS will provide an independent mediator helping both parties identify the problems and remedies, if necessary. In the event that both parties are unable to reach agreement, they can further pursue other workplace or legal procedures.

2.5.12 ACAS will charge for its mediation services except when the complaint is about employment rights and to be resolved in an employment tribunal. The charge is often paid by the employer.

(B) Conciliation

2.5.13 ACAS has a legal duty to offer free conciliation where a complaint about employment rights has been made to an employment tribunal. When an employment tribunal receives such complaint, it will be referred to ACAS with a view for conciliation. The ACAS conciliator will work with the parties concerned, aiming to resolve the dispute. If the complaint is settled through ACAS, the agreement will be legally binding. If no agreement can be reached, it will go back to the tribunal system.

2.5.14 ACAS strives to make conciliation available in any dispute under the following circumstances:

- (a) where the employer and employee concerned have already made reasonable efforts to resolve the issue(s);
- (b) where there is a prima facie cause of action at the time of the request, where the potential claimant appears to be eligible to make the claim, and where there is no prior binding agreement to settle the matter;
- (c) where potential individual rights claims will not be put at risk under collective and/or other agreements and procedures;
- (d) where conciliation will likely succeed²⁰; and
- (e) where the time and cost of going through the tribunal process are substantial, particularly in the case of collective dispute.

²⁰ This usually applies to cases of unauthorized wage deductions, breach of contract, or disputes over the amount of redundancy or holiday pay.

(C) Pre-claim conciliation

2.5.15 While conciliation is used when there is a potential or actual claim to an employment tribunal, pre-claim conciliation service is a free service available to all employers and employees where no claim has yet been submitted to an employment tribunal. The complainant can call the ACAS helpline, seeking advice and referral to the pre-claim conciliation service.

(D) Arbitration

2.5.16 The ACAS Arbitration Scheme provides an affordable alternative to an employment tribunal hearing, applicable to cases of alleged unfair dismissal or claims under flexible working legislation. Once the parties involved have signed an agreement to arbitration under the Scheme, the unfair dismissal claim can no longer be heard by an employment tribunal.

2.5.17 Entry to the Arbitration Scheme is via an Arbitration Agreement reached with the assistance of an ACAS conciliator or in the form of a compromise agreement drawn up by an independent adviser of the complainant. After relevant hearings have been conducted, the arbitrator will issue a binding "award" summarizing the case, the arbitrator's main considerations, the decision and the remedy. The arbitrator can order the same remedies as an employment tribunal for an unfair dismissal, such as re-instatement, re-engagement and compensation. There are limited grounds for challenging an arbitrator's award and the parties concerned cannot appeal against an arbitrator's decision except in cases relating to the European Commission law or the *Human Rights Act 1998*.

Possible outcomes of ACAS services

2.5.18 The possible outcomes after resolving disputes with one of the services provided by ACAS include:

- (a) settlement (via ACAS or privately)²¹;
- (b) withdrawal of the complaint;

²¹ In 2009-2010, 97% of disputes between individual employees and their employers were resolved through mediation.

- (c) monetary and/or non-monetary compensation (such as the employer making an apology and provision of references for future employment), if the parties concerned come to an agreement through conciliation; and
- (d) proceeding to an employment tribunal, if the case is not settled or withdrawn.

Scottish Public Services Ombudsman

2.5.19 The Scottish Public Services Ombudsman (SPSO) was set up in 2002 as a 'one-stop-shop' for handling complaints from the public, replacing three previous offices, namely the Scottish Parliamentary and Health Service Ombudsman, the Local Government Ombudsman for Scotland and the Housing Association Ombudsman for Scotland.

Role and functions

2.5.20 According to the *Scottish Public Services Ombudsman Act 2002*, SPSO is neither a regulator nor a watchdog. Instead, it acts as the last resort for complaints about organizations providing public services in Scotland. Not only do such organizations include local councils, the National Health Service, housing associations, the Scottish Government and its agencies and departments and most Scottish public bodies, but public colleges and universities are also specifically covered in the *Act*.

Accountability and leadership

2.5.21 Accountable to the Scottish Parliament, SPSO is required to lay its annual report and investigation reports before the Parliament. However, SPSO is not subject to the direction or control of the Scottish Government or the Parliament.

2.5.22 SPSO is appointed by the Queen, on the nomination of the Parliament, for a period not exceeding five years. He or she is eligible for a second term but re-appointment for a third term is only allowed under very special circumstances.

Major types of complaints handled

2.5.23 SPSO may look into complaints where a member of the public claims to have suffered injustice or hardship²² as a result of maladministration of a public body²³, its failure to provide a service or its failure in that service. SPSO is deemed to be the last resort in that it investigates cases only when the complainant has already exhausted the formal complaint procedures of the organization concerned.

2.5.24 SPSO does not investigate cases where the organization concerned has considered the matter properly and come to a properly-made decision, with the complainant disagreeing with that decision. Other complaints not handled by SPSO include commercial or contractual matter or a personnel issue relating to staff, such as appointments or removals, pay, and discipline or superannuation.

Complaint handling procedures

2.5.25 To bring a complaint against a public higher education institution, the staff concerned can approach SPSO in person, by phone, in writing, or filling out an online complaint form.

2.5.26 SPSO will consider whether the complaint is valid and eligible for investigation. In the event that SPSO decides to investigate the complaint, he or she will:

- (a) inform the complainant and the higher education institution concerned;
- (b) investigate the complaint by looking at it impartially, collecting and examining evidence in a variety of ways, including seeking written answers to questions, interviews, getting copies of documents, site visits and taking expert advice;

²² Injustice or hardship comprises: (a) hurt feelings, distress, worry or inconvenience; (b) loss of right or amenity; (c) financial loss or unnecessary expense; and (d) time and trouble in pursuing a justified complaint.

²³ The term 'maladministration' is not defined in the *Scottish Public Services Ombudsman Act 2002*, nor is it defined in other Ombudsman legislation in Scotland. In any event, the UK Parliamentary Ombudsman's annual report for 1993 provides some examples of maladministration. These are: (a) rudeness; (b) unwillingness to treat the complainant as a person with rights; (c) refusal to answer reasonable questions; (d) giving misleading advices; (e) offering no redress or manifestly disproportionate redress; (f) discrimination; (g) faulty procedures; (h) non-compliance with procedures; and (i) partiality.

- (c) weigh up the evidence in order to decide what is believed to be fair and reasonable; and
- (d) reach a view on the complaint and write a draft report.

2.5.27 While the draft report will be commented by the complainant, the final report will be sent to the complainant, the institution concerned and the relevant Ministers. A copy will also be laid before the Scottish Parliament.

Possible outcomes of investigation

2.5.28 If the complaint is justified, SPSO will make recommendations for actions to take to the higher education institution concerned, such as an explanation, an apology or re-imburement of costs incurred to the complainant, or improving the working practices within the institution. If SPSO considers that the matter is in the public interest²⁴, he or she may lay a report before the Scottish Parliament. The higher education institution also has an obligation to make arrangements for members of the public to inspect or obtain copies of any SPSO reports on investigations against it.

2.6 Improving Dispute Resolution Project

2.6.1 Funded by the HEFCE Leadership, Governance and Management Fund²⁵, the Higher Education Funding Council for England (HEFCE) commissioned Leeds Metropolitan University and several other institutions, to conduct the Improving Dispute Resolution Project in 2007, aiming at exploring with higher education institutions ways of improving practice in the resolution of disputes.²⁶ Given that mediation provides an opportunity for resolution at any stage in a dispute and helps avoid or reduce legal fees for all parties involved, the project particularly covers the following areas:

²⁴ Matters relating to the public interest include: (a) significant personal injustice complaints; (b) systemic failure cases; (c) precedent and test cases; and (d) cases where there has been a significant failure in the local complaints procedure.

²⁵ The aims of the HEFCE Leadership, Governance and Management Fund are: (a) encouraging the development and embedding of good practice in the areas of leadership, governance and management across the higher education sector; (b) providing measurable changes in, and impact on, the quality of leadership, governance and management and organizational performance in the sector; (c) seeking and sustaining value for money in the sector; and (d) providing esteem and recognition for leadership, governance and management in higher education institutions.

²⁶ Leeds Metropolitan University is the lead institution, and the other institutions are: (a) Staffordshire University; (b) the University of Wolverhampton; (c) the Higher Education Mediation Service of the Oxford Centre for Higher Education Policy Studies; (d) Martineau; (e) Eversheds; (f) Mills & Reeve; and (g) the Consortium on Negotiation and Conflict Resolution, College of Law, Georgia State University, the United States.

- (a) soliciting higher education institutions' experience in mediation and other forms of alternative dispute resolution;
- (b) discussing with higher education institutions ways of identifying disputes which are suitable for mediation; and
- (c) working with higher education institutions to develop training needs assessments for mediation.

2.6.2 Separate reports on each of the three areas examined in the Project were published in 2009. The following paragraphs will illustrate the summary findings of the reports, which are:

- (a) *Disputes in your institution: Lessons to be learned*;
- (b) *Alternative handling of disputes*; and
- (c) *Working with HEIs [higher education institutions] to develop mediation training*.

Findings in *Disputes in your institution: Lessons to be learned*

2.6.3 The main findings in the *Disputes in your institution: Lessons to be learned* report entail higher education institutions' experience in mediation and other forms of alternative dispute resolution, which are as follows:

- (a) administrative arrangements for dealing with disputes in higher education institutions tend to be fragmented, leading to prolongation of disputes and greater damage, in terms of time and cost, to all parties involved;
- (b) alternative dispute resolution and mediation, in particular, are more frequently adopted to handle staff disputes than student disputes;
- (c) despite the fact that a number of higher education institutions have commenced developing in-house mediation services, most higher education institutions are slow in developing better dispute resolutions, and there is little sharing of good practice and lessons learned, or exchange of mediators;

- (d) despite an increase in grievances, very few claims are referred to employment tribunals as disputes are normally settled internally within higher education institutions; and
- (e) higher education institutions generally settle staff disputes through continuation of the relationship on agreed terms, provision of financial compensation for loss and making apologies.

Findings in *Alternative handling of disputes*

2.6.4 The *Alternative handling of disputes* report portrays various ways of higher education institutions in identifying disputes which are suitable for mediation. In particular, the report reveals that:

- (a) the advantage of alternative dispute resolution, mediation in particular, is cost-effective in achieving a speedy resolution provided that an in-house mediator is engaged and only the parties involved attend. In the event that other parties, such as an outside mediator, solicitors, senior administrators of the higher education institution concerned, are involved, the cost incurred will be substantial;
- (b) higher education institutions in overseas jurisdictions engage a campus ombudsman and the system works to good effect provided that his or her tasks are clearly distinguished and the role clearly defined after consultation with the relevant higher education institution and student bodies; and
- (c) "mediation awareness" in unions is low and there is no systematic policy on the use of mediation.

Findings in *Working with HEIs to develop mediation training*

2.6.5 The *Working with HEIs to develop mediation training* report identifies the needs to develop mediation services in higher education institutions. Measures facilitating such development include:

- (a) developing online reference resources to enable higher education institutions to share experience and locate appropriate mediators in the event that a staff member does not trust the in-house mediation service;
- (b) encouraging further research in alternative dispute resolution and, mediation in particular;
- (c) encouraging a comprehensive review of dispute-resolution strategies and considering the full range of resolution needs in higher education institutions;
- (d) exploring quality mediation courses delivered by degree-awarding bodies;
- (e) developing criteria for selecting prospective mediators; and
- (f) developing a standard code of conduct for in-house and external mediators in handling higher education institution disputes.

2.6.6 As at the date of publication of this paper, the UK government has not scheduled any major review or evaluation on the proposed measures. So far, only a website serving as a 'project handbook' for resolving disputes in higher education institutions has been created. HEFCE continues to solicit comments and suggestions for improving aids for higher education institutions to streamline their practice and learn from the experience of other higher education institutions. Workshops and conferences have been scheduled in the following months where higher education institutions can share their experiences and practices in dispute resolutions.

Chapter 3 – The State of Queensland of Australia

3.1 Overview

3.1.1 At present, there are 37 universities in Australia, and the State of Queensland of Australia (Queensland) accounts for nine²⁷. The total number of staff employed in these nine universities is 18 000. In addition, Queensland has over 30 non-self-accrediting higher education institutions²⁸ and a small number of interstate universities offering higher education courses.²⁹

3.1.2 In Australia, a university has its own enabling legislation, setting out the scope of operation, governance arrangements and accountabilities. Similar to the United Kingdom, the governing body of universities in Queensland is either the university council or the senate. Among the nine universities, Bond University has a provision in its legislation³⁰ for an academic staff association, which is a recognized entity representing academic staff to safeguard their employment terms and conditions, negotiate with the employer on their behalf, and develop a procedure for settlement of industrial disputes.

3.1.3 In the event that a complaint or grievance cannot be resolved within the university, the staff concerned may seek assistance from public agencies such as the Crime and Misconduct Commission (CMC) or the Queensland Ombudsman. The *Whistleblowers Protection Act 1994 (WP Act)* also provides special protection to public interest disclosures, which are defined as disclosures about unlawful, negligent or improper public sector conduct or danger posed to public health, public safety or the environment in Queensland.

²⁷ The nine universities are: (a) Australian Catholic University; (b) Bond University; (c) Central Queensland University; (d) Griffith University; (e) James Cook University; (f) Queensland University of Technology; (g) The University of Queensland; (h) University of Southern Queensland; and (i) University of the Sunshine Coast.

²⁸ Non-self-accrediting higher education institutions offer accredited higher education courses under the *Higher Education (General Provisions) Act 2008*.

²⁹ *Department of Education and Training* (2010).

³⁰ This refers to the *Bond University Act 1987*.

3.2 Relevant legislation and code of practice

3.2.1 In Queensland, while it does not have any legislation or code of practice with provisions relating to the redress system for staff in the higher education sector, a person is not allowed to cause detriment³¹ to another person for making a public interest disclosure under the *WP Act*.

Whistleblowers Protection Act 1994

3.2.2 The *WP Act* aims to create a work environment where proper standards of ethical conduct are understood and adopted. Under the *WP Act*, a person is not liable, civilly, criminally or under any administrative process, for making a public interest disclosure. A reprisal against a person making a disclosure is an indictable offence, and the maximum penalty is either AUS\$16,700 (HK\$102,872)³² or two years' imprisonment. The complainant may request for job relocation in the event that he or she feels that there may be a reprisal.

Scope of information that can be disclosed

3.2.3 Under the *WP Act*, a person is not liable for making a public interest disclosure if he or she discloses the following information:

- (a) official misconduct³³;
- (b) maladministration³⁴ that specifically, substantially and adversely affects a person's interests;
- (c) negligent or improper management involving a substantial waste of public funds;

³¹ Detriment includes (a) personal injury or prejudice to safety; (b) property damage or loss; (c) intimidation or harassment; (d) adverse discrimination, disadvantage or adverse treatment about career, profession, employment, trade or business; (e) threats of detriment; and (f) financial loss from detriment.

³² The average exchange rate of Hong Kong Dollar per Australian Dollar in 2009 was 6.16.

³³ According to the *Crime and Misconduct Act 2001*, official misconduct is the conduct that could, if proved, be (a) a criminal offence; or (b) a disciplinary breach providing reasonable grounds for terminating a person's services, if the person is or was the holder of an appointment.

³⁴ Maladministration is an administrative action that is unlawful, arbitrary, unjust, oppressive, improperly discriminatory or taken for an improper purpose.

- (d) the conduct of public officer, public entity or any person contracting to supply goods or services (other than as an employee) to a public sector entity; and
- (e) danger to public health or safety, or the environment.

Crime and Misconduct Act 2001

3.2.4 The *Crime and Misconduct Act 2001* aims at combating and reducing major crimes, and improving the integrity of, and reducing the incidence of misconduct in, the public sector. This *Act* also provides the mandate for the establishment of CMC, which is empowered to investigate major crimes, and help the public sector deal with misconduct within the sector.

Ombudsman Act 2001

3.2.5 The *Ombudsman Act 2001* aims at giving people a timely, independent and just way of having inappropriate administrative actions of public agencies investigated, and improving the decision-making and administrative practice in public agencies. To achieve these objectives, an ombudsman is appointed to investigate administrative actions of, and make recommendations to, these agencies.

3.3 Complaint handling mechanism within universities

3.3.1 Under the *WP Act*, a university staff can put forward his or her complaints regarding a reprisal for making a public interest disclosure to either the university concerned, or a Member of the Legislative Assembly. While the Member has no formal role in investigating the incident, he or she may refer the case to an appropriate public agency which the Member considers has the power to investigate and/or remedy the conduct as a result of the disclosure.

Complaint handling mechanism

Principles underlying grievance and disciplinary procedures

3.3.2 Commonly specified in their procedures, universities in Queensland are committed to striving to achieve best practice and to take all reasonable steps to ensure that disputing parties are able to access a fair and rigorous process. Listed below are the principles underlying the complaint, grievance and disciplinary procedures:

- (a) encouraging informal and early resolution of grievance;
- (b) resolving complaints in a sensitive, timely and confidential manner;
- (c) applying the principles of natural justice; and
- (d) ensuring the university community against victimization or reprisals.

Complaint and grievance procedures

3.3.3 The procedure of dealing with a complaint or grievance in Queensland universities usually involves the following steps:

- (a) raising the complaint or grievance to the immediate supervisor or the appropriate university officer, who will advise on the available options such as mediation or conciliation to resolve the complaint;
- (b) writing to the Head of School, Deputy Vice-Chancellor or Director of Human Resources if the complainant feels that the matter has not been resolved;
- (c) employing an independent and neutral mediator or a Grievance Investigation Committee³⁵ by the relevant university officer to resolve the case; and

³⁵ In general, a Grievance Investigation Committee comprises senior university officers or staff members nominated by the Director of Human Resources, and staff members nominated by the Staff Consultative Committee.

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- (d) approaching a relevant external authority, including the Office of the Queensland Ombudsman, in the event that the complaint cannot be resolved after mediation.

3.3.4 The university concerned will keep record of complaints in this regard, and prepare a report to the Legislative Assembly annually, providing the following information:

- (a) the number of such complaints received or referred over the reporting period, for each type of information disclosed; and
- (b) the number of such complaints substantially verified³⁶ over the reporting period, for each type of information verified.

3.4 External organizations that handle complaints and grievances of staff in higher education sector

3.4.1 In Queensland, there is no independent inter-institutional organization that specifically handles complaints and grievances of staff in the higher education sector. Nevertheless, staff of the higher education sector can seek assistance from the National Tertiary Education Union (NTEU) for resolving disputes.

National Tertiary Education Union

3.4.2 NTEU is a specialist national union with a dedicated role of representing staff in tertiary education institutions³⁷ across Australia. NTEU has over 25 000 members³⁸, who contribute 1% of their annual salary as membership fees.³⁹ An additional 0.05% charge of a member's annual salary is put into an Industrial Defence Fund, which provides support to members undertaking sustainable industrial action or for the provision of legal assistance to branches or divisions of NTEU involved in disputes with broader implications for members.

³⁶ Substantially verified disclosure includes a disclosure for which an offence prosecution or disciplinary action has been taken or recommended.

³⁷ Eligible members are: (a) academic and research staff; (b) general staff; (c) teachers of Australia's English Language Intensive Courses for Overseas Students; and (d) staff of student unions and university companies.

³⁸ *National Tertiary Education Union* (2010).

³⁹ Most branch fees are set at 1% of a member's annual salary, with some branches charging a slightly lower or higher rate.

Role and functions

3.4.3 The primary role of NTEU is to defend the professional interests as well as to improve the living standards of its members. NTEU seeks to advance its members' interests by:

- (a) direct negotiation with employers on disputes relating to employment terms and conditions such as promotion, reclassification, redeployment, termination and redundancy, restructures and contract issues;
- (b) representation on governing councils and relevant government bodies and institution committees;
- (c) advising on issues relating to intellectual property, academic freedom, occupational health and safety, training and recruitment;
- (d) assisting in the establishment, training and resourcing of delegates' networks and other union communication mechanisms;
- (e) use of industrial and other tribunals;
- (f) lobbying of the government on the legal framework and funding of education, educational policy and industrial matters generally;
- (g) direct industrial action; and
- (h) services to individual members.

3.4.4 NTEU provides a wide range of services and benefits to its members, from discounted tax and health services to a variety of commercial discounts. The Industrial Defence Fund also provides assistance to members who are placed at financial risk as a consequence of their involvement in NTEU-endorsed industrial action, lay-off or prosecution by employers.

3.5 Public agencies that handle complaints of staff in higher education sector

3.5.1 Whereas there is no dedicated public agency that deals with staff complaints in the higher education sector in Queensland, both CMC and the Queensland Ombudsman provide a complaint handling service for the general public.

Crime and Misconduct Commission

3.5.2 CMC is a statutory body established in 2002 through merging the Criminal Justice Commission and the Queensland Crime Commission. CMC's jurisdiction covers all state and local government departments, the Queensland Police Service, most public agencies and statutory bodies, universities, courts, prisons and elected officials of state and local governments in Queensland.

Role and functions

3.5.3 CMC is an independent law enforcement commission setting up to combat major crimes in Queensland, including official misconduct in the Queensland public sector. It carries out its role by:

- (a) receiving and handling complaints about public sector misconduct;
- (b) investigating serious cases of public sector misconduct and corruption;
- (c) helping individual public agencies deal with and prevent misconduct;
- (d) conducting research into relevant areas, including policing methods;
- (e) gathering intelligence in support of investigations; and
- (f) offering a witness protection service to persons who assist CMC or other law enforcement agencies in discharging their functions.

Accountability and leadership

3.5.4 Funded by the state government, CMC is accountable to the Legislative Assembly of Queensland through the Parliamentary Crime and Misconduct Committee⁴⁰. CMC is run by a five-member board (the Commission), headed by a Chairperson. The corporate policy and strategic directions are set by the Commission and implemented by a 10-member Strategic Management Group.

3.5.5 According to the *Crime and Misconduct Act 2001*, the Chairperson of CMC has to be a legal practitioner who has served as, or is qualified for appointment as, a judge of the Supreme Court of any state, the High Court or the Federal Court. The *Crime and Misconduct Act 2001* also requires one of the Commissioners to be a practising lawyer with a demonstrated interest in civil liberties, and that one or more of the Commissioners have qualifications or expertise in public sector management and review, criminology, sociology or research related to crime or crime prevention.

Major types of complaints handled

3.5.6 CMC deals with complaints about official misconduct in relation to one of the following behaviours of public officers in carrying out their duties:

- (a) dishonesty or lack of impartiality;
- (b) breaching of the trust put in a person by virtue of their position;
and
- (c) misuse of officially-obtained information.

3.5.7 Public agencies are legally obliged to forward all complaints of suspected official misconduct in their agencies to CMC. To be eligible for CMC to handle, a case should be a criminal offence or serious enough to justify dismissal of the official concerned from his or her position.

⁴⁰ The principal responsibilities of the Parliamentary Crime and Misconduct Committee in relation to its jurisdiction over CMC are: (a) monitoring and reviewing the performance of CMC in carrying out its functions; (b) reporting to the Legislative Assembly on matters relevant to CMC; and (c) participating in the selection of the Commissioners of CMC.

3.5.8 **Table 1** shows complaints made by staff in Queensland universities to CMC from 2004 to 2008. In each of those five years, CMC received fewer than 10 such complaints, involving fewer than 30 allegations from university staff. The primary actions taken by CMC in response to these complaints, in general, were referring the case back to the university concerned to deal with.

Table 1 – Complaints made by staff in Queensland universities to Crime and Misconduct Commission from 2004 to 2008

	2004	2005	2006	2007	2008
Number of complaints received	4	4	7	1	7
Number of allegations involved	17	27	27	2	19
Types of allegation					
<i>Official misconduct</i>	8	5	13	0	4
<i>Victimization/harassment</i>	2	6	1	0	7
<i>Control of information</i>	1	2	0	0	6
<i>Corruption and favouritism</i>	2	6	5	0	0
<i>Others</i>	4	8	8	2	2
Actions taken					
<i>Determined to be not related to official misconduct</i>	0	0	0	0	1
<i>Referring to the university to deal with, with CMC providing outcome advice only</i>	8	4	26	0	7
<i>Referring to the university to deal with, with CMC to review before taking any final action</i>	4	0	0	0	10
<i>Determined to be unjustifiable use of resources, with no further action required</i>	5	23	1	2	1

Source: Crime and Misconduct Commission.

3.5.9 CMC does not involve in cases of minor misconduct of public officials, such as rudeness or inefficiency. It also does not handle complaints on unfair discrimination in the workplace⁴¹ and employment disputes⁴².

Complaint handling procedures

3.5.10 Any person can make a complaint to CMC in person, in writing, by phone, or through the CMC website. CMC will assess the validity of the complaint and decide on the appropriate action. For valid cases, CMC will either refer them to the universities concerned and monitor their progress, or investigate them direct.

Possible outcomes of CMC investigation

3.5.11 As CMC is not a court, it does not deliver a verdict or impose a disciplinary sanction. As such, the possible outcomes of its investigation are:

- (a) recommending the university concerned to explain what has happened in the event that there is no misconduct involved;
- (b) recommending the university concerned to take remedial action, such as administrative changes or preventive strategies;
- (c) referring the case to the Director of Public Prosecutions for criminal prosecution, or to the appropriate chief executive officer of the university concerned for disciplinary action; or
- (d) bringing the case before a Misconduct Tribunal for a disciplinary charge.

Queensland Ombudsman

3.5.12 The Queensland Ombudsman is an independent complaints investigation body in operation since 1974. Its establishment is to ensure that Queensland's public agencies act lawfully and fairly in serving the community.

⁴¹ Unfair discrimination in the workplace is handled by the Queensland Anti-Discrimination Commission.

⁴² Employment disputes are handled by the Department of Employment and Industrial Relations.

Role and functions

3.5.13 In accordance with the *Ombudsman Act 2001*, the Queensland Ombudsman has a dual role to:

- (a) providing a fair and impartial investigative service for people who believe that they have been adversely affected by a decision or action of a public agency; and
- (b) assisting public agencies to improve their decision-making and administrative practice.

3.5.14 The Queensland Ombudsman provides a free complaint resolution service and aims to promote good public administration within public agencies and local councils in Queensland. The Queensland Ombudsman investigates complaints about the actions and decisions of public agencies and their staff that may be unlawful, unreasonable, unfair, improperly discriminatory or otherwise wrong. They also help state and local government agencies improve their administrative practice by:

- (a) making recommendations based on their investigations;
- (b) conducting training on good decision-making and complaint management; and
- (c) providing advice and other assistance.

Accountability and leadership

3.5.15 The Queensland Ombudsman is an Officer of Parliament, independent of the government. He or she reports to the Legislative Assembly through the Legal, Constitutional and Administrative Review Committee⁴³.

⁴³ The responsibilities of the Legal, Constitutional and Administrative Review Committee in relation to its jurisdiction over the Queensland Ombudsman are: (a) monitoring and reviewing the performance of the Ombudsman; (b) reporting to the Legislative Assembly on any relevant matter; (c) examining annual reports of the Ombudsman and providing comment if necessary; and (d) reporting to the Legislative Assembly any changes in the Office of the Queensland Ombudsman's functions, structures and procedure.

3.5.16 The Queensland Ombudsman is appointed by the Governor-in-Council for a term not exceeding five years. The office-holder is eligible for a second term but will not be reappointed if the total number of years of service exceeds 10.

Major types of complaints handled

3.5.17 The types of complaints falling into the Queensland Ombudsman's domain include public agencies not acting on complaints and unfair employment or tendering processes. Actions and decisions made by universities and their staff that may be unlawful, unreasonable, unfair, improperly discriminatory or otherwise wrong are also under the Ombudsman's jurisdiction.

3.5.18 The types of complaints outside the power of investigation of the Queensland Ombudsman include:

- (a) complaints on discrimination and employment disputes;
- (b) problems which the complainant has known for more than 12 months before making the complaint;
- (c) matters under the jurisdiction of other agencies which the complainant has not referred to; and
- (d) problems which the complainant has not attempted to resolve with the institution (universities) concerned in the first place.

Complaint handling procedures

3.5.19 Any person can make a complaint to the Queensland Ombudsman either in person or in writing. Assuming a case involving a university, the complaint will be handled in the following steps depending upon the complexity of the case:

- (a) assessment – resolving the complaint on the basis of an assessment or independent research of the matter without contacting the university concerned;
- (b) preliminary inquiry – resolving the complaint after obtaining basic information from the university concerned;

- (c) informal investigation – conducting investigation by making verbal inquiries, seeking correspondence and other documents, or negotiating with the parties involved to resolve the complaint;
- (d) standard investigation – conducting formal interviews with university officers or other relevant persons, or seeking formal written responses from the university concerned, while not exercising the evidence gathering powers under the *Ombudsman Act 2001*; and
- (e) major investigation – exercising the evidence gathering powers under the *Ombudsman Act 2001* in response to evidence of maladministration in a university that requires thorough investigation.

Possible outcomes of investigation

3.5.20 When a complaint is received, the Queensland Ombudsman will assess the validity of the complaint and decide whether or not to conduct investigation. If the Queensland Ombudsman decides that an investigation is not warranted, complainants are given the reasons for the decision. If the university concerned has made a mistake or treated the complainant unfairly, the Queensland Ombudsman will recommend appropriate actions to be taken. In some cases, the Ombudsman may provide a report to the Legislative Assembly depending on the nature of the complaint and whether it is of public interest.

3.5.21 **Table 2** lists the complaints and grievances made by university staff in Queensland to the Queensland Ombudsman between 2006-2007 and 2008-2009. Same as the situation at CMC, fewer than 10 complaints or grievances were directed to the Queensland Ombudsman in each of those three years, and the majority involved maladministration. There were also no cases relating to public interest which warranted reporting to the Legislative Assembly.

3.5.22 In 2006-2007, six out of nine cases were referred to the relevant parties to resolve, while in 2007-2008, five out of seven complaints required direct investigation by the Queensland Ombudsman. In 2008-2009, the Queensland Ombudsman received three complaints from university staff, and two complainants were advised to resolve their complaints with the corresponding universities concerned.

Table 2 – Complaints and grievances made by university staff in Queensland to Queensland Ombudsman between 2006-2007 and 2008-2009

	2006-2007	2007-2008	2008-2009
Number of complaints/grievances received	9	7	3
Number of complaints/grievances investigated	1	5	1
Number of complaints/grievances referred to the relevant parties	6	2	2
Types of allegation			
<i>Official misconduct</i>	0	0	0
<i>Maladministration</i>	6	6	2
<i>Bullying</i>	1	1	1
<i>Harassment</i>	0	0	0
<i>Discrimination</i>	0	0	0
<i>Reprisal</i>	1	0	0
<i>Disciplinary action</i>	0	0	0
<i>Others</i>	1	0	0

Source: Queensland Ombudsman.

Chapter 4 – Taiwan

4.1 Overview

4.1.1 In 2009-2010, the number of higher education institutions in Taiwan was 164, comprising 105 universities and 59 colleges. The total number of teaching staff employed was 50 658, with 20%, 28% and 27% of them being professors, associate professors and assistant professors respectively.⁴⁴

4.1.2 The governance of both public and private universities is stipulated in the related legislation, and so are the rights, interests and complaint handling mechanism of staff of higher education institutions. The legislation also covers the establishment of a teachers' organization in each higher education institution, with staff joining it on their own will. Public agencies that handle complaints and grievances of staff of higher education institutions include the Civil Service Protection and Training Commission (CSPTC) and the Control Yuan. There is also a National Teachers' Association representing the rights and interests of most teaching staff across Taiwan.

4.2 Relevant legislation and code of practice

University Act, Teachers' Act and Civil Service Protection Act

4.2.1 In Taiwan, the governance of both public and private universities is stipulated in the *University Act*⁴⁵, which specifies that academic affairs⁴⁶ should be discussed in academic affairs meetings⁴⁷. The *University Act* also provides for the establishment of a Teachers' Appeal Review Committee in individual universities to handle teachers' complaints and grievances relating to dismissal, suspension and other detrimental decisions, with the composition, jurisdiction, complaint handling mechanism of the Committee being governed by the *Standards for Faculty Appeal and Review Committee Organization and Review Process*.⁴⁸

⁴⁴ 教育部全球資訊網(2010年).

⁴⁵ The *University Act* was enacted in 1948. The latest amendment was in September 2010.

⁴⁶ Academic affairs comprise: (a) development plans and budget of academic matters; (b) organizational procedures and rules; (c) establishment, alteration and suspension of colleges, departments, graduate institutes and auxiliary organizations; (d) academic and student matters, and other general affairs; (e) methods of teaching evaluation; (f) decisions of committees or task forces established at academic affairs meetings; and (g) resolutions at meetings and suggestions of presidents of higher education institutions.

⁴⁷ Members of academic affairs meetings constitute the president, deputy presidents, representatives of teaching staff, academic and executive supervisors as well as representatives of research personnel, general staff, students and other related personnel of individual higher education institutions.

⁴⁸ The *Standards for Faculty Appeal and Review Committee Organization and Review Process* was published in 1996. The latest amendment was in September 2010.

4.2.2 While the *Teachers' Act*⁴⁹ protects the rights and professional status of all full-time teaching staff of higher education institutions and stipulates the channels for making complaints and grievances, the *Civil Service Protection Act*⁵⁰ protects the rights of staff working in public universities, including the provision of remedies for illegal or ostensibly unjustifiable decisions.

Control Law 1992

4.2.3 The *Control Law 1992* empowers the Control Yuan to conduct impeachment, censure and audit, and to propose corrective measures in accordance with the Constitution and Additional Articles of the Constitution. The *Control Law 1992* also provides that the Control Yuan may receive written complaints from the public.

Law of Discipline against Public Functionaries

4.2.4 The *Law of Discipline against Public Functionaries*⁵¹ governs the failure of civil servants to observe relevant rules and regulations. It specifies the aims and procedures for the government to take disciplinary action against civil servants for dereliction of duty.

4.3 Complaint handling mechanism within higher education institutions

Complaint handling mechanism

4.3.1 According to the *Standards for Faculty Appeal and Review Committee Organization and Review Process*, each individual higher education institution is required to establish a Teachers' Appeal Review Committee to handle complaints and grievances made by staff within the institution. In the event that complaint cases cannot be resolved within the institution, complainants can seek assistance from the Ministry of Education.

⁴⁹ The *Teachers' Act* was enacted in 1995. The latest amendment was in 2009.

⁵⁰ The *Civil Service Protection Act* was enacted in 1996. The latest amendment was in 2003.

⁵¹ The *Law of Discipline against Public Functionaries* was enacted in 1931. The latest amendment was in 1985.

Composition of Teachers' Appeal Review Committee

4.3.2 Subject to the approval of the academic affairs meeting, individual higher education institutions are empowered to determine the composition, and the appointment and terms of service of the chairman and members of a Teachers' Appeal Review Committee, and notify the Ministry of Education accordingly. In general, a Teachers' Appeal Review Committee comprises 15 to 21 members, and at least two-thirds of them are teaching staff not taking up any administrative duties.

4.3.3 The membership of a Teachers' Appeal Review Committee constitutes representatives from the following parties:

- (a) teachers' organizations such as the Local Teachers' Associations;
- (b) education scholars from other higher education institutions;
- (c) administration of the higher education institution concerned; and
- (d) members of the public.

Complaint and grievance handling procedures

4.3.4 In general, any staff member of a higher education institution can lodge a complaint to the relevant Teachers' Appeal Review Committee if he or she considers that the institution concerned has engaged in illegal or improper acts damaging his or her interests. When the complaint is determined to be valid, the Committee will inform the institution concerned of the case, and the case normally takes three months to resolve.

4.3.5 As the first step of tackling a case, the Teachers' Appeal Review Committee will assign a group of three to five of its members to study and analyze relevant documents and legislation, and make recommendations to the Committee. The Committee will then invite relevant parties to give evidence in its meetings which are not open to the public.

4.3.6 Meetings of the Teachers' Appeal Review Committee require at least half of its members' attendance, and its decision requires the approval of two-thirds of its attendees. The decisions of a meeting will be sent to the parties involved, the teachers' organization in the district and the Ministry of Education. In the event that the parties involved are not satisfied with the decision of the Committee, they can appeal to the Ministry of Education.

4.3.7 As regards staff of public universities, they can lodge complaints to the corresponding Teachers' Appeal Review Committee in accordance with the *Civil Service Protection Act*, following a similar procedure as the one adopted by private higher education institutions. In the event that the complainant is not satisfied with the decision of the Committee, he or she can pursue the case before CSPTC.

4.4 External organizations that handle complaints and grievances of staff in higher education sector

4.4.1 While Taiwan does not have any independent inter-institutional organization that specifically handles complaints and grievances of staff in the higher education sector, there are teachers' organizations representing teachers in negotiation with relevant institutions and/or authorities relating to employment, complaints and other relevant matters.

Teachers' organizations

4.4.2 According to the *Teachers' Act*, there are three levels of teachers' organizations, namely the School Teachers' Association at the school level, the Local Teachers' Association at the municipal and county (city) levels and the National Teachers' Association at the central level. Teachers are free to join or hold any position in teachers' organizations, and schools are refrained from taking any actions against a teacher for his or her participation in teachers' organizations.

School Teachers' Association

4.4.3 According to the *Teachers' Act*, higher education institutions operating over 20 classes and employing over 30 teaching staff should form a School Teachers' Association. In the event that the number of classes is below 20, any such higher education institution may pair up with another one within the same district, or any higher education institution of similar size in other districts, to form a School Teachers' Association. The two constituent institutions of the resulting School Teachers' Association should employ at least 30 teaching staff in total.

Local Teachers' Association

4.4.4 A Local Teachers' Association is formed by at least 50% of the School Teachers' Associations in a district, and each district has only one Local Teachers' Association. A School Teachers' Association joining a Local Teachers' Association is categorized as a group member. A teaching staff of a higher education institution which has not formed any School Teachers' Association can join the Local Teachers' Association as an individual member.

National Teachers' Association

4.4.5 Established in 1999, the National Teachers' Association consists of 25 Local Teachers' Associations representing most teachers across Taiwan, comprising over 100 000 members.⁵² Membership fee is NT\$200 (HK\$49)⁵³ per annum, including NT\$10 (HK\$2.4) for a contribution to the National Teachers' Association Complaint Fund,⁵⁴ which provides financial resources to alleviate members' burden on litigation and legal fees relating to complaints and grievances.

Role and functions

4.4.6 According to the *Teachers' Act*, the role and functions of teachers' organizations at all levels are as follows:

- (a) upholding teachers' professionalism and autonomy;
- (b) negotiating with relevant authorities on employment criteria as well as employment terms and conditions;
- (c) conducting studies and helping resolve problems relating to education;
- (d) monitoring the management, operation and payments of the organization relating to compensation for resignation and layoff;

⁵² 全國教師會(2010年).

⁵³ The average exchange rate of Hong Kong Dollar per New Taiwan Dollar in 2009 was 0.243.

⁵⁴ In addition to the annual membership fee, other sources of income of this fund are donation, interest return and other incomes.

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- (e) representing members at statutory organizations in relation to employment, complaints and other relevant matters; and
 - (f) developing a Convention on Teachers' Self-discipline.

Financial assistance to members by National Teachers' Association

4.4.7 Although the National Teachers' Association does not handle complaints and grievances direct, it takes referrals from Local Teachers' Associations seeking legal advice or assistance. The referrals will be considered by the National Teachers' Association's grievance committee, and financial assistance for litigation expenses, up to NT\$36,000 (HK\$8,748) per case, will be provided if the complaint is valid for legal action.

4.5 Public agencies that handle complaints of staff in higher education sector

4.5.1 Similar to both the United Kingdom and Queensland, there is no dedicated public agency that handles staff complaints in the higher education sector. Instead, staff in the higher education sector may approach the Ministry of Education if their complaint cases cannot be resolved within the institution concerned. Staff of public higher education institutions can also approach either CSPTC or the Control Yuan to resolve their complaints and grievances.

Civil Service Protection and Training Commission

4.5.2 Established in 1996, CSPTC is a ministerial agency affiliated with the Examination Yuan⁵⁵. CSPTC is responsible for the protection and training of civil servants.

Role and functions

4.5.3 The functions of CSPTC include:

- (a) reviewing and planning civil service protection policies, laws and regulations;

⁵⁵ The Examination Yuan is responsible for national examinations and the management of civil service personnel in Taiwan.

- (b) making recommendations relating to the safeguarding of the rights and interests of civil servants, such as employment terms and conditions;
- (c) handling complaints and grievances of civil servants;
- (d) formulating and executing civil service training policies;
- (e) developing training systems; and
- (f) establishing laws and regulations governing training, qualifications of examiners, promotion, administration and personnel matters.

Accountability and leadership

4.5.4 CSPTC performs its role and functions independently in accordance with the *Civil Service Protection and Training Commission Organic Law*. Its operation is overseen by a Chairperson, who is assisted by two Deputy Chairpersons, five to seven full-time commissioners, and five to seven part-time commissioners. While the Chairperson of CSPTC is appointed by the President of Taiwan direct, the Deputy Chairpersons and full-time commissioners are appointed by the President of Taiwan upon the nomination of the President of the Examination Yuan. Their term of service is three years and renewable. Part-time commissioners are deputy heads of various government agencies, who are appointed by the President of the Examination Yuan.

Major types of complaints handled

4.5.5 CSPTC handles complaints and grievances on illegal or improper administrative conduct of public agencies, in particular, complaints relating to claims over infringement of rights and interests resulting from maladministration or poor working conditions. As such, when a complainant (a teaching staff at the public higher education institution) is not satisfied with the reply or decision of the Teachers' Appeal Review Committee of the institution under complaint, he or she could file such complaint with CSPTC.

4.5.6 Between 2000 and 2009, CSPTC accepted 8 596 complaint cases.⁵⁶ Nonetheless, there is no breakdown on the number of cases made by teaching staff of public higher education institutions on unresolved complaints or grievances.

4.5.7 CSPTC does not handle the following cases:

- (a) cases without concrete facts;
- (b) cases without reporting of a real name, home address and details of the agency involved; and
- (c) cases where a decision has been made by the Ministry of Education.

Complaint handling procedures

4.5.8 If a complainant is not satisfied with the reply of the Teachers' Appeal Review Committee concerned, he or she can appeal to CSPTC within 30 days upon receipt of the reply. CSPTC will conduct a procedural review and assess whether the case is valid for investigation. The Department of Protection at CSPTC will draw up appropriate opinions on handling the case for preliminary review by the full-time commissioners, followed by a review of the Review Board⁵⁷, and the final decision will be made at the Committee Meeting⁵⁸. All parties involved are obliged to adhere to the decision. In particular, the public higher education institution concerned has to report the implementation of the decision to CSPTC within two months. Public higher education institutions are required to publish decisions on appeals and their implementation on a regular basis.

Possible outcomes of CSPTC investigation

4.5.9 CSPTC will publish decisions made at the Committee Meeting as well as progress reports relating to the implementation of the decisions in the Examination Yuan Gazette and follow up the progress of the implementation. If the higher education institution concerned fails to implement the recommendations, the case will be directed to the Control Yuan for disciplinary action.

⁵⁶ 公務人員保障暨培訓委員會(2010年).

⁵⁷ The Review Board comprises a Deputy Chairperson and all full-time commissioners.

⁵⁸ Committee Meetings, comprising the Chairperson, Deputy Chairpersons and all commissioners, are convened to address civil service reviews and deliberation of complaint cases.

Control Yuan

4.5.10 Established in 1931, the Control Yuan is considered functionally equivalent to an independent ombudsman, while it holds powers of auditing and investigation.

Role and functions

4.5.11 According to the *Control Law 1992*, the Control Yuan has the following functions:

- (a) handling complaints from members of the public, including staff of public higher education institutions⁵⁹;
- (b) conducting investigation on central and local governments;
- (c) enforcing corrective measures against government bodies;
- (d) overseeing examinations; and
- (e) performing other functions relating to the exercise of the power of impeachment, censure and audit.

Accountability and leadership

4.5.12 The Control Yuan is a government body mandated by the Constitution. Its 29 Members, including a President and a Vice President, are nominated and appointed by the President of Taiwan with the consent of the Legislative Yuan for a term of six years.

Major types of complaints handled

4.5.13 The Control Yuan handles complaints arising from the following sources:

- (a) the general public, including staff of higher education institutions, who have discovered any public agencies violating their mandates;

⁵⁹ The Control Yuan has seven committees, one of which handles cases relating to education and cultural affairs.

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- (b) cases initiated by Members of the Control Yuan; and
 - (c) press reports about public agencies allegedly involved in the violation of law or in the case of dereliction.

4.5.14 The Control Yuan does not investigate cases which are anonymous, lacking evidence, or being rejected but raised again without further support of evidence.

Complaint handling procedures and possible outcomes of investigation

4.5.15 Staff of public higher education institutions can bring a complaint to the Control Yuan in person, in writing directly to a Member of the Control Yuan on duty⁶⁰, or by filling out an online complaint form. The Member on duty will assess the validity of the case. If it is valid for investigation, the Control Yuan will assign its Member(s), or commission a relevant organization to carry out the investigation. The results of the investigation will form the basis of potential actions to take, including impeachment, censure or corrective measures. While impeachment involves presentation of formal charges against a public official, censure is the expression of strong criticism on the act of the public official.

(A) Impeachment

4.5.16 In the event that the official of the public higher education institution concerned is found dereliction of duty or violation of the law, the Control Yuan may propose impeachment against him or her. Cases valid for impeachment must be initiated by at least two Members of the Control Yuan and reviewed by more than nine other Members before passing to an examination committee⁶¹ for scrutiny. If the examination committee concludes that the case is not valid for impeachment, but the initiated Members insist that impeachment is warranted, a new examination committee comprising at least nine different Members will be formed to review the case, and the decision made by the second examination committee will be final.

⁶⁰ The *Control Law 1992* specifies that the Control Yuan shall set up a member-on-duty office to take complaints from the public.

⁶¹ Each case will be scrutinized by a newly formed examination committee comprising 13 Members. All Members are required to take turns to join an examination committee.

4.5.17 If the offence is serious and requires immediate remedy, the case will be referred directly to the offender's supervisor for immediate action. If the case involves violation of the criminal code, it will be sent to the court for appropriate action.

(B) Censure

4.5.18 If Members of the Control Yuan find that the official of the public higher education institution concerned has violated the law and requires suspension from office, they may propose a censure against the official. The proposal will be scrutinized and approved by three or more Members of the Control Yuan other than the initiating Member(s). If the case involves violation of the criminal code, it will be directed to the court for action.

4.5.19 The public higher education institution concerned will also receive a written censure, where the supervisor or the official in charge shall take appropriate action in accordance with the *Law of Discipline against Public Functionaries* within one month. The supervisor may suspend the censured person from duty or take other immediate actions. In the event that the supervisor considers that no action shall be taken, he or she shall report the case to the Control Yuan with appropriate explanation. If the supervisor fails to take action in compliance with the law or if the action taken is considered inappropriate by more than two Control Yuan Members, an impeachment may be proposed against the censured person. If the impeachment proceedings result in penalty for the censured person, the supervisor shall be held responsible for dereliction of duty.

(C) Corrective measures

4.5.20 After receiving the demand for improvement from the Control Yuan, the public higher education institution concerned shall take immediate action and report progress to the Control Yuan within two months. In the event that the institution concerned, without valid reasons, fails to report to the Control Yuan in time, Members of the Control Yuan in charge of the original investigation will look into the case again.

4.5.21 In 2009, the Control Yuan received 28 829 complaints, among which 1 878 (6%) were related to the education and cultural sector. Nonetheless, there is no detailed breakdown on the number of complaints raised by staff from public higher education institutions.⁶²

Appeal

4.5.22 The complainant may appeal to the Control Yuan under the following circumstances:

- (a) further evidence to overturn the original decision;
- (b) overlooking of some important evidence in the initial stage; and
- (c) case not resolved due to making reference to a piece of legislation which is subsequently considered inappropriate.

⁶² 監察院(2010年).

Chapter 5 – Analysis

5.1 Introduction

5.1.1 This analysis looks into the complaint handling mechanism in the higher education sector in the United Kingdom (UK), the State of Queensland of Australia (Queensland) and Taiwan, in particular, whether these places have legislation or code of practice relating to the handling of staff complaints in the higher education sector, special features of the complaint handling mechanism within higher education institutions, the availability of an external organization that serves similar functions, the availability of a dedicated public agency or ombudsman that deals with such complaints and grievances, and whether any review or research has been conducted on the issues under study in the selected places.

5.2 Legislation or code of practice relating to the handling of staff complaints in higher education sector

5.2.1 Among the three places under study, only Taiwan has legislation, the *Teachers' Act*, which specifically protects rights of teachers and stipulates channels for making complaints and appeals. The *Teachers' Act* also provides for the establishment of teachers' organizations to negotiate with relevant authorities on employment terms and conditions as well as to represent members at statutory organizations in relation to employment issues and disputes. Also in Taiwan, the *University Act* provides for the establishment of a Teacher's Appeal Review Committee in individual higher education institutions to handle teachers' complaints and grievances on dismissal, suspension and other detrimental decisions, with the *Standards for Faculty Appeal and Review Committee Organization and Review Process* prescribing the composition, jurisdiction and the complaint handling procedures of the Teacher's Appeal Review Committee. Rights of staff working in public universities are further protected by the *Civil Service Protection Act*.

5.2.2 Unlike Taiwan, both the UK and Queensland do not have specific legislation relating to the handling of staff complaints in the higher education sector. Instead, they have legislation protecting rights of the general public, including staff at higher education institutions, from disclosing information relating to official misconduct and maladministration that adversely affects a person's interest.

5.2.3 In the UK, the *Public Interest Disclosure Act 1998* gives protection to "whistleblowers" for disclosing information in the public interest. In the event that there is a reprisal against a staff at a higher education institution for whistleblowing, he or she can seek protection through the employment tribunal system. Remedies include financial compensation and orders requiring the corresponding higher education institution to retain the whistleblower in his or her job.

5.2.4 In Queensland, the *Whistleblowers Protection Act 1994* provides protection to disclosures about unlawful, negligent or improper public sector conduct or danger posed to public health or safety or the environment. A reprisal against a person, including any staff at higher education institutions, making such a disclosure is an indictable offence. The maximum penalty is either AUS\$16,700 (HK\$102,872) or two years' imprisonment.

5.2.5 In addition to the public interest protection legislation, the UK has a *Guide for Members of Higher Education Governing Bodies in the UK* providing guidance on handling whistleblowing, complaint and grievance procedures in the higher education sector. Meanwhile, the *Code of Practice on Discipline and Grievance* published by the Advisory, Conciliation and Arbitration Service (ACAS) also provides guidance for handling disciplinary and grievance situations in the workplace. In particular, complaint and grievance procedures within higher education institutions are required to be established in accordance with this *Code of Practice on Discipline and Grievance*.

5.2.6 In Hong Kong, there is no legislation on the handling of staff complaints in the higher education sector or protecting the rights of the general public for "whistleblowing". Neither does it have any code of practice providing guidance for handling disciplinary and grievance cases in the higher education sector. Meanwhile, the University Grants Committee-funded (UGC-funded) institutions establish their own complaint handling mechanism in accordance with the needs of the respective institutions.

5.3 Complaint handling mechanism within higher education institutions

5.3.1 Among all the places under study, only Taiwan has the statutory requirement of setting up a committee within higher education institutions to deal with staff complaints and grievances relating to dismissal, suspension and other detrimental decisions. The Teacher's Appeal Review Committee in individual higher education institutions comprises 15 to 21 members, and at least two-thirds of them are teaching staff not taking up any administrative duties. Membership of a Teacher's Appeal Review Committee normally constitutes representatives from teachers' organizations, scholars from other higher education institutions, administration of the higher education institution concerned and members of the public.

5.4 External organization that helps staff in higher education sector to resolve complaints and grievances

5.4.1 The selected places under study do not have the setup of an independent inter-institutional organization that helps staff in the higher education sector resolve complaints and grievances. Instead, they all have a national teachers' union or organization across the country providing general and/or financial assistance to their members involving in disputes. In Hong Kong, individual universities set up their own university unions or staff associations to deal with complaints and grievances. There are also teachers unions and organizations across higher education institutions to assist their members to settle disputes.

5.4.2 In Taiwan, the *Teachers' Act* provides for the establishment of teachers' organizations to negotiate with relevant authorities on employment terms and conditions, and to represent members at statutory organizations in relation to employment and complaints. In particular, the National Teachers' Association provides financial assistance to its members for litigation expenses. The maximum amount is NT\$36,000 (HK\$8,748) per complaint case.

5.4.3 In the UK, the University and College Union will accompany its members to attend hearings or act on their behalf to negotiate with the corresponding higher education institution to ensure that all complaint and grievance handling procedures are followed properly in regard to disciplinary actions, unfair dismissal or redundancy. In some instances, the University and College Union will organize industrial actions, such as lobbying, protest or strike, with the intention of forcing the institution concerned to reinstate the staff to his or her position immediately.

5.4.4 In Queensland, the National Tertiary Education Union negotiates with higher education institutions direct on disputes relating to employment terms and conditions, such as termination and redundancy, restructures and contract issues. Its Industrial Defence Fund also provides assistance to members who are placed at financial risk as a consequence of their involvement in industrial action endorsed by the National Tertiary Education Union, as well as being laid off or prosecuted by employers.

5.5 Public agency that handles complaints and grievances made by staff in higher education sector

5.5.1 In all the three places under study, there is no dedicated public agency that handles complaints and grievances made by staff in the higher education sector. However, in both the UK and Queensland, there are public agencies that operate a redress system for the general public, namely ACAS in the UK and the Crime and Misconduct Commission (CMC) in Queensland. Unresolved complaints and grievances after all necessary formal grievance procedures within higher education institutions have been invoked may be directed to these agencies. In Taiwan, while staff at higher education institutions can lodge their complaints and grievances with the Ministry of Education in the event that they are not satisfied with the dispute resolution made by the Teachers' Appeal Review Committee of the corresponding higher education institution, staff at public higher education institutions can also put forward their complaints and grievances to the Civil Service Protection and Training Commission (CSPTC).

5.5.2 In the UK, ACAS is a non-departmental public body dealing with disputes between workers and their employers. ACAS has a statutory duty to promote the settlement of all claims to employment tribunals. These claims may arise from unfair dismissal, employment terms and conditions, breach of contract or discrimination.

5.5.3 Although ACAS has a statutory duty to exercise the power to conciliate in potential employment tribunal claims, it has no power to force parties to agree to arbitration, and agreements reached in mediation are normally not legally binding. Nonetheless, 97% of people using the ACAS mediation service indicate that their problems are resolved.

5.5.4 In Queensland, CMC is an independent law enforcement commission setting up to combat major crimes, including official misconduct in the Queensland public sector. It is accountable to the legislature of Queensland through the Parliamentary Crime and Misconduct Committee. One of the functions of CMC is to receive and investigate complaints about public sector misconduct relating to dishonesty or lack of impartiality, breaching of the trust put in a person by virtue of his or her position, and misuse of officially obtained information.

5.5.5 As CMC is not a court, it does not deliver a verdict or impose a disciplinary sanction. In general, CMC will refer the case to the public agency concerned for remedial or disciplinary action, or to the Director of Public Prosecutions for criminal prosecution, or to a Misconduct Tribunal for a disciplinary charge. Between 2004 and 2008, CMC received less than 10 complaints, involving less than 30 allegations from staff at higher education institutions per annum. The primary actions taken by CMC in response to these complaints were referring the case back to the institution concerned.

5.5.6 In Taiwan, CSPTC is a ministerial agency affiliated with the Examination Yuan. It is empowered to handle complaints and grievances on illegal or improper administrative conduct of public agencies, in particular, complaints relating to claims over infringement of rights and interests resulting from maladministration or work conditions. After having gone through the internal complaint handling system, the teaching staff who is not satisfied with the reply or decision of the Teachers' Appeal Review Committee at the public higher education institution under complaint could file such complaint with CSPTC. CSPTC will conduct investigation if the case is valid, and the decisions as well as progress reports relating to the implementation of the decisions will be published in the Examination Yuan Gazette. Failure to implement the recommendations will lead to such cases being directed to the Control Yuan for disciplinary action.

5.5.7 In Hong Kong, there is no dedicated public authority responsible for handling complaints lodged by staff of the UGC-funded institutions in relation to staffing matters and the staff members' employment relationship with the respective institutions. As a result, some disputes were brought to the court, or referred to the Legislative Council for handling, as widely reported in the media.

5.6 Ombudsman or organizations alike handling complaints from staff at higher education institutions

5.6.1 Except for Taiwan, the places under study have ombudsmen in place to handle complaints relating to maladministration in the public sector. For instance, in Scotland of the UK, the Scottish Public Services Ombudsman (SPSO) was set up as the last resort for complaints about public agencies in Scotland, including colleges and universities. In Queensland, the Queensland Ombudsman is an independent complaint investigation body providing a free complaint resolution service for people adversely affected by a decision or action of a public sector agency.

5.6.2 In general, SPSO will make recommendations to the higher education institution concerned for actions to take, such as an explanation, an apology or re-imburement of costs incurred to the complainant, or improving the working practices within the institution. If the institution concerned fails to implement the recommendations, SPSO can lay a special report, highlighting the matter, before the Scottish Parliament.

5.6.3 Similar to SPSO, if the public higher education institution concerned has made a mistake or treated the complainant unfairly, the Queensland Ombudsman will recommend appropriate actions to be taken. In some cases, the Ombudsman may provide a report to the Legislative Assembly depending on the nature of the complaint and whether it is of public interest. Between 2006-2007 and 2008-2009, there were fewer than 10 complaints or grievances made by staff of higher education institutions to the Queensland Ombudsman in each of those three years, and the majority involved maladministration.

5.6.4 In any event, the Ombudsmen in both Scotland and Queensland do not cover personnel matters such as appointments, dismissals, pay and conditions of service which are the subject of most staff grievances and complaints.

5.6.5 In Taiwan, the Control Yuan is the government body considered functionally equivalent to an independent ombudsman, in addition to its powers of auditing and investigation. If a complaint is valid for investigation, the Control Yuan will assign its Member(s), or commission a relevant organization to carry out the investigation. The results of the investigation will form the basis of impeachment, censure or corrective measures.

5.7 Review or study on complaint handling in higher education sector

5.7.1 Among all the places under study, only the UK has conducted a recent project on improving dispute resolution in the higher education sector, aiming at exploring with higher education institutions ways of enhancing resolution practices. The Improving Dispute Resolution Project was commissioned by the Higher Education Funding Council for England, a non-departmental public body distributing public money to universities and colleges in England. The project identifies the needs to develop mediation services in higher education institutions and provides measures facilitating such development, including:

- (a) developing an online reference resource to enable higher education institutions to share experience and locate appropriate mediators in the event that the complaining staff member does not trust the in-house mediation service;
- (b) encouraging further research in alternative dispute resolution and, mediation in particular;
- (c) encouraging a comprehensive review of dispute-resolution strategies and considering the full range of resolution needs in higher education institutions;
- (d) exploring quality mediation courses delivered by degree-awarding bodies;
- (e) developing criteria for selecting prospective mediators; and
- (f) developing a standard code of conduct for in-house and external mediators in handling disputes at higher education institutions.

5.7.2 As at the date of publication of this paper, the UK government has not scheduled any major review or evaluation on the proposed measures. So far, only a website serving as a 'project handbook' for resolving disputes in higher education institutions has been created. The Higher Education Funding Council for England continues to solicit comments and suggestions for improving aids for higher education institutions to streamline their practice and learn from the experience of other higher education institutions.

5.7.3 In Hong Kong, UGC has completed its study on the redress mechanisms adopted by universities and institutions in other jurisdictions, and will explore with the UGC-funded institutions on ways to improve their established mechanisms.

Appendix

Complaint handling mechanism in the higher education sector in the United Kingdom, Queensland and Taiwan

	The United Kingdom	Queensland	Taiwan
Relevant legal documents			
Specific legislation relating to the complaint handling mechanism in the higher education sector	Nil.	Nil.	<p><u>Teachers' Act</u></p> <p>(a) Protecting rights of teachers and stipulating channels for making complaints and appeals; and</p> <p>(b) enabling the establishment of teachers' organizations to negotiate with relevant authorities on employment terms and conditions and dispute resolution.</p> <p><u>University Act</u></p> <p>Enabling the establishment of a Teacher's Appeal Review Committee to handle teachers' complaints and grievances on disputes in both public and private universities.</p> <p><u>Standards for Faculty Appeal and Review Committee Organization and Review Process</u></p> <p>Governing the composition, jurisdiction and complaint handling mechanism of a Teacher's Appeal Review Committee.</p> <p><u>Civil Service Protection Act</u></p> <p>Protecting the rights of staff working in public universities.</p>

Appendix (cont'd)

Complaint handling mechanism in the higher education sector in the United Kingdom, Queensland and Taiwan

	The United Kingdom	Queensland	Taiwan
Relevant legal documents (cont'd)			
Legislation with provisions relating to "whistleblowing" or the complaint handling mechanism in general	<p><u>Public Interest Disclosure Act 1998</u></p> <p>(a) Giving protection to "whistleblowers" who disclose information in the public interest;</p> <p>(b) providing protection for a person in reprisal for whistleblowing through the employment tribunal system; and</p> <p>(c) offering remedies such as unlimited financial compensation and orders requiring the corresponding organization to retain the whistleblower in his or her job.</p>	<p><u>Whistleblowers Protection Act 1994</u></p> <p>(a) Providing protection to disclosures about unlawful, negligent or improper public sector conduct or danger posed to public health or safety or the environment; and</p> <p>(b) reprisal against a person making a disclosure being an indictable offence and maximum penalty being either AUS\$16,700 (HK\$102,872) or two years' imprisonment.</p>	Nil.

Appendix (cont'd)

Complaint handling mechanism in the higher education sector in the United Kingdom, Queensland and Taiwan

	The United Kingdom	Queensland	Taiwan
Relevant legal documents (cont'd)			
Code of practice or working guide	<p><i>Guide for Members of Higher Education Governing Bodies in the UK</i></p> <p>(a) Providing guidance on handling whistleblowing, complaint and grievance procedures in the higher education sector.</p> <p><i>Code of Practice on Discipline and Grievance</i></p> <p>(a) Providing guidance for handling disciplinary and grievance situations in the workplace; and</p> <p>(b) individual higher education institutions establishing their own complaint and grievance procedures in accordance with this <i>Code</i>.</p>	Nil.	Nil.

Appendix (cont'd)

Complaint handling mechanism in the higher education sector in the United Kingdom, Queensland and Taiwan

	The United Kingdom	Queensland	Taiwan
Complaint handling mechanism within higher education institutions			
Statutory committee dealing with staff complaints and grievances	Nil.	Nil.	Teacher's Appeal Review Committee of individual higher education institutions.
External organization that helps staff in the higher education sector resolve complaints and grievances			
Relevant teachers' organizations	<u>University and College Union</u> Representing academics, lecturers, trainers, instructors, researchers, managers, administrators, computer staff, librarians and postgraduates in universities, colleges, prisons, adult education and training organizations across the United Kingdom.	<u>National Tertiary Education Union</u> A specialist national union representing staff in tertiary education institutions across Australia.	Three levels of teachers' organizations: (a) School Teachers' Association at the school level; (b) Local Teachers' Association at the municipal and county (city) levels; and (c) National Teachers' Association at the central level.

Appendix (cont'd)

Complaint handling mechanism in the higher education sector in the United Kingdom, Queensland and Taiwan

	The United Kingdom	Queensland	Taiwan
External organization that helps staff in the higher education sector resolve complaints and grievances (cont'd)			
Role and functions	<ul style="list-style-type: none"> (a) Protecting and promoting members' interests; (b) monitoring employment terms and conditions; (c) advocating a good relationship between its members and their employers; and (d) advising and acting on behalf of its members against all forms of harassment and discrimination. 	<ul style="list-style-type: none"> (a) Direct negotiating with employers on disputes relating to employment terms and conditions; (b) representing teaching staff in governing councils and relevant government bodies; (c) providing advice on intellectual property, academic freedom, occupational health and safety, training and recruitment; (d) assisting in the establishment, training and resourcing of delegate networks and communication mechanisms; (e) lobbying the government on education policies and funding; and (f) directing industrial action. 	<ul style="list-style-type: none"> (a) Upholding teachers' professionalism and autonomy; (b) negotiating with relevant authorities on employment terms and conditions; (c) representing members at statutory organizations in relation to employment and complaints; (d) conducting studies relating to education; (e) monitoring the management of the organization dealing with compensation for resignation and layoff; and (f) developing a Convention on Teachers' Self-discipline.

Appendix (cont'd)

Complaint handling mechanism in the higher education sector in the United Kingdom, Queensland and Taiwan

	The United Kingdom	Queensland	Taiwan
External organization that helps staff in the higher education sector to resolve complaints and grievances (cont'd)			
General assistance to members	(a) Accompanying members to attend hearings or acting on their behalf to negotiate with the institution concerned in the event of disciplinary actions, unfair dismissal or redundancy; and (b) organizing industrial actions, such as lobbying, protest or strike.	Providing discounted tax and health services as well as commercial discounts to members.	The National Teachers' Association not handling complaints and grievances direct, but taking referrals from Local Teachers' Associations seeking legal advice or assistance.
Financial assistance to members	Nil.	The Industrial Defence Fund providing financial assistance to members involving in the Union-endorsed industrial action, lay-off or prosecution by employers.	The National Teachers' Association providing up to NT\$36,000 (HK\$8,748) for litigation expenses per complaint case valid for legal action.

Appendix (cont'd)

Complaint handling mechanism in the higher education sector in the United Kingdom, Queensland and Taiwan

	The United Kingdom	Queensland	Taiwan
Public agencies handling complaints and grievances			
Relevant public agency	Advisory, Conciliation and Arbitration Service (ACAS).	Crime and Misconduct Commission (CMC).	Civil Service Protection and Training Commission.
Year of establishment	1975.	2002.	1996.
Role and functions	<ul style="list-style-type: none"> (a) Promoting best practice in the workplace; (b) dealing with disputes between workers and their employers; and (c) providing advice and guidance on employment and work policies to the government and trade unions. 	<ul style="list-style-type: none"> (a) Receiving and investigating complaints about public sector misconduct; (b) conducting research and helping public sector agencies deal with and prevent the occurrence of misconduct; and (c) offering witness protection to persons helping CMC or other law enforcement agencies in discharging their functions. 	<ul style="list-style-type: none"> (a) Reviewing and planning civil service protection and training policies, laws and regulations; (b) safeguarding the rights and interests of civil servants; (c) handling complaints of civil servants; and (d) developing civil service training systems.
Accountability	Largely funded by the Department for Business, Innovation and Skills, ACAS is governed by an independent ACAS Council, consisting of leading figures from business, unions, independent sectors and academics.	Accountable to the Legislative Assembly of Queensland through the Parliamentary Crime and Misconduct Committee.	<ul style="list-style-type: none"> (a) A ministerial agency affiliated with the Examination Yuan; and (b) performing its role and functions independently in accordance with the law.

Appendix (cont'd)

Complaint handling mechanism in the higher education sector in the United Kingdom, Queensland and Taiwan

	The United Kingdom	Queensland	Taiwan
Public agencies handling complaints and grievances (cont'd)			
Composition	Appointed by the Secretary of State for Business, Enterprise and Regulatory Reform, the Chair and the 11 Council members serving in a part-time capacity.	Led by a Chairperson, CMC being run by a five-member board (the "Commission").	Comprising a Chairperson, two Deputy Chairpersons, five to seven full-time commissioners, and five to seven part-time commissioners.
Types of complaints handled	Claims arising from unfair dismissal, employment terms and conditions, breach of contract or discrimination which must be settled through employment tribunals.	Complaints of official misconduct relating to: (a) dishonesty or lack of impartiality; (b) breaching of the trust put in a person by virtue of his or her position; and (c) misuse of officially obtained information.	Complaints on illegal or improper administrative conduct of public agencies.
Complaint handling procedures	(a) Providing an independent mediator to help both parties identify the problems and remedies; (b) offering free conciliation service if the complaint about employment rights has been made to an employment tribunal; (c) providing a pre-claim conciliation service if no claim has yet been submitted to an employment tribunal; and (d) providing arbitration service for alleged unfair dismissal cases.	(a) Assessing the validity of the complaint and deciding on the appropriate action; and (b) either referring the case to the university concerned and monitoring its progress, or investigating it direct.	(a) Conducting a procedural review and assessing whether the case is valid for investigation; (b) drawing up appropriate opinions on handling the case for preliminary review by the full-time commissioners, followed by a review of the Review Board; and (c) making the final decision by the Committee Meeting.

Appendix (cont'd)

Complaint handling mechanism in the higher education sector in the United Kingdom, Queensland and Taiwan

	The United Kingdom	Queensland	Taiwan
Public agencies handling complaints and grievances (cont'd)			
Possible outcomes after investigation	(a) Settlement (via ACAS or privately); or (b) withdrawal of the complaint; or (c) monetary and/or non-monetary compensation (such as the employer making an apology), if the parties concerned come to an agreement through conciliation; or (d) proceeding to an employment tribunal, if the case is not settled or withdrawn.	(a) Recommending the institution concerned to explain the case if no misconduct is involved; or (b) recommending the institution concerned to take remedial action; or (c) referring the case to the Director of Public Prosecutions for criminal prosecution, or to the appropriate chief executive officer of the institution concerned for disciplinary action; or (d) bringing the case before a Misconduct Tribunal for a disciplinary charge.	(a) Publishing the Committee Meeting's decisions and progress reports relating to the implementation of the decision in the Examination Yuan Gazette; and (b) cases failing to implement the recommendations being directed to the Control Yuan for disciplinary action.

Appendix (cont'd)

Complaint handling mechanism in the higher education sector in the United Kingdom, Queensland and Taiwan

	The United Kingdom	Queensland	Taiwan
Ombudsman or organization alike handling complaints from staff at higher education institutions			
Relevant organization	Scottish Public Services Ombudsman (SPSO).	Queensland Ombudsman.	Control Yuan.
Year of establishment	2002.	1974.	1931.
Role and functions	Acting as the last resort for complaints about organizations providing public services in Scotland.	(a) Providing an investigative service for people adversely affected by a decision or action of a public sector agency; and (b) assisting public sector agencies to improve their decision-making and administrative practice.	(a) Handling complaints from members of the public, including staff of public higher education institutions; (b) conducting investigation and enforcing corrective measures on government bodies; (c) overseeing examinations; and (d) exercising the power of impeachment, censure and audit.
Accountability	Accountable to the Scottish Parliament.	(a) The Queensland Ombudsman being an Officer of Parliament, independent of the government; and (b) reporting to the Legislative Assembly through the Legal, Constitutional and Administrative Review Committee.	Mandated by the Taiwan Constitution.

Appendix (cont'd)

Complaint handling mechanism in the higher education sector in the United Kingdom, Queensland and Taiwan

	The United Kingdom	Queensland	Taiwan
Ombudsman or organization alike handling complaints from staff at higher education institutions (cont'd)			
Appointment/ Composition	SPSO appointed by the Queen, on the nomination of the Parliament.	The Queensland Ombudsman appointed by the Governor-in-Council.	(a) Comprising 29 Members, including a President and a Vice President; and (b) nominated and appointed by the President of Taiwan with the consent of the Legislative Yuan.
Types of complaints handled	Complaints relating to injustice or hardship as a result of maladministration, failure to provide a service or failure in that service.	(a) Unresolved complaints and unfair employment or tendering processes of public agencies; and (b) unlawful and unfair actions and decisions made by public agencies.	(a) Complaints from the public relating to government agencies violating their mandates; (b) cases initiated by Members of the Control Yuan; and (c) press reports about public agencies allegedly involved in the violation of law or dereliction of duties.
Complaint handling procedures	(a) Assessing the validity of the complaint; (b) collecting and examining evidence; (c) reaching a decision and preparing a draft report; and (d) sending the final report to the complainant, the institution concerned, the relevant Ministers, and the Scottish Parliament.	(a) Resolving the complaint on the basis of an assessment or independent research without contacting the institution concerned; or (b) resolving the complaint by obtaining information from the institution concerned; or (c) conducting investigation by making verbal inquiries or negotiating with the parties involved; or (d) conducting formal interviews with officers of the institution concerned or other relevant persons; or (e) exercising the evidence-gathering powers under the <i>Ombudsman Act 2001</i> in response to evidence of maladministration in the institution that requires thorough investigation.	(a) Member of the Control Yuan on duty assessing the validity of the case; and (b) the Control Yuan assigning its Member(s), or commissioning a relevant organization to carry out the investigation.

Appendix (cont'd)

Complaint handling mechanism in the higher education sector in the United Kingdom, Queensland and Taiwan

	The United Kingdom	Queensland	Taiwan
Ombudsman or organization alike handling complaints from staff at higher education institutions (cont'd)			
Possible outcomes after investigation	(a) Making recommendations (such as an explanation, an apology or re-imburement of costs incurred to the complainant, or improving the working practices) to the institution concerned; (b) sending a special report to the Scottish Parliament if the institution concerned fails to implement the recommendations; and (c) allowing members of the public to inspect or obtain copies of the SPSO reports on investigations against the institution concerned.	(a) Giving reasons to the complainant for the decision if an investigation is not warranted; (b) recommending appropriate actions if the institution concerned has made a mistake or treated the complainant unfairly; and (c) providing a report to the Legislative Assembly if the complaint is of public interest.	(a) Impeachment – if the official is found dereliction of duty or violation of the law; (b) censure – if the official has violated the law and requires suspension from office; and (c) corrective measures – if the aim is to improve the administrative affairs of the public agency concerned.

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98. 香港大學職員協會：《再評大學管治架構及申訴機制》，2009 年 3 月 31 日提交的文件，立法會 CB(2)1235/08-09(01)號文件。
99. 香港中文大學員工總會：《設立跨院校民選獨立申訴委員會》，2009 年 3 月 31 日提交的建議書，立法會 CB(2)1235/08-09(07)號文件。
100. 香港科技大學：2009 年 7 月 6 日向立法會教育事務委員會提交的文件，立法會 CB(2)2234/08-09(01)號文件。
101. 香港浸會大學：《教職員申訴處理程序》，2009 年 7 月 13 日向立法會教育事務委員會提交的文件，立法會 CB(2)2234/08-09(02)號文件。
102. 香港浸會大學教職員工會：《香港浸會大學教職員工會支持高等院校成立獨立申訴機制》，2009 年 7 月 6 日提交的文件，立法會 CB(2)2140/08-09(02)號文件。
103. 香港高等院校教職員會聯會，2009 年 3 月 30 日向立法會教育事務委員會提交的文件，立法會 CB(2)1235/08-09(04)號文件。
104. 香港教育學院，2009 年 7 月 6 日向立法會教育事務委員會提交的文件，立法會 CB(2)2166/08-09(03)號文件。
105. 香港教育學院教學人員協會：《大學教育資助委員會資助院校的管治架構和申訴及投訴機制》，為立法會教育事務委員會 2009 年 2 月 9 日的會議提交的意見書，立法會 CB(2)831/08-09(05)號文件。
106. 香港理工大學：《高等教育界跨院校修正機制》，為立法會教育事務委員會 2009 年 7 月 6 日的特別會議提交的文件，立法會 CB(2)2204/08-09(01)號文件。

- 107.嶺南大學：《高等教育界跨院校申訴機制》，2009年7月6日向立法會教育事務委員會提交的文件，立法會CB(2)2138/08-09(01)號文件。
- 108.職業訓練局講師工會：《大學教育資助委員會資助院校的管治架構和申訴及投訴機制》，為立法會教育事務委員會2009年2月9日的會議提交的意見書，立法會CB(2)1183/08-09(02)號文件。