

Citizen Participation and Public Petitions Committee

6th Meeting, 2023 (Session 6), Wednesday
19 April 2023

PE2000: Ensure universities are held accountable to students under consumer law

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| Petitioner | Dr Marie Oldfield |
| Petition summary | Calling on the Scottish Parliament to urge the Scottish Government to ensure universities are held accountable to students under consumer protection law by extending the remit of the Scottish Public Services Ombudsman or creating a new body, similar to the Office of the Independent Adjudicator for Higher Education, which could enable students to access redress without the need for court action. |
| Webpage | https://petitions.parliament.scot/petitions/PE2000 |

Introduction

1. This is a new petition that was lodged on 5 January 2023.
2. A full summary of this petition and its aims can be found at **Annexe A**.
3. A SPICe briefing has been prepared to inform the Committee's consideration of the petition and can be found at **Annexe B**.
4. While not a formal requirement, petitioners have the option to collect signatures on their petition while it remains under consideration. At the time of writing, 3 signatures have been received on this petition.
5. The Committee seeks views from the Scottish Government on all new petitions before they are formally considered. A response has been received from the Scottish Government and is included at **Annexe C** of this paper.
6. A submission has been provided by the petitioner. This is included at **Annexe D**.

Action

The Committee is invited to consider what action it wishes to take on this petition.

Clerk to the Committee

Annexe A

PE2000: Ensure universities are held accountable to students under consumer law

Petitioner

Dr Marie Oldfield

Date lodged

5 January 2023

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to ensure universities are held accountable to students under consumer protection law by extending the remit of the Scottish Public Services Ombudsman or creating a new body, similar to the Office of the Independent Adjudicator for Higher Education, which could enable students to access redress without the need for court action.

Previous action

I previously lodged [petition PE1769](#). This petition was closed in December 2020, with the Committee suggesting I submit a petition in the new parliamentary session.

Background information

My previous Petition PE1769 was submitted to investigate why higher education is not being fairly applied to every student. In the past 5 years, students have had content cut from their courses, feedback is limited or not provided, and assessments adversely impacted disadvantaging the student.

Students, especially self-funders, are paying for their education, and the SPSO is not equipped to deal with these types of complaints, leaving students to seek redress through the court system. The SPSO has stated that improvements could be made but it is beyond their remit to fully investigate these issues. This is patently unfair, and no one is currently demanding the taxpayers' money back even when services have not been provided.

Where strikes have been the cause, universities keep both wages and fees, essentially being paid double for non-provision of services to students. With funding coming directly from universities, students unions may not be in a position to stand up for students.

The non-provision of service means graduates are leaving without the education or skills required to successfully join the workforce.

Annexe B

The logo for SPICe (The Information Centre) is located in a purple rounded rectangle. It features the text 'SPICe' in a large, white, sans-serif font, followed by 'The Information Centre' and 'An t-Ionad Fiosrachaidh' in a smaller, white, sans-serif font.

The Information Centre
An t-Ionad Fiosrachaidh

Briefing for the Citizen Participation and Public Petitions Committee on petition [PE2000](#): ‘Ensure universities are held accountable to students under consumer law’, lodged by Dr Marie Oldfield

Brief overview of issues raised by the petition

The petition references a similar previous petition [PE1769: Higher Education in Scotland](#). This sought a review to consider “the way higher education in Scotland is set up and delivered in Scotland including:

- How students’ rights are enforced; and
- Whether there is scope to allocate more power to the Scottish Public Services Ombudsman.”

That petition was considered by the Session 5 Public Petitions Committee in 2020 and was closed in December of that year. That committee received submissions from:

- [Quality Assurance Agency Scotland](#);
- [SPSO](#);
- Two submissions from the Scottish Government in [February](#) and [October](#);
- The [Scottish Funding Council](#); and
- Three from the petitioner, in [July](#), [September](#) and [November](#).

The Session 5 Committee closed the petition on the basis that—

“The Scottish Government states that it has no current plans to seek to extend the existing powers currently available to the Scottish Public Services Ombudsman, and the Scottish Funding Council states that there is ‘no evidence that that the current approach is not effective in protecting the interests and rights of students’.”

The [SPICe briefing for PE1769](#) was prepared in December 2019. This remains a useful overview of the quality assurance and complaints procedures and remedies in relation to higher education institutions. The following paragraphs in this paper are focused on the role of the SPSO and consumer law.

Scottish Public Services Ombudsman

The [Scottish Public Services Ombudsman \(SPSO\)](#) has a wide remit, including certain responsibilities in relation to HEIs. The SPSO’s statutory functions are set out in the [Scottish Public Services Ombudsman Act 2002](#).

The SPSO’s role in relation to HEIs is to act as the final arbiter where complaints about an HEI are not satisfactorily resolved through its internal complaints procedures. It does not hear appeals about decisions made by HEIs. The SPSO can check whether the decision has been properly made; it cannot, however, change or overturn the decision. If the SPSO finds that something has gone wrong, it can make recommendations to put things right.

Schedule 4 of the 2002 Act lists a number of “matters which the Ombudsman must not investigate”. This list includes:

Action taken by or on behalf of [further and higher education institutions (excluding the OU)] in the exercise of academic judgement relating to an educational or training matter.

The SPSO’s submission to the previous petition said—

“My current view is I have seen no compelling evidence that SPSO is unduly restricted by the limitation on academic judgement. However, the legislation is now 15 years old and I would be open to further discussion if there was support for a review of this position from the sector and students.”

The SPSO’s [Redress Policy](#) sets out that, following a complaint, it may recommend “reimbursement of demonstrable loss and/or costs

incurred". In practice, this does not happen very often; the SPSO's [2020-21 annual report](#) identified four cases where the SPSO had made recommendation of the type, "Individual remedy: financial". The Redress Policy states that the SPSO will not consider compensation claims, i.e. claims that "go beyond simple reimbursement", and that these are more properly considered in the courts (or tribunals).

The SPSO has considered cases about claims of lost learning due to industrial action in universities, for example see: [Decision Report 201900021](#).

Consumer Law

Universities can set out what a student may expect from a university in the form of terms and conditions.

The Competition and Markets Authority ("CMA") published [guidance for Higher Education Institutions in 2015](#) in which it noted that "consumer protection law will generally apply to the relationship between HE providers and prospective and current undergraduate students."

Following the CMA guidance, [Universities UK published a briefing on student contracts in 2018](#). Both publications highlighted the need for clear processes for complaints and redress. The CMA noted that, in certain circumstances, a student could potentially pursue a civil claim for breach of contract (para 2.31); however, guidance by Universities UK states that students should, "have access to complaints schemes and independent adjudication to resolve disputes without costly court action".

One of the concerns of the petitioner is to remove the need for redress through the courts. As indicated in the CMA guidance (para 2.24), the enforcement of consumer law can involve action by the CMA or local Trading Standards services. The guidance notes though that "enforcers will usually promote compliance by the most appropriate means, in line with their enforcement policies, priorities and available resources". In certain circumstances, this can mean that court actions by individuals are necessary for consumer rights to be enforced. There are likely to be legal costs involved in such actions, although it can sometimes be possible for these costs to be shared amongst individuals (e.g. a group of students). [Legal aid may also be available](#).

[Reports in late 2022](#) indicate that a number of students in England and Wales are seeking redress through the courts for lost learning time due to the pandemic or industrial action.

Consumer protection legislation is reserved under header C7 of [Schedule 5](#) of the Scotland Act 1998.

Key Organisations and relevant links

Scottish Government

Ned Sharratt
Senior Researcher
17 January 2023

The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public. However, if you have any comments on any petition briefing you can email us at spice@parliament.scot

Every effort is made to ensure that the information contained in petition briefings is correct at the time of publication. Readers should be aware however that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

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Annexe C

Minister for Higher Education, Further Education, Youth Employment and Training submission of 31 January 2023

PE2000/A – Ensure universities are held accountable to students under consumer law

Introduction

1. The Scottish Government welcomes the opportunity to comment on the above petition.

The status of Higher Education Institutions

2. Higher Education Institutions (HEIs) are autonomous bodies, independent of Government, with responsibility for their own strategic and operational decision making. They are also responsible for compliance with existing legal requirements, including relevant consumer law, for example the Consumer Scotland Act 2020, Consumer Rights Act 2015, Consumer Protection from Unfair Trading Regulations 2008 and the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013. Although consumer advice and advocacy are now devolved, the redress and enforcement aspects of consumer protection remain reserved to the UK Government (Scotland Act 1998, Schedule 5, Head C7 (Consumer Protection)).
3. There are already mechanisms through which students can seek redress regarding individual complaints, without the need for court action in the first instance. As autonomous bodies, each HEI has its own arrangements for handling complaints from students. Any individual who is not satisfied with the outcome of the HEI complaints process may refer the issue to the Scottish Public Services Ombudsman (SPSO), with the exception that complaints relating to the Open University in Scotland are dealt with by the Office of the Independent Adjudicator for Higher Education. This is because, as a UK institution with its main base in England, it falls under UK-wide procedures.
4. Should legal action be pursued, publicly funded legal assistance ('legal aid') allows people to pursue or defend their rights or pay for

their defence when they could not otherwise afford to do so. The Law Society of Scotland provide a solicitor locator on their website at: <http://www.lawscot.org.uk/find-a-solicitor/>. This also provides the option to search for a solicitor registered to provide legal aid, along with information on their areas of legal practice.

5. Alternatively, the Scottish Legal Aid Board provides information on the nearest solicitors who offer help through legal aid, or other advice providers funded by the Board at: <http://www.slab.org.uk/public/solicitor-finder/>. For civil matters it is possible to search by case type. Although a firm is registered for legal aid work, they are not obligated to offer services to any client or offer to take on a case on legal aid.

Scottish Government response to student complaints

6. It is not uncommon for dissatisfied students to write to Scottish Ministers asking the Scottish Government to intervene in complaints made against universities. In these instances, officials advise correspondents to explore redress through the institution's own complaints procedures in the first instance and, if they remain dissatisfied, to raise with the SPSO.

Powers of the Scottish Public Services Ombudsman (SPSO)

7. Section 5 of the Scottish Public Services Ombudsman Act 2002 provides that the SPSO is entitled to investigate maladministration or service failures of public bodies. The Further and Higher Education (Scotland) Act 2005 extended the SPSO's remit to include fundable bodies (with the exception of the Open University and the Scottish Agricultural College).
8. The Scottish Public Services Ombudsman Act 2002 requires that HEIs in Scotland adopt a model complaints and handling procedure (CHP) developed by the Scottish Public Service Ombudsman (SPSO) in collaboration with representatives from the sector (<https://www.spsso.org.uk/sites/spsso/files/csa/OriginalCHPs/HEMCHPIImplementationGuide2012.pdf>).
9. The SPSO Support and Intervention Policy came into place on 1 April 2019, and formalises the mechanisms already used previously to offer support to organisations and take intervention when required: <https://www.spsso.org.uk/support-and-intervention-policy>. Support action, under the policy, gives guidance and support to organisations to help them improve their practice or address poor performance. Intervention action is more formal and usually requires the public body

to take specific action to improve performance in relation to complaints or whistleblowing concerns handling or engagement with SPSO investigations and reviews.

10. The remit of the SPSO does not apply to matters of “academic judgement relating to an educational or training matter”. Given that HEIs are not public bodies, this is an important limitation which should be preserved. Furthermore, in response to petition PE1769 (‘Higher Education in Scotland’), the SPSO said that the organisation “considers the impact of this restriction on a case-by-case basis, taking into accounts the specific facts and circumstances”, and that there is “no compelling evidence that SPSO is unduly restricted by the limitation on academic judgement.”
11. Each complainant will receive a letter from SPSO which sets out the specific reasons for any decisions, however they can request a review of decisions which the Ombudsman will consider. Further information on this review process can be found here:
<https://www.spsso.org.uk/decision-review-process>.

SPSO reporting

12. For 2021-22, the SPSO received 3,665 complaints – a 17% increase on the 3,130 received in the previous year; 3,492 complaints were determined – 3,208 of these were decided following detailed initial consideration, and 284 complaints were investigated; 63% of complaints were upheld, up from 61% the previous year; 703 enquiries received advice, support and signposting to information from the SPSO; 511 recommendations were made for redress and improvement to public service; and 234 pieces of feedback were given to authorities on how a complaint was handled or where the SPSO had identified an issue not complained about. (Source: <https://www.spsso.org.uk/statistics-2021-22>)

13. Of the 3,664 complaints received for 2021-22, 186 concerned universities:

| Case type | Stage | Outcome Group | Universities |
|-----------|------------------|--|--------------|
| Complaint | Advice | Premature | 19 |
| Complaint | Advice | Unable to proceed | 15 |
| Complaint | Early Resolution | Cause and impact test not met | 1 |
| Complaint | Early Resolution | Discretion - Insufficient benefit would be achieved by investigation | 33 |

| | | | |
|-----------|------------------|---|----|
| Complaint | Early Resolution | Discretion – Alternative route used or available | 1 |
| Complaint | Early Resolution | Discretion - Good complaint handling | 74 |
| Complaint | Early Resolution | Discretion – referred back | 8 |
| Complaint | Early Resolution | Premature (complaint that has been sent to SPSO before it has completed the relevant organisation’s complaints process) | 3 |
| Complaint | Early Resolution | Right of appeal to court/tribunal/Scottish ministers | 2 |
| Complaint | Early Resolution | Subject matter not in jurisdiction | 15 |
| Complaint | Early Resolution | Time limit | 7 |
| Complaint | Early Resolution | Unable to proceed | 6 |
| Complaint | Investigation | Some upheld | 2 |

(Source: <https://www.spsso.org.uk/statistics-2021-22>)

Quality Assurance in Scottish Higher Education

14. The Scottish Funding Council (SFC) has a statutory obligation under section 13 of the Further and Higher Education (Scotland) Act 2005 to secure that provision is made for assessing and enhancing the quality of higher education provided by fundable bodies in Scotland. The SFC meets its statutory obligation for higher education provision through the Quality Enhancement Framework (QEF), Scotland’s distinct enhancement-led approach to quality assurance with student engagement forming a key element, in partnership with the Quality Assurance Agency (QAA), Universities Scotland, NUS Scotland and Student Participation in Quality Scotland (Sparqs).
15. The SFC, supported by the Quality Assurance Agency (QAA), works with institutions to meet an agreed set of expectations for academic standards and quality, as measured against agreed sector reference points such as the UK Quality Code. This Code explains that higher

education institutions are expected to “actively engage students, individually and collectively, in the quality of their educational experience”, and “have fair and transparent procedures for handling complaints and appeals which are accessible to all students”.

16. The SFC also requires universities to comply with the principles of good governance as a condition of a grant of public funding, as set out in the Scottish Code of Good Higher Education Governance. All higher education institutions must also comply with the terms of their Financial Memorandum with the SFC, which requires institutions to ensure that they are “engaged actively in continuously enhancing the quality of its activities and involve students and other stakeholders in these processes”.

QAA Scottish Concerns Scheme

17. The QAA can investigate concerns about academic standards and quality in Scottish Higher Education Institutions raised by students, staff and other parties under its Scottish Concerns Scheme:
<https://www.qaa.ac.uk/scotland/en/reviewing-higher-education-in-scotland/how-to-raise-a-concern-in-scotland>.
18. Individuals can contact QAA Scotland if they have concerns about academic standards, quality of learning opportunities and information that higher education providers make available about their provision. Although this is not a mechanism for addressing individual complaints or grievances, where such concerns indicate serious systemic or procedural problems, a detailed investigation will be conducted.

Conclusion

19. We have no evidence to suggest that the current mechanisms in place are not effective in ensuring that universities are held accountable to students under consumer protection law. Although Consumer Scotland was established as a non-Ministerial office by the Consumer Scotland Act 2020, its remit is restricted to the devolved pillars of consumer advice and advocacy, with powers to conduct investigations into serious issues of consumer harm in Scotland. As redress and enforcement aspects of consumer protection are reserved, Scottish Ministers do not have power to legislate in this area.
20. In the light of the above, it is not our intention at the present time to seek to extend the existing powers currently available to the SPSO, or create a new body for this purpose. However we will continue with

work to reform the post-school education, research and skills system, with input from a wide range of stakeholders across Scotland, from learners to employers and those who either face barriers to engaging with the ecosystem or who have chosen to disengage:

<https://www.gov.scot/publications/post-school-education-research-and-skills-interim-purpose-and-principles/pages/overview/>.

Scottish Government
January 2023

Annexe D

Petitioner submission of 24 March 2023

PE2000/B: Ensure universities are held accountable to students under consumer law

I thank the Minister for Higher Education for providing the response from the Scottish Government.

I understand the political response to this and my previous petition, but I would be grateful if I could have engagement with these specific problems of policy.

I would not presume to state in which way I feel the Government could deal with the issues at hand within my petitions, but it was recommended by the [previous Public Petitions Committee](#) to discuss what kind of body would be needed to address the problem. Personally, I do not believe a new body is required, but rather a more joined up approach from existing bodies needs to be considered.

I stated in a [submission to PE1769](#), the SPSO does not refer to the QAA or the existing HE policy for complaints in HE. This means that the results of complaints are not evidence based on existing policy and therefore a matter of personal opinion of the reviewer. There is no reference to policy, or an evidence base within HE complaints in the public domain judged on by the SPSO. This may be why the SPSO does not uphold many complaints and those it does uphold are matters of complaints process i.e the length of time taken to address the complaint rather than the actual complaint. The in-house mechanisms of HE providers can appear to uphold the provider view, as does the SPSO. This can be seen by examining some of the complaints in the public domain, their substance and the resulting SPSO opinion. This is concerning due to the requirement for evidence-based decision making in government.

Many self-funders cannot access legal aid as they work and therefore do not come under income boundaries to do so. In addition, behaviour by the HE provider and the risk of not graduating can prevent students pursuing this, which neither increases transparency in the sector nor allows students to pursue this avenue without fear.

On point 8 of the Minister's response - if this has been in place since 2002, why does the SPSO repeatedly judge that unfit for purpose complaints processes exist but then is unable to do anything about them? (In the public domain from SPSO complaints upheld). The QAA and the Enhancement-Led Institutional Reviews (ELIR) are meant to have performed something of the function of point 9 for many years, but recommendations are not implemented*. Why does the Minister believe that doubling down on this via the SPSO will work? (*Public ELIRs - last 15 years).

The limit of academic judgement remaining undefined is limiting accountability and I would challenge the responders to define it. The QAA state what should be taught in subject benchmark statements, the marking criteria should be present and transparent and based on best practice. As a Senior Lecturer, my course is run this way. I therefore choose not to hide behind 'academic judgement' and conduct opaque manoeuvres. Neither should the SPSO, Government bodies or HE providers. Freedom of speech and how to teach could be seen as academic judgement but non-provision should not. Provision is contractual.

I would state that, as a Chartered Statistician, statistics are meaningless without context. The context I have spoken about is what matters – the how and why in the body of the complaint and the evidence basis, the data in paragraphs 12 and 13 of the Scottish Government response is not representative of this and therefore currently meaningless.

In my opinion, having examined public domain material I would suggest that the SFC is not meeting its statutory obligation and is wasting taxpayers' money without installing mechanisms to have it paid back when warranted. HE providers keep wages and fees and are effectively paid double for non-provision is disgraceful given Government policy of taxpayer value for money. Point 15 is far too ambiguous and could be said of a daycare centre, not an established and respected HE provider. Standard approved verbs for BSc and MSc courses outcome criteria are far more succinct and mature. I would like to add that 'fair and transparent procedures' may be written down in a policy, but then not delivered, as supported by complaints upheld by the SPSO.

I have written to the QAA and SPSO to enquire on their decision-making policy and to provide feedback, having approached them based on my experience as an academic and my research on relevant policy backed

by my published journal articles. I am a Senior Lecturer; an Executive Board Member of a professional body and I have published papers on the Higher Education System in the UK so I expected to have a reasonable discourse about how we could improve things moving forward for professionals and the education sector alike. However, I believe that both have failed to address my enquiry.

The SPSO have refused to communicate on the following: Why SPSO refuse to engage with bodies such as the QAA when trying to reach decisions on HE. SPSO continue to refer to my individual historical case raised prior to my engagement with the petitions committee rather than engage on broader issues I raised. SPSO have refused to detail why they are clearly able to override the QAA Benchmark Statements and Quality Guidelines and create their own expectations of Higher Education provision. Given the openness with which the SPSO has responded via the petitions committee I find this behaviour concerning.

The QAA responded to my query of why the SPSO can make decisions without consulting them as well as override their guidelines and policy by stating that the person dealing with my query is the person who dealt with my petition at government level. This person has repeatedly closed my policy queries at the QAA and refused to escalate them. This person then issued a QAA 'decision' on my petition and could only have got my historical case from the SPSO contact on the committee because this was never raised at petitions level. This was highly unprofessional as the question I had raised was on a purely feedback basis about policy and improving educational provision. I had not at any point discussed my individual case as the QAA does not discuss individual cases. I escalated this to the QAA Governance Board and from their response I believe that ultimately the QAA has no wish to understand or rectify the issues being raised on educational provision. This is again disappointing considering the openness with which the QAA responded to my previous petition and again raises issues of transparency and accountability of government bodies and HE provision to society.

I find the lack of willingness of these bodies to discuss policy and decision making with me to be very concerning; especially deciding on their own guidelines to assess cases against in isolation of any other body. This illustrates a multitude of bodies involved in educational provision and their inability to work together. Due to the number and disparate bodies legislation, policy and positive policy is becoming lost.

Accountability is clearly lost and the ability to disengage with the public and academics when asked policy questions is inappropriate. If my repeated petitions only prompt political responses and my enquiries to public bodies as a Senior Lecturer are shut down, how does this reflect democracy and transparency.