

Citizen Participation and Public Petitions Committee

18th Meeting, 2023 (Session 6), Wednesday
6 December 2023

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

Lodged on	5 January 2023
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. The Committee last considered this petition at its meeting on [19 April 2023](#). At that meeting, the Committee agreed to write to Universities Scotland and the National Union of Students (NUS) Scotland.
2. The petition summary is included in **Annexe A** and the Official Report of the Committee's last consideration of this petition is at **Annexe B**.
3. The Committee has received new responses from Universities Scotland, NUS Scotland and the Petitioner, which are set out in **Annexe C**.
4. Written submissions received prior to the Committee's last consideration can be found on the [petition's webpage](#).
5. Further background information about this petition can be found in the [SPICe briefing](#) for this petition.

6. The Scottish Government's initial position on this petition can be found on the [petition's webpage](#).
7. Every petition collects signatures while it remains under consideration. At the time of writing, 9 signatures have been received on this petition.

Action

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

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

Extract from Official Report of last consideration of PE2000 on 19 April 2023

The Convener: PE2000, which has been lodged by Dr Marie Oldfield, calls on the Scottish Parliament to urge the Scottish Government to ensure that universities are held accountable to students under consumer protection law by extending the remit of the Scottish Public Services Ombudsman or by creating a new body, similar to the Office of the Independent Adjudicator for Higher Education, to enable students to access redress without the need for court action.

Members will be aware that a similar petition—PE1769—was considered by our predecessor committee in the previous parliamentary session. It was closed on the basis that the Scottish Government had no plans to seek to extend the SPSO’s existing powers and that the Scottish Funding Council had stated that there was no evidence that the current approach had not been effective in protecting the interests and rights of students.

In its response to this new petition, the Scottish Government highlights that higher education institutions are “autonomous bodies” with their

“own arrangements for handling complaints from students”

and that

“Any individual who is not satisfied with the outcome of the university’s complaints process may refer the issue to the Scottish Public Services Ombudsman”.

As noted in response to the previous petition, the remit of the SPSO does not apply to matters of academic judgment.

The briefing that we have received from the Scottish Parliament Information Centre also notes that consumer protection legislation remains a reserved matter, with the Scottish Government highlighting that Scottish ministers have no power to legislate on the

“redress and enforcement aspects of consumer protection”.

We have also received a submission from the petitioner. In it, Dr Oldfield calls for the consideration of

“a more joined up approach from existing bodies”,

including the SPSO and the Quality Assurance Agency, and also raises concerns about the policy and decision-making processes of those bodies.

Do members have any comments or suggestions as to how we might take matters forward?

Alexander Stewart: We could take the opportunity to write to Universities Scotland and the National Union of Students Scotland to seek their views on the issue raised in the petition, specifically on the question whether they support a review of the complaints procedure for higher education institutions and the SPSO's remit in relation to these processes. That would be my recommendation, convener.

The Convener: I am quite keen to hear those views.

Fergus Ewing: I agree with Alexander Stewart. In the letter, we could point out that redress and enforcement aspects remain reserved to the UK, so that it is clear that our remit is constrained.

We could also refer to the fact that there has been a previous petition, and briefly append that petition and set out the outcome and the reasons therefore. Although I am keen to hear from Universities Scotland and NUS Scotland, we may well, when we hear from them, find ourselves in a rather similar situation to that of our predecessor committee. We owe them a hearing, but we should not raise expectations too high that we may not be able to fulfil.

The Convener: That is perfectly reasonable. Are colleagues agreed?

Members *indicated agreement.*

Annexe C

Universities Scotland submission of 13 July 2023

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

We welcome the opportunity to respond to this [petition](#).

Institutions will always strive to ensure that students receive the education they are entitled to expect based on their contract.¹ Overall, student satisfaction levels at university are high.² In cases where this is not achieved, it is important that students have an effective and independent recourse.

In summary, Universities Scotland believes that the SPSO offers an effective route for complaints-handling in cases where a resolution has not first been possible at institution level. We see no basis for an expanded remit or new body in Scotland. Current consumer protection law applies to students regardless of whether a fee is paid for higher education. As such, Scottish-domiciled students have equal protection. The Competition and Markets Authority (CMA) is increasingly taking a more active and interventionist approach on behalf of “consumers”, with the potential for non-compliance to result in enforcement action without individuals needing to progress their own legal proceedings. This direction is part of a wider set of changes in the landscape for complaints, consumer rights and regulation, much of which addresses aspects of petition 2000.

Routes of accountability to students

This exists through multiple routes, including:

- **The SPSO and specifically the [Scottish Higher Education Model Complaints Handling Procedure](#).** The HE-specific complaints handling procedure (CHP) is covered by the Public Services Reform

¹ Pg 2 [Briefing: Compensation and refund policies – developing good practice \(universitiesuk.ac.uk\)](#)

² National Student Satisfaction Survey, 2022. 79% “overall satisfaction” rating. Note the timing of this survey fell during the impact of the COVID-19 pandemic on students and higher education.

(Scotland) Act 2010 so that HEIs must comply with the model. This ensures consistency of practice.

Academic appeals are consistently the highest single category of complaint, fluctuating between 32% and 54% over the last three years. This aligns with the area of interest as stated by the petitioner and indicates that the SPSO can progress complaints of this nature. The data on the number of academic appeals processed by the SPSO reinforces the point made by the SPSO itself, as recently as 2020, when it said that it had seen: “no compelling evidence that SPSO is unduly restricted by the limitation on academic judgement.”³

The type of complaints handled by the SPSO also aligns closely to the those handled by the Office of the Independent Adjudicator (OIA) in England and Wales, with “academic appeals” also being the single biggest category of complaint processed for universities in England and Wales, at 38% in 2022. There is no obvious misalignment between the nature of the complaints handled between the respective bodies in Scotland and in England/Wales that puts students at Scottish HEIs at an obvious disadvantage.

- **The Quality Code, the Quality Enhancement Framework and statutory regulation.** The Quality Code, produced by the UK-wide Quality Assurance Agency, protects the public and student interest in a quality higher education. It applies to all higher education institutions in Scotland, and it is part of the regulatory framework for Scotland’s universities, as overseen by the Scottish Funding Council’s statutory responsibilities for quality in higher education. The Code requires that universities actively engage students, individually and collectively, in the quality of their educational experience. It also requires that universities have fair and transparent procedures for handling complaints and appeals which are accessible to all students. As such, the Code is a respected reference point for effective quality assurance.

³ Schedule 4 of the Scottish Public Services Ombudsman Act (2002) 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 can check whether the decision has been properly made; it cannot, however, change or overturn the decision.

Whilst part of the UK approach to quality, Scotland's model of Quality Enhancement takes this further, ensuring that quality assurance in learning and teaching within universities is an active and ever-evolving process with students as partners in the development of learning at every level.

It is part of the remit of QAA Scotland to investigate concerns about academic standards and quality raised by students if they are unhappy with the outcome of their institutions' own process. Where such concerns indicate serious systemic or procedural problems, QAA will conduct a detailed investigation through its [Scottish Concerns Scheme](#). This covers concerns about academic standards.

- **Consumer law.**

Students have rights and protections under consumer law which is applicable across the UK and regardless. A student's status as a "consumer" is not defined by whether a fee for the education applies. Consumer protection law sets out minimum standards that apply to various aspects of an HE provider's dealings with students, for example in relation to information provision and complaint handling, and the requirement of fairness for terms and conditions. It sits alongside sector-specific regulatory obligations that are relevant to many HE providers.

The CMA can require action from universities and/or it can refer universities to the relevant regulatory body⁴. The CMA's compliance review report is published in the interests of transparency and to promote shared understanding across the sector. [A CMA compliance review in 2016](#) required 7 UK universities, including one in Scotland, to make "undertakings" (change its practice) in response to its intervention.

[New guidance from the CMA](#), published in May 2023, updates that first issued in 2015, and provides helpful guidance and advice on how consumer protection law applies to the UK HE Sector and its students and what enforcement action is available when HE providers do not

⁴ This would be the Scottish Funding Council for Scotland's 19 higher education institutions.

comply with the law. This strengthens the CMA's existing consumer compliance powers, which already enabled it to require commitments and changes from institutions, as a result of its own investigations.

An evolving landscape

The regulatory and legislative landscape is changing in ways that increase the emphasis on fairness for individuals and the potential for enforcement. This is relevant to, and should address, some of the petitioner's concerns.

The [Digital Markets, Competition and Consumers Bill](#), as introduced by the UK Government in spring 2023, will have a substantive impact on consumer protection law. Proposals in the Bill will significantly strengthen the CMA's enforcement powers, allowing it to determine when consumer law infringement had occurred and to impose substantial financial penalties on businesses and individuals without resorting to court proceedings. The DMCC Bill will give the CMA a more powerful range of tools to pursue its enforcement objectives. Legal analysts point to an increased compliance burden for the businesses and organisations covered by the legislation.⁵

Additionally, [Consumer Scotland](#) was set up by Scottish Parliament in 2022 to advocate on behalf of consumers and represent consumer interests.

Given this evolving situation, we think the sector should have the opportunity to assess the impact of this change before deciding whether further change to the SPSO is needed.

⁵ <https://www.pinsentmasons.com/out-law/news/uk-digital-markets-competition-consumers-bill>

National Union of Students (NUS) Scotland submission of 10 August 2023

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

Thank you for contacting my NUS colleagues about the petition ***PE2000: Ensure universities are held accountable to students under consumer law.***

Also, please accept my sincere apologies for the lack of previous responses, and thank you for extending our response deadline.

In response to your question in the letter dated 20 April 2023 – yes, the National Union of Students would support a review into the complaints processes for higher education institutions, in order to empower students to properly hold them to account.

Our view remains that extending the remit of the Scottish Public Services Ombudsman to include students and universities is the most effective way of doing that.

Many universities have inadequate complaints processes and extending the remit of the SPSO would be a step towards creating a more equal playing field.

On behalf of NUS Scotland, thank you for your consideration.

Petitioner submission of 16 November 2023

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

I thank the NUS and Universities Scotland for their responses.

The lack of action on Enhancement-Led Institutional Reviews (ELIRs) and Higher Education (HE) Provider complaints processes remain unaddressed.

I note that the Universities Scotland discusses the Competition and Markets Authority (CMA) and the consumer protection law coming into force. This a discussion I have also had with the UK Secretary of State for Higher Education's policy team. What was found was that the contracts that many universities provide are unfit for purpose and already contravene the CMA guidance. Sometimes students don't even receive a copy of their contract and are simply asked to tick a box to accept, but those discussed from some Scottish universities still do not provide aspects such as refund mechanisms, mechanisms for non-provision of services and tuition, nor the ability to withdraw from the course and seek recompense when modules and services are changed following financial commitment from the student. This contract is again subject to the internal complaints procedure. To use the rights under the consumer law requires the student to redirect their complaints to civil court. This was my only recourse for resolution in my personal experience.

The SPSO has no mechanism for redress and no mechanism to examine the full aspects of complaints – this is stated in their publicly available documentation. To my awareness the SPSO cannot uphold complaints applicable to the student's consumer rights and, even if it could, it has been seen that the SPSO has made decisions on complaints without any regard to Benchmark Statements, QAA, or any other policy and has indeed gone against existing policy in this regard. Therefore, we still have a disconnect between complaints bodies and students being pushed to court if they want to seek redress. If students are to withhold fees where they believe tuition or services have not been given, they are liable to be denied further tuition or their certificates and/or transcripts withheld, impacting their immediate future education and careers. Seeking redress by civil court could take many months or years, which could have significant impact on the student's life and career. In the meantime, the university may choose to attempt to debt collect on any withheld fees if the student was forced to leave the course, either through non-provision of tuition or services or if the course was found to be incorrect in its original description of modules. By complaining the student can face fear tactics that mean they may drop a complaint or, having seen these in action, just won't complain in the first place. Many students, if a taxpayer or student loan funded, may also be

understandably unforthcoming in raising concerns regarding non-provision. A student would also be very likely to be intimidated in the act of facing a university in court, where the university is likely to employ professional legal counsel, and the student risks the financial expense of losing such a case. I believe this puts the student at a very unfair disadvantage against the university, and may leave the student feeling disempowered to exercise their rights under consumer law. I also believe that the senates of universities are acutely aware of their advantage over the students.

Using CMA guidance, the current unfit for purpose contracts are immediate breach of contract, but do we expect students to simply not sign them? Contracts are due for signature before the course start date, even if the course changes in the intervening time.

The lack of engagement by the bodies making policy and the narrow decision-making capability of the SPSO points to an overhaul being needed to ensure CMA advice and guidance is embedded in policy and can be used by students without fear of large expenses, retribution, or career damage.

The HE specific complaints procedure has been shown to be unfit for purpose by multiple SPSO decisions, but little action has been taken to rectify this. SPSO have been seen to not align with policies that govern higher education, failing to establish the terms of a complaint and by doing so taking independent and unilateral action to close a complaint. Students have had to go court using consumer rights due to SPSO failure. If the student fails at SPSO (incorrectly as is seen in some public decisions) the likelihood of being able to go to the CMA reduces, causes substantial extra paperwork for all parties (it can take many years to get through an SPSO investigation) and shows the SPSO to be unfit for purpose if they cannot investigate correctly in the first place.

Academic appeals can be slightly different to financial and non-provision of tuition appeals. The first can be due to marks and academic factors, the second is purely a case of contract breach.

The Digital Markets, Competition and Consumers Bill, referred to in Universities Scotland's submission is likely to be a powerful piece of legislation to assist in holding universities to account, and may address

much of the issues that have been raised, however the problems remain:

- SPSO doesn't investigate the full remit
- SPSO has no redress option
- Students could be pushed into court proceedings
- Power is not on the students' side and often they have no support
- The educational bodies must work together in order to investigate complaints correctly if the SPSO is to be the mechanism by which this is to be achieved.