

Minister for Higher Education, Further Education, Youth Employment and Training 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/HEMCHPImplementationGuide2012.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	3

		organisation's complaints process)	
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
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