

# 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.<sup>1</sup> Overall, student satisfaction levels at university are high.<sup>2</sup> 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 (Scotland) Act 2010 so that HEIs must comply with the model. This ensures consistency of practice.

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

<sup>2</sup> 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.

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.”<sup>3</sup>

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.

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

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<sup>3</sup> 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.

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 body<sup>4</sup>. 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 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.

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

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.<sup>5</sup>

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.

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