

# 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.