

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

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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

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