Consumer Protection Law and the Higher Education sector

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About the CMA

- Formed on 1 April 2014

- Unified competition and consumer authority

- Mission is to make markets work well for consumers, businesses and the economy

- Uses its consumer powers to tackle market wide consumer problems or issues which affect consumers’ ability to make choices
CMA’s work in HE sector

● Our work followed Office of Fair Trading’s Call for Information (CfI) into the higher education undergraduate sector in England - this found no evidence of pervasive bad practices, but identified some potential consumer protection issues.

● We took forward OFT recommendation to clarify HE providers’ responsibilities under consumer law.

● We consulted on & recently published compliance advice for UK HE providers (publicly funded universities, Further Education colleges offering HE courses, and alternative providers), focusing on undergraduate courses.

● We have also published materials for undergraduate students on their rights under consumer law.
How does consumer law apply to UK HE sector?

- Consumer law is applicable throughout the whole of the UK

- Consumer law will generally apply to the relationship between HE providers and prospective and current undergraduate students:
  - HE providers will be a ‘trader’ or ‘seller’ for purposes of consumer law (even if operating on a non-profit basis e.g. having charitable status)
  - undergraduate students will generally be acting for purposes outside their trade, business or profession and will therefore be ‘consumers’ - in general this is likely to be the case even when studying a particular subject may lead a person to a related career in the future

- Consumer law may also be relevant to other types of courses and students
Why is consumer law important for students?

- Choosing the right course and HE provider is an important decision - students are investing a lot of time and money and it can be difficult to change course or provider if they are dissatisfied

- Consumer law helps ensure that students:
  - get the information they need to make informed choices about what and where to study
  - are treated fairly during their studies
  - are equipped to resolve problems if things go wrong
Why is consumer law important for HE providers?

- Compliance with consumer law is not only important in giving students the protection required by the law, **but in helping to maintain student confidence and the standards and reputation of the UK HE sector**

- Consumer law is an important part of the wider academic relationship between HE providers and students. It can help providers compete for and retain students

- HE providers who do not meet their obligations may be in breach of consumer law and risk enforcement action as well as action by students
How does consumer law fit with HE sector requirements?

- Consumer law sets out minimum standards that apply to various aspects of an HE provider’s dealings with students, as well as helping to protect students if things go wrong.

- It sits alongside sector-specific requirements and guidelines that are relevant to many HE providers, e.g. the Quality Assurance Agency’s UK Quality Code, Office of Independent Adjudicator’s Good Practice Framework for handling complaints.
HE providers’ obligations to undergraduate students under consumer law

HE providers must:

● give prospective students the clear, accurate and timely information that they need so they can make an informed decision about what and where to study

● ensure that their terms and conditions are fair, for example, so they cannot make surprising changes to the course or costs

● ensure that their complaint handling processes are accessible, clear and fair
Information Provision

- HE providers must give prospective students the ‘material’ information they need to make an informed decision before they apply. This information includes:
  - the course content and structure and how it will be delivered
  - the total course costs (including tuition fees and any extra costs associated with the course that students are likely to incur, such as field trips, lab equipment, bench fees or studio hire)

- Information must be clear, accurate and easily accessible

Will you have to pay extra fees for lab fees?

Do you know when your payments are due?
# Examples of possible information provision breaches

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<thead>
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<th>Not providing 'material' information and/or not providing it at the right time</th>
<th>Giving false or misleading information that impacts on a student’s decision</th>
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<td>- failing to provide information about extra course costs up front</td>
<td>- leading students to believe at an open day that a particular and eminent individual will be involved in the teaching of the course - when this is not the case</td>
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<td>- failing to make clear that certain modules must be completed for the award to be accredited</td>
<td>- presenting information that could suggest the course provides a particular qualification by a professional body - when this is not the case and further study would be required to obtain the relevant award</td>
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<td>- only making important information available to prospective students after they have applied, for example via an applicant portal</td>
<td>- through wording or images creating the impression that the campus is based in central London - when in fact it is based elsewhere (particularly relevant for international students)</td>
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<td>- failing to make prospective students aware at the earliest opportunity of changes to the information contained in a prospectus – on which their choice of provider may or will be based.</td>
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Information Provision – pre-contract information

- Before, or at the latest when, offering a place to a prospective student, an HE provider must tell them of any changes since they applied and give ‘pre-contract information’ which includes:
  - course information and costs
  - arrangements for making payments to the provider
  - information on complaints handling
  - any right to cancel should the student change their mind (for distance contracts e.g. via UCAS)

- When an offer is accepted, the HE provider and prospective student will enter into a contract for admission to a course
Terms and Conditions

- Likely to include all contracts, rules and regulations and other documents that students are bound by, which together form the contract terms between the student and provider.

- Under unfair terms legislation:
  - Terms should be easily located and accessible to prospective students
  - Important or surprising terms should be specifically brought to prospective students attention before they accept an offer
  - Terms should be written in plain and intelligible language (they must be clear, transparent and legible)
  - Terms should strike a fair balance between the rights and obligations of the provider and student – for example they should not allow a wide discretion to change important aspects of the course or fees.

- Providers will not be able to enforce terms and conditions which are found to be unfair
Terms and Conditions: Terms allowing changes to courses

- Terms allowing changes to be made to a course will not be automatically unfair as there needs to be a reasonable amount of flexibility, e.g. to allow adjustments for recent theories and practice in an area.

- But a term that allows a provider too much discretion to make sweeping changes to a course – such as the course content, location of study, method of assessment or the final qualification to be awarded – is likely to be considered unfair unless it describes the circumstances when and reasons why this might happen so that students know in advance when and how changes might be made.

- A term will not be made fair just because a provider says that any changes it makes will be reasonable e.g.

  “The University may alter the timetable, location, campus, amount of contact time, how the course is delivered, the course content and assessment of any course, provided such alterations are reasonable.”
Terms and Conditions: Terms allowing fee increases

- It is important that prospective students know how much their course is likely to cost in total to allow them to fully assess their options and to better financially plan.

- Before prospective students apply, they should be able to foresee how much the total fees will be for the course.

- Terms allowing HE providers a wide discretion to increase fees during a course may be unfair e.g.

  “Tuition fees for most courses will increase from year to year. Therefore, if you are on a course of more than one year’s duration you can expect to pay higher tuition fees in subsequent years. It is your responsibility to find out what the tuition fee will be for each year of your course.”
Terms and Conditions
Intellectual Property Rights

● A blanket term that applies so that all students’ IPRs (such as all written work, creations, inventions and discoveries) are assigned to the HE provider, regardless of the circumstances of study or type of course, may be open to challenge as unfair: e.g.

“In order to allow the University to protect and exploit commercially valuable intellectual property arising from activities within the University, any intellectual property which a student may generate in connection with their studies will be assigned to and owned by the university.”

● There may be some courses or programmes where assignment of certain types of IPR to the HE provider is appropriate, and where there are sufficient safeguards to protect students’ interests.

Do you know who owns the intellectual property rights to your uni work?
Complaint handling

- **Complaint handling processes must be transparent and easily accessible to students**
  - prospective students must be provided with information about the complaints process before they accept an offer of a course
  - the complaints process must be **easily located** and **accessible** to current students e.g. on website or intranet
  - students should be provided with **clear** and **accurate** information about the complaint handling procedures e.g. who deals with complaints if courses are provided in partnership with another provider, details of any external complaint scheme students can access such as the OIA

- **Complaint handling processes must be fair** e.g. set out clear and reasonable timescales, allow students to escalate the matter if they are unhappy
What we’ve produced

For HE providers:
- 60-second summary
- Longer advice

For students and their advisers:
- 60-second summary
- Longer guide
- Visual messages
- Posters
- Press & social media activities
- A mechanism to report concerns
Getting information to students

CMA Channels

- Gov.uk
- Press & media
- Twitter & LinkedIn

Working with Partners

- NUS
- Citizens Advice
- UCAS
- Student Loans Company
- Student Room
Monitoring Compliance

- **We have set out clear expectations on HE provider compliance** – providers need to review practices, policies and terms to make sure they are compliant and if necessary make changes.

- **We have put in place a mechanism to report concerns about possible breaches of consumer law** - Online reporting: [www.gov.uk/government/publications/report-a-potential-consumer-law-breach-by-a-higher-education-provider](http://www.gov.uk/government/publications/report-a-potential-consumer-law-breach-by-a-higher-education-provider) (we cannot offer advice or intervene in individual disputes, but the information will be used to provide intelligence on potential problems).

- **We will carry out a compliance review commencing in October 2015**

- **HE providers that fail to comply with consumer law may risk enforcement action** - CMA, Trading Standards Services & Department of Enterprise, Trade and Investment in Northern Ireland all have enforcement powers.

- **Sector bodies such as the Quality Assurance Agency may also be able to act in appropriate circumstances** to secure compliance.
If a student has a concern that an HE provider has not met its consumer law obligations, there are a number of options they can consider:

- Talk to your tutor
- Talk to your university student officer
- Talk to your student union
- Talk to your local CAB or contact the Citizens Advice Consumer Advice service
- Make a formal complaint
- Refer your complaint to an independent third party e.g. OIA/SPSO
- Seek legal advice

If an HE provider is a member of an external complaint scheme, such as the OIA in England and Wales, a student may be able to refer a complaint to that scheme. The OIA is able to consider complaints from students about consumer issues.

Citizens Advice consumer website
www.citizensadvice.org.uk/

Consumer helpline - (England, Wales and Scotland - 03454 04 05 06)
or Consumerline (Northern Ireland) - 0300 123 6262
Key messages to take away

- **Undergraduate students have rights under consumer law.** Knowing those rights can help ensure students get the information they need when choosing a course and are treated fairly during their studies.

- **Universities and other HE providers have obligations under consumer law.** If they don’t meet their obligations to undergraduate students may be in breach of consumer law, and face action.

Students have consumer rights.