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CMA AND THE UNIVERSITY

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Overview

- Introduction
- Information Provision
- Terms and Conditions
- Complaints Handling
- Enforcement
- Summary



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Introduction

- Consumer protection law
 - Consumer Protection from Unfair Trading Regulations 2008 (CPRs)
 - Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CCRs)
 - Consumer Rights Act 2015 (CRA)
- Competition and Markets Authority's (CMA) guidance for UK higher education providers – advice on consumer protection law
- QAA's UK Quality Code and the OIA's Good Practice Framework for handling complaints



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Introduction

The CMA's compliance advice focuses on three themes :

- **Information Provision** – HE providers must give prospective students clear, accurate and timely **information** so they can make an informed decision about what and where to study
- **Terms and Conditions** – HE providers must ensure that their **terms and conditions** are fair
- **Complaint Handling** – HE providers must ensure that their **complaint handling** processes are accessible, clear and fair



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Partnership arrangements & consumer law compliance

- **Partnerships involve more than one provider in the delivery of an HE course and award of a qualification** e.g. validation, franchise and joint course arrangements
- **Providers and their students need to be clear where responsibilities lie** e.g. responsibility for admissions, course delivery & complaint handling, and clarity on who the student is contracting with
- **All providers in a partnership arrangement should ensure they comply with consumer law in their dealings with undergraduate students** – review practices and rules & regulations that affect students



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Information Provision

- Consumer protection law applies to information that is given **in writing, verbally** and **visually** (website, prospectus, course handbooks, open days)
- Information must be **clear, accurate** and **easily accessible**
- **Failure** to provide information, not provide it **at the right time** and/or to provide **false or misleading** information that impacts on a student's decision making = breaches under consumer protection law
- The CPRs require that HE providers give students the '**material information**' they need, at certain stages, in order to make **informed choices** about what and where to study
- The CCRs require that HE providers give students certain '**pre-contract information**' before they accept an offer - the contract and pre-contract information should be confirmed in a **durable medium**



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Material Information

(a) Course information, including:

- i. course title
- ii. entry requirements/criteria (both academic and non-academic), and an indication of the standard/typical offer level criteria
- iii. core modules for the course and an indication of likely optional modules, including whether there are any optional modules that are generally provided each year
- iv. information about the composition of the course and how it will be delivered
- v. the overall method(s) of assessment for the course, e.g. by exams, coursework and practical assessments
- vi. the award to be received on successful completion of the course and, if relevant, the awarding body or institution
- vii. location of study or possible locations, including work placements
- viii. length of the course
- ix. whether the course and provider are regulated and by whom, e.g. HEFCE
- x. whether the course is accredited, e.g. by a professional, statutory or regulatory body
- xi. any particular terms that a student may find surprising**

(b) Total course costs, including:

- i. tuition fees – this should include, if applicable, whether fees in future years will increase and by how much
- ii. other extra costs students are likely to incur, e.g. field trips, equipment, materials, bench fees or studio hire



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Material Information

■ CPRs:

- must provide “material information” to allow student to make an informed decision
- in a clear, intelligible, unambiguous and timely manner
- whether requested by the student or not
- must take account of factors relevant to particular types of student, e.g. international students – provide info on English language proficiency, visa and immigration requirements etc.



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Pre-Contract Information

- Before or at the offer stage, the HE provider must tell the student of any changes since they applied and give 'pre-contract information'
- Pre-contract information includes:
 - i. The main characteristics of the service e.g. the conditions under which the provider will reserve a place, and important course information
 - ii. Duration of the contract
 - iii. Total price (cost of tuition and details of any other costs)
 - iv. Identity of the HE provider and their address and contact details
 - v. Complaint handling policy and complaint/redress mechanism
 - vi. Payment, service delivery and performance arrangements
 - vii. Details of any applicable codes of conduct
 - viii. Details of deposits required to be paid and when
 - ix. Information about the right to cancel within 14 days
 - x. Model cancellation form
- Requirement to give confirmation of a distance contract and pre contract information using a 'durable medium', within a reasonable time after the contract is entered into



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Pre-Contract Information

- **CCRs:**
 - if providing information that is “pre-contract information”, ensure it is accurate
 - pre-contract information is binding on education provider where a prospective student subsequently accepts an offer
 - if information changes before the contract is agreed, must get student’s express agreement to the change



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Using Agents

Ensure **agents** recruiting students provide those students with correct and up to date

- “**material information**”
- **pre-contract information**



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Terms and Conditions

- **These include the rules, codes of conduct and other documents** that are the terms of the contract 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 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**



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Variation Terms

- Providers may have variation terms in their Terms and Conditions. Variation terms allow providers to alter aspects of their contracts with students.
- If a provider were to grant themselves **too wide a discretion** to make changes, such variation terms could be open to legal challenge
- A variation term may be less likely to be open to legal challenge for potential unfairness if:
 - the term is set out in **plain and intelligible language** and **actively drawn to the student's attention** up front;
 - it is **narrow** in its scope and effect;
 - it sets out **valid reasons** where changes might be necessary;
 - it explains the limited circumstances why **fees might increase**, who may be subject to fee rises and what any such increases may be linked to e.g. an objective verifiable index, such as the Retail Prices Index;
 - it sets out how the HE provider will deal with any **changes that become necessary**;
 - the HE provider informs students about any proposed changes **in good time** before they become effective; and
 - **the student is able to terminate the contract where they are adversely affected by the change.**



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Examples of Unfair Terms (1)

Changes to courses:

- Terms allowing changes to be made to a course will not **automatically** be unfair: some courses may need to keep up with the latest theories and practice in fast moving areas. However, terms permitting **sweeping changes** could be open to legal challenge – for example:

'The provider may alter the timetable, location, campus, amount of contact time, how the course is delivered, the course content and assessment of any course, at any time provided such alterations are reasonable'

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



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Examples of Unfair Terms (2)

Changes to fees:

- Prospective students must know how much their course is likely to cost in total to allow them to fully assess their options and plan their finances. It is not enough to advise that fees will increase – for example:

‘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.’



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Examples of Unfair Terms (3)

Ownership of IPR:

- A **blanket** term that applies so that all students’ IPRs (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 – for example:

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

- 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.



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Examples of Unfair Terms (4)

Limiting Liability:

- Terms that seek to **limit (or exclude) the liability** of the HE provider for their performance of the service beyond what is possible under the general law may be challengeable for unfairness – for example:

‘In the event that a provider is unable to continue with a course it will limit refunds to fees for the first year only’



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Complaints Handling

- Complaint handling processes must be **transparent and easily accessible** to students (both **prospective** and **current** 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, including who deals with their complaint if courses are provided in partnership, and 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, and allow students to escalate the matter if they are unhappy
- **Complaints procedures are more likely to comply with consumer law where they follow any guidelines published by a third party complaint scheme (of which the HE provider is a member)** e.g. OIA's Good Practice Framework for handling complaints



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Complaints Handling

Accessible, easily located and clear: practical tips

- Before offer is accepted, make complaints handling policy available and give confirmation on a durable medium (e.g. letter/email attachment) (CCRs)
- Ensure complaints procedure can be easily located by current students (e.g. on website and intranet).
- Provide clear accurate information about your complaints handling procedures in writing and verbally (where applicable). **You must not withhold information.**



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Complaints Handling

Complaints handling processes may be unfair and amount to unlawful practices if, for example:

- There is a failure to adequately respond to and address complaints
- Students are misled about how to exercise rights
- There are barriers to students exercising their rights (e.g. ignoring legitimate complaints, pressurising students not to bring complaints, rejecting complaints where students have attended graduation)



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Complaints Handling

A complaints procedure document may breach the CPRs and unfair terms legislation if:

- It states that the HE provider's view is final or allows it to close complaint at any time
- It does not include an internal process to escalate complaints that aren't satisfactorily resolved in first instance
- It prevents, hinders or deters student from raising or discussing concerns
- It creates an unreasonable barrier for certain types of students, e.g. requiring student to attend a particular location far from student's location



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Complaints Handling

Complaints procedure more likely to be fair if it:

- Sets out clear and reasonable timescales for provider's response times at each stage of the process
- Sets out clear and reasonable timescales for student to respond to any requests for further information
- Allows student to escalate the matter if unhappy, with ultimate right to appeal
- Follows guidelines published by an independent redress or complaint scheme of which you are a member (e.g. OIA's Good Practice Framework for handling complaints)



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Complaints Handling

- Complaints policy or procedure must be followed **in practice**
- **Train** staff to follow your complaints procedures



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Enforcement and other consequences

- HE providers that **fail to comply** with consumer law may risk action:
 - the CMA can do a range of things such as **providing information, education, advice, entering into dialogue, issuing warnings and negotiating undertakings**
 - However, the CMA is keen to enter into dialogue to resolve issues
 - the CMA, Trading Standards Service & 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 - where appropriate, the CMA may choose to raise concerns about an HE provider with the QAA and ask it to consider an investigation under its Concerns Scheme
- **Action by students**, including complaints to the OIA and claims for breach of contract
- **Adverse publicity/reputational damage** – leading to decline in recruitment of the best students and staff



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In Summary

- Be open and transparent, taking a common-sense approach and being able to justify your actions
- Review terms and conditions
- Review website, prospectus and course handbooks
- Review practices, policies, rules and regulations
- Make necessary changes
- Train staff and put in place mechanisms to ensure and record compliance



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