

UK higher education providers – draft advice on consumer protection law

Consultation document

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Any enquiries regarding this publication should be sent to us at: HE Consumer Compliance Team, Competition and Markets Authority, Victoria House, 37 Southampton Row, London, WC1B 4AD or by email to HEconsumercompliance@cma.gsi.gov.uk.

This publication is also available from the CMA's webpages at www.gov.uk/cma.

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1. About the consultation

Introduction

- 1.1 The Competition and Markets Authority (CMA) is consulting on draft compliance advice for higher education (HE) providers within the UK. We have specifically considered the law as it applies to HE providers of undergraduate courses but this advice may also be relevant to HE providers of other types of courses. The purpose of the advice is to help HE providers understand their responsibilities under consumer protection legislation, when dealing with undergraduate students, and how they can comply with it.
- 1.2 The CMA is a non-ministerial department formed on 1 April 2014. It is a unified competition and consumer authority which took over a number of the functions formerly performed by the Office of Fair Trading (OFT) and the Competition Commission (CC).
- 1.3 The CMA works to promote competition for the benefit of consumers, both within and outside the UK, to make markets work well for consumers, businesses and the economy. The CMA has powers to enforce consumer protection law.¹
- 1.4 Most business guidance on consumer protection law is now the responsibility of the [Trading Standards Institute](#). However, the CMA has lead responsibility for providing guidance to businesses in relation to unfair contract terms legislation. The CMA may also issue specific guidance or advice for businesses where it has conducted a market study or other in-depth analysis of business practices in a particular sector.
- 1.5 The issues covered in the draft advice have been identified following work initially undertaken by the OFT and followed up by the CMA. They are important given that for most students decisions on where and what to study will be a 'one-off' involving the investment of a significant amount of time and money. Once students have enrolled, if they are dissatisfied with their experience, it is practically very difficult for them to switch HE providers or courses. Therefore, it is very important that HE providers, in their dealings with students, provide clear, accurate, comprehensive and timely information, and that their terms and conditions and complaints processes are fair.

¹ Further details of the CMA's consumer powers and its approach to their use can be found in [Consumer Protection: Guidance on the CMA's approach to use of its consumer powers: CMA7](#), March 2014.

Scope of this consultation

- 1.6 The consultation is aimed primarily at HE providers within the UK and their representatives; specifically the draft compliance advice is intended for publicly funded universities, further education (FE) colleges that offer HE courses and privately funded universities and colleges.²
- 1.7 It will also be of interest to HE sector organisations, enforcers such as local authority Trading Standards Services, government departments, and consumer groups, student groups and advisers.
- 1.8 The scope of the draft compliance advice does not seek to cover the full range of consumer protection legislation that may apply to the HE sector. Rather, it focuses on consumer protection legislation that will generally apply in relation to three key issues for students:
- **Information provision** – the need for HE providers to give clear, accurate, comprehensive and timely information to students.
 - **Terms and conditions** – ensuring that the terms and conditions between HE providers and students are fair and balanced. HE providers should not rely on terms that could disadvantage students.
 - **Complaint handling processes and practices** – the need for HE providers to ensure that their complaint handling processes and practices are accessible, clear and fair to students.

Background

- 1.9 In February 2014 the OFT published a report that, among other issues, considered the application of the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCRs) to universities' rules and regulations that prevent students from graduating or progressing to the next academic year or using the HE provider's facilities if they owe monies to the HE provider which relate to non-tuition fee debts, such as for accommodation or childcare.³
- 1.10 In March 2014 the OFT published the findings of a Call for Information (Cfi) on the undergraduate HE sector in England.⁴ The Cfi was undertaken to gain a better understanding of how choice and competition in the HE sector were

² The scope of the CMA's work has been informed by the remit of the OFT's Cfi which focused on HE institutions and FE colleges that offer undergraduate HE courses. This work does not therefore cover those FE colleges that do not offer HE courses. Consumer protection legislation may still be applicable to such colleges.

³ OFT, *Universities' Terms and Conditions*, OFT1522, February 2014.

⁴ [Call for information on the higher education sector \(undergraduate\) in England.](#)

working. This included whether students are able to make well-informed choices and whether students are treated fairly when they get to university.

- 1.11 The evidence submitted to the Cfl did not suggest that the HE sector is characterised by pervasive bad practices. However, engagement with stakeholders highlighted significant scope for clarifying HE providers' responsibilities under consumer protection law. In this respect the Cfl identified some potential consumer protection issues relating to:
- the information available to students;
 - the terms and conditions used by some universities, including their accessibility, fairness and proportionality; and
 - the speed and effectiveness of complaints handling by some universities, as well as an apparent lack of student knowledge about the process.
- 1.12 Following the Cfl, the OFT recommended that, among other things, the CMA take forward work on clarifying HE providers' responsibilities under consumer protection law. The CMA accepted this recommendation and launched a project on 20 May 2014.⁵
- 1.13 Although the Cfl was concerned with the undergraduate HE sector in England, and the current situation regarding tuition fees varies between the devolved administrations within the UK, our follow-up work has been UK wide as consumer protection legislation is applicable throughout the whole of the UK.
- 1.14 Since the project was launched, we have undertaken further research and analysis, continued discussions with a number of stakeholders, and considered other relevant materials published by stakeholders.
- 1.15 Based on this further work, and our engagement with stakeholders, we consider that advice for HE providers in the UK would help clarify their responsibilities under consumer protection law in relation to the key issues identified.⁶ Alongside this, we also intend to produce materials to raise undergraduate students' awareness of their rights under consumer protection law.

⁵ See [CMA case page](#).

⁶ The main consumer protection legislation that is relevant in this context is the UTCCR's 1999, the Consumer Protection from Unfair Trading Regulations 2008 (CPRs), and the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CCR's).

Consultation process

1.16 We are publishing this consultation on the CMA website and sending it to a range of interested parties to invite comments. We would welcome your comments on the content of the draft advice document. We want to ensure that the advice is clear, comprehensive and useful for its intended users.

How to respond

1.17 We are seeking interested parties' views on the questions set out in [Section 2](#) of this document. Please respond to as many of the questions as you are able and, if you can, please support your answers with any evidence you may have.

1.18 When responding to this consultation please state whether you are responding as an individual or are representing the views of a group or organisation. If the latter, please make clear who you are representing and their role or interest in the HE sector.

1.19 We also plan to host a stakeholder event for HE providers, sector representatives and other interested parties during the consultation period. If you would be interested in attending please email HEconsumercompliance@cma.gsi.gov.uk as places will be limited.

Duration

1.20 The consultation will run for four weeks, from 19 November 2014 to 18 December 2014. Responses should be submitted by post or email, by no later than **5pm on 18 December 2014** and should be sent to:

HE Consumer Compliance Team
Competition and Markets Authority
7th floor
Victoria House
37 Southampton Row
London WC1B 4AD

Email: HEconsumercompliance@cma.gsi.gov.uk

Compliance with the government consultation principles

1.21 In consulting, the CMA has taken into account the government consultation principles, which sets out the principles that government departments and

other public bodies should adopt when consulting with stakeholders. Full details can be found on [GOV.UK](https://www.gov.uk).

Data use statement for responses

- 1.22 Personal data received in the course of this consultation will be processed in accordance with the Data Protection Act 1998. Our use of all information received (including personal data) is subject to Part 9 of the Enterprise Act 2002. We may wish to refer to comments received in response to this consultation in future publications. In deciding whether to do so, we will have regard to the need for excluding from publication, as far as that is practicable, any information relating to the private affairs of an individual or any commercial information relating to a business which, if published, would or might, in our opinion, significantly harm the individual's interests, or, as the case may be, the legitimate business interests of that business. If you consider that your response contains such information, that information should be marked 'confidential information' and an explanation given as to why you consider it is confidential.
- 1.23 Please note that information provided in response to this consultation, including personal information, may be the subject of requests from the public for information under the Freedom of Information Act 2000. In considering such requests for information we will take full account of any reasons provided by respondents in support of confidentiality, the Data Protection Act 1998 and our obligations under Part 9 of the Enterprise Act 2002.
- 1.24 If you are replying by email, these provisions override any standard confidentiality disclaimer that is generated by your organisation's IT system.

After the consultation

- 1.25 After the consultation we will publish a final version of the compliance advice and a summary of the responses received that fall within the scope of the consultation. These documents will be available on our webpages and respondents will be notified when they are available. We also intend to publish a short summary version of the compliance advice, which will be available alongside the fuller version.

2. Questions for consideration

Information provision

2.1 The draft advice – see Chapter 4 – sets out the CMA’s views on what is likely to constitute ‘material information’ under the Consumer Protection from Unfair Trading Regulations 2008 (CPRs), by which we mean the information that students need, at certain stages, in order to make informed choices about courses. The information that must be provided according to the CPRs is the information that is necessary for the average consumer to make an informed transactional decision, which is distinct from information that is only useful or may be helpful.

Q1: Do you agree with our views on the kinds of information that are likely to constitute ‘material information’ under the CPRs? (see paragraph 4.8 of the draft advice): in particular:

(a) Is there any information currently included that you do not think constitutes ‘material information’ and if so why?

(b) Is there any other information you think ought to be included as constituting ‘material information’ and if so why?

2.2 The draft advice – see Chapter 4 (paragraphs 4.18 to 4.29 refer) and Annex A – sets out the CMA’s views on the application of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CCRs) to the HE sector, including what pre-contract information must be provided before the student becomes bound by a contract.

Q2(a) Do you agree with our views on how the elements of the CCRs that are relevant to distance contracts will apply where applications by students and offers by providers are generally conducted at a distance (for example, through the Universities and Colleges Admissions Service)?

Q2(b) Do you agree with our views on the types of information that are likely to constitute the ‘main characteristics of the service’?

Q2(c) Do you agree with our views on what types of information are likely to fall within the scope of the other pre-contract information required for distance contracts under the CCRs?

Terms and conditions

2.3 The draft advice – see Chapter 5 – sets out the CMA’s view on the following examples of contract terms used by some HE providers that could be open to legal challenge for potential unfairness under the UTCCR 1999:

- (a) terms allowing a provider an unreasonably wide discretion to vary course content and structure and/or increase fees during the duration of the course (see paragraphs 5.14 to 5.23 of the draft advice);
- (b) terms seeking to limit a provider’s liability for non-performance or sub-standard performance of the educational service (see paragraphs 5.24 and 5.25 of the draft advice);
- (c) terms that give a blanket assignment, or a blanket right to receive an assignment, of any intellectual property rights from students to the provider (see paragraphs 5.26 to 5.28 of the draft advice).

Q3(a) Do you agree with the CMA’s views on the potential unfairness of the terms listed?

Q3(b) Do you agree with the CMA’s views on the proposed factors that may make the relevant terms at (a) and (c) above less likely to be open to challenge for unfairness?

Complaint handling

2.4 The draft advice – see Chapter 6 (paragraphs 6.1 to 6.10 refer) – sets out the CMA’s views on how consumer protection law applies to an HE provider’s complaints processes and practices.

Q4: Do you agree with the CMA’s views on how consumer protection legislation applies to an HE provider’s complaint handling processes and practices?

General

Q5 What, if any, aspects of the draft advice are in need of clarification and why?

Q6: Overall, is the draft advice sufficiently clear and helpful for the intended audience?

Q7 Are there any other comments you wish to make on the draft advice?