

Cylchlythyr | Circular

COVID-19 impact on higher education providers: information on consumer protection, student expectations and quality

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To: Heads of higher education institutions in Wales
Principals of directly-funded further education colleges in Wales
Response by: No response required
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This circular provides an update on actions that HEFCW is taking with regards to quality, standards and the student experience, in response to the Covid-19 pandemic. It provides information for institutions on matters which they should consider in implementing their plans for 2020/21.

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Introduction

1. This circular provides an update on actions that HEFCW is taking with regards to quality, standards and the student experience, in response to the Covid-19 pandemic.
2. It provides information for institutions on matters which they should consider in implementing their arrangements for 2020/21.

Background

3. Under section 17 of the [Higher Education \(Wales\) Act 2015](#), HEFCW is required to assess, or make arrangements for the assessment of, the quality of education provided in Wales by, or on behalf of, each regulated institution. This relates to all provision of regulated institutions, including non-HE provision. The quality of education or of a course of education, under the terms of section 18 of the 2015 Act, is defined as inadequate if it is not adequate to meet the reasonable needs of those receiving the education or undertaking the course.
4. In 2015 the Competition and Markets Authority published [UK higher education providers – advice on consumer protection law](#). The CMA can consider taking enforcement action, if it believes there has been a failure to comply with consumer law. In response to the pandemic, the CMA has set up a COVID-19 Taskforce, to monitor and respond to consumer and competition problems. It has launched a project on cancellations and refunds and prioritised action in three sectors where consumers have not received any services and been pressured to accept vouchers, refused refunds or asked to pay large sums of money to reserve a future service. It has not made a statement specifically about the application of consumer law to issues in the higher education sector arising from the pandemic. However, on its website, the CMA has stated in the context of its Covid-19 related work generally that it “*acknowledges that most businesses are trying to do the right thing in these unprecedented circumstances but, at the same time, ordinary consumers deserve to have their rights protected*”. Further details about the CMA’s COVID-19 taskforce can be found at: www.gov.uk/government/collections/cma-covid-19-response.
5. In May 2020 HEFCW published circular [W20/11HE](#), outlining steps that HEFCW was taking to streamline selected elements of regulatory processes for higher education (HE) providers in Wales (universities and, where applicable, regulated and/or funded FE colleges). The Circular also provided information about future actions and requirements in a number of other areas, such as funding and strategies.
6. HEFCW has established a Looking Forward Group (LFG) in partnership with Universities Wales in order to work collectively with Universities, Chairs of governors of Universities, NUSW, the Wales TUC for further and

higher education, and Welsh Government to address the issues posed by the pandemic.

7. Welsh Government has published '[Keep Wales Safe: Covid-19 guidance for higher education](#)'. The guidance is iterative, and will be updated as appropriate.
8. The Office of the Independent Adjudicator (OIA) has published [briefing notes](#) on complaints arising from Corona Virus. This confirms plans to consider the wording of force majeure clauses, which we understand some, if not all, institutions relied upon to cover disruption caused by the pandemic.

Consumer Protection

9. Consumer law continues to apply during and after the Covid-19 pandemic. The summary of requirements for providers continues to be as follows:
 - Information provision: ensuring that students are given up front, clear, timely, and comprehensive information, which is accurate based on what is known at the time;
 - Ensuring that terms and conditions between HE providers and students are fair;
 - Ensuring that HE providers' complaint handling processes and practices are accessible, clear and fair to students.
10. Higher education providers have moved their provision online very rapidly in 2019/20 in response to the Covid-19 pandemic. Where providers have taken actions as necessary in order to implement public health advice, then, HEFCW is unlikely to take regulatory action.

Information

11. Providers should continue to make sure that students have access to clear and up to date information, based on what is known at the time. This needs to be provided as early as possible, to ensure that both current and prospective students have as much information as possible on which to base their decisions about studying in 2020/21.
12. Where providers have made decisions about the delivery of part of the academic year, but not the whole year, then they should provide information on the decisions made to date, and the timescales in which information on the remainder of the academic year will be made available. The principle should be to provide students with information as it becomes available in order to inform their choice.
13. The information provided to students is likely to vary according to institution, course, equality and diversity implications, and student circumstances. Providers will need to ensure that they provide information

which meets the needs of the different groups of students, to enable them to make informed choices about their studies in 2020/21.

Terms and conditions

14. Providers must continue to ensure that their terms and conditions are fair. This includes recognising that learning and teaching in 2020/21 may be delivered differently to other years, and that the changes may not suit all students or courses. Any amendments to terms and conditions must reflect this, and include consultation with the student body.
15. Providers will not be able to rely on blanket clauses excluding the provider's liability for failing to deliver the educational service to the required standard, or giving providers a wide discretion to change significant aspects of the course of study, contrary to students' expectations. Providers must therefore make it clear how they currently expect to deliver provision in 2020/21 to enable students to achieve the required outcomes, and must provide information at an appropriate time to enable students to choose whether to undertake studies in 2020/21. This information should be updated on an ongoing basis, as appropriate.

Complaints

16. Complaints processes must continue to remain accessible, transparent and fair. They need to continue to be dealt with in a timely manner. Providers should continue to issue Completion of Procedures Letters as appropriate, which should include information on submitting a complaint to the Office of the Independent Adjudicator (OIA), the independent student complaints body for higher education in England and Wales.
17. We will continue to monitor the numbers of complaints made to the OIA, and their outcomes, as outlined in our procedures for assessing the quality of education.

Student expectations

18. We understand from our engagement with NUS Wales and Students' Unions that the majority of students have been content with the approach taken by their provider in moving provision online at short notice. However, some students, particularly those who are disabled and/or disadvantaged, had raised concerns about the quality of, or their ability to access, this provision. Providers have been providing loans of equipment to students, and/or have used their hardship funding to support existing students who needed access to equipment and/or broadband.
19. It is likely that 2020/21 will be very different in terms of the student experience compared to previous years. We recognise that the needs and experiences of students will differ, by institution, course, and individual ability and/or circumstances. In particular, the needs of some students will

be able to be met online, while the needs of others will not. This could be due to studying practical, work-based or performance-based subjects, disability, and/or lack of broadband or equipment. Institutions will need to take a range of approaches to meet the needs of different groups.

20. The needs of students are likely to change as the pandemic evolves. Providers will need to be mindful of this, and ensure that they are aware of the expectations of their students, and manage these expectations as they evolve. The provision of timely information is key in this, together with maintaining the effectiveness and robustness of provision. It is likely to be necessary to tailor information for different groups of students, depending on their needs. Students will need sufficient time to interrogate the offer and to reflect on whether it meets their needs. Students' unions will also need time to plan for how they support student voice and experience as the situation changes.
21. Providers should take all reasonable measures to ensure that they can still deliver the programmes of study on which students had enrolled, recognising that approaches may need to be varied in response to the pandemic. They also need to provide information up front on how programmes have changed in response to the pandemic, obtain the agreement of students to these changes, and explain their options should they choose not to accept the changes, for example, deferring.
22. It is essential that providers engage with their Students' Unions to ensure that they have the capacity to support the potentially greater number of students who may seek assistance in 2020/21, including in raising issues regarding the quality and/or accessibility of provision.

Quality

23. We have asked providers to report on how they delivered provision for 2019/20 from the date of the lockdown. We requested this information at a high level.
24. We will shortly request information from providers regarding their expectations for delivering provision for 2020/21. Again, this will be requesting information at a high level, and we will be taking a thematic approach. Our aim in doing this is to seek assurance that students will be able to access provision of the appropriate quality, and be able to undertake their studies effectively. We recognise that the nature of some subjects may mean that it may be more challenging to achieve this in the current circumstances, and we encourage providers to be transparent in their responses to us on this matter.
25. Providers are aware that the pedagogy for online/ blended learning differs to that for face to face teaching. They will need to take steps to ensure that staff delivering online / blended learning in 2020/21 receive appropriate

training, support and time in advance of the academic year in order to enable them to do this effectively.

26. HEFCW is likely to do some work in 2020/21 on the use of no detriment policies (ie policies confirming that students will obtain a final grade which is no lower than their average pre-pandemic), and their impact in maintaining academic standards. Where possible, we will try to do this on a UK-wide basis, in partnership with the other UK funders and regulators, Universities UK and GuildHE.
27. As noted in the guidance we provided in circular W20/11HE, providers need to continue to focus on the rigour of decision making with respect to qualifications and standards, and maintaining the integrity of awards. The Quality Assurance Agency for Higher Education continues to produce [support and guidance for providers](#) in relation to COVID-19, and we encourage you to continue to engage with this.

Further information / responses to

28. For further information, contact Dr Cliona O'Neill (cliona.oneill@hefcw.ac.uk).

Assessing the impact of our policies

29. We will carry out impact assessments to help safeguard against discrimination and promote equality. We will also consider the impact of policies on the Welsh language, and Welsh language provision within the HE sector in Wales, and potential impacts towards the goals set out in the Well-Being of Future Generations (Wales) Act 2015 including our Well-Being Objectives. Contact equality@hefcw.ac.uk for more information about impact assessments. We will update any guidance as required in the light of mitigatable negative impact on the above. Providers are expected to continue to take account of their own duties in these areas, and should alert HEFCW to any concerns about the negative impact of the crisis on protected characteristic groups and the Welsh language.