
Competition & Markets Authority Update

August 2016



Introduction

On 22 July 2016 the Competition and Markets Authority (the CMA) published its review of the Sector's compliance with previous CMA guidance.

The good news is that the CMA recognises the Sector's progress towards compliance. Less positively, the CMA is concerned that some institutions are taking too long to achieve full compliance. Concurrent with the release of its review, the CMA publicised undertakings it has obtained from three universities to implement particular improvements. The CMA has signalled that it will continue to monitor compliance across the Sector and will work closely with funding bodies and with the QAA. It has also advised students on how they may initiate direct action against non-compliant institutions.

An open letter to Higher Education Providers, published simultaneously with the results of its review, sets out the CMA's expectation that HE providers will:

- consider whether the concerns identified in this latest report also apply to their terms and practices, and make any necessary changes to ensure compliance with consumer protection law, which is covered in the CMA's 2015 HE advice;
- ensure that all policies are consistent, and that old policies are removed from websites;
- if they have not done so already, put mechanisms in place to ensure that all departments and faculties are aware of, and are complying with, the law, for example in the information they provide about the content of courses and any additional course costs; and
- ensure that all relevant staff are aware of, understand and follow, the CMA's HE advice.

Non-compliance can leave institutions exposed to the risk of adverse publicity from the CMA; enforcement action by funding bodies; adverse findings from the QAA or legal proceedings being taken by individual students.

In the remainder of this paper we summarise the particular areas of concern highlighted by the CMA.

Sanctions for Non Academic Debts

Academic progression or graduation cannot be hindered because of debts other than tuition fees. This must be made clear to students consistently across any terms and conditions documents issued to them. The CMA has obtained undertakings from both Buckinghamshire New University and the University of Buckingham on this point.



Accessibility of Information and Terms

Prospective students must be helped to make informed choices about whether to apply and whether to accept an offer. The CMA expects that important terms and conditions should be readily apparent to students at an early stage in their research and application process. Presentation of terms at enrolment is generally regarded as too late in the process.

Important or surprising terms need to be prominent so that their significance is understood. The CMA does not expect applicants to have to search for documents or navigate through lists of policies. They also stress the need to ensure that there are single up to date versions of each document and that older versions do not exist on ancillary websites or in printed form.

Variation of (Unregulated) Tuition Fees

Potential students need to be made aware of the fact that an institution may increase fees after the first year of study. The CMA concern appears to be focused particularly on unregulated tuition fees such as those for part time, international or post graduate students. The information given needs to be tailored to the student in their offer letter. The timing of increases, notice periods that will be given and a student's right to withdraw from their contract should also be set out.

The basis of any increase, including a link to a particular verifiable index, such as RPI, must be made clear. The CMA obtained an undertaking from Birkbeck College, University of London, that it would tighten up a general provision that allowed it to increase fees "*approximately in line with inflation*" and similarly from the University of Buckingham that it would not continue to rely on a general statement that fees may increase "*usually in line with inflation*".

Additional Course Costs

The CMA expects additional course costs (such as field trips or studio hire) that students are required to incur to be notified to them in "a clear and comprehensible manner" in material provided to students before they apply and in their offer letters. General phrases such as "*Details of any additional significant expenditure that you may be required to incur can be obtained upon request from your school of study*" used by the University of Buckingham are not considered acceptable. Students are expected to be made aware of how much the extra charge will be, when it will be collected, whether it is mandatory or optional, and if optional whether it is likely to have a direct impact upon the student's academic success.



Variation or Cancellation of Courses

To help prospective students make an informed choice, the CMA is concerned that they should be made aware about the likelihood of and scope for changes to the content and delivery of programmes. This includes the risk of programmes being withdrawn. Withdrawal or significant alteration after the UCAS application deadline particularly concerns the CMA.

Where a HE provider anticipates that something significant about the content or delivery of a programme may change, this needs to be made clear to prospective students. Wide ranging discretion to make changes is likely to be deemed unfair.

Limitation of Liability

Information provided in writing, verbally or visually should be correct and current and be without inaccuracies that might affect prospective students' decisions. Statements that disclaim liability for errors or omissions are likely to be judged by the CMA to be unfair. Given the number of staff who are likely to handle enquiries, participate in visit days and contribute to website and prospectus programme descriptions, this is a difficult area to manage. It is vital that all staff are aware of the need to ensure that prospective students are consistently given accurate and complete information.

Discouragement of Complaints

Complaints handling policies need to be easily accessible, clear and fair. The CMA has required Buckinghamshire New University not to enforce contract terms that (i) prevent students who are pursuing informal or formal complaints from attending a graduation event to have their award conferred upon them or (ii) risk invalidating their complaint by attending graduation events.

Birkbeck College, University of London has been required to drop a provision that meant it would not accept complaints from students who have tuition fee debts.



How Uniac can Help

Dr. Kath Thompson from HEFCE will provide a further insight on this topic at the Uniac Forum on 5 October 2016.

In addition, Uniac can review institutions' approaches to ensure that printed, visual and verbal information is accurate and that terms and conditions are framed so that they are likely to be judged as fair to students. To discuss this further, please contact us.



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