



## CONSUMER PROTECTION LAW

### Overview

Consumer protection legislation has applied to the Higher Education (HE) sector for some time, however guidance from the Competition and Markets Authority (CMA) in March 2015 means that there is increased appreciation and awareness of how consumer protection law applies to OCRPL students. The CMA is monitoring universities' progress towards compliance with legislative provision.

### Application of Consumer Protection Legislation on OCRPL

The CMA advised that consumer protection law applies to the relationship between HE providers and prospective and current undergraduate students, but this advice may also be relevant to HE providers of other types of courses and other students where consumer protection legislation applies, thus widening the relevance to postgraduate studies as well.

The CMA advice focuses on compliance with the following consumer protection legislation:

- (a) Consumer Protection from Unfair Trading Regulations (2008);
- (b) Consumer Contracts (Information, Cancellation, and Additional Charges) Regulations (2013);
- (c) Unfair Terms Legislation (at the date of publication of the CMA guidance relevant legislation was the Unfair Terms in Consumer Contracts Regulations 1999).

The CMA guidance comprises three areas:

- (a) Information provision: the need to provide up front, clear, accurate, comprehensive, unambiguous and timely information to prospective and current students. A prevailing theme of the legislation is that consumers/applicants are able to make informed choices i.e. before they accept an offer of a place they have a reasonable degree of certainty regarding the nature and extent of the academic (or other) service the University will provide and the cost they will incur;



- (b) Terms and conditions: the need for terms and conditions that apply to students to be fair and balanced, and ensuring that HE providers do not rely on terms that are to the students' detriment;
- (c) Complaint handling processes and practices: The need to ensure that complaints handling processes and practices are accessible, clear and fair to students.

The CMA expects all HE institutions to consider this guidance, review relevant practices, policies, rules and regulations to ensure that they comply with consumer protection law, or make necessary changes to ensure compliance. In addition, HE providers are expected to put mechanisms in place to ensure that all faculties and departments are complying with the guidance, make all necessary information available to all staff, and ensure that it is understood and followed.

Non-compliance with consumer protection law could result in enforcement action by the CMA, or local authority Trading Standards, or by students individually or collectively. Such enforcement action could mean civil proceedings or criminal prosecutions against certain breaches, as appropriate.

OCRPL has established the website which it is using as a means of briefing all staff on key information and bespoke advice and guidance for particular circumstances. This is being complemented with face-to-face briefings and events for front-line staff in particular roles and staff in leadership roles needing to plan with CMA guidance in mind.

Details of these events will be posted on the Events page and circulated to staff, in the first instance via Heads of Academic Departments and Professional Service areas, for cascading to colleagues.

## Application of Consumer Protections Laws on Students

### 1. Recruitment of students

Work has been undertaken to ensure that centrally-managed recruitment activity and central communications to prospective students is undertaken in line with CMA guidance. Staff in departments must also ensure that they take the following steps in dealing with prospective students:

1.1 Review all 'pre-contract' information about courses of study (departmental; joint and interdisciplinary) to ensure it remains accurate and up-to-date. Changes to pre-contract information should be identified to applicants as should any 'surprising' terms and conditions i.e. clauses which it would not be reasonable to assume that applicants with no previous experience of HE would understand and/or terms whose contravention might prevent a student from successfully completing the course. This might, for example, contain conventions relating to core modules that must be passed; pre-requisites for later years of study; calculation methods for modules.

1.2 Review 'material information' to ensure it is provided in a clear, unambiguous, and timely fashion to all potential students, this to include:

1.2.1 course title

1.2.2 entry requirements/criteria

1.2.3 core modules for the course

1.2.4 indication of likely optional modules

1.2.5 optional modules that are generally available each year,

1.2.6 course composition information

1.2.7 contact hours (for lectures seminars, tutorials, work placements, and feedback on assignments)

1.2.8 expected workload for students and self-study time

1.2.9 details of general level of experience of staff involved in delivery the different elements of the course

1.2.10 overall methods of assessment for the course

1.2.11 award to be received at end of course

1.2.12 awarding body of institution

1.2.13 location of study; likely location of work placements



1.2.14 length of course

1.2.15 relevant PSRB or equivalent recognition

1.2.16 course timetable information

1.2.17 Course costs, including all tuition fees other costs such as field trips, equipment, bench fees or studio hire. All costs known to be a component of studying a course at Warwick should be shared with students or applicants. Any course costs that are likely to have a direct impact on a student's academic success, such as mandatory field trips on which a piece of assessed work would be based should be highlighted.

## 2. Enrolment of students

OCRPL will ensure the following steps are taken with respect to enrolling students:

2.1 Ensure that it is clear that the student will be entering into a contract with the institution at the point that the offer is accepted by the student;

2.2 Ensure that the information made available at the offer stage is not changed from that given at the pre-contract stage, unless agreement to the change has been given by the applicant.

The CMA advises that the contract/offer accepted by the student should last for the full duration of the course, with milestones to be achieved in order to progress to each next period of study to be clearly stated. This implies information relating to credit loads; pass marks; variation in modes of assessment and implications; pre-requisites; classification conventions and any other rules or guidance followed by boards of examiners in considering students' academic profiles for progression or conferral of awards. Departments must consider particularly carefully full disclosure via online publication and direct notification to students of all criteria used by boards of examiners in considering attainment and making progression/classification decisions.

The CMA does not consider that re-enrolment for each year of study should trigger a new contract being entered into for that year of study. This means that changes proposed by departments to courses or otherwise affecting students' experience must be subject to a process of consultation and communication by departments with their student community.



The CMA also advises that changes should only be made out of necessity rather than provider convenience; departments are advised to bear in mind that material changes should not be made casually.

### 3. Fair Terms and Conditions

Any OCRPL's regulations form part of a student's contract for admission onto a course, and are therefore considered by the CMA likely to be subject to the test of fairness under the unfair terms legislation. If a term is found to be unfair, it will not be binding on students and cannot be enforced. Any terms indicating that an institution or a department has wide discretion to varying elements of the initial offer are likely to be deemed unlawful.

Care should be taken to avoid such statements and to provide specific examples of changes that may take place and how such changes will be managed, noting opportunities that students will have in terms of consultation and communication.

Departments will wish to consider information provided in student handbooks and online about the learning environment offered and reasons why changes may take place. Staff turnover, development of the academic discipline, availability of new teaching techniques; technological advances suitable for integration; new assessment methods and introduction of new option modules informed by staff members' research interests are all perfectly legitimate and desirable changes, likely to benefit students, but care should be taken to alert students to potential changes early; engage students actively in discussions about the impact of changes and consider the timing of these.

Departments should pay particular attention to ensuring that:

- 3.1 Necessary information must be clearly signposted on websites and not located on student/staff intranet pages that require password access;
- 3.2 Necessary information is available and accessible from a prospective student's first contact with OCRPL, since only making relevant terms available at enrolment would be considered unfair. Late provision of material information will also extend the cancellation period;



- 3.3 Necessary information should not be located in numerous separate documents or in different places on webpages, thus making retrieval and review difficult. Neither should they be formatted into very lengthy documents or use difficult to understand language, jargon nor acronyms with which students are unlikely to be familiar. Departments should be mindful of the majority of applicants' very limited knowledge of higher education and of international students' lack of knowledge of the UK's educational tradition;
- 3.4 Information or requirements that might be considered 'surprising' should be specifically raised, for example; terms whose contravention may prevent a student from completing their course, notably those in relation to conduct (covered under disciplinary regulations, appropriate use of OCRPL IT facilities etc.) but also in relation to attainment and progression, and the procedures used by boards of examiners for consideration of student cases;
- 3.5 Where variation in course or wider service is indicated, students should be given clear information in advance about the change, how it will operate, and, ultimately, their right to cancel their contract with OCRPL and switch HE providers if changes are made. In such instances, support should be provided to students who opt to pursue a course elsewhere in the form of managing their transition appropriately. Such cases are likely to be few and far between but the impact upon individual students can be high.

The CMA advises that changes/variations in terms are less likely to be open to legal challenge when valid reasons are given for the variation and anticipated mechanisms and timetables for change are set out clearly, and communicated to students in good time before the change is to take place.

#### 4. Intellectual Property Rights (IPR)

OCRPL is advised that blanket terms, where a student assigns all of their IPRs to their institution, are likely to be considered unfair. Where it is reasonable and appropriate for OCRPL to require a student to assign it specific IPRs, this should be clearly set out and drawn to the attention of the student at the earliest possible opportunity.



## 5. Non-Academic Debts

Terms that employ the use of academic sanctions for non-academic related debts (such as accommodation or travel costs) will be open to challenge under unfair terms legislation. OCRPL has amended its terms and conditions to bring practice into line with these requirements.

## 6. Proposed changes to courses

6.1 Where a proposed change to a course would effect a course-level learning outcome or material information, student feedback from the cohort(s) to be affected by the proposal should be sought. Ideally, this would be via a direct e-mail to individual students affected, giving them an opportunity to respond with feedback by a given date, after which feedback would be considered and any alterations to planned changes made to accommodate reasonable feedback. The affected cohorts should then be notified of the effective date of the changes originally proposed. Where further changes have been made in the light of feedback, these should also be communicated.

6.2 Where an approved change to an advertised course will affect a course-level learning outcome or previously published 'material information', current applicants should be informed.

## **Complaints Handling**

All information relating to complaints handling processes should be easy to locate, accessible and clear to all parties. It should be made available to prospective students before the contract is concluded and made available to students in a durable medium along with the remainder of the "material information". Any other opportunities open to students for redress with third parties (such as the OIA) should also be made clear.

OCRPL should ensure that responsibility for complaints handling where there is partnership/collaboration/sponsor/award from another provider is made clear, available and easily accessible to all relevant students/prospective students.



The remit and time limits within complaints handling processes should be fair, and made clear and easily accessible to all students/prospective students. No barriers should be put in the way of students/prospective students exercising their rights under their contract with OCRPL and no pressure should ever be brought to bear to dissuade a student from bringing a complaint.

OCRPL has a duty to ensure that all staff are trained in, and follow its complaints procedure. Considerable work has been undertaken over the last 12 months by colleagues in the Academic Registrar's Office and Legal Counsel to enable appropriate front-line staff to be trained in complaints-handling. Given the size of the organization, this has been easy to implement and carry out.

CMA guidance describes 'compliant' complaints procedures as setting out clear and reasonable timescales for each stage of the process, feedback and requests for further information and evidence; providing an avenue for students to escalate the matter further if they remain unhappy with the outcome and ultimately to appeal, and following guidelines on complaints handling published by a third party complaint or redress scheme of which the HEI is a member, in this case the Office of the Independent Adjudicator (OIA).

Within the complaints process, stage 1 complaints are the preserve of the department in which the source of the complaint takes place. It is also critical in terms of central monitoring and reporting of complaints that accurate information on levels of complaints by areas and theme is available in order for OCRPL to take appropriate steps to address shortcomings.

### **What has OCRPL done to ensure compliance with CMA Guidance?**

1. In June 2019 OCRPL established a Working Group with membership as set out below, which met on a monthly basis and which included representation from academic departments as well as a number of central service areas with a particular remit to take forward compliance with consumer protection legislation.





The CMA Working Group was dis-established in January 2020, and CMA matters are now under the aegis of the office of the Legal Counsel of OCRPL.

CMA Working Group consisted of:

- Dr Dermot O'Callaghan, (Chair)
  - Dr Christopher Sugden, (Secretary)
  - Mr Hendrik Storm, (Treasurer)
  - Mr Noel Frost, (Legal Counsel)
  - Dr Patrick Sookhdeo, (Director of Studies)
  - Ms Caroline Kerslake, (Member of Board)
  - Dr. Joshva John, (Dean of OCRPL)
  - Mr Andre Lombard, (Academic Registrar and Administrator)
  - Mr. Jorge Coelho, (Head of Student Finance)
  - Mrs Rosemary Kerslake, (Member of Board)
  - Dr Vinay Samuel, (Member of Board)
2. OCRPL's formal postgraduate student terms and conditions for acceptance of a place on a course of study have been revised and updated.
  3. 'Material information' for courses of study has been developed and has been sent out to all candidates made an offer of a place on a course of study since 2018/2019 cycle.
  4. Information on additional costs has been gathered, and is made available on both internal and external facing web pages.
  5. Work has been undertaken to develop the online Student webpage and app, providing a user-friendly interface to academic regulation, studies, interaction and other provisions governing the student experience, accompanied by information about related sources of information advice and guidance.

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6. OCRPL's Good Practice Guide on Information for Students was updated in 2019 in the light of CMA guidance.
7. Information on consumer protection law was communicated across OCRPL, and a number of generic and bespoke events will be provided during the course of 2020 to further ensure ongoing development and compliance.
8. Guidelines for University staff working in marketing have been produced.