

Name and Address of University/Higher
Education Institution

Our ref CRE-E/28985

Date February 2014

Email universitiest&cs@oft.gsi.gov.uk

Dear Sirs

Universities' Terms and Conditions - Investigation under the Enterprise Act 2002

The Office of Fair Trading ('OFT') has today published a report outlining its findings from its investigation considering whether there are problems with the terms and practices used by some universities to prevent students from graduating or enrolling onto the next academic year or using university facilities if they owe monies to the university which relate to non-tuition fee debts, or if they engage in conduct (unrelated to academic performance) of which the university disapproves.

We would like to take this opportunity to raise awareness of consumer protection legislation among the sector and the types of terms and practices which the OFT considers may be open to challenge as unfair and/or unreasonable.

We are recommending that universities review their rules and regulations, other terms and conditions, and practices in light of the OFT's views outlined in the report, and make amendments as necessary.

We are writing to all universities across the UK in the same terms and we are not singling out any specific institution for special attention. We consider that our report is relevant to every university. We are also writing to other higher education institutions, as the report is also likely to be of interest to them.



During the course of the investigation, many universities have taken the time to share copies of their documents and views, and, in some cases, have met with us alongside Universities UK. We have also received helpful input from other bodies such as the National Union of Students and the National Association of Student Money Advisers. This has helped the OFT to build an understanding of practices and approaches across the sector. We are grateful for such open and constructive engagement.

Details of investigation

In July 2013 the OFT opened an investigation to consider the aforementioned terms and conditions. The investigation considered whether the contract terms and/or practices in question breached consumer protection legislation including:

- a. the Unfair Terms in Consumer Contracts Regulations 1999 ('UTCCRs')
- b. the Unfair Contract Terms Act 1977 ('UCTA') and
- c. the Consumer Protection from Unfair Trading Regulations 2008 ('CPRs').

More information about our investigation and our report is available on our website at: www.offt.gov.uk/OFTwork/consumer-enforcement/consumer-enforcement-completed/university-terms

Our conclusions

Academic sanctions relating to student debt

We have concluded that use of and reliance upon contract terms to withhold graduation or progression or otherwise exclude students from tuition for non-payment of ancillary debts (such as accommodation or childcare), in a blanket fashion and regardless of the circumstances, is open to challenge as unfair under the UTCCRs and/or unreasonable under the UCTA. We also consider that practices around the use of such terms may constitute unfair commercial practices under the CPRs. We have identified that a significant majority of UK universities appear to include such provisions in their rules and regulations or other terms and conditions.

We also identified that not all universities include these provisions, and the report includes some examples of alternative approaches to student debt

management that the OFT has seen.

Sanctions relating to student conduct

We consider that withholding services that the student may be said to be paying for, as a disciplinary measure, may be unfair if appropriate standards of transparency and fairness are not met. However we have not identified widespread concerns that such standards are not already in place.

In January 2014, the OFT published a summary note clarifying its views on this issue. A copy can be found at www.offt.gov.uk/OFTwork/consumer-enforcement/consumer-enforcement-completed/university-terms.

Action to be taken by universities

The OFT expects all universities to refrain from using potentially unfair and/or unreasonable terms and practices and not to mislead students about either party's rights.

We recommend that universities review their rules and regulations, other terms and conditions, and practices in light of the OFT's views outlined in the report, and make amendments where necessary.

Universities are reminded that if a term is found to be unfair then it is not enforceable against students.

Although we have not specifically looked at the terms and practices used by other higher education institutions as part of the investigation, we consider that the report and our reasoning will be of interest and would encourage other higher education institutions to assess whether their terms and practices are fair.

Please note that the report is not a substitute for independent legal advice as to whether a court would consider a particular term or practice to be fair or unfair. Unfortunately the OFT cannot provide individual institutions with advice on the fairness of their terms or practices. Should a university or other higher education institution be unsure of its legal obligations it may wish to seek its own advice.

The OFT has published 'Unfair Contract Terms Guidance' (OFT 311) which provides further information on the types of terms that the OFT considers may be unfair. Details can be found at:

www.offt.gov.uk/OFTwork/publications/publication-categories/guidance/unfair-terms-consumer/oft311)

The OFT has also published 'Consumer Protection from Unfair Trading' (OFT 1008) which provides guidance on the CPRs. Details can be found at:

www.offt.gov.uk/shared_offt/business_leaflets/cpregs/oft1008.pdf

Other OFT work

Finally, the findings from this investigation are being fed into the OFT's call for information on the provision of Higher Education in England

(www.offt.gov.uk/OFTwork/markets-work/othermarketswork/higher-education-cfi) and will be used to inform the OFT's understanding of how the Higher Education market is functioning. A summary of findings from the call for information and any proposed next steps is expected to be published in March 2014.

We hope that you find this letter and the findings report helpful. If you have any general queries about this letter or the report, please reply by email to

universities&cs@oft.gsi.gov.uk.

Yours faithfully,

Jason Freeman
Project Director