

Higher Education consumer law compliance review – summary of undertakings provided to the CMA

UNIVERSITY of BUCKINGHAM (BUCKINGHAM)

Following the Competition and Markets Authority (CMA) review of consumer law compliance in the Higher Education undergraduate sector, the University of Buckingham (Buckingham) has fully co-operated with the CMA and, reflecting the changes it had voluntarily made to its terms and/or practices, agreed the following undertakings with the CMA pursuant to section 219 of the Enterprise Act 2002, which are set out below:

1. The following undertaking took effect from 4 July 2016

Buckingham will not:

- a) Threaten, apply or rely upon in anyway academic sanctions for the purpose of obtaining or securing from a consumer monies owed to Buckingham which are not tuition fee debts including (but not limited to) accommodation fees and library fines;
- b) Use or recommend for use any consumer notice or any term in contracts with students concluded after the 4 July 2016 which have the object and/or effect of permitting Buckingham to impose on a student, or rely upon in any way, academic sanctions for the purpose of obtaining or securing from a student the payment of monies owed to Buckingham which are not tuition fee debts including (but not limited to) accommodation fees and library fines;
- c) Enforce, attempt to enforce or otherwise rely on any such term (i.e. as referred to in b) above) in contracts with consumers and/or any such consumer notice provided or communicated to students.

For the purpose of the above undertaking:

- a) “academic sanctions”, consistent with the OFT report (OFT 1522) at paragraph 1.11, includes preventing graduation, academic progression, enrolling for the next year of study, registration for exams, withholding a student’s academic results or any other academic processes, or withholding academic services like tuition or access to university facilities that are critical to study. For the avoidance of doubt, we consider that references or any representation made to a student by a University to the effect that the University will not release the student’s degree or other “qualification including certificates and transcripts” or any similar wording falls within the meaning of an academic sanction.
- b) “Consumer notice” has the same meaning as that in section 61 of the Consumer Rights Act 2015 (CRA)¹.

2. The following undertaking took effect from 4 July 2016

Buckingham will not:

¹ A consumer notice for the purpose of Part 2 of the CRA is wording that relates to the rights or obligations between a trader and a consumer, or which appears to exclude or restrict a trader’s liability to a consumer. It includes an announcement or other communication, whether or not in writing, and whether or not expressed to apply to a consumer, as long as it is reasonable to assume that it is intended to be seen or heard by one.

- a) Use or recommend for use in any contracts with consumers concluded after 4 July 2016, or in any notice provided to students, or enforce, attempt to enforce or otherwise rely on, any term which permits Buckingham to increase any fees payable by the student under a contract, after the student has entered that contract, other than where:
 - i. the fee increase is in line with inflation, as calculated in accordance with RPI or another independent and verifiable index, and
 - ii. before the student enters into the contract they have been given clear and comprehensible notice, in their offer letter, of how and when the fee increase will take place.
- b) In particular Buckingham will not use, recommend for use, enforce, attempt to enforce or rely on in any contract or consumer notice, the term: "*Fees are reviewed annually and may increase, usually in line with inflation*".

3. The following undertaking took effect from 4 July 2016

Buckingham will not:

- a) Use or recommend for use in any contracts with students concluded after 4 July 2016, any term which requires the student to incur additional course costs, where the nature and amount of the additional course cost has not been notified to the student in a clear and comprehensible manner in their offer letter, before the student has concluded the contract, and or any terms of a similar kind or with a similar effect in such contracts or any consumer notices of a similar kind or with a similar effect;
- b) Rely on the term "*Details of any additional significant expenditure that you may be required to incur can be obtained upon request from your school of study*" in any contract in which it is currently included and/or any term of a similar kind or with a similar effect in such contracts or any consumer notices of a similar kind or with a similar effect provided or communicated to students.
- c) In respect of contracts entered into on or after 4 July 2016, charge any additional course cost or require the student to pay any additional course costs, where
 - i) This cost has not been specifically notified to the student in their offer letter and included in a clear and comprehensible manner in information provided or made available to the student before they make their application, and
 - ii) in a manner which enables the student to calculate how much the extra cost will be, when they will be charged, and whether the cost is mandatory or optional.

BUCKINGHAMSHIRE NEW UNIVERSITY (“BUCKS NEW”)

Following the Competition and Markets Authority (CMA) review of consumer law compliance in the Higher Education undergraduate sector, Buckinghamshire New University (Bucks New) has fully cooperated with the CMA and, reflecting the changes it had voluntarily agreed to make to its terms and/or practices, agreed the following undertakings with the CMA pursuant to section 219 of the Enterprise Act 2002, which are set out below:

1. The following undertaking took effect from 16 June 2016

Bucks New will not:

- a) Threaten, apply or rely upon in any way academic sanctions for the purpose of obtaining or securing from a consumer monies owed to Bucks New which are not tuition fee debts including (but not limited to) accommodation fees and library fines;
- b) Use or recommend for use any consumer notice or any term in contracts with consumers concluded after the 16 June 2016 which have the object and/or effect of permitting Bucks New to impose on a student, or rely upon in any way, academic sanctions for the purpose of obtaining or securing from a student the payment of monies owed to Bucks New which are not tuition fee debts including (but not limited to) accommodation fees and library fines;
- c) Enforce, attempt to enforce or otherwise rely on any such term (i.e. as referred to in b) above) in contracts with consumers concluded on or before the 16 June 2016 and/or any such consumer notice provided or communicated before that date.

For the purpose of the above undertaking:

- a) “academic sanctions”, consistent with the OFT report (OFT 1522) at paragraph 1.11, includes preventing graduation, academic progression, enrolling for the next year of study, registration for exams, withholding a student’s academic results or any other academic processes, or withholding academic services like tuition or access to university facilities that are critical to study. For the avoidance of doubt, we consider that references or any representation made to a student by a University to the effect that the University will not release the student’s “award certificate”, “certificate”, and/or “award” or any similar wording falls within the meaning of an academic sanction.
- b) “Consumer notice” has the same meaning as that in section 61 of the Consumer Rights Act 2015 (CRA) (see footnote)².

2. The following undertaking took effect from 16 June 2016

Bucks New will not:

- a) Use or recommend for use in any contracts with consumers concluded after the 16 June 2016, the following term “*Where a student is in the process of an informal or formal complaint they may not usually attend a graduation event to have their award conferred upon them. Should a student decide to attend a graduation event this will invalidate their complaint*” and/or any term of a similar kind or

² A consumer notice for the purpose of Part 2 of the CRA is wording that relates to the rights or obligations between a trader and a consumer, or which appears to exclude or restrict a trader’s liability to a consumer. It includes an announcement or other communication, whether or not in writing, and whether or not expressed to apply to a consumer, as long as it is reasonable to assume that it is intended to be seen or heard by one.

with a similar effect in such contracts or any consumer notice of a similar kind or with a similar effect;

- b) Enforce, attempt to enforce or otherwise rely on the term referred to in paragraph a) above in any contract with consumers concluded on or before the 16 June 2016 and/or any term of a similar kind or with a similar effect in such contracts or any consumer notice of a similar kind or with a similar effect provided or communicated before the said date.

BIRKBECK COLLEGE, UNIVERSITY OF LONDON (“BIRKBECK”)

Following the Competition and Markets Authority (CMA) review of consumer law compliance in the Higher Education undergraduate sector, Birkbeck College, University of London (Birkbeck) has fully co-operated with the CMA and, reflecting the changes it had voluntarily made (or agreed to make) to its terms agreed the following undertakings with the CMA pursuant to section 219 of the Enterprise Act 2002, which are set out below:

1. The following undertaking took effect from 9 May 2016

Birkbeck will:

- i) Not enforce, attempt to enforce or otherwise rely upon the term at clause 12 in its Student Complaints Policy and Procedure which provides “the College will not normally enact the Complaints procedure where a complainant is in debt to the College for tuition fees” in any contract with consumers concluded on, before or after the date of this undertaking.
- ii) Not to enforce, attempt to enforce or otherwise rely upon any term or terms of a similar kind or with a similar effect to the said clause 12, in any contract with consumers concluded on, before or after the date of this undertaking (for example the clause at paragraph 60 of Birkbeck’s fee policy of 2015-16) or any consumer notice of a similar kind or with a similar effect³.
- iii) Remove as soon as reasonably possible and in any event no later than before the start of the academic year 2016/17 clause 12 of its Student Complaints Policy and Procedure or any term or terms in contracts with consumers, or any consumer notice, of a similar kind or with a similar effect and thereafter will not insert, attempt to insert, use, recommend for use or rely upon in any way such terms in contracts with consumers and/or in a consumer notice.

2. The following undertaking took effect from 9 July 2016

- a) “The relevant term” referred to in this undertaking is set out in Birkbeck College, University of London (Birkbeck) Fees Policy of 2015-16, namely:

“All tuition fees are subject to annual increases and are not fixed for more than one academic year. You may expect fees to increase annually and approximately in line with inflation. Each year at enrolment we will re-confirm to you the fee you must pay. Where there are significant fee increases these will be communicated to you in writing at the earliest opportunity.”

- b) “Undergraduate programme enrolment courses” referred to in this undertaking means undergraduate programmes of study that require an application to study and include Certificate of Higher Education programme enrolment and undergraduate degree programmes.

³ ‘Consumer notice’ has the same meaning for the purpose of this undertaking as that in section 61 of the Consumer Rights Act 2015 (CRA). A consumer notice for the purpose of Part 2 of the CRA, is wording that relates to rights or obligations between a trader and a consumer, or which appears to exclude or restrict a trader’s liability to a consumer. It includes an announcement or other communication, whether or not in writing, and whether or not expressed to apply to a consumer, as long as it is reasonable to assume that it is intended to be seen or heard by one. (The inclusion of notices in the CRA ensures that in a broad sense any wording directed by traders to consumers that has an effect comparable to a potentially unfair term is open to challenge).

Birkbeck will not

- c) Use or recommend for use in any contracts for undergraduate programme enrolment courses [as defined in b) above] concluded after 9 July 2016:
 - i) the relevant term set out in paragraph a) above and/or
 - ii) any term or terms of a similar kind or with a similar effect namely those which have the object or effect of permitting Birkbeck to increase fees for students already enrolled on undergraduate programme enrolment courses, other than where the annual tuition fee increase is in line with inflation, as calculated in line with an independent and verifiable index such as the RPI, and no more than a relevant cap or limitation on such tuition fee increases.

- d) Enforce, attempt to enforce or otherwise rely on the relevant term referred to in paragraph a) above in any contracts for undergraduate programme enrolment courses concluded on or before 9 July 2016 and/or any term or terms of a similar kind or with a similar effect as set out in paragraph c ii) above in such contracts.

- e) Enforce, attempt to enforce or otherwise rely on any consumer notice, relating to or covering undergraduate programme enrolment courses, of a similar kind or with a similar effect as set out in paragraph c ii) above⁴.

⁴ "Consumer notice" has the same meaning for the purpose of this undertaking as that in section 61 of the Consumer Rights Act 2015 (CRA). This is consistent with the previous undertaking provided by Birkbeck.