

Consumer law compliance review

Higher Education undergraduate sector
findings report

© Crown copyright 2016

You may reuse this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence.

To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/ or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Contents

	<i>Page</i>
1. Summary.....	3
2. Introduction	7
3. The review	12
4. Findings	14
5. Action taken and next steps.....	31
Annex A: Questions and Answers.....	39

1. Summary

- 1.1 This report sets out our findings and actions following a review of consumer law compliance in the higher education undergraduate sector, which began in October 2015.
- 1.2 The Competition and Markets Authority (CMA) published consumer protection law (consumer law) compliance [Advice for the Higher Education Undergraduate Sector](#) in March 2015 (CMA's 2015 HE advice).
- 1.3 The purpose of this advice was to help Higher Education (HE) providers across the UK understand and comply with their responsibilities under consumer law, in their dealings with prospective and current undergraduate students.
- 1.4 At the time of publication, the CMA announced it would carry out a compliance review¹, commencing 1 October 2015. The aim of this review was to:
 - (a) establish whether the CMA had been successful in its aim to help raise awareness of consumer law obligations and rights in this sector and improve compliance;
 - (b) identify whether there was any evidence of non-compliance by HE providers and if so to decide what, if any, further action to take;
 - (c) establish whether any further CMA work or materials in this area would be helpful.
- 1.5 We have engaged with a range of stakeholders as part of the compliance review. We have considered all information received, including intelligence from our online reporting tool, which enables students and their advisers to report any concerns or issues to us, and the findings of an independent survey carried out on our behalf by IFF Research. We have also carried out a review of the information, policies and procedures publicly available on the websites of a number of HE providers.

Findings

- 1.6 In summary, our review found that good progress has been made by many HE providers, but some still have work to do to ensure they are fully complying with their consumer law obligations.

¹ The CMA has a general review function in section 5 of the Enterprise Act 2002. Information gathered can help the CMA to determine whether further action is warranted by the CMA or others, including whether further action is necessary in relation to consumer law compliance.

- 1.7 Awareness of consumer law obligations among HE providers has increased significantly since we began our work in this area in 2014.
- 1.8 Considerable efforts have been made by many HE providers to review and amend their practices, terms and policies, which we welcome. For example, of those who responded to the IFF survey, all but one provider said that they had made changes to the information they provide to prospective undergraduates as a result of the CMA's 2015 HE advice and their subsequent review.
- 1.9 During our review of the information publicly available on a number of HE providers' websites, we have seen examples of positive practices or changes. These include providers:
- having updated their policies and terms so that they no longer apply academic sanctions when students are in non-academic debt;
 - giving upfront information to prospective students on the circumstances in which advertised modules may not be available to them during their studies so they can make informed choices; and
 - introducing new policies that explain to staff the relevant consumer protection obligations, for example in relation to making changes to courses.
- 1.10 Despite some good progress, we have also seen examples of potential non-compliance with consumer law, including in relation to:
- the accessibility and adequacy of information provided to prospective students, for example in relation to additional course costs and undergraduate degree course variation;
 - terms that potentially allow providers a wide discretion to vary fees or course content and/or withdraw courses;
 - the use of academic sanctions for non-academic debt;
 - policies and processes that could hinder or prevent a student from making or progressing a complaint.
- 1.11 We also have some concerns about the length of time it is taking some HE providers to complete their compliance reviews and implement changes, where necessary.
- 1.12 During our review, using our statutory powers, we have undertaken and completed targeted investigations into the terms and/or practices of three HE providers. Following this action we have secured undertakings to improve their practices in relation to:

- the use of academic sanctions for non-academic debt, such as accommodation debt;
 - the information provided to prospective students regarding additional course costs;
 - terms and information provision relating to the potential for fee variation; and
 - terms in providers' complaints processes that could act as a barrier to students raising or continuing to pursue complaints.
- 1.13 We welcome the co-operation of all the universities with whom we have engaged and secured undertakings from, so far. See [our webpages](#) for further details. The CMA is continuing to look at issues relating to other providers.
- 1.14 Our review of publically available information was focused on a sample of universities. We selected these universities based on information submitted to us, and/or previous reviews undertaken by the Office of Fair Trading (OFT)/CMA before the publication of the CMA's 2015 HE Advice.
- 1.15 In a sector of over 900 HE providers, we have not reviewed all. The concerns we have identified may be occurring more widely. Therefore, we are writing to HE providers drawing their attention to our concerns and setting out what we now expect them to do. A copy of this letter can be found on the CMA's [webpages](#).
- 1.16 We will continue to work closely with key stakeholders in the sector, including the Higher Education Funding Council for England (HEFCE), the Higher Education Funding Council for Wales (HEFCW), the Scottish Funding Council (SFC), the Department for the Economy, Northern Ireland (DfE) and the Quality Assurance Agency for Higher Education (QAA), to ensure compliance with consumer law is further embedded among HE providers. There are also HE regulatory initiatives that will help to underpin and increase the long term impact of our work, for example, the requirements of consumer law will form part of the baseline requirements in the revised operating model for quality assessment of universities and colleges, to be implemented in England and Northern Ireland in 2017-18.
- 1.17 We expect all HE providers to comply with consumer law. If we become aware of further concerns, we will consider these and decide whether to take further action or pass this information on to other enforcement or HE regulatory bodies.
- 1.18 In addition to the possibility of action by the CMA or other enforcement or HE regulatory bodies, students can also choose to take private actions and seek redress under consumer protection legislation or refer their complaint to the

Office of the Independent Adjudicator (OIA) in England and Wales, the Scottish Public Services Ombudsman (SPSO), or through the Northern Ireland Visitor system and, from 1 October 2016, the Northern Ireland Public Services Ombudsman (NIPSO).

2. Introduction

2.1 This report sets out:

- (a) the background to the compliance review, which began in October 2015;
- (b) the purpose of the compliance review and what it involved;
- (c) the review findings, in particular the specific areas of concern that we have identified;
- (d) how the issues identified have been, or will be, taken forward, including, where relevant, by other stakeholders in the sector; and
- (e) action taken and next steps.

2.2 This report focuses on the particular issues we identified as areas of concern. As such this findings report complements the CMA's 2015 HE advice and should be read in conjunction with that advice.

2.3 For the purpose of the CMA's 2015 HE advice, and this findings report, when we refer to HE providers we mean:

- (a) publicly funded universities, sometimes referred to as traditional HE providers;
- (b) further education (FE) colleges that offer HE courses; and
- (c) HE providers that do not receive direct public funding, sometimes referred to as alternative HE providers.

2.4 The main consumer protection legislation applicable to the CMA's 2015 HE advice, and to this compliance review findings report, is:

- (a) The Consumer Protection from Unfair Trading Regulations 2008 (CPRs);
- (b) The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CCRs); and
- (c) Unfair terms legislation (Unfair Terms in Consumer Contracts Regulations 1999 (UTCCRs) for contracts concluded prior to 1 October 2015, and Parts 1 and 2 of the Consumer Rights Act 2015 (CRA) (see Schedule 3 regarding

enforcement action) for contracts concluded on or after 1 October 2015). Provisions are also made in Part 2 for consumer notices.²

Background to the review

- 2.5 In March 2014 the OFT³ published findings from a Call for Information on the undergraduate higher education sector in England,⁴ which identified some potential consumer protection compliance concerns in the following areas:
- (a) the information available to students to enable them to choose the most appropriate courses and HE provider;
 - (b) the terms and conditions used by some HE providers, including their accessibility, fairness and proportionality; and
 - (c) the speed and effectiveness of complaints handling by some HE providers, as well as an apparent lack of student knowledge about the process.
- 2.6 As a result of these findings, the OFT recommended that the CMA undertake work to clarify HE providers' responsibilities under consumer law. This follow up work, research and analysis has been UK-wide as consumer protection legislation applies throughout the UK.
- 2.7 In March 2015, following constructive engagement with stakeholders in the sector and a public consultation, the CMA published its 2015 HE advice to help providers understand and comply with consumer law in their dealings with undergraduate students in the following three areas:
- (a) **Information provision** – the need to provide upfront, clear, accurate, comprehensive, unambiguous and timely information to prospective and current students.
 - (b) **Terms and conditions** – the need for terms and conditions that apply to students to be fair. HE providers should not rely on terms that could disadvantage students.

² A consumer notice is defined in section 61 of the CRA. The inclusion of notices in the CRA ensures in a broad sense **any wording** directed by traders to consumers that has the effect comparable to a potentially unfair term is open to challenge. See the CMA's main [unfair terms guidance](#) and [Unfair terms explained for businesses: individual guides](#).

³ The CMA is a non-ministerial department formed on 1 April 2014. It is a unified competition and consumer authority which took over many of the functions formerly performed by the Competition Commission and the OFT.

⁴ Call for information on the higher education sector (undergraduate) in England.

- (c) **Complaint handling processes and practices** – the need to ensure that complaint handling processes and practices are accessible, clear and fair to students.
- 2.8 At the same time as the CMA published its 2015 HE advice, it wrote to HE providers in the UK⁵ asking them to read the advice and review and amend, where necessary, their practices to ensure they comply with consumer law.
- 2.9 After publication, the CMA participated in a number of workshops organised by sector bodies representing providers (including Universities UK (UUK), the Association of Colleges (AoC) and Study UK) and stakeholder meetings to help raise the awareness and understanding of our advice in the sector. During the review the CMA has also responded to a number of questions about its advice. In Annex A we have provided the CMA’s answers to those questions that may be of wider interest to others.
- 2.10 Alongside the advice for HE providers, the CMA also published materials for students and their advisers on their consumer law rights. Informed students are an important way to drive compliance by challenging HE providers to give them the required information and to treat them fairly. We worked closely with stakeholders (including the NUS, Student Loans Company, Which?, UCAS and Citizens Advice) to disseminate our materials and advice to prospective and current students. For example, UCAS published consumer rights advice on ucas.com for applicants, parents and advisers as well as highlighting it in its newsletters to parents, pre-applicants, applicants and schools.
- 2.11 As announced, when the CMA published its advice materials in March 2015, the CMA has carried out a compliance review. This review began on 1 October 2015 and we are now reporting our findings.

CMA’s mission and powers

- 2.12 The CMA’s aim is to make markets work well for consumers, business and the economy. Markets work well when businesses are in open, fair and vigorous competition with each other for the consumer’s custom. The CMA seeks to empower consumers to exercise informed choice, using both competition and consumer powers to help markets work well.

⁵ We wrote to the 953 HE providers, including universities and colleges that deliver HE undergraduate courses in the UK.

2.13 The CMA uses the full range of its consumer powers to tackle, in particular, market-wide consumer problems or issues, which affect consumers' ability to make choices, and where competition can be hampered.⁶

2.14 The CMA pursues this goal in a number of ways including by:

- (a) encouraging businesses to improve their trading practices by advising them about their duties under the law and encouraging self-regulation;
- (b) equipping consumers and businesses with information they need to protect against and avoid unlawful practices; and
- (c) taking enforcement action under competition and consumer law.

Who is this report aimed at?

2.15 This report, like the CMA 2015 HE advice it relates to, is intended for HE providers in the UK. The report may also be of interest to consumer and student advisers, HE sector regulators and organisations and to enforcers.

What is the purpose of this report?

2.16 The purpose of this report is to:

- (a) share the compliance review findings and the CMA's views on those findings with the HE sector;
- (b) further raise awareness of consumer law in this sector to drive improved compliance; and
- (c) assist and inform the work of organisations who have a sectoral role.

2.17 Some HE providers have told us that they are finding some aspects of consumer law challenging to implement in practice and that they would welcome examples of good terms. Although the CMA is unable to 'approve' terms or practices, in this report we offer detailed suggestions as to how HE providers can seek to achieve compliance with the relevant consumer protection legislation, which we also covered in the CMA's 2015 HE advice. This is not new guidance or advice but a practical illustration of potential ways to achieve compliance with the CMA's interpretation of the law as set out in the CMA's 2015 HE advice.

2.18 The CMA's views in this report are not a substitute for legal advice. They should not be relied on as such, and are not binding on the courts or other enforcers.

⁶ See [Consumer protection: guidance on the CMA's approach to use of its consumer powers \(CMA7\)](#), March 2014.

Whether there has been a breach of consumer law will depend upon the circumstances of the particular case. Ultimately, only a court can decide whether a particular term or practice is unfair.

3. The review

Purpose of the review

- 3.1 When we published our 2015 HE Advice and other compliance materials we said that we would undertake a compliance review, beginning 1 October 2015. The purpose of the compliance review was threefold:
- (a) to establish whether we have been successful in our aim to help raise awareness of consumer law obligations and rights in this sector and improve compliance;
 - (b) to identify whether there was any evidence of non-compliance by HE providers and, if so, to decide what, if any, further action to take; and
 - (c) to establish whether any further CMA work or materials in this area would be helpful.

What the review involved

- 3.2 During the compliance review period we have:
- (a) sought the views of the key stakeholders working in the sector on the helpfulness of the CMA's 2015 HE advice and whether they have been acted upon;
 - (b) commissioned an anonymised survey of providers to:
 - (i) find out how useful they found the CMA's 2015 HE advice;
 - (ii) establish whether HE providers had reviewed their information provision, policies and complaints processes as a result of the CMA's 2015 HE advice; and
 - (iii) establish whether there are any other issues on which further compliance advice would be helpful;
 - (c) reviewed the information received from organisations working in the sector, including Which?;
 - (d) reviewed information submitted to us by students and their advisers about possible non-compliance by providers;
 - (e) responded to queries and/or requests for clarification about the application of the CMA's 2015 HE advice;

- (f) monitored media coverage relating to the sector;
- (g) provided views on the application of consumer law to inform the policy work being undertaken by key sector stakeholders, for example, BIS' proposals on the teaching excellence framework; and
- (h) carried out a review of the information, policies and procedures publicly available on the websites of a number of HE providers.

3.3 During our review, using our statutory powers, we have undertaken and completed targeted investigations into the terms and practices of three HE providers. We have secured undertakings in relation to:

- the use of academic sanctions for non-academic debt, such as accommodation debt;
- the information provided to prospective students regarding additional course costs;
- terms and information provision relating to potential for fee variation; and
- terms in providers' complaints processes that could act as a barrier to students raising or continuing to pursue complaints.

4. Findings

Have we raised awareness?

- 4.1 Feedback from the HE sector during our compliance review suggests awareness of consumer law obligations among both HE providers and student advisers has grown significantly since we published the CMA's 2015 HE advice, as illustrated by the following quotes from HEFCE, SFC, the DfE, QAA and the NUS. We particularly welcome the efforts made by many stakeholders in the sector to raise awareness and understanding of the issues and implications for HE providers, and the rights of students.

Higher Education Funding Council for England

'The publication of the CMA materials has raised the profile of consumer issues in the higher education sector, particularly in relation to information that institutions should provide to students prior to starting their course. The materials have provided focus and in our conversations with providers we detect a shift in understanding of the issues and an appreciation of the advice for its practical support.'

Scottish Funding Council

'The CMA's advice is helping to improve the standard and consistency of information that is made available to applicants, students, and others with an interest in higher education, as well as encouraging universities to review their policies, practices, and processes.'

Department for the Economy, Northern Ireland

'The Department has been working with the sector to raise awareness of the CMA guidance in relation to institutions' legal obligations under consumer rights legislation. Northern Ireland's higher education institutions have been very positive and are keen to ensure that they are fully compliant with the legislation.'

Quality Assurance Agency for Higher Education

'Our engagement with higher education providers across the UK has indicated that they are taking the requirements of the 2015 guidance seriously and are reviewing their practices to ensure compliance.'

National Union of Students

‘The largest positive impact has been where CMA guidance has informed and given confidence to student officers and union staff to challenge unfair practices at their institutions. There are a significant number of individual and collective cases in which unions have successfully challenged practice by using the advice given to them by the CMA, particularly where the CMA have been contacted and have provided further information and advice on the particular circumstances. Many student advisers and advice centre managers have stated that the CMA guidance has been essential in successfully resolving many student complaints.’

- 4.2 In our anonymised survey of 137 universities,⁷ 63 out of the 66 who responded said that they found the advice to be either very or fairly useful. No respondents said that the advice was not at all useful.⁸

Have HE providers made changes as a result of our advice?

- 4.3 We welcome the efforts made by HE providers to review and amend when necessary their practices, terms and policies. In our anonymised survey, HE providers were asked whether they had reviewed, and made changes to, any of the following as a result of the CMA’s 2015 HE advice:

- Information provided to prospective students.
- Information provided to current students.
- Their practices, policies, rules and regulations.
- Their complaints process.

- 4.4 Of those who responded to our survey all but one HE provider said that they had made changes to the information they provide to prospective undergraduates as a result of the CMA's 2015 HE advice and their subsequent review, with a large

⁷ A total of 137 universities were invited to participate in an online survey – administered by IFF Research – 66 of which went on to complete it. This represents a response rate of 48%.

Providers were asked how useful they found CMA’s 2015 HE advice, whether their institution had reviewed their information provision, policies and complaints processes as a result of this advice and – among those who had – whether they had consequently made any changes. Providers were also asked to give examples of the types of changes they have made and of any areas of the advice that would benefit from further clarification. All responses were anonymised, to encourage open and honest answers. An independent check of whether these reviews all took place was therefore not possible. In addition, GuildHE collected and anonymised a further seven responses to the survey from their members. These responses were considered by the CMA but are not included in the numbers provided in this report as these relate solely to the survey administered by IFF.

⁸ As the survey was anonymised we do not know which institutions responded. It is possible that the universities who responded are more likely to have found the advice useful and/or acted upon it, than those who did not respond.

majority – 77% – also making changes to the information they provide to their current undergraduates (see Figure 1). Significantly all those respondents who said they had reviewed their information provision to prospective undergraduates as a result of our advice said that they then made changes to the information they provide.

Figure 1: Feedback from IFF survey

	<i>As a result of the CMA's 2015 HE advice and open letter, has your institution reviewed any of the following?</i>				<i>As a result of your review, have you made any changes to the following?</i>			
	<i>Information for prospective students</i>	<i>Information for current students</i>	<i>Practices, policies, rules and regulations</i>	<i>Complaints process</i>	<i>Information for prospective students</i>	<i>Information for current students</i>	<i>Practices, policies, rules and regulations</i>	<i>Complaints process</i>
No response	0	0	0	0	1	2	3	14
Yes	65	64	63	52	65	51	56	27
No	1	1	2	12	0	10	6	24
Don't know	0	1	1	2	0	3	1	1

Source: IFF.

4.5 85% of survey respondents said that they had made changes to their practices, policies, rules and regulations as a result of their review. Fewer providers – 41% – reported making changes to their complaints process. This may reflect the fact that they had made changes to their complaints processes following publication of the OIA's Good Practice Framework in December 2014 and that HE providers in Scotland are required to adopt the SPSO's Model Complaints Handling Procedure and had done so from August 2013.

Summary of the CMA's review of the information publicly available on providers' websites

4.6 During our review of the information publicly available on a number of HE providers' websites,⁹ we have seen examples of positive practices or changes. These include providers:

- having updated their policies and terms so that they no longer apply academic sanctions when students are in non-academic debt;

⁹ A review of the information publically available on providers' websites does not encompass all the information provided to prospective students before and after they accept an offer on a course. This additional information (eg offer letters) was not available to us. However, it does reflect the primary source of information that is available to students when they are researching online where to apply and what to study.

- giving clear and upfront information to prospective students about the circumstances in which advertised modules may not be available to them during their studies so they can make informed choices;
 - giving clear and upfront information to students, including international students, on the level of tuition fees and the circumstances in which they may change during the course;
 - giving clear and upfront information about any additional course costs; and
 - introducing new policies that explain to staff the relevant consumer protection obligations, for example in relation to making changes to courses.
- 4.7 It is clear, both from our survey and broader engagement with sector bodies, that HE providers recognise the importance of consumer law and have reviewed their terms and practices. However there is evidence that some providers are still in the process of changing their practices, policies and rules in light of the CMA's 2015 HE advice. We are concerned by how long it is taking some providers to complete their reviews and implement the necessary changes, where necessary. We would urge providers to ensure these changes are finalised and implemented as a matter of urgency, given it is now over a year since the CMA's 2015 HE advice was published and we are approaching the start of the new academic year.
- 4.8 From our review of the information, terms and policy documents publicly available on a number of providers websites, further research following media coverage, and information provided by stakeholders, we have found some incidences of potential non-compliance on a number of issues.
- 4.9 Below we report on the key compliance concerns we identified during the course of our reviews. We refer to:
- the relevant parts of the CMA's 2015 HE advice;
 - example wording to illustrate our concerns; and
 - changes being made by providers or provide practical tips to illustrate how potentially compliance is more likely to be achieved (see paragraph 2.16).
- 4.10 The concerns covered are on the following issues:
- (a) the accessibility of terms;
 - (b) terms or wording that potentially allow a provider a wide discretion to vary tuition fees;

- (c) a lack of transparency about additional course costs;
- (d) terms or wording that potentially allow a provider a wide discretion to vary course content (including the withdrawal of courses) and delivery;
- (e) wording that potentially unfairly limits the HE provider's liability;
- (f) terms or wording that prevent students from progressing or graduating if they owe non-academic debts; and
- (g) terms or provisions in complaints processes that put barriers in the way of students instigating or progressing complaints.

4.11 It should be emphasised that we did also see examples of good practice by providers in these areas.

The accessibility of terms/binding prospective students to hidden terms

4.12 It is important that prospective students are given the information they need to make informed choices when deciding where to apply and whether to accept offers. The terms (or any wording)¹⁰ used by a provider may influence a student's decision about where and what to study. In the CMA's 2015 HE advice we explain that important terms should be conveyed early on in the research and application process, for example in prospectuses and websites and that they should be clear and intelligible (see paragraphs 4.6 to 4.10 and 5.10). Further, paragraph 5.8 of the CMA's 2015 HE advice states that HE providers should ensure that 'any terms that may be particularly surprising or important, and especially those whose significance may be missed, are specifically brought to the student's attention. Such terms should not be hidden within a long list of overarching regulations.'

4.13 In paragraphs 5.5 and 5.6 of the CMA's 2015 HE advice, we explain that providers should give students an appropriate opportunity to read and understand terms before they are asked to accept them. Terms should be brought to prospective students' attention before they accept an offer (for example, at the latest when they receive their offer letter).

¹⁰ Consistent with the CMA's 2015 HE advice, where we refer to 'terms' in this report, this includes all contracts, rules and regulations documents that students are bound by, which together form the contract terms between the HE provider and the student. In this report, we refer not only to 'terms' but also 'wording'. The CRA now clarifies that 'consumer notices' are subject to a similar test of fairness to terms in consumer contracts. The notice provisions of the CRA ensure that in a broad sense any wording that relates to the rights or obligations between a trader and a consumer is open to challenge in the same way as a contract term.

4.14 We found examples of potential problems with certain terms being difficult to find or understand.¹¹ For example, we sometimes found the following:

- (a) It was necessary to search for documents and/or navigate through an A-Z of policies to find relevant terms within the scope of our review.
- (b) Although it appeared that a certain contractual document had been updated, for example to remove the application of academic sanctions to non-tuition fee debts, older and not updated similar versions of such documents were still available on websites. This type of inconsistency could potentially lead to students being misled about their rights or obligations.
- (c) We saw examples where prospective students have to digest a large amount of information in order to understand their rights and obligations and those of the HE provider. However, it was not clear, in these instances, if students are being provided, via other means, with a document that specifically draws to their attention the most important terms prior to accepting their offer of a place (eg in an offer letter).
- (d) We saw wording that suggested that students may only be presented with some terms at the point of enrolment, which in our view in the majority of cases is likely to be too late.

4.15 We are pleased to note from responses to the IFF survey that some providers have made, or are taking steps to make, improvements in this respect. Examples of positive steps are set out below:

Examples of positive action taken by providers regarding the accessibility of their terms

- A new page on the website has been developed which is accessible to prospective and current students, where all relevant information relating to terms and conditions will be stored in a 'one-stop shop'.
- The terms and conditions have been collated into one document which links to relevant policies and procedures for clarity and ease of accessibility.

Variation of tuition fees and transparency of additional course costs

4.16 It is important that prospective students are given information about tuition fees and any other costs, which they need in order to make informed decisions about

¹¹ Our review was largely limited to publicly available information.

what and where to study and so that they can financially plan for their studies. Chapter 4 of the CMA's 2015 HE advice sets out the legal obligations on providers in relation to information provision.¹²

Fees and wide variation terms

4.17 In the CMA's 2015 HE advice, (see paragraphs 4.10, 4.25 to 4.40, and 5.29, and Annex B) we explain the following:

- (a) information on tuition fees should be provided to students before they apply for courses. This information should include, if applicable, whether fees in future years will increase, if so by how much, and whether such increases will only apply to certain types of students (for example international students).¹³
- (b) the CCRs require that HE providers make available certain pre-contract information to prospective students 'in a clear and comprehensible manner'. The information includes details of 'the total price for the service'. It is the CMA's view that the CCRs pre-contract information needs to be provided before the prospective student accepts the offer of a place.¹⁴
- (c) a term of the contract for educational services that allows for fee variation may be less likely to be open to legal challenge for potential unfairness¹⁵ if the term sets out limited circumstances and valid reasons why fees might increase. For example, the provider should set out when the fee increases might be applied and its ability to increase fees is linked to an objective verifiable index, such as the Retail Prices Index.

4.18 However, in our review we found some examples of terms that were unclear as to any future fee increases. Below, we provide an illustrative example of a type of term or wording that may be potentially open to challenge.¹⁶

¹² This covers details on what information should be provided, when and in what format.

¹³ The relevant legislation is the CPRs and Regulation 6 in particular.

¹⁴ See in particular regulation 13 of the CCRs and schedule 2 of the Regulations. Note that for distance contracts, there is a requirement that pre-contract CCRs information must be provided in a durable medium. If the pre-contract information is not provided in a durable medium prior to the conclusion of the contract, then it must be provided with the confirmation of contract (Regulation 16). Although information provided on a HE provider's website may meet the requirements of making available pre-contract information for the purpose of Regulation 13, it is not information provided by a durable medium. For further information see paragraphs 4.42 of the CMA's 2015 advice, in particular.

¹⁵ See CRA and/or UTCCRs, as applicable.

¹⁶ The examples of terms or wording referred to in this report, although based on some types of wording or terms which we have seen, are provided for illustrative purposes only, in the context of this report. The assessment of compliance with consumer law legislation requires a consideration of all the circumstances in a particular case.

Example

'Most courses will have a small increase in tuition fees for each year annually; however some courses can have a more significant increase.'

- 4.19 The example term purports to allow the HE provider to amend its tuition fees for programmes at its discretion annually. On the basis of the above wording, before accepting a course students cannot foresee what increases may be made to their tuition fees during the course.
- 4.20 Potential detriment regarding tuition fee increases are likely to be greatest for those undergraduate students who are not protected by statutory limits on the amount of tuition fees that can be charged. At the time of the review, in England and Wales, this for example included Home and other EU students who were charged a tuition fee below the permitted statutory level, and international students, who fall outside the statutory regime.
- 4.21 Below we provide a practical illustration of potential ways to achieve compliance with the CMA's interpretation of the law as set out in the CMA's 2015 HE advice.

Compliance tips

Actively draw to a prospective student's attention (eg on your website and in your prospectus alongside prominent information about the course fees generally) the following information:

- The level of the fees for the first academic year of the course (or a clear indication how it will be calculated).
- Whether fees will (or might) increase.
- The circumstances in which fee increases might be triggered.
- Which students may be subject to increases, eg international undergraduate students.
- Any increase in tuition fees for enrolled students is to be calculated in line with an independent and verifiable index, such as RPI.
- A clear and plain language explanation of the relevant index and how it will be used to calculate the fee increases, including information on the current and recent index rates, and include indicative examples of how fees could change given the application of a typical index rate.
- When any fee increases during the course would take effect, eg at the beginning of each academic year.
- Continuing students will be given adequate notice of such increases so that students can assess their options.

Provide the above information, tailored to the student, in their offer letter.

Ensure that your terms and conditions reflect the information above and make provision for the student to be given the right to cancel the contract following tuition fee increases.

Transparency of additional course costs

- 4.22 On some courses students can incur significant costs beyond their tuition fees. In the CMA's 2015 HE advice, when we refer to additional course costs, we mean any significant and specific additional course costs, for example field trips for geography or geology courses or studio hire for design courses.
- 4.23 'Hidden' additional course costs, which prospective students do not know about when choosing where to apply, are a particular concern because the student may not be able to make an informed decision about where to apply, will not have the opportunity to financially plan, and may not be able to afford the charge.

- 4.24 In the CMA's 2015 HE advice, (see paragraph 4.10) we explain that HE providers should indicate how much these extra costs are, or are likely to be, before the student makes an application to a particular HE provider. Where they are unknown or uncertain, HE providers should set out how they will be calculated and whether they are optional or mandatory for undertaking or passing the course. It is particularly important to highlight to prospective students any course costs that are likely to have a direct impact on the outcome of students' academic success. In the CMA's 2015 HE advice, we explain how this type of information is also covered by the CCRs pre-contract information requirements, see for instance paragraph 4.29 and Annex B.
- 4.25 We found some examples in our review which indicated that information about additional course costs were not being provided in a timely way to prospective students. For instance, websites stated that this information would only be available upon request, or would or may only be provided once the student had begun their studies. Below, we provide illustrative examples of wording that is likely to give rise to concern.

Examples

- 'We aim to give students information about additional charges or costs connected with their programme of study in advance. Some programmes require an additional contribution towards extra costs incurred for special facilities, materials or field trips. Note, however, that some courses have compulsory trips and others are optional. We may tell you about these extras during your course.'
- 'Details of additional significant expenditure that a student may be required to pay can be obtained upon request from the student's Department.'

- 4.26 We did find some good examples of HE providers giving a clear and transparent indication on their website of extra costs to prospective students. Below we provide a practical illustration of potential ways to achieve compliance of the CMA's interpretation of the law as set out in the CMA's 2015 HE advice.

Compliance tips

Actively draw to a prospective student's attention upfront, alongside information about the details of the course (eg on a website page prominently linked to the relevant course page), to the following information:

- Any significant costs, which are not covered by tuition fees that the student may or will incur during their course (for example, field trips, specialist equipment and materials or studio hire).
- Whether these costs are optional or mandatory.
- When such costs are due to be paid.
- How much these extra costs are, or are likely to be (if, for example, at the time the information is provided, such costs are unknown or uncertain, information should be provided on how they will be calculated).

Give the prospective student the above relevant information in their offer letter.

Variation of course content, delivery and withdrawal

- 4.27 When prospective students are researching which course to study and where, they use the information available on providers' websites, in prospectuses, other documents such as course handbooks, and at open days to make informed choices. It is important that prospective students at this stage are made aware of the likelihood of, and scope for, changes to the content and delivery of the courses described in this information, including the possible withdrawal of courses (see paragraphs 4.6 to 4.10 of the CMA's 2015 HE advice)¹⁷. In particular, during our review we concluded that prospective students may suffer serious inconvenience if programmes are withdrawn or significantly changed after the deadline for submitting UCAS applications.
- 4.28 The CMA's 2015 HE advice highlights that in order to comply with the CPRs any particularly significant and important terms that apply to the course should be conveyed early on (see paragraphs 5.8 to 5.11). This is likely, in our view, to include variation terms regarding course content and/or withdrawal.
- 4.29 It is, of course, possible for HE providers to make provision for both the variation of course content (including withdrawal of the course) and course delivery after students have accepted the offer of a place. However the combined effect of the

¹⁷ The relevant legislation is the CPRs.

CCRs¹⁸ and unfair terms legislation is to require HE providers to give transparent and full information about the potential for such variation before the student is bound to the contract. If the HE provider anticipates something significant about the programme may change (such as the modules provided) or the arrangements for delivering the course (eg the location of study or overall assessment methods), it should be made clear to prospective students in the CCRs' pre-contract information what may change, when and how. This will help to ensure that any change to the pre-contract information will be legally effective without the student's express consent to the changes. It would not satisfy the CCRs requirements for the information about the possible changes to be in 'the small print' and it would not be acceptable for the HE provider to reserve the right to make any changes it wants. The CCR's pre-contract information is assessable for fairness under unfair terms legislation along with the HE provider's other terms.

- 4.30 As set out in the CMA's 2015 HE advice (see paragraph 5.17 and 5.22 to 5.24) a term allowing variation that gives an HE provider too wide a discretion to make changes to the detriment of students is unlikely to be considered fair, even though it may only have been intended to facilitate minor adjustments.
- 4.31 The CMA's review of the information available on providers' websites has highlighted a number of potential concerns on course variation terms.
- 4.32 These potential concerns relate to:
- (a) unfair terms or wording that give providers a wide discretion to make changes; and
 - (b) variation terms being difficult to find on providers' websites.
- 4.33 Below, we provide an illustrative example of a term or wording that may be potentially open to challenge.

¹⁸ The CCRs pre-contract information includes details of the main characteristics of the services and the arrangements for carrying out the contract (for example performing the service) – see annex B of the CMA's 2015 HE advice.

Example

We will make all reasonable efforts to deliver the programme as described in the prospectus and on the website, however, we reserve the right to make alterations to the programme, including to the timetable, content, location and delivery methods, so as to meet operational demands.

- 4.34 The above provision is potentially unfair as it purports to allow the HE provider to arbitrarily withdraw or vary courses after the prospective student has accepted an offer on a course and/or enrolled. This type of wording does not enable the student to foresee the type of changes which could be made, nor the circumstances in which these may take place, prior to them entering the contract for educational services. It also does not make any provision for the HE provider to provide students with reasonable notice of any significant changes to the programmes.
- 4.35 In paragraph 5.25 of the CMA's 2015 HE advice we explain that a course variation term is more likely to be fair if:
- (a) it is narrow in scope and effect, for instance, restricted to minor adjustments that are unlikely to negatively impact on students or changes that are required by necessity;
 - (b) it is brought to the attention of prospective students at an early stage, including at application stage and pre-offer stages;
 - (c) it sets out a valid reason for why changes might be necessary in a way that enables students to foresee when and what changes could be made;
 - (d) it is set out in plain and intelligible language, which students can understand;
 - (e) provision is made in the term for students to be notified of the changes in good time and before they come into effect; and
 - (f) students who are adversely affected by the change are able to terminate their agreement.
- 4.36 We are pleased to note from responses to the IFF survey, that some providers have made, or are taking steps to make, improvements on the issue of course variation as a result of the CMA's 2015 HE advice.

Example changes providers have reported making as a result of the CMA's 2015 HE advice

- Introducing a policy on student consultation for programme and module changes.
- Clarifying the circumstances in which changes may be made to qualifications in progress.
- Changing their disclaimer statement, to outline:
 - (i) the sorts of changes that might occur to programmes and courses between the acceptance of an offer to study and completion of the study period;
 - (ii) why these changes occur; and
 - (iii) how students will be informed of such changes.

Limiting liability

- 4.37 As set out in paragraph 4.19 of the CMA's 2015 HE advice, information that is provided in writing, verbally or visually must be correct, and should not contain inaccuracies that may impact students' decisions. Providing misleading information (which is false or deceptive in any way, including how it is presented) or outdated information could breach the CPRs.
- 4.38 In our review we found some examples where HE providers seek to unreasonably limit their liability for inaccurate information on their website. Below, we provide illustrative examples of the types of terms or wording that may be potentially open to challenge.

Examples

- 'Whilst every effort has been made to ensure the accuracy of the information presented on our website, we cannot be held responsible for any errors or omissions.'
- 'The information contained in this website is for general information purposes only. Whilst we endeavour to keep the information up-to-date and correct, we make no representations or warranties about its completeness, accuracy or reliability. Any reliance placed on the website information is strictly at your own risk.'

4.39 The above statements have the effect of seeking to exclude the providers' liability for the accuracy of the information provided on their website. Similar concerns would arise if a website disclaimer gives the HE providers a wide discretion to vary the website information (which, for instance, normally includes detailed course content information and fees information). As indicated above, it is the CMA's view that prospective students reasonably rely on what is said to them on a provider's website when deciding whether to apply to a particular provider and also in considering whether to accept an offer of a place. The concept of good faith demands that a provider is bound by any statements that help to secure the student's agreement. If the provider reserves a wide discretion in the technical small print to exclude liability for such statements, there is clear scope for the student to be misled.

4.40 It is the CMA's view that these types of disclaimers are particularly objectionable if relevant parts of the website information constitute the CCRs pre-contract information. As referred to above, and explained in the CMA's 2015 HE advice and the CMA's main unfair terms guidance, this statutory pre-contract information is legally binding on the HE provider, and any change to it will not be effective unless expressly agreed with the student. HE providers cannot contract out of this obligation and any wording purporting to do so is automatically unenforceable. Also, a provider cannot rely on a general disclaimer in the small print to help ensure changes to pre-contract information can be made without the student's express consent.

Terms that prevent students from progressing if they owe non-tuition fee debts

4.41 The OFT previously investigated terms and conditions and practices that prevent students from graduating or enrolling on to the next academic year if they owe monies to the HE provider which relate to non-tuition fee debts, such as for

accommodation or childcare. The OFT published a report in February 2014. The report can be found on the [archived OFT website](#).

- 4.42 In paragraph 5.37 of the CMA's 2015 HE advice, as set out in the OFT's report, we re-iterated that terms which allow for the blanket use of academic sanctions for non-tuition fee debts will be open to challenge under unfair terms legislation. Practices around the use of such terms may also constitute aggressive commercial practices under the CPRs.
- 4.43 During our review, we have become aware that a number of HE providers have stopped relying on academic sanctions to enforce non-tuition fee debts, following the publication of the OFT's 2014 report and the CMA's 2015 advice. We have also secured assurances to this effect from HE providers.¹⁹ We welcome these changes. However, we have concerns that the use of such terms or practices are still being relied upon by some HE providers.
- 4.44 Consistent with the OFT's report, it is the CMA's view that HE providers are able to manage their non-academic debts effectively by using alternative and conventional practices, for example, by:
- intervening early where students are facing financial hardship, for example by discussing the source of financial assistance available and agreeing repayment options/plans with students;
 - using commercial debt collection practices;
 - incentivising timely payment; and/or
 - withholding the service of the same type.

Complaints processes

- 4.45 In paragraph 6.2 of the CMA's 2015 HE advice, we explain that to be in compliance with consumer law, HE providers need to ensure that complaints handling policies are easy to locate, accessible, clear and fair to students. In Chapter 6 of the CMA's 2015 HE advice we provide examples of circumstances, where we consider that complaint processes may contravene the CPRs²⁰ and/or potentially breach unfair terms legislation.
- 4.46 We explain in the CMA's 2015 HE advice that complaints procedures are more likely to comply with the CPRs and with unfair terms legislation where they, for example, follow the guidelines on complaint handling published by a third party

¹⁹ For example, see UCL press release (2015): [CMA secures assurances from UCL on student debt policy](#)

²⁰ We refer to the CPRs provisions covering 'aggressive practices' and 'professional diligence'.

redress or complaint scheme of which the HE provider is a member – for instance the OIA’s Good Practice Framework for handling complaints in higher education in England and Wales.²¹ HE providers in Scotland are required to adopt the SPSO’s Model Complaints Handling Procedures (CHP). The model CHP is published under section 16B of the SPSO Act 2002 (as amended by the Public Services Reform (Scotland) Act 2010).²²

- 4.47 It is the CMA’s view that it is particularly important for complaint procedures to give students a fair opportunity to engage with the complaint process (see paragraph 6.9 (c) and (d) of the CMA’s 2015 HE advice). Moreover, a provision in the complaint process which hinders or deters a student from raising a complaint with their provider, or deters them from exhausting the provider’s complaint process, may act as a barrier or deterrent to the student exercising their right to access the OIA or a similar body.
- 4.48 From our survey and reviews we are aware of HE providers having made, or being in the process of making, changes to their complaints processes in light of our CMA’s 2015 HE advice. However, the CMA’s review of a number of complaints handling policies and procedures, which were available on a number of HE providers’ websites, indicates that there may still be compliance issues regarding some HE provider’s complaint procedures. In our review, we focused on provisions in the procedures that we considered could potentially act as a barrier to students raising or continuing to pursue a complaint. The following are illustrative examples of the type of wording that potentially could give rise to this type of concern.

Examples

- ‘We will not usually enact the complaint procedure where a complainant is in debt to us for fees.’
- ‘Where a student is in the process of a complaint they may not usually attend a graduation event. Should a student attend their graduation, the complaint will be invalidated.’

²¹ The OIA’s [Good Practice Framework](#) provides an overview of key factors to include in effective complaints and academic appeals processes and applies to HE providers that belong to the OIA Scheme. The OIA will refer to the framework in considering complaints from students.

²² Under section 16C of the 2010 Act, all Universities (and Colleges) must ensure that their complaints handling procedure complies with the [model CHP](#). The model CHP is in operation across all Scottish HE providers and provides a standardised procedure of two stages with a strong focus on early resolution.

5. Action taken and next steps

Action taken by the CMA

- 5.1 Since the launch of our compliance review in October 2015 we have used our statutory powers to undertake targeted investigations into a number of HE providers' terms and/or practices based on our review. Following this action we have secured undertakings in relation to:
- the use of academic sanctions for non-tuition fee debt, such as accommodation;
 - the information provided to prospective students regarding additional course costs;
 - terms and information provision relating to fee variation; and
 - terms in providers' complaints processes which could act as a barrier to students raising or continuing to pursue complaints.
- 5.2 We expect all HE providers to comply with consumer law. If we become aware of further concerns, we will consider these and decide whether to take further action or pass this information to other enforcement or HE regulatory bodies, as set out in more detail below.

Next steps

Wider sector compliance with consumer law

- 5.3 The CMA's concerns about potential non-compliance were not only with those providers with whom we have already directly engaged. We selected a number of providers to review, based on the intelligence submitted to us and previous OFT/CMA reviews. The compliance concerns we have identified may reflect wider issues in the sector. Therefore, in light of the findings of the compliance review, we are writing to HE providers in the UK. In this letter, which can be found on the CMA's webpages, we highlight our concerns and explain that, building on the review of terms and practices that HE providers should have already carried out, we now expect them to:
- (a) consider whether the concerns identified also apply to their terms and practices, and make any necessary changes;
 - (b) if necessary, make changes to their practices, policies, rules and regulations to ensure compliance with consumer law as soon as possible;

- (c) ensure all their policies are internally consistent, with old policies removed from their websites;
 - (d) if they have not done so already, put mechanisms in place to ensure that all different departments and faculties are complying with the law, for example, in relation to information about the composition of courses, including any additional course costs; and
 - (e) ensure that their relevant staff are aware of, understand and follow, the CMA's 2015 HE advice and their own internal procedures and practices, as they are responsible for the actions of their staff, who are acting in their name or on their behalf.
- 5.4 If HE providers remain unsure of their consumer law obligations, they should consider seeking their own independent legal advice. Ultimately, it is an HE provider's responsibility to ensure that they comply with the law.
- 5.5 We are also sharing the findings of our compliance review with key stakeholders in the sector, including:
- (a) other consumer law enforcers, such as local authority Trading Standards Services (TSS) and the DfE;
 - (b) relevant sector or government bodies including the HEFCE, HEFCW, SFC, DfE and the QAA;
 - (c) the OIA, SPSO and NIPSO;
 - (d) government, including the Devolved Nation administrations;
 - (e) HE sector representative bodies – including UUK, Supporting Professionalism in Admissions (SPA), GuildHE , AoC, and Study UK; and
 - (f) student and consumer representative bodies – including the National Union of Students (NUS), National Union of Students and the Union of Students in Ireland (NUS-USI), Which?, and Citizens Advice.

What happens if HE providers do not comply with consumer law?

- 5.6 We have already used our consumer enforcement powers to secure undertakings from a number of providers. Where we receive further information which suggests there is potential non-compliance, the CMA may investigate these concerns and take action, or may be able to pass this information to other partners who may be better placed to act.

Action by enforcers

- 5.7 Non-compliance with consumer law could result in enforcement action not only by the CMA, but also by either TSS or the DfE in Northern Ireland. All have powers to enforce the consumer protection legislation referred to in the CMA's 2015 HE advice and can bring civil proceedings or criminal prosecutions against certain breaches, as appropriate.²³
- 5.8 Since 1 October 2015, the CMA (and other enforcers under Part 8 of the Enterprise Act 2002) have been able to seek additional civil remedies known as 'enhanced consumer measures' as part of an undertaking or enforcement order against a trader – this includes compensation or other redress (such as the right to cancel the contract) in cases where consumers have suffered loss as a result of conduct giving rise to the enforcement action (redress measures), as well as compliance measures intended to prevent or reduce the risks of future breaches and choice measures to enable consumers to choose more effectively between suppliers.

Action by compliance partners

- 5.9 Alongside working with other enforcers of consumer law, the CMA, where appropriate, will work with other bodies with alternative, and sometimes non-legislative, powers for the purposes of ensuring consumer protection (so called 'compliance partners'). This includes the Advertising Standards Authority, the UK's independent self-regulator of advertising across all media. Its Advertising Codes cover advertising and marketing communications, and are likely to include HE providers' course information/prospectuses on websites, leaflets and posters directed at prospective students.

Action by HE sector bodies

- 5.10 Consumer law sits alongside other sector-specific regulatory obligations and guidelines that are relevant to many HE providers, including in relation to their information provision and complaint handling processes. Sector regulators, or the QAA, may investigate consumer issues in order to protect the collective

²³ This does not mean that enforcement action must or will be taken in respect of each and every infringement. Instead, enforcers will usually promote compliance by the most appropriate means, in line with their enforcement policies, priorities and available resources. There are a range of compliance options available to enforcers alongside enforcement, including education, advice and warnings. Further guidance on the CMA's approach to using its consumer powers can be found on the CMA webpages.

interests of HE students, for example where the concern affects groups of students and indicate serious systemic or procedural problems.²⁴

5.11 The QAA also undertakes Higher Education reviews to inform students and the wider public whether a provider meets the expectations of the higher education sector. Examples of themes arising from recommendations made in reviews include:

- the need to ensure that all students have appropriate and timely access to information on procedures for complaints and appeals; and
- the need to adopt a coordinated approach to the provision of information on fees and additional course costs at programme level.

5.12 In some instances, compliance with aspects of the CMA's 2015 HE Advice has been incorporated into sector regulation and guidance (and there are plans to further embed the advice within the quality assessment framework for the sector). For example:

- All regulated institutions providing higher education in Wales are required under the Higher Education (Wales) Act 2015 to have an approved Fee and Access Plan. HEFCW has used its most recent published Fee and Access Plan Guidance (in respect of Fee and Access Plans for 2017/18) to require all regulated institutions to comply with the CMA's 2015 HE advice in relation to fees.²⁵

5.13 The CMA may therefore choose to raise concerns about an HE provider with the relevant government body or sector regulator (including DfE, HEFCE, HEFCW, or the SFC) or the QAA as appropriate. We will continue to work closely with these bodies and look to share information about HE providers that are raising potential concerns.

²⁴ From 1 August 2016 the responsibility for investigating concerns about academic standards and quality among publicly-funded universities and FE colleges in England and Northern Ireland will transfer to HEFCE and the DfE respectively and HEFCE will act on behalf of the DfE. Under the 'Unsatisfactory Quality Investigations' scheme HEFCE will consider whether a given issue represents a potential systemic risk and, if it does, commission a third party to investigate. The QAA's Concerns scheme will remain for Wales and for non-publicly-funded providers (so-called alternative providers). The situation in Scotland is unchanged.

²⁵ The HEFCW Fee and Access Plan guidance states that 'in all matters related to fees, including indicating any inflationary increases up to the maximum fee limit, an institution must comply with CMA guidelines for higher education and HEFCW encourages institutions to publically confirm that their fee and access plan complies with these guidelines'.

Action students might take

- *External complaint or redress schemes*

- 5.14 If a provider is a member of any external complaint or redress scheme, such as the OIA, students may be able to refer a complaint to that scheme if it falls within the OIA's remit and the student has exhausted internal procedures. In considering complaints, the OIA is able to recommend financial compensation where a student has suffered actual financial loss, or when it is not possible to return the student to the position they would have been in before the issue they complained about arose, or for distress and inconvenience. In Scotland students may be able to refer a complaint to the SPSO, if it falls within its remit. In Northern Ireland, from 1 October 2016 students may be able to refer a complaint to the NIPSO if it falls within its remit.
- 5.15 In September 2015 the range of providers in England and Wales that are required to join the OIA was extended to include all providers offering higher education courses which are designated for student support funding and providers with degree-awarding powers. This brought more than 500 higher education providers into the OIA Scheme, including further education colleges for their higher education students, and alternative providers.
- 5.16 The OIA is able to consider complaints from students about consumer issues. These are included within a category of complaints about 'service issues' that can cover a number of different aspects relating to the accuracy of published information, costs and hidden fees and broad issues of consumer protection.
- 5.17 The OIA takes the CMA's 2015 HE advice and consumer law into consideration as part of its review of all cases where this is relevant, and there have been cases where this has been specifically referred to in the OIA decision.

OIA case studies – examples of consumer protection related issues

Case study 1: Misrepresentation – Settled case

A group of students complained that the University had misrepresented important facts about an MA course. The students felt that this disadvantaged them academically and financially as a result of committing to and undertaking the course, which did not meet aspirations or requirements. The University made an initial offer of £500. The OIA found that for two of the three semesters of the course much of what the students could reasonably have expected in terms of teaching, content, delivery and learning experience was not delivered. Although the University sought to address some of the shortcomings, and by semester three had taken steps to provide much of what it had advertised, this was in large part because students pursued complaints in a highly constructive way, from within six weeks of the course beginning. The OIA recommended, and the parties accepted, that a refund of two thirds of the total tuition fees for the course should be paid to each of the students, in addition to the payment of £500 that the University had already proposed.

Case study 2: Misleading prospectus – Complaint justified

The OIA found a case ‘Justified’ where a University had not fully considered a student’s complaints about the failure of the course to offer all of the vocational opportunities outlined in the prospectus. The OIA recommended that the university refer the complaint to a Complaints Panel for full review, apologise to the student, and pay financial compensation for distress and inconvenience.

- *Rights under consumer law*

- 5.18 In some circumstances, students may also have the right to take legal action against a provider, or the right to defend any action brought by a provider, for example to recover debts allegedly owed. In particular, in relation to an unfair term, a student may be able to rely on unfair terms legislation. If a term is found to be unfair by a court, the term is not legally binding on the student and cannot be relied on by a provider.
- 5.19 In some circumstances a student may have the right to seek redress under the CPRs in respect of misleading actions and aggressive practices.²⁶ This is in

²⁶ This may include the right to unwind the contract, receive a discount or seek damages for detriment caused by the breach. For further information, see BIS, [Guidance on the Consumer Protection \(Amendment\) Regulations 2014](#), August 2014.

addition to any other rights to seek redress through any civil action they may pursue for breach of contract.

- 5.20 If the pre-contract information provided under the CCRs is breached, students would have their usual remedies for breach of contract, including their statutory remedies under the CRA.
- 5.21 The CMA has previously published materials for undergraduate students and their advisers, setting out what students need to know about their consumer rights when choosing or taking a higher education course, and what to do if things go wrong. A copy of the student facing materials can be found on our [webpages](#).

Further HE regulatory initiatives to help ‘embed’ consumer law compliance

- 5.22 The CMA is continuing to work with sector bodies, government and other stakeholders to further embed consumer law compliance across the sector. In particular, there are a number of HE regulatory policy initiatives that recognise the importance of consumer law in the HE sector, which once implemented should help to underpin and increase the long term impact of our own work.²⁷
- 5.23 A [revised operating model](#) for quality assessment of universities and colleges is to be implemented in England and Northern Ireland in 2017-18.²⁸ The baseline requirements set out what providers need to do in order to deliver a consistently high-quality student academic experience and to ensure that degree standards are secure. The requirements of consumer law are an important element of that baseline. The CMA will be part of the UK Standing Committee that oversees the future development of the baseline requirements. It is also intended that the high-level elements of the revised quality assessment approach will be taken forward in Wales in a similar way to the approach adopted in England and Northern Ireland, but the detailed operating model for quality assessment in Wales will be the subject of a separate consultation by HEFCW under its new powers. The SFC is reviewing its arrangements for quality assessment in a separate, but parallel, process.

²⁷ Alongside these regulatory initiatives, we have already seen other positive steps taken by stakeholders in the HE sector. For example, SPA have reported that they have updated its good practice statement regarding applicant complaints and appeals to take account of the CMA’s 2015 HE advice and the publication of a [Statement of Good Practice on HE course changes and closures](#) – jointly developed by the AoC, GuildHE, HEFCE, the Independent Universities Group, NU Students, Study UK, and Universities UK. The latter brought together good practice on how HE providers need to work with their students when courses change or close, offering them alternative courses or arranging transfers where appropriate. It also provides that an HE provider’s terms and conditions should include transparent, fair and accessible policies and practices governing course closure and changes And these should be clear to prospective students at all stages of the application and enrolment cycle.

²⁸ There will be transitional arrangements in 2016-17 to support the implementation.

- 5.24 In the White Paper (*'Success as a Knowledge Economy: Teaching Excellence, Social Mobility and Student Choice'*) published in May 2016 BIS announced the government's intention to establish a new consumer focused market regulator in England, the Office for Students, and reiterated its commitment to the integration of consumer law compliance into the baseline requirements for quality assessment. Although there will be a new regulator, the quality assessment arrangements will be carried over and will be the same.
- 5.25 The CMA will also sit on the Steering Group, convened by HEFCE, for developing good practice guidance on the provision of course information by HE providers.

Annex A: Questions and Answers

Question	CMA answer
<p>Is the CMA's 2015 HE advice specific to undergraduate students only or can it be applied to other types of students. If not, will you be producing compliance advice for other types of students?</p>	<p>The focus of the CMA's compliance advice was undergraduate students. This is because it follows on from the work undertaken by the OFT in its Call for Information (CFI) and the focus of that work had been on undergraduate provision.</p> <p>The CMA has no plans at this time to publish further compliance advice covering other types of students. That said, the CMA's 2015 HE advice may apply to other types of students, including for example post-graduate students, in so far as they fall within the legal definition of a 'consumer' under applicable consumer law (see below). The CMA's 2015 HE advice (paragraph 2.15) states as follows: 'We have specifically considered the law as it applies to HE providers of undergraduate courses. However, this advice may also be relevant to other types of courses and students'.</p> <p>The advice applies to undergraduate students who are consumers. A student will be a consumer, as defined in law,²⁹ as long as they are acting for purposes that are wholly or mainly outside of their trade, business or profession – in general this is likely to be the case even when studying a particular subject may lead a person to a related career in the future as there are likely to be many reasons for undertaking the particular course. In the CMA's view it is likely that most undergraduate students will fall within the legal definition of a consumer. However, there may be some instances where students do not fall within the definition of 'consumer' (for example, this might be the case where a student is studying as part of their job). If in doubt, the CMA's 2015 HE advice states that HE providers should prepare their information, terms,</p>

²⁹ See the definition of 'consumer' in the CCRs, CPRs and CRA.

Question	CMA answer
	contracts and policies on the assumption that they are likely to be accessed by prospective or current students who are `consumers' (see paragraph 2.17 of the CMA's 2015 HE advice).
The CMA 2015 HE advice states that the CCRs require that the pre-contract information for distance contracts is provided in a 'durable medium'. How can the 'durable medium' requirement be met?	<p>As explained in Chapter 4.42 of the CMA's 2015 HE advice, durable medium is defined in the CCRs (Regulation 5) as paper or email; or any other medium that:</p> <ul style="list-style-type: none"> • allows information to be addressed personally to the recipient, • enables the recipient to store the information in a way accessible for future reference for a period that is long enough for the purposes of the information; and • allows the unchanged reproduction of the information stored. <p>An example of durable medium would be an email sent to the student with documents attached, which the student can retain and use to access the documents at a later date.</p> <p>Also, it is the CMA's view that an email sent to a prospective student with a link to a PDF document stored on the university's website could be regarded as compliant with the requirements of durable medium provided that:</p> <ul style="list-style-type: none"> • the student can access the PDF document; and • the student is able to store the PDF document. <p>The PDF document can be reproduced unchanged during an adequate period without the HE provider being able to amend the content unilaterally. Accordingly, the HE provider would need</p>

Question	CMA answer
	<p>to ensure that the link to the same unchanged PDF document is still valid (and accessible to the student) for an adequate period after the student has completed the programme.</p> <p>However, as the CMA's 2015 HE advice explains, a website link to documents on the HE provider's website would not be a durable medium as websites may be changed and so would not be a permanent record of what the student had been given (see paragraph 4.42).</p>
<p>The CMA 2015 HE advice refers to terms that are likely to be considered surprising or important. What types of terms are likely to be considered surprising or important?</p>	<p>Paragraph 5.8 of the CMA's 2015 HE advice states that HE providers should ensure any terms that may be particularly surprising or important, and especially those whose significant may be missed, are specifically brought to the student's attention. Surprising or important terms could include:</p> <ul style="list-style-type: none"> • a term whose contravention may prevent a student from completing their course; • a term explaining that the degree awarding body is different to the HE provider running the course; • a term that sets out how tuition fees may change over the duration of the course; • a term that sets out how significant aspect of the course may be varied or how delivery of the course may change; and • a term that allows the HE provider to impose a financial sanction on the student for a breach of the contract for educational services, eg a charge for late payment of tuition fees.

Question	CMA answer
	<p>In addition to being brought to the student’s attention, such terms should also be substantively fair.</p>
<p>In what circumstances does the provider need to obtain the express consent of prospective or current students to make changes?</p>	<p>Under the CCRs, HE providers are required to provide certain pre-contract information to students including the following:</p> <ul style="list-style-type: none"> • ‘The main characteristic of the service’ (such as important information about the details of the course). • ‘The duration of the contract’ (this is likely to include the standard length of the course). • ‘The total price for the service’ and ‘details of any other costs’ (this is likely to include tuition fees payable per year together with the total amount of any other costs such as field trips). <p>For further details see Annex B of the CMA's 2015 HE advice.</p> <p>The pre-contract information is to be treated as legally binding on the HE provider in the same way as what is said in the contract for educational services itself. The services must be provided as stated in the pre-contract information, and any changes to it will not be effective unless they are expressly agreed between the HE provider and the student.</p> <p>If the HE provider anticipates that an aspect of the pre-contract information might change, in order to ensure that any change to it will be legally effective without the need to obtain the student’s express consent to the changes, in the CMA’s view:</p>

Question	CMA answer
	<ul style="list-style-type: none"> • it needs to be made clear to the prospective students in the relevant pre-contract information itself specifically what might change; and • this type of variation provision must meet the requirements of fairness under unfair terms legislation, which means in particular that it must enable the consumer to foresee the circumstances, nature and extent of any changes. <p>The above particularly needs to be borne in mind, if the HE provider has a clause in the terms and conditions or ‘the small print wording’ for changes to be made to the details of the educational service provided, the tuition fees or any other issue covered by the CCRs pre-contract information. Independently of any questions of fairness that may arise relating to such terms or wording under unfair terms legislation, where the HE provider does not make appropriate provision in the CCRs pre-contract information itself for variation, any changes which are made to the issues covered in it are liable to be ineffective unless the consumer expressly agrees to them.</p>
<p>What are providers’ responsibilities in relation to third party providers, eg those that deliver aspects of the course or provide services under franchise arrangements?</p>	<p>This will very much depend on the nature of the relationship between providers, third parties and students.</p> <p>Providers must make absolutely clear to students where, if relevant, responsibility lies for delivering different aspects of the educational service contract they have entered into, for example in circumstances where there are franchise, validation or joint course arrangements. Providers and students must be clear who is responsible for admissions, course delivery and complaint handling, and who the student is contracting with.</p>

Question	CMA answer
	<p>Providers cannot exclude or restrict liability for third party sub-contract providers who deliver services on their behalf.</p> <p>All providers in a partnership arrangement should ensure they are complying with consumer law in their dealings with undergraduate students.</p>
<p>If students are studying at an overseas campus set up by a UK university are they protected by UK consumer law?</p>	<p>Yes – if the overseas campus is based in the EU and enforcers in the relevant Member States can also enforce the law. Much of the UK’s consumer law comes from the EU, which means that in many areas of consumer law consumers across the EU can generally expect the same or, at least, the same minimal level of protection provided for them under each Member State’s own laws.</p> <p>For campuses based outside of the EU, generally speaking we would expect UK consumer law to apply, where the contract for education services was concluded in the UK, or the course was directed towards UK consumers. However, a number of factors would have to be considered such as the nature of the relationship between the overseas campus and the UK institution, the precise contractual arrangements and the specific wording and intention of the legislation in question. We would advise providers to seek legal advice about their particular circumstances in relation to this issue.</p>
<p>What is the CMA’s view on a provider using academic sanctions that prevent graduation or progression if students have non-academic debts, for example outstanding</p>	<p>As set out in the CMA’s 2015 HE advice, it is the CMA’s view that terms, which allow for the blanket use of academic sanctions for non-tuition fee debt will be open to challenge under unfair terms legislation. Practices around the use of such terms may also constitute aggressive commercial practices under the CPRs (see paragraphs 5.36 to 5.37).</p> <p>We recognise that HE providers have a legitimate interests to collect their debts which are lawfully due but preventing a student from graduating or progressing onto the next academic</p>

Question	CMA answer
<p>rent or childcare of a certain amount?</p>	<p>year, for a debt which is separate or ancillary to the core educational service, in our view, is likely to be disproportionate and heavy handed.</p> <p>Consistent with the OFT's report, we consider that HE providers are able to manage their non-academic debts effectively by using alternative and conventional practices for example by:</p> <ul style="list-style-type: none"> • intervening early where students are facing financial hardships, for example, by discussing the source of financial assistance available and agreeing repayment options/plans with students; • using commercial debt collection practices; • incentivising timely payment; and • withholding the service of the same type. <p>Many HE providers do not use academic sanctions to enforce non-tuition fee debts. Following the report published by the OFT and action taken by the CMA, we are aware of a number of HE providers who have stopped in all circumstances relying on academic sanctions to enforce non-tuition fee debts.</p>
<p>What are the consumer law obligations on HE providers in relation to informing students about changes to their chosen courses, including the level of fees, when students defer their year of entry?</p>	<p>Exactly how consumer law applies will depend on the contractual analysis which may differ according to the circumstances, including factors such as whether the deferral is offered / sought before a place is accepted, or afterwards.</p> <p>As a general point, the CPRs, CCRs and unfair terms legislation will apply in principle in the same way in the case of deferred offers as for offers for following-year admissions. Clear, transparent and accurate information on courses, including fees and other costs, should be</p>

Question	CMA answer
	<p>given to prospective students before applying for, or accepting, an offer as required by the CCRs and the CPRs. Furthermore, under unfair terms legislation a contract term that allows a HE provider to determine the price, the course's content or how it is to be delivered at its own discretion, after the student has become bound by the contract, may be unfair and therefore not binding.</p> <p>Where a deferred offer of a place is made, for example, if tuition fee levels have not yet been determined for the proposed year of entry, and it is anticipated that there may be an increase in fees for the proposed year of entry, the HE provider is more likely in our view to comply with the law if any increases of tuition fees are tied to a RPI or other independent, objective and verifiable index.</p> <p>A further important point is that we consider that the CPRs and unfair terms legislation are likely to require key information to be given regarding the HE provider's policy and terms on deferrals. This would include the potential impact on the prospective student of deferring entry for a year.</p> <p>If the issue of deferral arises after a place has been accepted, we assume this would generally be on the initiative of the prospective student and would be likely to take effect pursuant to the contract terms and policies, which the student should already have been informed of before accepting a place. However, in our view, the CPRs are likely to require information to be given again on any key matters that would be likely to influence the student's decision to defer admission to the course, including, in particular, transparent information on the level of fees for that year if they could increase, and any other significant potential aspects of the course that will or might change during the deferral period.</p>