

From: Nisha Arora
Senior Director, Consumer

12 March 2015

Dear Sir/Madam

CMA advice for UK Higher Education providers on consumer protection law

I am writing to draw your attention to the advice published today by the Competition and Markets Authority (CMA).¹ A copy of this advice can be found at the CMA's Higher Education (HE) [consumer compliance page](#).²

The advice is intended to help you understand and comply with consumer protection law in your dealings with undergraduate students.³ You should therefore read the advice, and review and, where necessary, amend your practices to ensure they comply with consumer protection law. Alongside the advice, the CMA is also publishing some materials for students to raise awareness of their rights under consumer protection law and to help drive compliance.

The CMA has produced the advice as a result of the recommendations made by the Office of Fair Trading's (OFT) Call for Information (Cfi) on the HE undergraduate sector in England. These included a recommendation that the CMA clarify the responsibilities of universities under consumer protection law. The CMA has therefore drafted and consulted on this advice, which it has developed through constructive engagement with stakeholders in the sector. The CMA is also currently considering certain aspects of the regulatory regime underpinning the HE sector in England following the OFT's work.

Why is this advice important?

With HE playing a key role in the economy, compliance with consumer protection law is not only important in giving students the protection required by the law, but it also

¹ 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 Office of Fair Trading and the Competition Commission. The CMA's mission is to make markets work well in the interests of consumers, businesses and the economy.

² You can find the advice and our other materials here: bit.ly/HEadvice.

³ Other sector-specific requirements that may be relevant to you include the Quality Assurance Agency for Higher Education's [UK Quality Code for Higher Education](#).

helps to maintain student confidence and the standards and reputation of the UK HE sector. HE providers who comply with consumer protection law will enhance current and prospective students' confidence in them to the benefit of both students and those providers.

Consumer protection law will generally apply to the relationship between HE providers and undergraduate students, and it sits alongside other sector specific requirements that may be relevant to you. HE providers that fail to comply with consumer protection law may risk enforcement action. The CMA, Local Authority Trading Standards Services (TSS), and the Department of Enterprise, Trade and Investment in Northern Ireland all have powers to enforce consumer protection law. Sector bodies, such as the Quality Assurance Agency for Higher Education, may also be able to act in appropriate circumstances to secure compliance.

Where HE providers do not comply with consumer protection law, students may also have recourse to an external complaint or redress scheme⁴ and in some circumstances will have the right to take legal action against you.

What should you do?

All HE providers should comply with consumer protection law, and therefore you should:

- consider how the CMA's advice applies to you – and review the information you provide to prospective and current undergraduate students, and your relevant practices, policies, rules and regulations that govern your dealings with students;
- if necessary, make changes to ensure compliance as soon as possible, including completing any internal clearance processes that are necessary to do this. Where prospectuses have already been prepared for future intakes of students, the information should be updated as necessary and provided on websites as well as in any communications with a prospective student;
- consider putting mechanisms in place to ensure all of your different departments and faculties are following this advice and complying with consumer protection law; and
- ensure that your relevant staff are aware of, understand, and follow this advice when designing and/or operating your internal procedures and practices, as you are responsible for the actions of your staff, who are acting in your name or on your behalf.

⁴ Such as the Office of the Independent Adjudicator for Higher Education (OIA) in England and Wales or the Scottish Public Services Ombudsman.

Next steps

The CMA's advice is intended to help you comply with the law. We will monitor the sector and will be carrying out a review, commencing in October 2015, to assess compliance with consumer protection law. As part of that review we will analyse any information which has been submitted, including via our compliance reporting mechanism. Where necessary, we may also request certain information from some HE providers and ask them to demonstrate their compliance with the law.

Should serious infringements be identified, either through monitoring or during the course of the compliance review, the CMA or another consumer enforcement partner may decide to take action, including before the compliance review has concluded.

If you are unsure of your consumer protection law obligations, you should consider seeking legal advice.

If you have any queries about this letter, please contact the CMA at HEconsumercompliance@cma.gsi.gov.uk.

Yours faithfully

Nisha Arora
Senior Director, Consumer

NOTES

1. Details of the OFT's Call for Information can be found at the OFT's [Call for information on the higher education sector \(undergraduate\) in England](#) case page.
2. Details of the CMA's higher education regulatory work can be found at the CMA's [Competition and regulation in higher education in England](#) case page.
3. The CMA has powers to enforce consumer protection law. Details of the CMA's consumer powers and its approach to their use can be found in the guidance document [Consumer protection – guidance on the CMA's approach to use of its consumer powers](#).
4. The CMA shares with the Trading Standards Institute (TSI) the role of working with businesses to drive up standards through clarifying legal obligations. When the CMA provides guidance to businesses, this is primarily on specific issues identified in the course of its market studies, on the Unfair Terms in Consumer Contracts Regulations 1999, and on issues where its particular knowledge of the market makes it best placed to advise businesses. Other business guidance on consumer law is produced by the TSI. See [Business Companion](#) for more information.