

Restatement of the CMA's views on how consumer protection law applies when a student has accepted an offer of a place from an HE provider

Introduction

1. The CMA has previously published its views on consumer law specifically in relation to the Higher Education (HE) undergraduate sector and more generally. The purpose in doing so was to help HE providers, and other businesses, to understand and comply with their consumer law obligations.
2. The Department for Education (DfE), has issued a letter today to Vice Chancellors in England about their admission policies and terms.
3. The CMA has decided it would be helpful for the sector if it re-iterated its views on how consumer protection law applies when a student has accepted an offer of a place from an HE provider.
4. Prospective students should be treated fairly by businesses, as required by consumer protection law. The CMA's views are not new and are set out in the CMA's consumer law compliance advice for HE providers¹, the CMA's HE consumer law compliance review findings report² and its general unfair contract terms guidance.³ These views are summarised below.

Contract between an HE provider and a prospective student

5. When an HE provider makes an offer of a place to a prospective student and the offer is accepted, in our view a binding contract is made between the HE provider and student (see paragraphs 4.23 to 4.24 of the CMA's advice to HE Providers). The HE provider has agreed to reserve a place and allow the student to enrol on the relevant course if they meet any specified entry requirements (where applicable).

¹ [CMA 33 - consumer law compliance advice for HE providers](#) - Chapter 4 in particular provides guidance on how consumer protection law applies at the offer stage, including information requirements.

² [CMA - HE undergraduate - compliance review findings](#)

³ [CMA 37 - unfair contract terms guidance](#)

6. The terms of that contract must be fair. If terms are unfair then they are unenforceable against a consumer (i.e. student). It should be noted that transparency is not enough, on its own, to make a term fair – as fairness includes a consideration of the content of terms as well as the way they are expressed (see paragraphs 2.23 to 2.24 of the CMA’s unfair terms guidance). The fairness assessment is concerned with rights and duties, and therefore its focus is on potential not actual outcomes. A term may be open to challenge if it *could* be used to cause consumer detriment even if it is not at present being used so as to produce that outcome in practice (see paragraph 2.19 of the CMA’s unfair terms guidance).

Terms that allow an HE provider to cancel or withdraw an accepted offer

7. Rights and duties under a contract cannot be considered fairly and evenly balanced unless both parties are equally bound by their obligations under the contract and the general law. A term that affords a wide discretion to the HE provider to withdraw or cancel an accepted offer effectively means the HE provider could simply choose not to comply with the terms of the offers it has made to prospective students. A provision that has this effect is likely to be unfair under unfair terms legislation.
8. The CMA’s views on cancellation clauses, particularly those which give excessive rights to a trader, are set out in paragraphs 5.16.1 to 5.16.5 of the CMA’s unfair terms guidance. See also paragraphs 5.22 to 5.24 of the CMA’s advice to HE providers, which discusses withdrawal or cancellation of courses. These paragraphs will also be relevant to situations where an HE provider withdraws or cancels an accepted offer to a student who has met the entry requirements.

Terms that seek to limit liability

9. Terms which undermine the value of contractual obligations by preventing or hindering the consumer (i.e. student) from seeking appropriate remedies from an HE Provider who has not complied with them, for example terms which exclude or limit the liability of an HE provider if it fails or is unable to provide the place it has agreed to, are likely to be unfair.
10. In the CMA’s view broad exclusions of liability can be used to distort the balance of the contract, particularly where unclear or unqualified. Cancellation or withdrawal of an accepted offer by the HE Provider can leave the student facing

inconvenience at least, if not costs or other problems. As set out in paragraphs 5.30 and 5.31 of its advice to HE providers, in the CMA's view terms that purport to exclude or limit the liability of a HE provider if it fails to meet its contractual obligations are inappropriate and potentially unfair. See also paragraphs 5.10.1 to 5.10.5 of the CMA's unfair terms guidance, which sets out the CMA's views on exclusions of liability for a failure to perform contractual obligations.