

From: Nisha Arora  
*Senior Director, Consumer*

22 July 2016

Dear Sir/Madam

**An open letter to Higher Education providers following the CMA's review of compliance with consumer protection law in the sector**

You may recall that in March 2015 the Competition and Markets Authority (CMA) wrote to Higher Education (HE) providers to highlight the publication of the CMA's [advice](#)<sup>1</sup> to the HE undergraduate sector on consumer protection law.<sup>2</sup> We asked HE providers to read the advice and review and, where necessary, amend their practices to ensure they comply with consumer protection law. We also made clear that we would follow up our advice with a compliance review, beginning in October 2015. More detail can be found on the [case page](#).

I am writing to draw your attention to the report that the CMA has published today, summarising the findings of our compliance review and what we now expect from providers in light of it.

**CMA Higher Education compliance review – what we found**

In summary, we found that progress has been made by many HE providers since the publication of our advice in March 2015. However, some still have work to do to ensure that they are fully complying with their consumer protection law obligations.

During our review of information that is publicly available on a number of HE providers' websites, we saw examples of positive practices or changes, such as HE providers:

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<sup>1</sup> The main consumer protection legislation applicable to the CMA's HE 2015 advice, and to this compliance review findings report, is: the Consumer Protection from Unfair Trading Regulations 2008; the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013; and Unfair terms legislation (Unfair Terms in Consumer Contracts Regulations 1999 for contracts concluded prior to 1 October 2015, and Parts 1 and 2 of the Consumer Rights Act 2015 for contracts concluded on or after 1 October 2015).

<sup>2</sup> A copy of this letter can be found [on the CMA's webpages](#).

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

However, during our review we also identified some concerns that could potentially breach consumer law. These are set out in the findings report and focus on:

- the accessibility of information and terms;
- terms or wording that allow providers a wide discretion to vary tuition fees;
- a lack of transparency about additional course costs;
- terms or wording that allow providers a wide discretion to vary or cancel courses;
- wording that potentially unfairly limits HE providers' liability, for example statements that seek to exclude HE providers' liability for the accuracy of information on their websites;
- terms or wording that prevent students from progressing or graduating if they owe non-academic debts, for example for accommodation;
- terms or provisions in complaints processes that could deter students from instigating or progressing complaints.

During our compliance review, using our statutory powers we have taken targeted action with three universities and have secured undertakings to ensure improved practices. You can read about the case details on our webpages.

### **What does this mean for you?**

We have not reviewed all HE providers. The concerns we have identified may be occurring more widely in the sector. Therefore, in light of the findings of the

compliance review, and building on the review of terms and practices that should already have been carried out by HE providers, we now expect HE providers to:

- consider whether the concerns identified in the findings report also apply to their terms and practices, and make any necessary changes to ensure compliance with consumer protection law, which is covered in the CMA's 2015 HE advice;
- ensure that all policies are consistent, and that old policies are removed from websites;
- if they have not done so already, put mechanisms in place to ensure that all departments and faculties are aware of, and are complying with, the law, for example in the information they provide about the content of courses and any additional course costs; and
- ensure that all relevant staff are aware of, understand and follow, the CMA's HE advice.

The CMA is continuing to look at issues relating to other HE providers. In addition, should we be made aware of other concerns, this could result in further action, either by the CMA or other enforcement or HE regulatory bodies.

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

Yours faithfully,

Nisha Arora  
*Senior Director, Consumer*