

Response from GuildHE

Introduction

GuildHE is one of the two recognised representative bodies for higher education in the UK.

Information provision

The draft advice – see Chapter 4 – sets out the CMA’s views on what is likely to constitute ‘material information’ under the Consumer Protection from Unfair Trading Regulations 2008 (CPRs), by which we mean the information that students need, at certain stages, in order to make informed choices about courses. The information that must be provided according to the CPRs is the information that is necessary for the average consumer to make an informed transactional decision, which is distinct from information that is only useful or may be helpful.

Q1: Do you agree with our views on the kinds of information that are likely to constitute ‘material information’ under the CPRs? (see paragraph 4.8 of the draft advice): in particular:

(a) Is there any information currently included that you do not think constitutes ‘material information’ and if so why?

We agree in part.

The task of very detailed definition would be extremely challenging and risks being too prescriptive and unhelpful to both applicants and institutions.

To pick one example: entry requirements vary from subject to subject. Some courses require portfolios, auditions and/or combinations with traditional qualifications. This is hard to quantify and specify.

As important might be prior learning, industry experience, interview performance, and again combining these with traditional qualifications.

It is important not to over-prescribe entry requirements and deter applicants of this nature.

Universities and colleges are currently managing deep and wide-ranging reforms to the pre-HE qualifications which influence admission to HE, as well as increasing divergence in pre-HE qualifications across the different UK territories. This exacerbates the danger of over-prescription.

There is a risk of conflict with access regulations in relation to contextual data, fee-waivers, and incentives for certain under-represented groups. There is also an issue here of the philosophy of discounting: like other private and public markets, what should institutions do about that? Are they within their rights to vary the ‘price’ according to demand or to offer discounts according to ability, background, potential to succeed?

There are also questions about the philosophy and definition of additional costs. If field trips, equipment, materials, etc. are required, this should be clearly set out as part of material information on additional costs. However, we need to be clear that tuition fees aren’t

necessarily designed to cover or include all study-related costs. But if individual institutions wish to recruit on the basis of an all-inclusive fee, then that is up to them.

(b) Is there any other information you think ought to be included as constituting 'material information' and if so why?

No.

The draft advice – see Chapter 4 (paragraphs 4.18 to 4.29 refer) and Annex A – sets out the CMA's views on the application of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CCRs) to the HE sector, including what pre-contract information must be provided before the student becomes bound by a contract.

Q2(a) Do you agree with our views on how the elements of the CCRs that are relevant to distance contracts will apply where applications by students and offers by providers are generally conducted at a distance (for example, through the Universities and Colleges Admissions Service)?

There are two stages to the contract, and the information required is different at each point.

In its draft advice, the CMA indicates that there are two contracts: one at the offer stage (referred to as stage 2(a) or 2(b)) and one at enrolment (stage 3).

We think the requirements vary across each of these stages, and requirements and the advice must recognise this.

Q2(b) Do you agree with our views on the types of information that are likely to constitute the 'main characteristics of the service'?

Yes

Q2(c) Do you agree with our views on what types of information are likely to fall within the scope of the other pre-contract information required for distance contracts under the CCRs?

Yes.

Terms and conditions

The draft advice – see Chapter 5 – sets out the CMA's view on the following examples of contract terms used by some HE providers that could be open to legal challenge for potential unfairness under the UTCCR 1999:

(a) terms allowing a provider an unreasonably wide discretion to vary course content and structure and/or increase fees during the duration of the course (see paragraphs 5.14 to 5.23 of the draft advice);

(b) terms seeking to limit a provider's liability for non-performance or sub-standard performance of the educational service (see paragraphs 5.24 and 5.25 of the draft advice);

(c) terms that give a blanket assignment, or a blanket right to receive an assignment, of any intellectual property rights from students to the provider (see paragraphs 5.26 to 5.28 of the draft advice).

Q3(a) Do you agree with the CMA's views on the potential unfairness of the terms listed?

We accept that there are some instances where the drafting of terms might be considered unreasonably wide, but it would be more helpful to provide examples of the limits of what *is* (rather than what is not) reasonable. This should help reduce the likelihood of legal challenge and work in the interest of students and institutions.

Q3(b) Do you agree with the CMA's views on the proposed factors that may make the relevant terms at (a) and (c) above less likely to be open to challenge for unfairness?

See answer to Q3(a) above.

Complaint handling

Q4: Do you agree with the CMA's views on how consumer protection legislation applies to an HE provider's complaint handling processes and practices?

Broadly, yes.

We also note the parallel passage of the Consumer Protection Act and its intended introduction of binding obligations around complaints handling at private HE providers. The burden of compliance will be greater at private providers which have not previously been bound to subscribe to OIA.

General

Q5 What, if any, aspects of the draft advice are in need of clarification and why?

When drafting and communicating the advice, it will be important to highlight clearly to institutions that the advice is about compliance with existing legislation and rights therein.

Quality assurance in HE is currently undergoing a review. What role might QAA have in ensuring that institutions fulfil their obligations in the areas covered by the draft advice? Has QAA been consulted in drafting the advice? If not, we would strongly recommend a more joined-up approach with QAA and OIA.

We are aware that UCAS will be seeking to review its complaints handling processes and practices in light of this consultation.

Q6: Overall, is the draft advice sufficiently clear and helpful for the intended audience?

See our first paragraph under Q5 above.

We would also encourage CMA to work with the Supporting Professionalism in Admissions (SPA) programme to maximise the clarity and reach of the guidance. SPA is a well-recognised independent source of guidance for HE providers on admissions good practice, as well as contextualised admission which we mentioned in our response to Q1 above.

Given the points we raise under Q1(a) above on encouraging access to HE among under-represented groups, it would also be useful to engage with the Office for Fair Access on the final draft of the advice.

Q7 Are there any other comments you wish to make on the draft advice?

Engagement with providers:

GuildHE would welcome CMA's constructive engagement with HE providers beyond the consultation period, to ensure that institutions are well aware of their responsibilities, and to hear providers' views about the practicalities and timing of any changes.

Timing:

The timetable for introducing any changes must consider the following:

- The admissions cycle for 2015 entry is already well underway.
 - Universities and colleges have also published their recruitment material for 2016 entry.
 - This includes information about courses and entry requirements on UCAS as well as institutional sources.
 - Potential students for entry in these years have already begun to explore their options on the basis of this information and the expectations currently attached to it.
 - Universities and colleges are also currently managing a wide range of other relevant reforms, including the removal of student number controls and comprehensive reforms to the pre-HE qualifications which influence admission to HE.
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