

MILLS & REEVE

Achieve more. Together.

Compliance with the CMA

Part 1

St George's, University of London

Kate Allan

2 May 2024



History

- 2015 - The Competition and Markets Authority ('CMA') issue a guide to the application of consumer law to applicants and students in HE
- 2015 – FOI and Criticism by Which?
- New consumer legislation
- 2017 - Advertising Standards Agency action
- 2018 – OfS condition of registration C1
- 2020 onwards – OfS/CMA/OIA increased focus on consumer law
- 2022 – OfS partner with trading standards

OfS Condition C1

- **Condition C1: Guidance on consumer protection law**
- **Condition C1:** The provider must demonstrate that in developing and implementing its policies, procedures and terms and conditions it has given due regard to relevant guidance about how to comply with consumer protection law

Reminder during COVID

- Give prospective students clear and timely information about their course.
- Let prospective and current students know about any planned and possible changes and to keep them well informed as circumstances change.
- Terms and conditions must continue to be fair.
- Students need to have access to complaint processes that are easily accessible, clear and fair.

Student CMA journey

- Potential applicant
- Application
- Offer
- Acceptance
- Enrolment
- Continuing student

General Principles

- The CMA guidance applies to UG courses
- Generic caveats reserving rights to make changes or disclaiming liability will likely not be legally enforceable and may breach consumer law
- Full information on changes to academic provision should be provided
- Links to Discover Uni / Unistats etc are not a substitute for full information
- Blanket assignments of intellectual property are not normally justifiable
- Plain English should be used, and any acronyms should be defined

- The same principles apply to information provided orally
- Course information must be provided in any substantive hard copy course marketing materials, but it is appropriate to link to more detailed information with a web-link
- Academic sanctions imposed for non-academic debt likely unfair
- Highlight any important or surprising terms

Consequences of breach

- Student OIA and civil claims – damages or repeat performance
 - Possibility of group complaints via OIA (and courts)
- Regulatory Action – CMA
- Enforcement Action - National Trading Standards (recent partnership with OfS)
- Reputation

OIA case September 2020

- A student complained to their provider that the information on its website was misleading.
- The student believed that they would need to study either module A or module B. However, they had to study module A and module B.
- The student complained to the OIA. They said that they would not have started the course if they had known that they had to study both modules. They wanted a refund of their tuition fees and of their living costs.

Case outcome

- The provider offered the student £1,000, and a further apology. OIA decided that this offer was reasonable and so decided that the complaint was **Not Justified**.
- The student had been offered the opportunity to withdraw from studies, but had decided to transfer to another course, for which the same fees were payable. The provider had supported the student to use their previous assessments towards the new course, and the student would be able to complete their new qualification within the original timescale.

The ASA and advertising by HEIs

- How to avoid breaches
 - Consider how an average consumer will interpret it
 - Ranking claims must be genuine and accurate
 - Make the basis of any claim clear
 - Do not assume any sector knowledge

Example

- In June 2017 it was noted that over 30 universities in the UK claimed to be in the top 10 at that time

Thank you

If you have any questions or would like to speak to one of our team, we'd love to hear from you.

Call or email:

Kate Allan

T: +44(0)20 7648 9252

E: Kate.allan@mills-reeve.com

