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STUDENT CONTRACTS

ENSURING A TRANSPARENT AND ACCOUNTABLE RELATIONSHIP BETWEEN UNIVERSITIES AND STUDENTS

EXECUTIVE SUMMARY

This briefing explores the development of student contracts and sets out recommendations for good practice. It builds on the existing guidance from the Competition and Markets Authority (CMA), advice on providing course information to prospective students and existing practice in the sector. **It is not intended as legal advice for compliance with consumer law or the CMA's existing guidance.**

The briefing outlines core principles for student-university contracts and makes recommendations for their future development.

INTRODUCTION

1. The relationship between students and universities is at the heart of a good quality higher education. Students value a relationship where they can trust their university to support and challenge them to achieve a good degree, deliver value for money and treat them fairly. At the same time students recognise that this is not a conventional consumer relationship and that their success is dependent on their own commitment and input into their studies.
2. Students should have a fair and transparent contract that sets out the salient rules and expectations underpinning the relationship with their university. All students studying in the UK have the right to accurate and transparent information to make their decisions, fair and clear contractual terms and conditions, and opportunities for redress. All students should also have access to complaints schemes and independent adjudication to resolve disputes without costly court action.
3. Contracts should provide the foundation for engagement and accountability between students, their representatives and their institution. Consumer law dictates that a contract exists between a university and all its students, whether undergraduate, postgraduate, a visiting or distance learning student. They should clearly state what the university will provide to the student. In this respect they should provide a framework for identifying and addressing concerns without recourse to legal action.
4. This briefing explores the development of student contracts and sets out recommendations for good practice. It builds on the existing guidance from the Competition and Markets Authority (CMA), advice on providing course information to prospective students and existing practice in the sector. **It is not intended as legal advice for compliance with consumer law or the CMA's existing guidance.** It outlines core principles that should inform the development of student contracts. This includes:
 - ensuring that the terms and conditions of the contract are fair
 - that course information is clear, consistent and quantifiable
 - providing material information, including avenues for complaints
 - integrating other relevant registration conditions such as student protection plans and student transfer arrangements
5. It recommends that the future development of student contracts by universities should consider how contracts can:

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- build on existing practice and guidance on consumer regulations and presentation of course information
 - be embedded in the local relationship between a university and their students and their representatives and advisors
 - provide students with the information necessary to progress in their studies and achieve a final award
6. Although this work is motivated by the ongoing regulatory interest in student contracts in England, the briefing and the principles of good practice for student contracts are intended to be applicable the across the UK.

CONTEXT

7. The CMA published its [guidance to higher education providers](#) in March 2015, setting out its interpretation of the application of consumer protection legislation to higher education. Relevant legislation includes the Consumer Rights Act 2015, the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) and the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CPRs).
8. The CMA carried out a compliance review of higher education providers in July 2016, which recognised the ‘considerable efforts’ by higher education providers to amend practices, terms and policies where necessary to be in line with the competition regulator’s guidance.¹ A UUK self-assessment exercise also found that 91% of institutions were fairly confident that they met their duties to students under consumer law (7% said they were very confident) and that 93% had conducted an internal review of their compliance.²
9. Many institutions also have student charters in place, developed in partnership with student unions and which outline mutual expectations. This followed the recommendations of the Student Charter Group, a ‘task and finish’ working group which brought together institution and student representatives to explore current and best practice in the use of student charters. It made a number of recommendations (January 2011), including that each university should have a student charter and the form they should take.³ Although the same report did not recommend the introduction of ‘legal style’ student contracts, it should be noted that this predates the 2015 CMA guidance which made clear that consumer protection law applies to the student-university relationship. [Building a framework for partnership with students](#) (2014) examined the

¹ CMA, Consumer law compliance review, July 2016.

² An online self-assessment survey was carried out April – May 2016, with reports produced for all participating institutions in October 2016.

³https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/32420/11-736-student-charter-group.pdf

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used of student charters three years on and made a number of further recommendations, including: simplicity; creating the conditions for partnership; using charters to enhance the learning environment and evaluating their contribution to student success.

10. In the context of the student contract, charters can be incorporated into this, so that the values, behaviours and expectations of students as part of the university community and embedded into the student-university relationship from the outset.
11. In England, the Office for Students (OfS) regulatory framework includes a requirement that providers demonstrate how they have given due regard to relevant guidance on complying with consumer rights law. This includes ensuring that contracts are fair and transparent, encompassing the contract for academic services as well as others the student may enter as part of the higher education experience. The regulatory framework also emphasises the importance of engagement between students and their university. Providers are expected to actively engage students in governance of the institution and the quality of their education. Furthermore, all registered providers must subscribe to the Office of the Independent Adjudicator for Higher Education (OIA).

PRINCIPLES OF GOOD PRACTICE

12. Student contracts play a role in ensuring a fair and accountable relationship between the student and their university. Students and their representatives should be able to use the contract to hold institutions to account if they do not receive what was promised, including through the OIA where necessary.
13. Student contracts and the rules, regulations, policies and procedures underpinning them should be developed in consultation with students' unions or representatives. Institutions and students' unions should work together to ensure that they do not have contradictory rules, regulations, policies or procedures which are complicated and confusing for students. An independent advice service can be well placed to advise on student contracts and their contents.

14. To ensure a student contract plays a positive role in supporting the relationship between students and their university the following principles should be considered:

- **Clear:** Ensure it is clear what forms the contract and that its content is communicated clearly to the student. In particular, terms and conditions must be clear and transparent so that students can hold higher education providers to account and are aware of their own responsibilities. Contracts should be clearly presented, setting out their purpose and clearly highlighting any linked documents, what these contain and what they mean for students. Using plain, accessible language is important for ensuring students can understand and use the contract.
- **Consistent:** Terms and conditions and other information which forms the student contract should be consistent with the pre-contract information that was available to prospective students.⁴ Consistency in the way the information is presented should make it easier for students to understand and navigate. Information should be sense-checked with student representatives for accessibility and consistency.
- **Fair:** Terms and conditions must be fair.⁵ Terms should be certain – not ambiguous or vague – for a student contract to be enforceable. This means that students should be able to understand the terms that form the contract, how they affect their rights and obligations and how the terms could impact them.
- **Quantifiable:** For higher education providers to be held to account, student contracts should include appropriate quantifiable information about what a student can expect from their course. This should also aim to give prospective and continuing students a better understanding of what is expected of them and of the nature of their obligations.

CONTENT OF CONTRACTS

15. Contracts should set out the information that is important for students to know in order to understand what is expected of them and to hold their university to account if necessary. A sample of current contracts reveals they do differ – particularly in their presentation – but in practice tend to include the following elements:

⁴ Pre-contract information is information that must be given to prospective students under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013. If any of the information does change before the contract is agreed, these changes need to be highlighted to the student when the offer is sent. The [CMA guidance](#) provides further details on pre-contract information.

⁵ Guidance on university obligations under unfair terms legislation is provided by the CMA guidance.

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- university terms and conditions
 - any other relevant rules and regulations, policies and procedures
 - course information
 - the information provided by the offer letter sent to prospective students
 - complaints handling procedures
16. Institutions should consider what is presented in contracts in consultation with student representatives and advisors. It is good practice to begin the document by clearly setting out what forms the contract, providing links where relevant. For example, it may not be practical for the entirety of terms, regulations, policies and procedures to be included in one document and many institutions already produce summary documents to collate together the key information for students.
17. In producing an accessible, user-friendly contract, institutions should consider the use of three main approaches in communicating the information that forms the contract between the university and student:
- a) more detailed information on aspects that are central to the university-student relationship (including important or surprising terms)
 - b) description of, and links to, other information that is part of the contract
 - c) description of, and links to, further relevant information
18. A non-exhaustive list of the types of information that might be included in the contract in relation to these three approaches is set out in annex A.

Provide course information upfront

19. Student contracts should present relevant course information so that students know what to expect, and what is expected of them, including the appropriate use of quantifiable information. The student contract is an opportunity to reiterate the summary course information that was presented to prospective students. By placing this information in the contract, the expectations on both the student and the institution will be clear and consistent from the outset. Relevant elements include:
- course structure, including expected learning outcomes, teaching and assessment formats and the degree algorithm
 - expectations on the student, including independent study and other regulations such as plagiarism
 - additional support available to students, including pastoral support and careers advice
 - course costs, including additional costs

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20. It would not be possible or desirable to provide the exact details of all elements of a course to prospective students. Indicative information can be included in contracts when there is a firm basis for its use and it is clearly presented as indicative. Institutions can subsequently make changes; what is important is that the instances and process when changes may need to take place are clear.
21. The development of contracts presents an opportunity to make information consistent through the application and offer stage. Some of the key information that makes up the student contract is available to applicants and students via a range of other sources, not just information provided directly to them by an institution. Institutions should be aware of other sources through which prospective students may be obtaining information, and ensure that this is consistent. This includes, for example:
- information on the UCAS website, which is provided to UCAS by institutions
 - other information provided by UCAS, for example via sessions for teachers
 - Unistats and associated guidance for university websites
 - external choice and advice sites, such as Which? University and What Uni?.
22. A [*Guide to providing information to prospective undergraduate students*](#) was developed following the 2015 review of Unistats and the Key Information Set (KIS). It transfers responsibility for publishing detailed course information to providers' own websites. It recommends providing summary information about the approach to teaching and learning on a course, including relevant quantifiable information.

Use a student-friendly format

23. Information in contracts should be readily accessible and easy to understand so that students can raise any issues or concerns with their university and with their representatives or advisors.
24. Many universities are starting to collate the most important information into a single document which clearly signals the different elements of the contract, including underlying terms and conditions or academic regulations. This follows the recommendations from the CMA compliance review. Universities can also use this document to highlight important or surprising terms to prospective and continuing students.
25. The type of language used is important. Plain English is essential in consumer communications, particularly where a provider is viewed as being in a more powerful position than a consumer. Presenting information as questions from the student

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perspective can help; headings such as ‘How do I make a complaint?’ rather than ‘Complaints procedures’ can be more engaging and informative.

Providing timely contract information

26. When a student accepts a place on a course, a contract is agreed between the provider and student. The CMA guidance sets out that for distance contracts (for example, where offer and acceptance is made via UCAS) institutions need to:
- provide confirmation of the contract in a durable medium, including all pre-contract information (unless this has already been provided)
 - give prospective students notice of their 14-day right to cancel, or ‘cooling off’ period
27. Student contracts should therefore be provided to prospective students at offer and acceptance. It should be brought to students’ attention again on enrolment, and any changes to material information should be highlighted.
28. For continuing students, the contract information should be brought to their attention at registration. This does not have to be done using a durable medium, for example, a link could be provided rather than a PDF version. Institutions can adapt the contract for re-enrolment accordingly, particularly if there have been any changes for the academic year ahead.
29. The information forming the student contract should be made available for potential applicants via prospectuses and websites. As far as possible it should be accurate and up to date, and institutions should be aware that prospective applicants and students will make decisions using this information. The CMA guidance covers in detail what information should be provided and when, with guidance on how to ensure terms and conditions are fair, accurate and transparent.

Signpost to relevant OfS registration conditions (England)

30. The student contract also presents an opportunity to integrate conditions of registration on universities, where they are directly relevant to students. For example, contracts are an opportunity to signpost arrangements in relation to the following conditions:
- Student protection plans – based on statement of good practice on course changes and closures. The level of detail required will be based on institutional risks and will ultimately need to be approved by the OfS.
 - Student transfer arrangements – clarifying to students the arrangements for transferring out of the institution, including credit transfer. This can also be an opportunity to highlight areas for pastoral support for students who are struggling or concerned about their fit with the course.

- OIA membership – all providers on the register are required to be a member of the OIA and to make students aware of their ability to use the scheme.

USE OF CLAUSES TO LIMIT OR EXCLUDE LIABILITY

31. Consumer protection law seeks to redress any significant imbalance in the contractual relationship between universities and their students, which universities might otherwise be able to exploit to the detriment of students. A ‘force majeure’ clause is an example of a type of contractual provision that excludes or limits the liability of universities for the consequences of failing to deliver a course in the circumstances described in the clause, either as promised or at all. This can have the potential to cause significant detriment to students and therefore the use of such clauses in consumer contracts is carefully constrained.
32. If a force majeure clause (or a part of such a clause) falls outside these constraints, it is considered unfair, and is unenforceable against students. Action can be taken by enforcing authorities (principally for these purposes, the CMA) to secure an injunction restraining the use of unfair terms. Alternatively, students can argue that the term is unfair and unenforceable in the context of proceedings brought by or against them, for example for damages for losses sustained or as part of a defence to a claim by the university for fees withheld as a result of interrupted service.
33. Ultimately it is for a court to decide whether a clause is unfair and therefore unenforceable. Guidance issued by the CMA is significant in terms of signalling the regulator’s views and indicating where they might be inclined to put pressure on institutions to take action to modify force majeure clauses, but it is not a definitive interpretation of the law.
34. To be considered enforceable, a “force majeure” clause needs to satisfy a number of criteria. It must be:
 1. Drawn to the attention of the student at or before the time the contract was entered into. This is when the student accepted the offer of a place on the course. Depending on how frequently terms and conditions are revised, therefore, it may be that different clauses apply to different cohorts of students.
 2. Easily understandable and legible, so written in plain English and avoiding legal and technical jargon.
 3. Clear and unambiguous, so that any vagueness in the drafting will be construed in the way that is most favourable to the student.
 4. Narrow in effect, so limited to circumstances that are genuinely outside the reasonable control of the university.
 5. Reasonable in the actions it permits the university to take should the specified circumstances materialize. In particular, there is always an expectation that the

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party seeking to rely on the clause must be able to demonstrate that it has taken reasonable steps to mitigate the consequences for the other party.

35. Annexe B includes some examples of different types of force majeure clauses. These are illustrative examples to aid understanding of the types of exclusions and limitations of liability institutions may choose to include in their contract. These are not recommended clauses and no guarantee is given as to their enforceability, nor does this constitute legal advice.

COURSE CHANGES

36. These rules are to protect students from unfair changes to their contract. This does not mean, however, that institutions cannot make any changes. There are some instances when institutions may need to make alterations to courses, resulting in a difference in what was promised at the offer stage and included in the contract agreed between student and university. For example, this could include the absence of a particular lecturer and the need to alter course material due to new research developments.

37. The sector-owned [*Higher education course changes and closures: statement of good practice*](#) sets out five principles for consideration if altering or closing down a course. Institutions that anticipate potential significant changes to a programme, or the possibility that a programme will not run, need to provide prospective students with the following details in the pre-contract information: what may change; when it may change; and, how it may change. When making changes to courses, the CMA recommends that these are more likely to be fair if:

- it is narrow in scope and effect – for instance, restricted to minor adjustments that are unlikely to negatively impact on students or changes that are required by necessity
- it is brought to the attention of prospective students at an early stage, including at application stage and pre-offer stages
- it sets out a valid reason for why changes might be necessary in a way that enables students to foresee when and what changes could be made
- it is set out in plain and intelligible language, which students can understand
- provision is made in the term for students to be notified of the changes in good time and before they come into effect
- students who are adversely affected by the change are able to terminate their agreement

38. The industrial action that took place in February – March 2018, over proposed changes to the USS pension scheme, is an example of when institutions may need to respond at short notice with changes to mitigate the impact on students. In circumstances which

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have a direct impact on teaching and exams, institutions will need to need to act quickly to put alternative arrangements in place which try to prevent students losing out or not receiving the service that was promised. There are a number of key principles when planning for industrial action or a similar event:

- ensuring that students, individually and collectively, are treated fairly and as consistently as possible
- ensuring that academic standards and quality are not compromised
- consulting with appropriate representative student bodies in the institution's planning from an early stage
- identifying and assessing the potential effects of industrial action, or a similar event, not only on the whole institution but also on each department, service and cohort of students
- reviewing relevant policies and procedures across all areas/services, and making necessary amendments to them as the student contract permits
- ensuring that the institution makes clear to students how the institution will respond where full delivery of services may not be feasible
- ensuring regular and effective communication with staff, students and the students' union on the institution's plans in order to manage expectations
- dealing promptly and effectively with any complaints that arise
- keeping a clear record of the institution's decision-making process

It is important that, as far as possible, institutions do what they can to deliver on their promises to students and that if a course change is made it does not put the student in a worse position than if no change had been implemented. However, it is possible to make changes that do not amount to a breach of contract and which are to the benefit of students.

ADDITIONAL ELEMENTS

39. Accommodation contract – this is generally a separate contract, even where students are living in university accommodation. Institutions could consider the use of improved signposting within the student contract so that students are fully aware of when this contract will be formed and where to find it.

40. Student support services – support services are an important element of the service universities provide to help their students achieve successful outcomes. Information can be clearly signposted in the student contract so that students are aware of what is available to them and how to access support.

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41. Information must align with **pre-contract information** – this is not a new requirement and is set out in the [CMA guidance](#).

CONCLUSIONS

42. Student contracts are an opportunity for institutions to bring the information that underpins the relationship between the university and students in a more systematic and accessible way. In this respect, the ongoing development of student contracts across the sector should:

- *Build on existing practice and guidance on consumer regulations and presentation of course information:* Contracts should be based on the CMA's guidance to the sector, in particular on what it considers fair terms and conditions and sector guidance on providing clear and accurate information about teaching on a course.
- *Be embedded in the local relationship between a university and their students and their representatives and advisors:* Contracts should be developed in partnership with student representatives and advisors in order to reflect the priorities of students in their relationship with their university.
- *Provide students with the information necessary to progress in their studies and achieve a final award:* Contracts should include information about elements of the course that are central to students' progress, including the assessment structure of the course and the algorithm through which student outcomes will be classified.

ANNEXE A: CONTRACT INFORMATION

This is based on current good practice, the contract examples we have reviewed, and our understanding of the motivation for the proposed registration condition. **This is not legal advice.** Institutions may take a different view on the level of detail required for particular areas – what is important is that all information forming the contract meets the good practice principles outlined in section three, as well as duties under consumer protection legislation.

When developing a contract considerations include:

- creating both a hard-copy and web-based ‘one-stop shop’ student contract
- using the student contract as a way to identify and collate all the terms that govern the contractual relationship between the student and university
- using the new contract to ensure that any important or surprising terms are highlighted to the student
- placing key information about the course upfront in the contract document so that students can easily refer back to this
- where possible, making the information quantifiable
- ensuring relevant procedures follow the [OIA’s Good Practice Framework](#) for handling complaints and academic appeals.

a) More detailed information on aspects that are central to the university-student relationship (including important or surprising terms)

- important or surprising terms⁶
- student contractual obligations
- university contractual obligations
- course information
- tuition fees and additional costs
- making changes to the contract and services – this should include an explanation of the circumstances when making a change might occur and the procedure for this. It is

⁶ The CMA has highlighted the type of terms considered important or surprising.

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good practice to use examples of types of change that could be made and how this would be communicated to students.

- duration and termination rights
- use of personal data
- visa and immigration requirements

These areas may also include links to further information where necessary.

b) Description of, and links to, other information that is part of the contract

- complaints procedure (including reference to the OIA)
- academic regulations
- student support services
- student agreement/charter – expected behaviours and values
- use of university facilities
- health and safety regulations
- freedom of speech and freedom of expression
- equality and diversity policy
- harassment and bullying policy/sexual violence and harassment policy
- independent advocacy and representation services, for example students' unions and their advice services
- University obligations under the Prevent Duty

c) Description of, and links to, further relevant information

- accommodation
- students' union information, provided by the students' union
- process for transferring in/out of institution
- information on how fees are spent/integrated reporting
- voter registration

ANNEXE B: EXAMPLES OF FORCE MAJEURE CLAUSES

(NB: these are not recommended clauses and no guarantee is given as to their enforceability. They are produced here as illustrative examples to aid understanding of the types of exclusions and limitation of liability institutions may choose to use)

1. Total exclusion of liability

The University will not be liable to you in any manner whatsoever for any failure or delay, or for the consequences of any failure or delay, in performance of any contract with you if it is due to any event beyond our reasonable control, such as:

- industrial action
- acts of god
- failure by third party suppliers and subcontractors

2. Partial exclusion of liability

The University will do all that it reasonably can to provide educational services as described on its website or in the prospectus or other documents issued by it to appropriately enrolled students. Sometimes circumstances beyond our control mean that we cannot provide such educational services. This might be because of, for example:

- industrial action by University staff or third parties
- the unanticipated departure or absence of key members of University staff
- acts of terrorism
- the acts of any governmental or local authority
- where the numbers recruited to a course are so low that it is not possible to deliver an appropriate quality of education for students enrolled on it

In these circumstances, the University will take all reasonable steps to minimise the resultant disruption to those services and to affected students, by, for example, offering affected students the chance to move to another course or institution, or by delivering a modified version of the same course, but to the full extent that is possible under the general law the University excludes liability for any loss and/or damage suffered by any applicant or student.

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The modifications we make may be to:

- the content and syllabus of programmes, including in relation to placements
- the timetable, location and number of classes
- the content or method of delivery of programmes of study
- the examination process

In making any changes, we will aim to keep the changes to the minimum necessary and will notify and consult with you in advance about any changes that are required. If you are not satisfied with the changes, you will be offered the opportunity to withdraw from the course, move to another course and, if required, reasonable support to transfer to another provider.

3. Limitation of liability

We make all reasonable efforts to deliver our courses and other services as described on our website. However, we may need to make changes in response to unforeseen circumstances, for example to:

- changes to the timetable, location, and method of delivery of programmes of study, provided such alterations are reasonable
- changes to topics, modules and options within degree programmes, and / or placements and field trips

This may be because of academic changes within subject areas, or as a result of low student numbers on a course.

In exceptional circumstances, we may suspend, discontinue or combine courses.

Where changes are necessary, we will provide appropriate and alternative options for affected students. If you do not wish to accept any alternative arrangements you must notify us in writing within reasonable time of being informed, and we will refund any deposits or tuition fees paid in accordance with our refunds policy.