



## Higher Education sector Call for Information: CMA consultation and guidance on student rights to information and fair treatment

On 19 November 2014, the Competition and Markets Authority (CMA) launched a consultation on draft consumer protection law advice for Higher Education (HE) providers in relation to their dealings with undergraduate students.

The consultation followed recommendations issued by the OFT earlier this year in response to a Call for Information into the sector. It is part of the consumer workstream that the CMA is conducting and forms part of a wider review which is also looking at the impact of the regulatory structure on competition in the market.

### The OFT Report

The OFT published the findings of a Call for Information (“CFI”) on the undergraduate HE sector in March 2014. The aim of the CFI was for the OFT to gain a better understanding of how choice and competition in the HE sector were working.

The OFT identified a number of issues concerning:

- the way that students are able to access information regarding where to apply and what to study and how students are treated when they get to university. Whilst the evidence did not suggest the HE sector is engaged in underlying bad practices and indicated some good examples of improvement, the OFT noted the significant scope for clarifying HE providers’ responsibilities under consumer protection law;
- the convergence of student fees at £9k per annum and restrictions in choices in applying to universities. However in the absence of evidence of anti-competitive behaviour, it decided that no further action should be taken; and
- the complexity of the regulatory structure, particularly the fact that there are different regimes in place for different categories of HE providers. It recommended a review of the regulatory regime be undertaken in conjunction with various industry bodies and stakeholders.

The CMA, which took over the responsibilities of the OFT in relation to market investigations from 1 April 2014, has now followed up on the recommendations in relation to student choice and fair treatment, and has published its draft advice.

### The CMA's draft advice

The draft advice is intended to help HE providers understand how to comply with consumer law in their dealings with undergraduate students. It focuses on consumer protection legislation that will generally apply in relation to three key issues for students: information provision, terms and conditions, and complaints handling.

### Information provision

The advice emphasises the need for HE providers to give clear, accurate, comprehensive and timely information to students, including:

- giving students clear and accessible information about course content, structure and costs *before* they make a decision about which HE providers to apply to;
- at the offer stage, drawing students attention to the HE providers’ full terms and conditions, and all necessary pre-contract information about the course; and
- at the enrolment stage, flagging to students any information that has changed.

### Terms and conditions

The advice states that the terms and conditions between HE providers and students should be accessible, fair and balanced. Examples of terms which may be unfair and therefore open to challenge include blanket terms which allow the HE provider:

- an unreasonably wide discretion to vary course content, structure or fee;

- to limit its liability for non- or sub-standard performance of the educational service; and
- to impose academic sanctions against students for non-payment of non-tuition fee debt, for example, withholding the award of degrees for non-payment of library fees.

## Complaint handling processes and practices

HE providers must ensure that their complaint handling processes and practices are clear and accessible to students, and must:

- provide students with complaints handling information before they accept an offer; and
- ensure complaints procedures set out reasonable timescales for students to hear back about the complaint, and allow students to escalate the matter if complaints are not satisfactorily resolved.

## The consultation

The CMA is seeking views from interested parties on the draft advice, particular in relation to the proposed unfair blanket terms. More details can be found in the [consultation document](#).

The deadline for responding is **Thursday 18 December 2014**.

## Comment

Students are increasingly behaving as consumers, a point demonstrated by the recent consumer group Which?'s report on value for money within the HE sector, which concluded that there were "worsening perceptions of value for money" among students. Which's [report](#) highlights the fact that students' consumer rights and student satisfaction levels go hand in hand.

For those working in the HE sector, it is hoped that the CMA consumer protection advice will provide welcome guidance and certainty in a difficult area.

## Contacts

For further information about this article, please contact Matthew Ramus or Stephanie Rickard or your usual Burges Salmon contact.



### Matthew Ramus

Partner

+44 (0)117 902 7183

matthew.ramus@burges-salmon.com



### Stephanie Rickard

Legal Director

+44 (0)117 902 6682

stephanie.rickard@burges-salmon.com

Burges Salmon LLP, One Glass Wharf, Bristol BS2 0ZX Tel: +44 (0) 117 939 2000 Fax: +44 (0) 117 902 4400  
6 New Street Square, London EC4A 3BF Tel: +44 (0) 20 7685 1200 Fax: +44 (0) 20 7980 4966

[www.burges-salmon.com](http://www.burges-salmon.com)

Burges Salmon LLP is a Limited Liability Partnership registered in England and Wales (LLP number OC307212) and is authorised and regulated by the Solicitors Regulation Authority. A list of members, all of whom are solicitors, may be inspected at our registered office: One Glass Wharf, Bristol BS2 0ZX.

© Burges Salmon LLP 2014. All rights reserved. Extracts may be reproduced with our prior consent, provided that the source is acknowledged. Disclaimer: This briefing gives general information only and is not intended to be an exhaustive statement of the law. Although we have taken care over the information, you should not rely on it as legal advice. We do not accept any liability to anyone who does rely on its content.

Data Protection: Your details are processed and kept securely in accordance with the Data Protection Act 1998. We may use your personal information to send information to you about our products and services, newsletters and legal updates; to invite you to our training seminars and other events; and for analysis including generation of marketing reports. To help us keep our database up to date, please let us know if your contact details change or if you do not want to receive any further marketing material by contacting [marketing@burges-salmon.com](mailto:marketing@burges-salmon.com).