

# Insight

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## Protecting students as consumers

### Introduction

Students have consumer rights and are protected by consumer protection law. However, many are young and inexperienced consumers, making important choices about what and where to study with limited personal knowledge to guide them. In addition, choosing a university and course is likely to be a one-off decision, and can be difficult to change once a student has started.<sup>1</sup> It also leads to a significant investment of their time and money.<sup>2</sup>

While the idea of students as ‘consumers’ of their higher education is by no means uncontested, consumer protection legislation generally means that students should receive clear, accurate and timely information about their course and university or college; that student contracts should contain fair terms and conditions; and that there should be fair

mechanisms for dealing with complaints.

The Office for Students (OfS) plays an important role in protecting students’ consumer interests. Our regulation is designed to empower student choice and incentivise existing and new providers of higher education to focus on students’ needs. Our conditions of registration include an explicit requirement that institutions demonstrate they have given due regard to relevant guidance about how to comply with consumer protection law in developing and implementing their policies.

The scope of consumer protection law as it relates to higher education is wide. In addition to teaching and learning, it applies to a range of other services, such as accommodation and support, provided by universities and colleges for current and

### Summary

Students at universities and colleges in England are covered by the principles of consumer protection, and a range of law and guidance applies. The Office for Students works with other bodies to secure this protection for the benefit of students. This brief looks at the concept of students as consumers and considers the scope of consumer protection law as it currently stands. It also examines how our regulation protects consumer rights, and what we have done and will do towards this end. While the brief provides commentary on a range of regulatory and legal issues, it is not intended to provide legal advice, or a comprehensive statement or guide on consumer protection law or the OfS’s regulatory requirements.

### Terms used in this Insight brief

**Consumer:** Normally an individual who obtains goods or services for purposes other than their business, trade or profession.

**Consumer protection law:** The legal framework that grants rights to consumers and seeks to protect these rights.

The Office for Students is the independent regulator of higher education in England. We aim to ensure that every student, whatever their background, has a fulfilling experience of higher education that enriches their lives and careers. We regulate to promote quality, choice, competition and value for money in higher education, with a particular remit to ensure access, success and progression for underrepresented and disadvantaged groups of students.

prospective students. The brief does not attempt to cover all these, but considers some of the themes and areas most relevant to the OfS's regulation. In this brief we will discuss the background to the concept of the 'student consumer'; some of the guidance and legislation relating to consumer protection; how protecting consumer rights is addressed in our regulatory framework; and the OfS's work in this area.

## The emergence of the 'student consumer'

The emergence of the 'student consumer' in English higher education discourse is connected with what has been described as the 'marketisation' of higher education. At its simplest, this term is used to refer to a series of reforms to the funding of higher education in England introduced by successive governments over several decades. The most notable of these, the shift from government grants to fund teaching to government-subsidised student loans, has meant that students are increasingly making a significant personal financial investment in their higher education.<sup>3</sup>

These developments gained new prominence with the tripling of annual undergraduate tuition fees (from £3,000 to £9,000) for English students in 2012. The 2011 higher education white paper, 'Students at the heart of the system', set out the rationale for these reforms with explicit reference to the language of the market; their aim was to stimulate greater competition and choice, and to promote efficiencies. It also discussed the aim to empower students as consumers, through improving information for prospective students and making student feedback available.<sup>4</sup>

Much of the commentary on students as consumers is framed by critics of these changes. They object to marketisation, specifically its perceived threat to pedagogy and, some claim, the core role and mission of higher education institutions.

They are concerned that the characterisation of students as consumers obscures and underplays the collaborative nature of their relationship with their university or college and their learning.<sup>5</sup> It is not the role of this brief to comment on or analyse these debates and discussions, but they set the scene for more recent developments in this area.

In 2014, the former responsibilities of the Office of Fair Trading were passed to several different organisations, including the Competition and Markets Authority (CMA). In 2015, the CMA published a policy paper that recommended reform to the regulatory framework for higher education in England. This contributed to the policy and legislative developments that ultimately led to the creation of the OfS as the regulator for higher education in England, and to the current regulatory framework.<sup>6</sup>

In 2015, the CMA also published guidance on consumer protection law for UK higher education providers. This guidance was refreshed in 2023. Its introduction sets out the main elements of the law as it applies to students, and notes that a focus on consumer protection does not preclude a focus on other elements of the relationship between students and institutions.

## Consumer protection law in higher education

Consumer protection law addresses two main areas: the rights of the buyer and the responsibilities of the seller. When a student registers on a higher education course, they buy a service from a university or college. They usually do so in a personal capacity. Students are therefore 'consumers' for the purpose of consumer protection law. This gives them consumer rights and means that their course providers must comply with consumer protection law. The OfS expects higher education providers to treat **all** students as consumers for the

'The advice is particularly important given the extent to which [higher education] providers' funding comes directly from students. This has highlighted particular expectations of providers when it comes to, for example, the information they provide about the degrees and courses available, the choices on offer, how teaching will be delivered, students' rights as consumers, and how complaints by students will be handled. Consumer protection law is therefore an important aspect of [a higher education] provider's relationship with students, together with the existence of a supportive learning and pastoral environment within an academic community.'<sup>7</sup>

(CMA, 'UK higher education providers: Advice on consumer protection law', 2023)

purposes of consumer protection law.

There are a number of sources of consumer protection law in England. These include the Consumer Rights Act 2015, the Consumer Protection from Unfair Trading Regulations 2008, and the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.<sup>8</sup> Consumer protection law covers a wide range of areas, including advertising, pre-contractual information, terms and conditions of contracts, contract variations and complaints.

The CMA has published advice on consumer protection law for higher education providers, which sets out how consumer protection law applies to them.<sup>9</sup> This advice has recently been updated, particularly in its references to the law and stakeholders. The advice is aimed at helping institutions to understand their responsibilities under consumer protection law

## Major organisations relevant to this area<sup>10</sup>

**The Competition and Markets Authority (CMA)** is a non-ministerial government department and the UK's lead competition and consumer authority.<sup>11</sup> It issues advice and guidance to businesses, to help them understand their consumer law obligations and to promote compliance. It has issued advice for higher education providers on consumer law and taken enforcement action to help secure change across the sector. The CMA has extensive discretionary powers over compliance and enforcement activities.<sup>12</sup>

**Local authority trading standards departments** have duties to enforce consumer protection law in their local areas. They can also offer advice to consumers and those selling goods or services.<sup>13</sup>

**National Trading Standards** is distinct from local authority trading standards departments, but works with these services. It conducts national and regional consumer protection work. Its remit is to protect consumers and safeguard businesses through cross-boundary intelligence-led enforcement projects in England and Wales.<sup>14</sup>

**The Chartered Trading Standards Institute** is the professional membership body for trading standards professionals. It runs the Consumer Codes Approval Scheme, which is open to all businesses to apply to join.<sup>15</sup>

**The Office for Students (OfS)** is the statutory regulator for higher education in England, which uses notifications from students and other third parties to inform its monitoring activity to ensure that providers comply with their ongoing conditions of registration. These include having due regard to relevant guidance on how to comply with consumer protection law.<sup>16</sup>

**The Office of the Independent Adjudicator (OIA)** is the independent body set up to review student complaints about higher education providers in England and Wales. It issues guidance to share learning from complaints.<sup>17</sup>

**The Advertising Standards Authority** is the UK's independent regulator of advertising across all media. It endorses and administers the advertising codes of practice.<sup>18</sup>

when dealing with undergraduate students. It focuses on the following three core areas:

- **Information provision** at the application, offer and enrolment stages, to ensure students are given clear, accurate, comprehensive, unambiguous and timely information.
- Ensuring that contractual **terms and conditions** between higher education providers and students are fair and do not disadvantage students.
- Accessible, clear and fair **complaint handling processes and practices**.

Below we set out some key provisions of consumer protection law and the OfS's view about how these provisions might apply in higher education scenarios. This should not be read as a guide to consumer protection law or as legal advice.

### Reasonable care and skill

Consumer protection law requires a higher education provider to provide educational services with reasonable care and skill. While there is no definition of 'reasonable care and skill' in the Consumer Rights Act, it is understood that industry standards or codes of practice

will be considered in determining whether the standard of reasonable care and skill has been met.

For higher education providers registered with the OfS, we consider that the quality and standards conditions ('B' conditions) in our regulatory framework may be relevant, along with other standards in the particular sector or industry related to the subjects taught, although compliance with our minimum quality requirements does not necessarily constitute compliance with consumer protection law. If a university or college does not meet the reasonable care and skill requirement, it is likely to be in breach of the contract with its students.

### Information

There are important legal provisions that mean statements made by a provider of services at the time a consumer enters into a contract can become binding.<sup>19</sup> This means that it is essential for an institution to set out clear and accurate statements in its prospectus, on its website and in any materials sent directly to a prospective student alongside an offer letter. It is also important that a provider honours any promises made via these channels.

Other important legal requirements mean a provider must give certain minimum information to students before they enter into a contract with the provider.<sup>20</sup> The latest CMA guidance includes information about this, including the type of information that needs to be provided. The OfS would expect registered providers to be clear to students in advance about how their course will be delivered, for example the extent to which elements will be delivered online or in person, to avoid giving a misleading impression about what students can expect in practice. The CMA also gives information about this in its updated guidance.<sup>21</sup>

There are legal provisions that require a university or college

to be transparent about any additional fees payable to it or its partners before the contract is entered into.<sup>22</sup> These might include for example the cost of field trips, equipment, materials, or hiring facilities (such as a music or art studio).<sup>23</sup> Unless there is such transparency, any such charges may not be legally binding or enforceable against a student.

The 2008 regulations on unfair trading also apply to higher education providers. Broadly speaking, these prohibit a provider from engaging in unfair commercial practices in its dealings with students. They also prohibit misleading actions and omissions, and aggressive practices likely to affect students' decisions. The regulations also include an important list of commercial practices that are automatically deemed unfair. Examples 1, 2 and 3 set out behaviours the OfS considers likely to amount to unfair commercial practices.

## Fair terms and conditions

An unfair term in an institution's contract will not be binding on a student. Universities and colleges should act in good faith when entering into a contract. The Consumer Rights Act sets out that a term in a contract will be unfair if it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer – the student.

There are a number of 'blacklisted terms' that the Act automatically deems as unfair if they are present in a contract. The Act also contains an indicative 'grey list' of terms that might be considered unfair. While these are not automatically unfair, they may be used to assist a court when considering the application of the fairness test. Whether any particular term is deemed unfair will depend on its specific

wording and effect. Examples relevant to higher education include:

- A term that tries to exclude or limit a student's legal rights where a university or college does not deliver its contractual obligations is likely to be considered unfair.
- A term that purports to enable a university or college to rely on oversubscription as a basis for unilateral decisions to deliver a different course, or to withdraw a course or offer (including before the course starts), is likely to be considered unfair. The OfS takes the view that most of the circumstances likely to lead to oversubscription are likely to be within the control of a university or college, and this raises serious questions about the fairness of such terms. We would therefore expect all offers to be honoured where students meet the terms of their offer, whether or not this would mean the total number of students exceeded the provider's preferred cohort size.

## Unilateral variation of terms

By a unilateral variation of terms, we mean a situation where terms and conditions purport to give a provider the right to unilaterally change elements of the contract (including the level of fees) without the express consent of a student. The OfS would distinguish this from a situation where the terms and conditions of a contract precisely set out in advance (at the time the contract is originally agreed with a student) how and when a contractual change will take effect, for example, a contract clearly stating in advance that a particular optional module for a course will only be available in a

particular (specified) academic year, and therefore will not be available in the following academic year.

There are many important issues to consider in respect of whether terms that allow unilateral variations are fair and enforceable. The updated CMA guidance discusses some of these issues, but we would like to draw attention to some in particular.<sup>24</sup>

First, a provider should ensure that students are properly notified in advance of any proposed unilateral variations, and how they can avoid being affected by the changes (for example, by exiting their contract). However, the difficulties involved in transferring from one institution to another raise important questions about whether it is fair for a provider to make such changes in the first place.<sup>25</sup> We think that universities and colleges need to carefully consider the overall fairness of any changes. This includes taking into account any limitations on a student's ability to transfer to another higher education provider for a similar course when the variation to the contract is made.

## Complaints

Consumer protection law, including the principle of 'professional diligence', requires providers to ensure that their complaints handling processes are fair.<sup>26</sup> Preventing students from exercising their contractual rights, such as by misleading them or making it impossible for them to follow a complaints process, could constitute non-compliance with the consumer protection regulations. Terms and conditions that have the effect of preventing or restricting students from exercising their contractual rights may also amount to unfair contract terms under the Consumer Rights Act.

## Example 1

A university registered with the OfS advertised in its prospectus, which it attached to letters offering course places, that a named professor would deliver a specialist module as part of a particular course, in person from its newly refurbished campus, during the spring term of the first year of the course. The same information was advertised prominently on the course pages of the university's website. The offer letter encouraged students to take into account the information in the prospectus and on the course pages of the website when deciding whether to accept the offer.

At the time of sending out the offer letters, the university knew that the named professor would not be delivering the module during the upcoming academic year because she would be taking an agreed period of research leave. The university notified students during the autumn term that the module the professor was due to deliver was replaced with an alternative module with different content, to be delivered primarily online by a different member of staff, and that the named professor would not deliver any modules on the course during the first year.

Based on these facts, there are likely to be a number of serious potential consumer protection concerns, some of which include:

- Did the university's approach amount to an unfair commercial practice that is prohibited by consumer protection law? Based on the facts, it appears that the university carried out a misleading action and omission when sending out the offer letters.<sup>27</sup> These letters encouraged prospective students to take into account incorrect information when deciding whether to accept offers, and it is likely that this information would have induced students to accept an offer on the understanding that a course would include particular content and be taught by a particular person.
- Did the university carry out the banned unfair practice of 'bait advertising' or 'bait and switch advertising', given that, at the time the university sent offer letters, the university intended to switch the course modules?<sup>28</sup>

## Example 2

A higher education institution published information that set out its approach to learning and teaching. This was published on its website and in its prospectus, which was attached to letters offering course places. This information explained that, 'You will be taught in person on campus, with an element of online learning.' The institution encouraged students to consider this information when deciding whether to accept their offers. In the first year of the course, the institution delivered only a small proportion of teaching in person.

In the second year of the course, the institution relied on the following clause in its terms and conditions to unilaterally change the delivery of teaching from in-person to online: 'The institution can at any time make any changes to the institution's terms and conditions without obtaining the express consent of each student.' The institution's terms and conditions and prospectus did not set out in advance that delivery of teaching would change from in person to online in the second year of the course.

There would be a number of serious potential consumer protection concerns here, including:

- The provision of misleading information about in-person teaching would have been likely to have induced students to accept an offer on the understanding that teaching would mainly be delivered in person.
- The term allowing the institution to make sweeping changes to its terms and conditions without the express consent of each student is likely to be unfair, because it would appear to have the object or effect of enabling the institution to alter the terms of the contract unilaterally without a valid reason specified in the contract.
- The information provided about in-person teaching would be likely to amount to a term of the contract for a range of reasons based on the facts, and the institution's failure to ensure that teaching was mainly delivered in person would be likely to amount to a breach of contract.
- While the institution could have obtained express consent of each student to make changes to the way teaching was delivered in future years, this would not be sufficient to remedy a breach of contract that had already taken place, or the misleading information that was originally provided.



### Example 3

A student wished to make a complaint about a college's compliance with the terms and conditions of a contract for higher education services. The college's terms and conditions set out that a complaint could only be made by requesting a complaints form from the main reception and submitting the completed form in person to the receptionist.

A student submitted a complaints form to main reception and after a few weeks received a letter advising them of the outcome of the complaint. The student was unhappy with the outcome and asked how they could escalate the complaint. A member of staff informed the student that the complaints procedure had been exhausted and there was no other route to complain.

This scenario raises a number of serious consumer protection concerns, which include:

- The contractual term may be unfair because it appears to have the object or effect of hindering a student's ability to pursue a legal remedy and may cause a significant imbalance in the rights and obligations of the college and student, to the detriment of the student.
- The member of staff appears to have made a misleading statement and omission in informing the student that there was no other route to complain and failing to tell the student about their ability to complain to the OIA. This is because the student may decide not to pursue any legal remedies that may be available to them as a result of that information.<sup>29</sup>

### What the OfS is doing

This section looks at some of our work on student consumer protection in recent years.

#### Protecting students' consumer rights through our regulation

All higher education providers registered with the OfS are subject to a group of ongoing conditions of registration entitled 'Protecting the interests of all students'. These are collectively referred to as the 'C' conditions. The C conditions are primarily designed to work in support of our objectives, rather than as ends in themselves. For example, they protect students when the requirements of our regulation of quality and standards are

not being delivered in practice. Conditions C1, C2 and C3 relate specifically to aspects of consumer protection law.<sup>30</sup>

Our regulatory intelligence tells us where students experience issues related to their consumer rights. For example, prospective students do not always get the information they need from institutions to make an informed decision about what and where to study. It is not always clear what students can expect in terms of teaching and support – including, among other things, course content, structure, the number and type of contact hours they will receive, and the method of assessment. Students are sometimes asked to pay additional costs that they did not know about when they chose

the course. The contracts that students enter with their provider can be hard to understand, or contain provisions that appear to be unfair. If things do go wrong, students might find that their provider does not have an adequate complaints process.

The law sets out minimum standards that apply to various aspects of a provider's dealings with students, including providing information to prospective students, the fairness of contractual terms and conditions, and complaint handling. The CMA guidance is important in this regard and the OfS's regulatory requirements draw on this.

While the OfS can make judgements about whether a university or college is complying with consumer protection

### Consumer protection in the C conditions

- Condition C1 requires a provider to demonstrate that it has given 'due regard' to the CMA's guidance in developing and implementing arrangements to provide accurate information for applicants and students, fair and transparent student contracts, and fair, accessible complaints handling practices.
- Condition C2 requires a provider to cooperate with the requirements of the OIA's student complaints scheme and to make students aware of their ability to use the scheme.
- Condition C3 requires a provider to develop and publish a student protection plan tailored to its specific circumstances. Student protection plans set out what students can expect to happen should a course, campus, or provider close. The purpose of a plan is to ensure that students can continue and complete their studies or can be compensated if this is not possible.

law for the purposes of our regulatory requirements, we cannot determine disputes, or make binding judgments about how the law applies, between a particular student and a provider – only a court can provide a definitive interpretation of the law and how it applies to individual circumstances. This means that we have the remit to raise concerns with a provider about its compliance with consumer protection law, and we may seek to encourage or incentivise compliance in a range of different ways. For example, this could include imposing a specific condition of registration to require a provider to comply with all, or particular aspects of, consumer protection law and taking enforcement action where there is or has been a failure to comply with that condition.

Our approach has depended on the specific circumstances of each case, and these vary significantly. For example, where a university is closing a course or a campus, we may intervene to ensure that students are properly informed of changes within a reasonable timeframe and that they are supported to understand their rights, including the right to complain and escalate issues to the OIA. In other cases, universities have made changes to their terms and conditions and improved protections for students as a result of our intervention. In such cases, we may engage with a provider to achieve improvements without the need for more active regulation.

However, where an individual provider may not be following consumer protection law, we may also decide to refer the case to National Trading Standards or other enforcement bodies. Our general policy aim is to ensure that a provider amends its policies, procedures and terms and conditions to comply with consumer protection law.

We also protect the interests of students as consumers through our work on quality and standards where our B conditions set minimum requirements for

the academic experience and the outcomes students should receive from their university or college. We monitor the financial sustainability of providers and seek to protect students in cases where their provider or course closes. We also work closely with other bodies with specific consumer responsibilities.

### Learning about concerns

The OfS works with the Office of the Independent Adjudicator, the independent body set up to review student complaints about higher education providers in England and Wales.<sup>31</sup> The OIA deals with complaints that students have been unable to resolve with their university or college and, where it finds that these are justified, makes recommendations for redress. Learning from this process is shared to improve policy and practices across the higher education sector. In 2022, the OIA received 2,850 complaints, most of them relating to academic appeals or issues with university services (38 per cent each), with smaller proportions relating to finances, disciplinary matters (academic and non-academic), equality law and human rights, welfare issues and fitness to practise. In total, 25 per cent of cases were deemed to be justified, partly justified or settled in favour of the student.<sup>32</sup>

At present the OfS has no direct role in dealing with individual complaints or with disputes between students and their university or college.<sup>33</sup> However, students, student representatives, students' unions and staff members can use our notifications process to tell us about current issues in their university or college that relate to the matters we regulate. We carefully consider all the notifications we receive. Where we think a notification raises concerns that a university or college is not meeting, or is at risk of breaching, our requirements, we may intervene and use our regulatory powers to address the issue. This includes potential concerns about a

provider's compliance with consumer protection law.<sup>34</sup>

### Partnership with National Trading Standards

In November 2022, we announced a new arrangement with National Trading Standards.<sup>35</sup> It focuses on three priority areas, with agreement that National Trading Standards will examine each referral it receives from the OfS where a potential breach of consumer protection legislation has been identified. These are:

- Unfair terms and conditions in student contracts, such as misleading precontract information on which students rely when choosing their course.
- Organisations that wrongly claim to be registered with the OfS or to have degree awarding powers or university title.
- Misleading advertising by 'essay mills' (organisations that allow students to commit academic fraud by commissioning written work).

We have begun to make referrals to National Trading Standards, including in relation to:

- Terms and conditions that are not clear, intelligible and unambiguous.
- Multiple terms requiring students to pay charges that may be unfair.
- Terms that seek to limit a provider's liability.
- Terms that, in our view, allow the provider an unreasonably wide discretion to vary course content and structure, or to increase fees during the duration of the course.
- Terms that, in our view, require clarification and detail to help avoid misinterpretation by students.

We intend to publish more information about these cases at an appropriate time, as we think these issues are relevant to all universities and colleges and the contracts they make with students. We consider publication an important tool to help all institutions understand how to comply, and to encourage them to do so.

### **Impact on students during industrial action**

The OfS published a briefing note in November 2022, highlighting the need for universities and colleges to continue to comply with their regulatory and legal obligations when addressing disruption caused by industrial action. It summarised their obligations under consumer protection law and reminded them that all OfS conditions of registration continue to apply during periods of industrial action taken by staff in universities and colleges.

The note communicated our expectation that universities and colleges take all reasonable steps to avoid or limit disruption to students and make up for any teaching time or learning that students lose. We gave the examples of offering full or partial fee refunds, or ensuring that all lost teaching time is made up without detriment to students. The briefing note also made clear that any changes made to examinations or other assessments should avoid disadvantaging students, while also maintaining standards. It set out the importance of universities and colleges communicating regularly and clearly with students about the impact of the disruption and the steps they have taken to mitigate this.<sup>36</sup>

We have reminded providers affected by the ongoing marking and assessment boycott in June 2023 to ensure that students are not disadvantaged, that they can graduate or progress on time where this is appropriate in academic terms, and that any degree awarded accurately

reflects a student's academic achievement. Where they cannot ensure this is the case, we have said that we expect there to be proactive engagement with the students directly affected to ensure they understand when they will receive assessment outcomes and are informed of the full range of options available to them.

### **Next steps for the OfS**

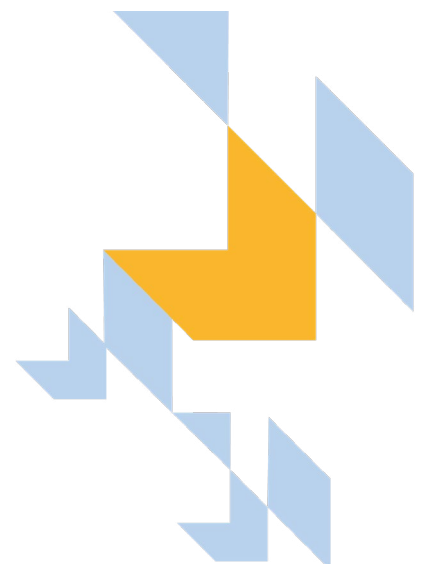
Over the next year, we intend to develop proposals and consult on an updated approach to protecting the interests of students as consumers. This may involve revisiting our current consumer protection conditions and considering replacing them with more focused requirements.

To this end we will monitor queries and notifications from students, and carry out additional research and polling on student consumer protection issues, to understand students' concerns and priorities in this area. We will use this intelligence to inform proposals for a revised approach and will consider the extent to which it is appropriate for the OfS, as the independent regulator for higher education in England, to set requirements that go beyond those in consumer protection law.

### **Conclusion**

Universities and colleges have important legal responsibilities to ensure the consumer rights of current and prospective students are protected. These responsibilities include the provision of clear information about courses; transparent and fair terms and conditions in student contracts; and accessible and fair complaint-handling procedures.

The OfS will continue the work set out in this brief to help protect students as consumers, and will be engaging with students, and those who work to support students, to understand their concerns and priorities in this area.





## Notes

<sup>1</sup> In this brief, for the sake of readability, we may use ‘universities and colleges’, or sometimes simply ‘universities’ or ‘institutions’, to refer to what our regulatory framework and other more formal documents call ‘higher education providers’.

<sup>2</sup> CMA, ‘[UK higher education providers: Advice on consumer protection law](#)’, 2023, pp3-4.

<sup>3</sup> There is a wealth of academic literature on students as consumers and the marketisation of higher education in the UK. Examples of discussion on this topic include Williams, J, ‘Consuming higher education: Why learning can’t be bought’, 2013; Brown, R, ‘[The marketisation of higher education: Issues and ironies](#)’, 2015, published in *New Vistas*, 1 (1), pp4-9; Palfreyman, D and Tapper, T, ‘Reshaping the university: The rise of the regulated market in higher education’, 2014.

<sup>4</sup> Department for Business, Innovation and Skills, ‘[Higher education: Students at the heart of the system](#)’, White paper, UK government, 2011.

<sup>5</sup> See, for example, Tomlinson, M, ‘[Student perceptions of themselves as “consumers” of higher education](#)’, 2017, published in *British Journal of Sociology of Education*, 38:4, pp450-467.

<sup>6</sup> CMA, ‘[An effective regulatory framework for higher education: a policy paper](#)’, 2015.

<sup>7</sup> CMA, ‘[UK higher education providers: Advice on consumer protection law](#)’, 2023, p3.

<sup>8</sup> [Consumer Rights Act 2015; The Consumer Protection from Unfair Trading Regulations 2008; The Consumer Contracts \(Information, Cancellation and Additional Charges\) Regulations 2013](#). Note that a bill before Parliament envisages making changes to the 2008 regulations and potentially other areas of consumer protection law.

<sup>9</sup> CMA, ‘[UK higher education providers: Advice on consumer protection law](#)’, 2023.

<sup>10</sup> This is not an exhaustive list of organisations working in this area. For more information about the work of these organisations and the other bodies they work with, see their websites (given in endnotes 11 to 18).

<sup>11</sup> See [Competition and Markets Authority](#).

<sup>12</sup> For more about the responsibilities of the CMA see CMA, ‘[Our responsibilities](#)’.

<sup>13</sup> See Chartered Trading Standards Institute, ‘[Looking for consumer help and advice?](#)’. This web page includes a tool to find local trading standards departments.

<sup>14</sup> See [National Trading Standards](#).

<sup>15</sup> See [Chartered Trading Standards Institute](#).

<sup>16</sup> See [Office for Students](#).

<sup>17</sup> See [Office of the Independent Adjudicator](#).

<sup>18</sup> See [Advertising Standards Authority](#).

<sup>19</sup> See [section 50](#) of the Consumer Rights Act 2015.

<sup>20</sup> See [regulation 6 \(3\)](#) of The Consumer Protection from Unfair Trading Regulations 2008 and [regulation 10](#) and [Schedule 2](#) of The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.

<sup>21</sup> See CMA, ‘[UK higher education providers: Advice on consumer protection law](#)’, 2023, p24, pp30-31.

<sup>22</sup> See [Regulation 40](#) of The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.

<sup>23</sup> See CMA, ‘[UK higher education providers: Advice on consumer protection law](#)’, 2023, p24, pp30-31.

<sup>24</sup> See CMA, ‘[UK higher education providers: Advice on consumer protection law](#)’, 2023, pp38-40.

<sup>25</sup> See [RWE Vertrieb AG v Verbraucherzentrale Nordrhein-Westfalen eV](#). In particular, see paragraph 54, which concerns the importance of assessing whether consumers can avoid a contractual variation by terminating the contract and switching service provider:

‘[...] it is of fundamental importance [...] that the right of termination given to the consumer is not purely formal but can actually be exercised. That would not be the case if, for reasons connected with the method of exercise of the right of termination or the conditions of the market concerned, the consumer has no real possibility of changing supplier [...].’

<sup>26</sup> The Consumer Protection from Unfair Trading Regulations 2008, [regulation 2](#) states:

‘[...] “professional diligence” means the standard of special skill and care which a trader may reasonably be expected to exercise towards consumers which is commensurate with either:

- a. honest market practice in the trader’s field of activity, or
- b. the general principle of good faith in the trader’s field of activity;’

<sup>27</sup> See [regulation 5](#) of The Consumer Protection from Unfair Trading Regulations 2008.

<sup>28</sup> See paragraphs 5 and 6, [Schedule 1](#) of the Consumer Protection from Unfair Trading Regulations 2008.

<sup>29</sup> See [regulation 6](#) of The Consumer Protection from Unfair Trading Regulations 2008.

<sup>30</sup> OfS, ‘[Securing student success: Regulatory framework for higher education in England](#)’ (OfS 2022.69), November 2022, pp142-150.

<sup>31</sup> See [Office of the Independent Adjudicator](#).

<sup>32</sup> Office of the Independent Adjudicator for Higher Education, ‘[Annual report 2022](#)’.

<sup>33</sup> A new complaints scheme, operated by the OfS, will in future consider free speech complaints about universities and colleges or their students’ unions, from students, staff or visiting speakers. See [Higher Education \(Freedom of Speech\) Act 2023](#).

<sup>34</sup> OfS, ‘[Notifications](#)’, last updated March 2021.

<sup>35</sup> OfS, ‘[New OfS-National Trading Standards partnership to protect students’ rights as consumers](#)’, November 2022. See also [National Trading Standards](#).

<sup>36</sup> OfS, ‘Briefing note: [Disruption to students caused by industrial action](#)’, November 2022.