

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.

Summary

Applies to: all registered providers.

Initial or general ongoing condition: initial and ongoing condition.

Legal basis: section 5 of HERA.

Notes

364. Any assessment that the OfS makes about whether a provider has satisfied this condition is not a judgment about whether the provider is complying with consumer protection law and should not be seen as such. Providers will need to continue to seek their own legal advice to ensure compliance with the law.

Guidance

365. 'Policies, procedures and terms and conditions' means the arrangements that a provider has put in place to:

- a. Ensure that applicants and students are provided with accurate information about their course and the provider and that such information is quantifiable, timely, accessible and enforceable.
- b. Enter into student contracts that have transparent and fair terms and conditions.
- c. Ensure that complaint handling practices are clear, accessible and fair.

366. 'Student contracts' include the contract for academic services and other contracts into which a student may enter as part of the higher education experience, including but not limited to contracts governing the provision of accommodation, disability support packages, scholarships, sports facilities and additional course costs.

367. 'Relevant guidance' means the CMA's publication 'UK higher education providers: advice on consumer protection law',²¹ or other guidance that the provider can demonstrate to the satisfaction of the OfS is similarly authoritative.

368. In judging whether a provider has had due regard to relevant guidance about how to comply

²¹ See www.gov.uk/government/publications/higher-education-consumer-law-advice-for-providers.

Compliance checklists are at Annex A of this guidance.

with consumer protection law, material that the OfS may consider includes:

- a. Information provided or published by the provider about the approach it takes to ensuring compliance with consumer protection law.
- b. The information a provider publishes, or provides directly to applicants and students, about the provider and its courses.
- c. The contracts a provider uses to govern its relationship with students and the terms and conditions for these.
- d. Student complaints, whether to the OIA or elsewhere, that the provider is not operating in compliance with consumer protection law.
- e. Information from the CMA or from others, that the provider is not operating in compliance with consumer protection law.

Assessment

369. A provider seeking registration is required to submit a short self-assessment, describing how, in developing its policies, procedures and terms and conditions, it has given due regard to relevant guidance. Where the provider has used guidance other than that published by the CMA, it must demonstrate the appropriateness of this guidance.

370. The self-assessment must be evidenced by reference to supporting evidence, that might include, but not be limited to:

- information on organisational and staffing arrangements, for example, whether there is a department and/or designated staff member responsible for consumer law issues
- information about staff training on the provider's consumer law obligations
- minutes of relevant meetings and other relevant documentation
- information on working groups or committees established to ensure compliance with consumer law
- details of reviews (planned or actual) into information management and provision, complaint handling and the setting terms and conditions and/or contracts
- evidence that professional legal advice has been sought
- policies relating to sources of information for staff and students, with examples of how this is provided e.g. hyperlinks in the provider's submission
- policies and procedures intended to ensure that student contracts are fair and transparent
- policies and procedures relating to consumer law obligations, such as information management and provision, complaints handling and setting terms and conditions

and/or contracts

- complaints process
- refund and compensation policy
- samples of web-site course descriptions, letters supporting offers to applicants, terms and conditions, model contracts
- information showing awareness of the OIA's Good Practice Framework.

371. In order to determine whether a provider continues to comply with this condition, the OfS's assessment will be informed by the provider's behaviour, information submitted by the provider, and any other information available to the OfS, such as whistleblowing / public interest disclosure reports submitted to OfS, or information from other relevant bodies, such as OIA, CMA or Trading Standards. The OfS may seek further information and evidence from a provider if it deems this to be necessary.

Behaviours

372. In order to determine whether or not a provider is complying with this condition on an ongoing basis, the OfS's judgement will be informed by the provider's behaviour, as well as information submitted by the provider or available to the OfS.

373. The following are non-exhaustive examples of behaviours that may indicate compliance with this general ongoing condition. A provider:

- responds to the OfS's queries in relation to the condition quickly, openly and transparently
- regularly reviews the adequacy and effectiveness of its policies and procedures relating to the provision of information; terms and conditions; and complaints handling.

374. The following are non-exhaustive examples of behaviours that may indicate non-compliance with these general ongoing conditions. A provider:

- does not follow the procedures set out in its original submission and this is evidenced to OfS through third party feedback from students, their representative organisations, CMA, OIA or Trading Standards
- does not engage with the OfS, and does not notify the OfS of any reportable events and/or does not retain and submit the required information in relation to any condition
- fails to comply with relevant statutory obligations, as indicated by judicial proceedings and/or steps taken by other regulators, or third parties such as Trading Standards, OIA, CMA, students or their representative bodies
- does not have management capacity and capability to ensure that it is able to continue to meet its ongoing conditions of registration.