

## Consumer Law Guidance

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| <b>Purpose</b>               | Explains the impact of consumer protection law on the enrolment of students |
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The Consumer Protection from Unfair Trading Regulations 2008 (CPR 2008)

The CPR 2008 make it unlawful to mislead students by failing to give them the information they need to make an informed decision. Students, therefore, must be provided with 'material information' when researching what and where to study. Material information is the information the student needs to make an informed decision.

According to the CPR 2008, material information must be clear, intelligible, unambiguous and provided in a timely manner.

The information must be easily accessible, for example, via the College's website.

Students must be provided with full information about courses and their costs up front.

The Competition and Markets Authority (the "CMA") has provided a non-exhaustive list of key course related material information under the CPR 2008 which can be found [here](#): (please see page 29 of the Higher education: consumer law advice for providers 31<sup>st</sup> May 2023).

Where the College publishes materials (such as prospectuses or information on its website) which provide sufficiently detailed information about the courses being offered, including costs, for the prospective student to make a decision about applying, this will be an 'invitation to purchase' under the CPR 2008. In each invitation to purchase, the College should ensure it is providing all the necessary 'material information', for example the main characteristics of the course, the total tuition fees and other costs, in a comprehensive way.

Where advertising and marketing of courses is directed at particular groups of prospective students, e.g., international students, part-time students or students learning at a distance, the CPR 2008 require the College to take account of factors that are characteristic of those groups and the factors that will be relevant to their decisions. Information relating to English language proficiency, visa and immigration requirements is likely to be relevant to international students and facility accessibility requirements such as library opening times, course timetables and course length is likely to be relevant to the decisions of part-time students.

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The CPR 2008 require that the College consider the factors that may particularly affect the decisions of vulnerable groups. Certain practices may particularly impact on the decisions of students who have disabilities which affect their ability to move around campus, for example:

- making inaccurate statements about accessibility to facilities; and
- omitting to mention restrictions on access to buildings.

It is important to consider where prospective students will look for information and ensure that the material information is provided in the right places. Departmental materials, course pages, etc. should provide the required material information.

Care should be taken to ensure that information provided, in whatever form, is accurate and does not contain inaccuracies which may impact students' decisions.

### **The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations (CCR 2013)**

#### **Introduction**

The CCR 2013 apply to contracts between a 'trader' and a 'consumer'. For the purposes of the CCR 2013, the College is a trader, and its students are consumers. However, it appears that the CCR 2013 does not apply to services provided for free. Therefore, the information given below is for full and part fee paying students.

The CCR 2013 distinguishes between three different contracts being:

1. distance contracts
2. off-premises contracts
3. on-premises contracts

These contracts are defined as follows:

1. a distance contract – the key consideration to determine whether there is a 'distance contract' is whether the agreement is negotiated and entered into at a distance, i.e., without the simultaneous physical presence of the trader and consumer, exclusively using distance communication, e.g., the internet.
2. an off-premises contract – this type of contract is, broadly, one where face-to-face communication away from the College played a significant role. The full definition is given by CCR 2013, reg 5, as a contract which is any of these:
  - A contract concluded in the simultaneous physical presence of the trader and the consumer, in a place which is not the business premises of the trader.

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- A contract for which an offer was made by the consumer in the simultaneous physical presence of the trader and the consumer, in a place which is not the business premises of the trader.
  - A contract concluded on the business premises of the trader or through any means of distance communication immediately after the consumer was personally and individually addressed in a place which is not the business premises of the trader in the simultaneous physical presence of the trader and the consumer.
  - A contract concluded during an excursion organised by the trader with the aim or effect of promoting and selling goods or services to the consumer.
3. an on-premises contract – this is a contract which is neither an off-premises contract or a distance contract.

### **Requirements for on-premises contracts**

Before the student is bound by an on-premises contract (generally the point at which the student accepts an offer made by the College), the College must give or make available to the student the information described in [Schedule 1](#) of the CCR 2013 in a clear and comprehensible manner, if that information is not already apparent from the context. Schedule 1 lists 11 pieces of information (not all of which will be applicable).

Please note that the CCR 2013 does not provide for any statutory right to cancel or cooling-off period in relation to on-premises contracts.

### **Requirements for off-premises contracts**

The requirements are more onerous for off-premises contracts. In these circumstances, the College must, prior to the contract:

- provide the student with the relevant information described in [Schedule 2](#) of the CCR 2013. This is a list similar to the list found in Schedule 1 for on-premises contracts, but is more extensive; and
- provide a cancellation notice in the prescribed form (found at [Part B of Schedule 3](#) of the CCR 2013). The College provides its own cancellation notice which should be used.

Both must be provided on paper (or with the agreement of the consumer, on another 'durable medium', e.g., email).

Once the contract has been entered into, the College must also give the student a copy of the signed contract, or a confirmation of the contract. This must be on paper (or with the agreement of the student, on another durable medium). This must be provided within a 'reasonable time' but in any event before performance of the College's service begins.

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Students are able to cancel the contract without giving any reason or incurring any liability during the cancellation period. In most cases, the cancellation period is 14 days starting the day after the date that the contract is entered into.

The student is not required to cancel by using the cancellation form provided by the College and can instead 'make any other clear statement setting out the decision to cancel the contract'. Importantly, this means that the contract can be cancelled orally. It is prudent to keep records of contact with the student should there be a dispute regarding cancellation.

If the student does choose to cancel during the cancellation period, then the College must reimburse all payments received.

The College must not begin the supply of services to the student before the end of the cancellation period. However, in exceptional circumstances, services can begin immediately if the student makes an express request on a durable medium.

### **Requirements for distance contracts**

The requirements for distance contracts are similar to those for off-premises contracts. As above, the College must provide the information described in [Schedule 2](#) of CCR 2013 and provide a cancellation notice in the prescribed form.

The CCR 2013 recognises that communicating at a distance, by for example telephone or email, provides challenges. The key points are as follows:

Unlike off-premises contracts, there is no requirement for pre-contractual information to be provided on a durable medium. It should, however, be given in a way appropriate to the means of distance communication used, i.e., on a webpage easily accessible by the student prior to entry into the contract.

The College must give the student a copy of the contract and confirm all of the information set out in schedule 2 in paper or email (this should not be a link to the College website).

Where the College calls a student with a view to concluding a distance contract, it must, at the beginning of the conversation, disclose its identity and the commercial purpose of the call.

CCR 2013, [reg 14](#) sets out specific requirements for distance contracts 'concluded by electronic means', i.e., via a website and email. If it is necessary to conclude a contract via electronic means, the College should, directly before the confirmation, provide consumers with the information listed in CCR 2013, [Schedule 2, paras \(a\), \(f\), \(g\), \(h\), \(s\) and \(t\)](#),

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(to the extent each is applicable) and also ensure that the student explicitly acknowledges that the contract implies an obligation to pay (where applicable). If using a button, use wording such as "order with obligation to pay".

The consumer's rights of cancellation are the same as for off-premises contracts.

Where any pre-contract information that you have already provided changes, the College must obtain the student's express agreement to the change before or at the time of making the offer.

The CMA has given its interpretation as to the information which should be provided to HE students (which is also likely to apply to fee paying FE students) for distance, off-premises and on-premises contracts at page 75 of the Higher education: consumer law advice for providers 31<sup>st</sup> May 2023 (linked above).

### Consequences of a failure to comply

- Failure to provide the requisite information will be a breach of contract.
- If the College fails to provide the pre-contractual information as to cancellation, then the cancellation period is extended and only ends at 12 months plus 14 days after the date of contract. If the College provides the information about the right to cancel late, then the cancellation period will end 14 days after provision of the information.
- If the specific requirements in relation to distance contracts concluded by electronic means are not satisfied, then 'the consumer is not bound by the contract'.

### The Consumer Rights Act 2015 (CRA 2015)

The CRA 2015 consolidates a number of previous pieces of consumer protection legislation. For the purposes of the CRA, students are consumers. The College must ensure that:

- its terms can be easily accessed, for example on its website, and are available to students,
- students are aware of its terms and that they are given the opportunity to review them before they accept an offer,
- its terms are written in plain and intelligible language and are clear and transparent so that students understand them, how they affect their rights and obligations, and how the terms could impact them,
- any important or surprising terms are drawn to students' attention before they accept an offer, so that their significance is not missed. For example, a term that sets out how tuition fees may change over the duration of the course should be brought to students' attention up front,
- its terms are not drafted in such a way that their effect could be unfair. For example, the following might be open to challenge:

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- terms allowing the College an unreasonably wide discretion to vary course content and structure or increase fees during the duration of the course;
- terms seeking to limit the College's liability for non-performance or substandard performance of the educational service;
- terms that give the College a blanket assignment, or a blanket right to receive an assignment, of intellectual property rights from students;
- terms allowing the College to impose academic sanctions against students for non-payment of non-tuition fee debts;
- terms allowing disproportionate charges in compensation or requiring the student to pay for services which have not been supplied, if the consumer decides not to conclude or perform the contract;
- terms allowing the College to set the price after the student is bound by the contract, where no price or method of determining the price is agreed when the consumer is bound.

CRA 2015, [section 50](#), broadly, states that anything said or written by or on behalf of the College about its services, which is taken into account by an applicant when making a decision about whether to enter into a contract with the College, will be binding. Changes to this information will be ineffective unless expressly agreed with the learner. College staff should be mindful of this when concluding contracts with applicants.