

Conduct sanctions – summary of findings

Purpose

The purpose of this summary note is to outline the Office of Fair Trading's ('OFT') views on the terms and conditions that we have reviewed, used by some universities to prevent students from enrolling onto the next academic year or withholding paid-for services (such as internet connection or access) if they engage in certain conduct of which the university disapproves.

Background

In July 2013 the OFT opened an investigation under the Enterprise Act 2002 to consider whether there are problems with the terms and conditions used by some universities to prevent students from graduating or enrolling onto the next academic year or using university facilities (i) if they owe monies to the university which relate to non-tuition fee debts or (ii) if they engage in conduct (unrelated to academic performance) of which the university disapproves.

The purpose of the investigation was to ascertain whether the practice of using academic sanctions to enforce debts ancillary to tuition fees, or certain conduct, could be unfair under consumer protection legislation.

The OFT intends to publish a report setting out its findings from the investigation in early 2014. However, this note has been produced ahead of the report to clarify the OFT's findings and views in respect of conduct terms and practices only. This follows representations from sector representatives for early clarification on this issue.

Conduct issues

The OFT was concerned that services (such as internet access), which students may be paying for, may be withheld from students under the auspices of disciplinary action, without procedures being in place, or when it is unfair to withhold the service in any event such as when used as a sanction to punish unrelated to the conduct in question and/or when such punishment may be considered to be disproportionate.

The OFT clarified that it was not looking to influence when or how universities took disciplinary action in situations of criminal misbehaviour such as assault, drug-dealing, hate crimes etc, or where they were considering whether a student was fit to continue with their course or graduate for reasons of serious misconduct, related to suitability to enter their profession.

Our views

The OFT considers that terms providing a university with a wide discretion in matters of student discipline, without the requirement to liaise with the student concerned or the ability for students to contest the issue and appeal against any decision, would be likely to be unfair under the Unfair Terms in Consumer Contracts Regulations 1999.

For example, terms allowing paid-for services to be withheld or applying academic sanctions for disciplinary matters in a blanket fashion or without a clear process may be open to challenge under the UTCCRs. We are aware of instances where students have alleged that their internet access was suspended without due process for criticising their institution on social media, for example.

Any ability to withhold services must be clearly set out in the university's terms and conditions, and properly brought to the student's attention. Fairness is more likely to be achieved where the student is properly notified of the allegations against them, and has a fair hearing to put their side of the story, before any sanction is invoked, and the student has a right of appeal to an independent decision maker.

The OFT considers that terms withholding paid-for services should not be used to restrict any legitimate rights of expression or other human rights. It is unlikely to be reasonable for universities to withhold internet access as part of an exercise in managing their own reputation for instance.

Our findings

The OFT has not identified any widespread concerns with terms regarding disciplinary sanctions for conduct of which the university disapproves. We found that the majority of UK universities whose terms and conditions we assessed have defined disciplinary procedures set out in their overarching rules and regulations or other terms and conditions.

In general, terms we have seen allow discretion to universities, and set out fairly comprehensive procedures for contacting the student concerned to inform them of the issue, allowing them the opportunity to contest the issue, informing them of the proposed sanction and having an appeals process in place. We accept that there are likely to be situations where applying such sanctions may be an appropriate and proportionate means of exerting discipline on students and regulating behaviour that may disadvantage the wider student community.

However, the university must act reasonably in these matters. In particular, where a student has a contract for the supply of services, the OFT considers that it would be unreasonable to withdraw those services unless there are clear rules that have already been brought to the student's attention, and a fair process is followed.

The OFT would have concerns if universities were not following defined disciplinary processes, withholding paid-for services, suspending students from study or applying other sanctions inappropriately or in a way that is disproportionate to the matter concerned.

This general conclusion is based on the evidence available to us at this time, which we have reviewed. Ultimately the final decision on whether a term is fair or unfair rests with the courts. None of these type of terms used by any university should be seen as approved by the OFT for general use. Our view is not binding on the courts, or upon other enforcers, nor does it fetter the OFT's discretion to take future action, as appropriate.