

# Consumer Law Handbook

## Managing compliance with consumer law OfS Annex C

This handbook provides guidance on how this all works, what the requirements are, and a single point of reference to help you ensure compliance with consumer law. NSCD has agreed a common approach to managing Consumer Law requirements.

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## Preface

Even before students take up a place at Northern School of Contemporary Dance (NSCD), a contract under consumer law is formed with NSCD. This handbook provides guidance on how this all works, what the requirements are, and a single point of reference to ensure compliance with consumer law. NSCD has agreed a common approach as a result of its previous membership of the Conservatoire for dance and Drama. It plans to use this approach as a standardised approach in the early stages of its independence as its own Higher Education Provider (HEP) to managing Consumer Law requirements.

- **Part 1** of this handbook sets out the NSCD's agreed operational approach to managing its obligations under Consumer Law.
- **Part 2** contains guidance on Consumer Law and what we need to do in order to comply with the agreed operational approach and the requirements of Consumer Law.

A full checklist that synthesises both the CMA Consumer Law Requirements and the related guidance from HEFCE about the provision of information to applicants and students is provided as Appendix 1 for us to benchmark ourselves against; the CMA and HEFCE guidance is also split into separate checklists (see Appendices 1 A and 1B).

Updates to this handbook have been made in June 2020 in the light of new guidance and requirements arising from the Covid19 2020 pandemic. The specific sections of this handbook containing new information/additional guidance are:

### **Section 3 Additional requirements for the provision of material information to applicants and students arising from the Covid19 pandemic**

### **Section 4 What does NSCD need to do?**

Additionally, related to this guidance and new requirements, two new appendices have been added to the staff infobase on NSCD-Moodle to assist staff with managing the provision of information to prospective and current students:

Appendix 9a Covid19 Checklist for Provision of Information to Applicants

Appendix 9b Covid19 Checklist for Provision of Information to Students

## **PART 1: MANAGING CONSUMER LAW COMPLIANCE**

### **Introduction**

In 2015, the Competition and Markets Authority (CMA) introduced guidance for Higher Education Providers on Consumer Law Protection. This document has informed much of this handbook and can be found at the following link:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/428549/HE\\_providers\\_-\\_advice\\_on\\_consumer\\_protection\\_law.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/428549/HE_providers_-_advice_on_consumer_protection_law.pdf)



Additionally, from 2018, the new regulatory body for higher education in England is the Office for Students. The Office for Students regards students (including postgraduate students) as consumers. To continue to deliver higher education programmes of study, the Conservatoire must register with the Office for Students. As part of registering with the Office for Students, NSCD along with all other registered HE providers is required to complete a self-assessment showing how they have given due regard to guidance about how to comply with consumer law. <https://www.officeforstudents.org.uk/advice-and-guidance/regulation/student-protection/students-as-consumers/>

In June 2020, in light of the obligations and collective responsibility of NSCD with regard to the Office for Students registration, the Consumer Rights Act (2015), the Consumer Protection from Unfair Trading Regulations (2008) (CPRs) and the Consumer Contract Regulations (CCRs), the Leadership team agreed five principles (the 'Effective Collective Principles') for ensuring appropriate oversight and consistency of practice where this is prudent. These principles can be found on page 5 of this handbook.

The principles are designed to support compliance with meeting consumer law requirements, promote consistency of practice, and ensure that NSCD can demonstrate a joined-up approach and an appropriate level of oversight in this area.

The principles support the School to meet the requirements of Consumer Law, as laid out by the CMA in Annex B to its guidance (this is reproduced for your reference) as:

#### **Appendix 8 CMA Requirements Annex B Information Provision Requirements under the CCRs).**

As agreed by the Leadership team, Academic Registry and Admissions who all manage quality and maintenance of standards, in meeting the requirements under Consumer Law, which will include as needed:

- Undertaking an annual review of School website content and usability
- Helping to update model documents and template documents
- Advice and guidance

In June 2020, the Office for Students issued guidance on the provision of information to applicants and current students in respect of the Covid19 pandemic and consumer law.

### **1.1. The Effective Collective Principles (*Table 1*)**

As identified in the School's Terms and Conditions, Fees policy and management of pre-contract documentation (agreed October 2020), the five principles remain in place for how NSCD manages its obligations under Consumer Law with the addition of Principle 6 under the related student protect plan:

<b>Principle 1</b>	Create a unified set of templates for Offer Letters, Terms and Conditions, Fees Policies, and course summaries as far as is practicable, and agree any changes to the contents of these documents in advance of publication of any changes with Academic Registry and the Quality Team;
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<b>Principle 2</b>	NSCD continues to adhere to the guidance on the provision of ‘material information’ provided in 2017 by HEFCE, <sup>1</sup> and discuss plans to change the content of this information on its school website with Academic registry / Quality Team and admissions <u>in advance of publication of any changes</u> for information on this list;
<b>Principle 3</b>	Academic Registry, Admissions and marketing will continue to review other information provided on the website to discuss and support compliance in this area regarding implications for consumer law;
<b>Principle 4</b>	Where, after offers have been made to students, the admissions manager or Head of Faculty determines that there needs to be an amendment to the course as set out in the offer letter, terms and conditions, fees policy, course summary, or ‘material information’ provided on school websites or other sources, this should be raised with the Vice Principal for agreement before the change is made or before students are advised about the change;
<b>Principle 5</b>	Building on the internal consumer law guidance first circulated in 2016, Academic Registry and Quality Team will produce and maintain an expanded ‘consumer law compliance’ handbook that covers this approach, contains relevant guidance, up to date model documents, and provides a single point of reference to assist with the continuity and future management of these areas.
<b>Principle 6</b>	NSCD has developed a comprehensive student protection plan to identify how it will communicate information and support students to fulfil their study choices in the unusual circumstances of a programme not being able to run or programme failure.

## PART 2: GUIDANCE

This guidance should be read in conjunction with the *Guidance for HE Providers* published in 2015 by the Competition and Markets Authority (‘CMA Guidance<sup>2</sup>’) and HEFCE’s *Guide to providing information to prospective undergraduate students* published in 2017.<sup>3</sup>

A checklist which synthesises the CMA requirements and a summary of the HEFCE guide is provided as **Appendix 1** to use to ensure that we are meeting the necessary requirements. Academic Registry and the Quality Team can provide support with this work and can check School websites and documentation where needed.

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<sup>1</sup> See appendix 1b) for the list of ‘material information’ agreed by CEC in spring 2018; this information is also found in Appendix 1 where it is mapped against the CMA requirements.

<sup>2</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/428549/HE\\_providers\\_-\\_advice\\_on\\_consumer\\_protection\\_law.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/428549/HE_providers_-_advice_on_consumer_protection_law.pdf)

<sup>3</sup> <http://www.hefce.ac.uk/lt/provinfo/>

## 2.1. The Consumer Law Context

### What is covered by the CMA Guidance on consumer law?

All institutions should note that consumer rights are likely to extend to postgraduate students (see CMA Guidance, section 2.17) to prepare for this we have decided to take a single approach to the introduction of the terms and conditions.

The CMA's summary of these requirements set out in the CMA Guidance pages 5-8 and is reproduced in **Appendix 1** to this document. The key phases / elements of the student-consumer life-cycle are defined by CMA as:

- Information provision: ensuring that students are given up front, clear, timely, accurate and comprehensive information. CMA identifies three phases: 'student research and application', 'offer stage', 'student enrolment stage' HEFCE's 2017 Guidance provides practical advice on the implementation of the CMA Guidance in this part of the life-cycle. Information may be contained both on websites and in prospectuses. Please see **Appendix 1** for a checklist that synthesises both sets of guidance;

- Ensuring that terms and conditions between HE providers and students are clear. This includes not asserting unreasonably wide discretion to vary course content or increase fees during the duration of the course in fees policies (and terms and conditions);
- Ensuring that HE providers' complaint handling processes and practices are accessible, clear and fair to students. The model terms and conditions document is relevant to each of the above areas.

Provision of information to applicants/students governed by consumer law			
What is 'material information'?	• Information about the Higher Education courses we offer	Contained in:  Website Content <sup>4</sup> ; Paper prospectuses; Verbal information provided e.g. at Open Days	<b>Information must be up to date, current and accurate at the time we open our Admissions process</b>
	• The structure of Higher Education courses		
	• The fees/costs		
	• The pre-contract information (see 'what is pre-contract information' below)		
What is 'pre-contract information'?	• Terms and Conditions (durable medium)	Held in:  Offer letters; Website Content; paper prospectuses	<b>Information must reflect what is published on our website and prospectus; any changes must be clearly flagged in our offer letter/before we confirm an offer</b>
	• Fees Policy (durable medium)		
	• Course Summary (durable medium)		
	• Accompanying policies and procedures (e.g. Complaints Procedures, Misconduct Procedures etc)		

<sup>4</sup> Please refer to **Appendix 1b)** for the list of material information that comprises the list agreed by Leadership team covering areas that professional services, Academic Registry and quality team will be consulted about, where faculties would like to propose changes to information. Please refer to **Appendices 1, 1a) and 1b)** for the checklists of CMA requirements and the list of material information as agreed by CEC (Appendix 1b).

## 2.2. 'Material Information' and 'Pre-contract Information': Provision of Information to applicants / students

### Material Information, Pre-contract Information and the Consumer Rights Act (2015)

The Higher Education & Research Act (HERA) (2017) came into force in June 2018, and set out in law that applicants and students of higher education are covered under the Consumer Rights Act (2015). The Consumer Rights Act (2015) ensures that **any statement made by a School when an applicant is either deciding to enter into the contract, or is making a decision about 'services' after entering into the contract, is now a binding contractual term.**

This would include, for example, statements made by staff/students at open days, content on our School website, content in prospectuses and other published information.

NSCD will take care to ensure the accuracy of published information and to **notify applicants and continuing students** of any changes to material/pre-contract information.

### 3.0. Additional Requirements for the Provision of Material Information to Applicants and Students arising from the Covid19 Pandemic (2020/21 academic year)

In June 2020, the Office for Students published specific guidance on the provision of information to applicants and students in light of the Covid19 pandemic and the impacts of this relating to changes to advertised programmes and material information. The OfS guidance can be found at the following link:

- <https://www.officeforstudents.org.uk/publications/guidance-for-providers-about-student-and-consumer-protection-during-the-pandemic/>

Staff should also be aware of the additional published information from the Office for Students at the following links:

- [www.officeforstudents.org.uk/publications/guidance-for-providers-about-quality-and-standardsduring-coronavirus-pandemic/](http://www.officeforstudents.org.uk/publications/guidance-for-providers-about-quality-and-standardsduring-coronavirus-pandemic/)
- [www.officeforstudents.org.uk/publications/regulatory-requirements-during-the-coronavirus-covid-19-pandemic/](http://www.officeforstudents.org.uk/publications/regulatory-requirements-during-the-coronavirus-covid-19-pandemic/)

Staff are asked to note in particular the following extracts (in italic font) from the Office for Students' guidance for providers about student and consumer protection during the pandemic. NSCD has highlighted in bold font information where we are required to act:

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*When assessing the School's behaviour in relation to compliance with the C conditions, the OfS expects them to **protect the interests of their students by providing clear and timely information to prospective and current students**, ensuring that terms and conditions are fair and transparent, and that complaints processes are accessible and fair.*

*As set out in our guidance on quality and standards during the pandemic, NSCD should **make all reasonable efforts to provide alternative teaching and support for a student that is broadly equivalent to the NSCD's usual arrangements**. NSCD will ensure that it follows the principles set out*



*in their student protection plans in relation to ensuring continuation of study for students, even where their plans do not specifically refer to pandemic-related risks.*

*NSCD has already adapted its arrangements for the remainder of the 2019-20 academic year and will be planning for any adjustments that may be necessary for 2020-21. As set out above, we expect only to take regulatory action where we consider that there has been a significant disregard for CMA guidance (and a significant breach of consumer protection law which is not a result of public health advice may be evidence of that), or reasonable efforts have not been made to protect the interests of students. We will, as a matter of course, take into account the impact of the pandemic on its ability to satisfy conditions of registration.*

*During this period, we are using four primary mechanisms to enable us to identify regulatory concerns about student and consumer protection:*

- NSCD will report if it intends or expects to cease teaching some or all of its courses to one or more groups of students, and it will seek further information as a result of such a report. Further information about reduced reporting requirements is available on our website.*
- NSCD will continue to encourage students and other third parties to notify us of any concerns about the arrangements put in place by the School. Such notifications will be particularly important to help us identify where we may not have made reasonable efforts to protect the interests of our students.*
- NSCD will make transparent its approaches to teaching and assessment during the pandemic ensure provide guidance and expectations and follow up any notifications that cause concern.*
- As part of our normal regulatory approach NSCD will consider the number and pattern of complaints to the OIA and we will use this information to inform our assessments after the pandemic and so will be able to take into account issues raised by our students and the OI's response to these.*

*In this context it is important that NSCD **considers how its approaches to the current situation will affect all students, and those who might be most vulnerable to disruption.** This includes students suffering from coronavirus or who need to self-isolate, international students, and students unable or less able to access or effectively engage in remote learning for whatever reason, together with care leavers, those estranged from their families, and students with disabilities.*

*NSCD will **engage with student representative groups (through Student/Staff Liaison Committee, SSLC) to understand the concerns of students collectively as well as considering concerns raised by individual students.***

*NSCD will **consider the needs of prospective students planning to start courses in 2020-21.** It is not clear when the progress of the pandemic might allow for the delivery of courses to return to the format originally intended and advertised. In order for providers to satisfy our regulatory requirements, **applicants will need to understand what NSCD is committing to deliver, how it intends to achieve this and what plans are in place to manage possible changes should these be required in response to the pandemic and changing public health advice.** Prospective students should be able to confirm their choice of a course and NSCD with confidence on the basis of such information.*

### **Prospective students**

*Prospective students will have a different relationship with NSCD to current students. This is because they will be making decisions about which course to choose, and where to study, based on the information given by different providers. When prospectuses and other marketing materials were*

published for courses starting in 2020-21 and prospective students made their applications, the information provided would have been based on the way our courses would normally run.

Some information is therefore likely to have changed significantly as a result of the pandemic. Notwithstanding the significant uncertainty regarding the impact of coronavirus, **NSCD will be clear about these changes, for example the extent to which teaching is now planned to be delivered online rather than face-to-face and over what period. Prospective students will need to understand what NSCD is committing to deliver in the current circumstances and in different scenarios, how this will be achieved, and the changes that might need to be made in response to changing public health advice. Sufficient information will be provided** to allow prospective students to make an informed decision about whether they are willing to start a course and accept those adjustments or whether they would prefer to defer until NSCD is able to deliver the course as originally advertised, or whether they might choose a different course or different provider.

It is important to note that **when an offer is accepted by an applicant a contract is formed. Any changes to material information that has been provided to the prospective student should be communicated to them before an offer is accepted, and they should expressly consent to those changes.** Material information is information that students need to make an informed choice or decision and will cover details about the course and fees and includes the information described in paragraph 40.

**Sufficient information needs to be given to prospective students about the course, in line with CM guidance, including information about any planned changes and NSCD's plans for different scenarios. NSCD will set out information that includes the following:**

**a. Content of the course.** If the modules, or other course components such as placements or field trips, that will be offered have now changed or reduced, or will be delivered in different years, this needs to be made clear. NSCD will give applicants clear information about the content that will be delivered in 2020-21 and beyond.

**b. Length of the course.** For example, if there are changes to the anticipated length of the course to take account of particular assessment methods or placements that might be core requirements for the course which can only be undertaken in a normal operating environment, then these will be explicit.

**c. How the course will be delivered.** This includes the extent to which the course will now be delivered online rather than face-to-face and how the balance between, lectures, seminars and self-learning has changed. Prospective students will be particularly interested in the volume and arrangements of contact hours and support and resources for learning if this is now taking place online and virtually.

**d. Cost of the course.** Information about the cost of a course will be explicit up front and will not increase once the course has started and so if NSCD is offering a discount only for the year in which any adjustments will be made and the cost will increase to a 'normal' level thereafter, this needs to be made clear to the applicant. NSCD will be clear about any extra costs that students might need to bear to access resources or buy equipment as a result of the changes to teaching.

**e. How the course will be assessed.**

**f. Award.** If there are potential changes to the qualification that is awarded, as a result of the pandemic. If professional accreditation has not been confirmed for 2020-21 then this will be made clear.

**g. Possible locations.** If the pandemic has affected where teaching may be delivered if and when face-to-face teaching can resume, for example because social distancing requirements may mean additional space may need to be made available at a location that is not the normal teaching location for the course, then this will be made explicit.

We recognise that in the current circumstances it can provide NSCD with some difficulty around giving exact information to students on how a course will be delivered. However, we will **acknowledge what is definite and what is not, set out our plans for the delivery of the course and properly explain the differences in delivery that will apply in different circumstances.**

**NSCD will let students know about their plans for delivery in different scenarios and changes in public health advice**, for example by saying that teaching will be online until government restrictions on social distancing are lifted which might mean this is online for the entire academic year, or by describing that face-to-face teaching will be delivered following guidelines on social distancing and increased health and safety measures. **NSCD will explain, if face-to-face teaching is resumed, what measures it would take in the event of a further lockdown.**

NSCD recognises that **plans need to be explained in a way that will allow a prospective student to make an informed choice about what and where they study and to allow them to change their mind** if they are not satisfied with the revised offer.

**NSCD will also let applicants know how it will communicate with them about these plans and any further changes that are necessary** in response to changes in public health advice.

**If an applicant is not made aware of, or does not consent to, changes to the material information in their offer and begins their course in 2020-21, NSCD will ensure that those students are aware of the options available to them**, such as the right for the students to seek repeat performance or a partial refund (dependent on what is applicable in the circumstances). This is because NSCD will have set out in advance of the student starting their course in 2020-21 what it plans to deliver in the current circumstances and what its plans are in different scenarios.

**In circumstances where offers have already been accepted, the express consent of the student will be needed to make any changes to material information that was included in the offer.** The OfS considers that this is likely to be different to a situation where the material information provided to prospective students set out what might change and how this would be implemented. Then, although the course would be different, this was already clearly and properly explained to the prospective student.

**Changes to material information will be drawn to the attention of applicants in a timely way so that applicants, whether or not they have already accepted an offer, can pursue other choices.** For example, for prospective students planning to start undergraduate courses in September 2020-21, we would expect such information to be made available to them before confirmation and clearing in August 2020.

## **Current students (with existing contracts)**

*NSCD has entered into contractual relationships with its current students and the material information it provided as part of the offer forms part of the contractual responsibility to the student. The content of those contracts and the relevant consumer protection law will determine the scope of the relationship, and potential remedies available for the student for any alleged breach of the contract (or relevant consumer protection law).*

*In the current circumstances where NSCD has had to make changes to courses to comply with government public health advice it is likely that delivery will have been, in the majority of cases, significantly different to that which was offered to the student. Where NSCD has existing contracts with its students, the terms and conditions that were agreed at the time the contract was formed will apply to the contractual relationship. This includes information that was provided to students at the application stage about how the course would be delivered.*

*As a general principle, the OfS expects that a provider should **make all reasonable efforts to fulfil its contracts with students by continuing to deliver higher education that is broadly equivalent to that which was originally advertised even if that education is being delivered through a different method as a result of public health advice.***

*The OfS will continue to expect providers to comply with its guidance on quality and standards. As set out in paragraph 48 above, generally only regulatory action will be taken where a provider has demonstrated significant disregard for CMA guidance, or a significant breach of consumer law which is not a result of public health advice, or where reasonable efforts have not been made to protect the interests of students.*

*NSCD **will need to provide current students with clear and timely information about any changes to material information about the course as set out in paragraph 40 above and should seek their consent to this change.***

*NSCD **will also let current students know what options are available to them if they are not satisfied with the changes that have been made;** for example, if there is an option for students to take a year out or to transfer to another course.*

*NSCD notes that while following this approach may be appropriate for regulatory purposes it does not imply that it as a provider will be compliant with the law.*

*Students have rights under consumer protection law, which includes the right to redress in certain circumstances.*

*NSCD will carefully consider its obligations under consumer protection law, including students' rights to redress. NSCD will seek its own legal advice and properly document its decisions in relation to consumer protection law.*

*As noted in paragraph 49, this guidance does not affect students' rights under breach of contract or consumer protection law or prevent action being taken by students or other authorities. Ultimately only a court can decide whether a breach of the law has occurred including whether any remedies for consumers apply. Students also have the right to complain to the OIA if they have completed the School's own internal complaints process.*

## 4.0. What does NSCD need to do?

- Follow its model Terms and Conditions, Fees Policy, and Offer Letter templates. The Course Summary Template should be followed.

- Terms and Conditions, Fees Policy, Course Summary documents and Offer Letters for checking by Academic Registry, Quality Team and Admissions manager ahead of publication/dissemination.

Please allow enough time check through the documents and feedback in accordance with any internal School schedule of approval.

- Material information must be accurate and kept up to date.

- Where there are changes to previously advertised programme delivery as a result of the Covid19 pandemic (including future as yet unforeseen changes):

- check the information in Section 3 of this handbook;
- use the checklists in Appendices 7a and 7b
- consult with Academic Registry and Quality Team for advice and guidance
- Ensure communications with applicants and current students are timely, as frequent as necessary, and accurate at the time of issue
- For applicants, ensure that the contract cancellation period (as set out in the Terms and Conditions) is renewed as necessary in the event of any change to material information
- For current students, ensure that student consent is sought to changes to programmes, and let students know what options are available to them if they are not satisfied with the changes that have been made

- Material information and pre-contract information needs to be easy to find on your website.

Academic Registry will support a user test for admissions to advise on user-friendliness and will review our website to check if there are any areas needing attention.

- When making formal offers of a place to study, the following 'Pre-Contract information' must be sent in durable medium at the point of making an offer to an applicant:

- Terms and Conditions (see Appendices 2 for the template and 2A for guidance)
- Fees Policy (see Appendices 3 for the template and 3A for a guidance checklist)
- Course Fact file document (see Appendix 4 for the template)
- Offer Letter (see Appendices 5 for the template and 5A for a template Guidance Note)
- (Guidance Note on changes to pre-contract information, if necessary/relevant)
- Links in 'pre-contract information' to web pages must be working or should redirect to new pages where the webpage has become obsolete.

It is easier to avoid broken links if landing pages are linked to where documents can be found, rather than to specific documents themselves.

- Changes to material/pre-contract information must be communicated to applicants and registered students.

Where applicants have already had a formal offer in durable medium, this will normally need to be reissued with a fresh set of pre-contract documents together with a guidance/briefing note about the changes, and the 14-day cooling period will recommence as if for the first time. An example of a guidance note is provided as **Appendix 5A**.

- Current Terms and Conditions, Fees Policies and Course Summaries should be published online before formal offers are made.



If applicants are unsure about anything then they should contact the Academic Registrar for discussion and/or advice.