

## **GUIDANCE FOR COMPLYING WITH CONSUMER PROTECTION LAW: PROGRAMME AND MODULE AMENDMENT**

### **1. Introduction**

1.1. These notes have been developed to reflect the advice published by the [Competition and Markets Authority \(CMA\) on higher education providers' responsibilities](#) toward applicants and students under consumer protection laws when changes are considered for Birkbeck programmes and modules. The College expects all staff members to abide by this guidance to ensure compliance with consumer protection law.

1.2. These guidance notes are designed to be read alongside the existing guidance on the procedure through which proposals for new programmes and amendments to existing programmes (minor and major) are considered. <http://www.bbk.ac.uk/registry/for-staff/quality/programme-approval>

### **2. Student Contract**

2.1. The College provides information to applicants through the print and web prospectuses on the programmes that we provide so that prospective students can make informed choices about what to study. The information that we provide to students advertising our programmes is a key part of the student contractual relationship with the College. It is essential that this information is maintained and is accurate at all times.

2.2. The contractual relationship between the College and the student is formalised when a student accepts an offer of study or enrolls, whichever comes first. The agreed contract is based on the details of the programme advertised.

2.3. Institutions are obliged under consumer law to provide details confirming the contract in a durable medium. The College now issues a Confirmation of Study Agreement (COSA) which is a pdf version of the online prospectus course entry. This document is provided via the student's BBK Profile and is produced for all students before the start of their first term. This forms an integral part of the student contract. COSAs are not re-issued but do include a disclaimer in case circumstances mean that changes are unavoidable, or in the students' interest, once a student has begun their programme. In this event (which should be exceptional and not the normal pattern of events) departments must ensure that they communicate with students over the change in line with the guidance below at the earliest available opportunity.

### **3. Programme and Module Amendments**

3.1. The College is committed to providing applicants and students with timely, accurate and clear information while also recognising the need to be flexible and responsive to subject and pedagogic developments and other changes which might impact on planned delivery. The College recognises the importance of ensuring curricula, resources and learning, teaching and assessment methods are current and appropriate. Furthermore, the College supports the use of feedback from staff, students, alumni, employers and other key stakeholders in enhancing its provision and aims to enable programme teams to adapt and refresh their programmes accordingly.

3.2. One of the College's key obligations under consumer protection law is to provide timely and accurate information to applicants and students entering into or holding a contract with the College. Therefore, programme and module leaders are encouraged to plan well in

advance any proposed changes which significantly affect the offering to current and future students.

3.3. Compliance with consumer protection law does not mean that the College can no longer change and enhance its provision but it does have implications for the timing on when changes can be brought in and how these changes are communicated to prospective and current students.

3.4. The College [Terms and Conditions of Study](#) allow for changes to programmes as below:

#### **Changes to Modules and Programmes**

*27. The College will make all reasonable efforts to deliver modules and programmes of study and all other educational services and facilities as described on its website or in the prospectus or other documents issued by it to any applicant or student. However, in some circumstances the College will be entitled to make reasonable changes including cancellation; due to factors beyond the College's control, to benefit the student experience, for operational viability, or in response to requirements by professional or accrediting bodies. Please see the Courses Disclaimer for information.*

#### **Cancellation of a Module or Programme**

*28. For reasons of operational viability, including insufficient numbers of students, it may be necessary for us to cancel a programme or module before it commences. If we cancel the programme or module, we will notify you as soon as possible and we will use reasonable endeavours to provide a suitable replacement. If you are not satisfied with the replacement provided by us or if we are unable to provide a suitable replacement, you may cancel the contract and withdraw your application without any liability for tuition fees (even if the cancellation period has expired).*

*29. If we are forced to discontinue your programme or module after you have begun your studies, we will inform you as soon as is reasonably possible and will use all reasonable endeavours to transfer you to a suitable replacement for which you are qualified. If you are not satisfied with the replacement provided by us or if we are unable to provide a suitable replacement, you may cancel the contract and withdraw from the course without incurring any further liability for tuition fees and you shall be entitled to a refund of all tuition fees paid to date. Please note the College Student Protection Plan available on our website.*

#### **Changes to Programmes or Modules prior to registration**

*30. As a result of the period between prospectus publication and registration, it may sometimes be necessary to vary the content of the programme or module (including optional modules), specific teaching staff or services described in the prospectus. The College will use all reasonable endeavours to ensure that changes are kept to a minimum, but if the College is required to make any material changes (as described in the offer letter and/or prospectus) before you register at the College, we shall bring these to your attention as soon as possible; if you reasonably believe that the proposed change will prejudicially affect you, you may either cancel the contract and withdraw your application for the course without any liability to us for tuition fees or transfer to such other programme or module (if any) as may be offered by us for which you are qualified.*

#### **Changes to Programmes or Modules after registration**

*31. The College will be entitled to make reasonable minor changes to the course where that will enable the College to deliver a better quality of educational experience to students or for factors beyond the College's reasonable control. In making any such changes, the College will aim to keep the changes to the minimum necessary to achieve the required quality of experience and will notify affected students in advance about any changes that are required.*

32. Where material changes (in the College's reasonable opinion) are necessary or proposed, student representatives will be consulted and all students informed as soon as possible. If the College changes your programme or module and you are not satisfied with the changes, you will be offered the opportunity to transfer to an alternative or withdraw from the programme or module without incurring any further tuition fee liability and may be entitled to a refund. If required reasonable support will be provided to enable you to transfer to another provider.

### **Force Majeure**

33. Sometimes circumstances beyond the control of the College may mean that it cannot provide its educational services. The College shall not be liable for any failure to perform its obligations under the terms of this contract where such performance is directly caused by circumstances beyond its reasonable control.

Examples of such circumstances include:

- (a) industrial action by College staff or third parties;
- (b) the unanticipated departure of members of College staff;
- (c) power failure;
- (d) acts of terrorism;
- (e) damage to buildings or equipment;
- (f) the acts of any governmental or local authority;
- (g) where the numbers recruited to a course are so low that it is not possible to deliver an appropriate quality of education for students enrolled on it; or
- (h) changes required by accrediting/regulatory bodies.

These are known as ("Force Majeure Events"). In these circumstances, the College will take all reasonable steps to minimise the resultant disruption to those services and to those affected students, by, for example, offering affected students the opportunity to transfer to another programme or module or institution, or by delivery of a modified version of the original programme or module of study that you enrolled on, but to the full extent that is possible under the general law the College excludes liability for any loss and/or damage suffered by any applicant or student as a result of a Force Majeure Event.

### **Teaching Venues**

34. Modules will be taught in venues in London used by Birkbeck for the purposes of teaching. This includes buildings owned by Birkbeck and buildings hired by Birkbeck. Venues will be located in and around the Bloomsbury area of London and at Birkbeck's building in Stratford, East London.

### **Cancellation**

35. Students retain the right to cancel the contract in accordance with the Cancellation Procedure as set out in the College's Fees Policy.

3.5. When changes to programmes are planned, full consideration should be given as to the timing of changes and the impact it will have on students. The degree to which students are affected depends on their stage in the cycle.

**Prospective Students** – where changes are planned for a new incoming cohort of students the changes should be approved and advertised before applications open for that cohort of study.

**Applicants** – where material changes are required to a programme of study that is in mid-recruitment cycle, then all applicants and offer holders must be informed of the changes at the earliest opportunity. Applicants and offer holders will need to be given information on the change, the rationale behind it and on their options for making an alternative decision should they no longer wish to proceed with their application. A judgement is required on whether a

change is sufficiently material to require a notification to applicants, if it means a change to core/compulsory modules and/or significant change to the delivery of teaching or assessment then the change should be considered as material.

Please note that a key component of the expectations under consumer law is not only that the College is expected to deliver the programme as advertised, but that if there are changes between what is originally advertised and what is agreed at the start of studies that applicants are notified with sufficient time for them to make alternative arrangements if they choose not to continue with their plans to study at Birkbeck.

**Existing Students** - Students should expect to be studying the advertised programme that was originally agreed when they applied for study, as this forms the basis of their contract with the College. Changes should not be made to programme for an existing cohort of students except where it will benefit the student experience or changes are necessary due to circumstances outside of the control of the College. Any changes should be planned in advance of implementation; material changes proposed for in-year implementation will not normally be approved. Where an amendment is proposed for a programme which affects an existing cohort of students, the College expects consultation to be undertaken with those affected. Consultation should consist of informing all students affected about the change, how it will impact them, the rationale for the change and how they can feedback on the proposals. This can be done with all students affected or consultation via student/staff liaison meetings and/or with programme reps. Depending on the scale and impact of the changes, the consultation method may vary. Guidance on the consultation process for current students can be found in the FAQs at the end of this document.

3.6. The College will make every effort to support programme teams in enhancing their provision and improving the student experience, especially where proposed changes are in response to feedback from key stakeholders. However, the College may advise that the implementation of proposed changes is deferred if implementation could affect compliance with consumer protection law. In exceptional circumstances, programme teams may find that they have to run more than one version of a programme if some students within a cohort decide not to support the proposed change. Programme teams will need to review the resources required should this occur.

#### **4. Cancellation of a programme or pathway**

4.1. On occasion decisions may be necessary not to run a programme of study due to low student numbers. These decisions may be necessary close to the start of a programme. Consideration should be given to alternative options open to applicants. Applicants/offer holders must be communicated with at the earliest opportunity and provided with details of what their options are. Options should be fair and reasonable, and may include deferral to the following year or an alternative programme of study. Any tuition fees paid will need to be refunded and in some cases financial compensation may be necessary. ASQ, BSIS and ER must be notified of the cancellation.

#### **5. Material changes**

5.1. Students need to be informed or consulted about changes where a change affects the key details of the programme or module that are made available to students. This would be information contained on the courses page on the prospectus, the programme specification or in the Confirmation of Study Agreement (COSA). Some level of judgement is required on whether something is a material change, please consult with ASQ [asq@bbk.ac.uk](mailto:asq@bbk.ac.uk) for advice if required. Changes to core/compulsory modules should be considered as more material than changes to optional modules.

5.2. Some examples of material changes are:

- Change to title of programme
- Change to programme structure – i.e. changing programme core or compulsory modules
- Changes to learning outcomes of core/compulsory modules
- Substantial changes to types of assessment (i.e. introducing or removing a number of exams or coursework submissions.)
- Change to professional accreditation – so if you make a change to your programme you need to check if this affects its eligibility for professional accreditation.
- Addition of necessary additional costs (i.e. fieldtrips, books, equipment)
- Introduction of an attendance requirement to assessment
- Change to campus location

5.3. Some examples of non-material changes are:

- Room allocations
- Removal or addition of optional modules
- Minor module title changes
- Changes to contact hours (except where it is substantial – e.g. 33.3% or more)
- Changes to minimum word counts or exam length (except where it is substantial e.g. 33.3% or more)
- Change to assessment weightings (except where it is substantial e.g. a shift of 33.3% or more)
- Change to assessment deadlines

## **6. Providing information on courses**

6.1. When providing information to students about any programme, such as responding to enquiries by e-mail, phone or in person at an open evening. Staff should feel free to give students good and reasonable expectations about the programme and the experience they will receive but care should be given to ensure that no inaccurate or misleading information is provided and that no firm commitments made where there is likelihood that this might change. Examples of areas where staff should consider what information is provided:

- Fees for the programme
- Specific key academic staff that will be teaching on the programme
- The running of specific optional modules

## **7. Compliance with consumer law**

7.1. The Office for Students (OfS) use compliance with the CMA guidance as one of its conditions of registration for HE providers. Failure to meet our obligations under consumer law puts us at risk of action taken by the Office for Students and/or enforcement action by the CMA. Furthermore, in some circumstances, students may have the right to take legal action against us and/or seek redress. If an applicant or student is concerned that we may have breached consumer law, we would encourage them to raise their concerns with the College directly via our student complaints procedures. If they are not satisfied with how their complaint has been handled, they can choose to pursue their complaint to the Office of the Independent Adjudicator for Higher Education (OIA). However, it is possible that students may seek to go to the CMA or through the courts without having gone through our internal procedures.

7.2. In February 2017, the University of East Anglia were challenged and were found to be in breach of consumer law by the CMA on their practices following a class complaint.

<https://www.gov.uk/government/news/university-improves-its-approach-to-dealing-with-course-changes>. UEA had added new compulsory module to the 2nd year of a 4 year degree, affecting current students and prospective students. The change was incorrectly considered minor by the university and so students and offer holders were not informed.

## **Student Consultation - FAQs**

### **Do I need to consult with students?**

If the change is not material or substantial (see above) then no consultation will be required but any current students affected should be communicated with to ensure they have all necessary and up to date information. If the change is a material change then you will need to consult with students. How far you need to involve students in a change is dependent on the severity of the proposed change and a judgement should be made on a case by case basis. Please consult with ASQ [asq@bbk.ac.uk](mailto:asq@bbk.ac.uk) for advice if required.

### **Do I need explicit opt-in consent?**

Not necessarily, in most cases it will be sufficient to email or meet with students with details of the proposed changes. You will need to provide details of a staff member for students to contact with any queries and information on their options if they are not happy with the changes.

### **How should I consult with students?**

You should consult with students by providing information in an email. You should also consider offering a meeting so the changes can be explained and discussed. Existing student/staff liaison meetings can be used for these purposes or specific meetings may be arranged. It is also advisable to communicate and meet with student reps.

### **What information should I provide?**

Students should be provided with:

- The rationale for the change
- Explanation of how it affects and how it will benefit them
- Contact details of someone to discuss this with
- Options on what to do if they are unhappy

### **What if a student expresses dissatisfaction?**

Not all enhancements or improvements will be an enhancement to all, or may not be perceived as an enhancement by all. Dependent on circumstances and numbers of students who express dissatisfaction you may need to do one or some of the following:

- Abandon or defer the change
- Amend the change
- Proceed with the change in any case
- Permit dissatisfied students to continue on unchanged programme
- Offer to meet with students to discuss their dissatisfaction
- Offer students assistance in transferring to another programme or HEI provider
- Offer students financial compensation