



# **COVID19 CONSUMER LAW HANDBOOK**

**Managing compliance with consumer law**

**Updated with information relating to the Covid19 pandemic**

**Updated November 2021**

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## Preface

Even before students take up a place on a course of higher education with you, a contract under consumer law is formed with the Conservatoire for Dance and Drama (and by extension, the relevant Member School). This handbook provides you with guidance on how this all works, what the requirements are, and a single point of reference to help you ensure compliance with consumer law. The Member Schools of the Conservatoire have agreed a common approach to managing Consumer Law requirements. Please see **Appendix 6** 'Operational Agreement for Compliance with Consumer Law' for details of the agreed approach.

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

A set of appendices complements this handbook, and includes checklists that you can use to check your compliance, along with model templates for your Terms and Conditions, Fees Policy, and Course Summary<sup>1</sup> documents, as well as further information and guidance about 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 Schools to benchmark themselves against; the CMA and HEFCE guidance is also split into separate checklists for you to use if you wish (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. All updates are shown in blue font. 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 do Schools need to do?**

Additionally, related to this guidance and new requirements, two new appendices have been added to assist Schools 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

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<sup>1</sup> All member Schools use the model Terms and Conditions, Fees Policy, and offer letter templates. The model Course Summary template should be used unless you have an equivalent document in place.

## 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. In order 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, the Conservatoire along with all other registered HE providers was required to complete a self-assessment showing how they've given due regard to guidance about how to comply with consumer law. You can find more information at the following link:

<https://www.officeforstudents.org.uk/advice-and-guidance/regulation/student-protection/students-as-consumers/>

There are three pieces of key legislation that pertain to student contracts and Consumer Law compliance (although they are not specific to the student sector):

#### 1. Consumer Contract Regulations 2013

This piece of legislation is very much process driven and is about what kind of information needs to be provided, when and how. It covers aspects such as pre-contract information and what needs to be provided to consumer before they enter into a contract, and is also explicit about this information being presented in durable media, rather than over the telephone or similar. It also specifies that the 14-day cancellation window must be publicized to students, and be clear about when it starts and when it ends. It is crucial that all relevant elements of this act are pulled together to ensure compliance.

#### 2. Consumer Rights Act 2015

This is a very important piece of legislation that defines what a consumer is. One of its core elements is the unfair terms regulations, and it specifies that if a term of a consumer contract is found to be unfair, it is not binding on the consumer (student) and so cannot be enforced. There is also a requirement that all services delivered to students need to be done so with due care.

#### 3. Consumer Protection from Unfair Trading Regulations 2008

This piece of legislation leads away from misleading and coercive practices, such as misleading students about what their rights are. Strict compliance is particularly important when dealing with student cases and complaints, e.g. providers must inform students they have the right to appeal to the OIA if they are not satisfied with the final outcome of their complaint, and provide clear signposting. Criminal sanctions are possible for serious breaches.

Some red flags and challenges schools should be aware of:

### Student contracts

What is your student contracting process?  
When is your student contract formed?  
What documents make up your student contract?  
Things said at interview/audition/open days  
Consent for pre-contract changes/reliance on variation clauses post-contract  
Pastoral support  
Suspension/termination of contract  
Collaboration/placement arrangements

### Consumer Law Compliance

OfS ongoing conditions of registration  
Cancellation rights  
Refunds, penalties and compensation policies  
Statutory guarantees and remedies  
Mis-selling  
Requirements around durable medium  
Fairness test  
Pandemic and industrial action  
Student Protection Plans

In June 2018, in light of the obligations and collective responsibility of the Conservatoire with regard to the Office for Students **and the legislation on p.4**, the Conservatoire Executive Committee 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 6 of this handbook.

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

The principles support the Conservatoire and its Schools 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 Conservatoire Executive Committee (CEC), the Quality Team in the central office of the Conservatoire will support Schools in meeting the requirements under Consumer Law, which will include as needed:

- Undertaking reviews of School website content and usability
- Helping to update model documents on behalf of Schools
- 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. The Effective Collective Principles (*Table 1*)

Prior to the move to a single Terms and Conditions, Fees policy and central Conservatoire management of pre-contract documentation (agreed June 2019), the following five principles remain in place for how the Conservatoire manages its obligations under Consumer Law:

|                    |   | <b>Summary of Principle</b>   |
|--------------------|---|---|
| <b>Principle 1</b> | Schools follow the Conservatoire model 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 Quality Team;  | <b>Follow Conservatoire model templates;<br/>Agree any changes to content of these documents with Quality Team in advance</b>   |
| <b>Principle 2</b> | Schools continue to adhere to the guidance on the provision of ‘material information’ provided in 2017 by HEFCE, <sup>2</sup> and discuss plans to change the content of this information on school websites with Quality Team <u>in advance of publication of any changes</u> for information on this list;  | <b>Adhere to guidance and discuss plans before changing any published content</b>   |
| <b>Principle 3</b> | Quality Team will continue to review other information provided on websites in order to discuss and support schools in this area with regard to implications for consumer law;  | <b>Quality Team will review published information on websites and will advise/support Schools on compliance</b>   |
| <b>Principle 4</b> | Where, after offers have been made to students, a school 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 Quality Team for agreement before the change is made or before students are advised about the change; | <b><u>Before making any changes or advising students of any changes:</u><br/><br/>Raise any proposed major/minor modifications to course content, pre-contract information and material information with Quality Team</b> |
| <b>Principle 5</b> | Building on the internal consumer law guidance first circulated in 2016, 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 for any member of school staff, to assist with the continuity and future management of these areas.                    | <b>Use the Consumer Law Compliance Handbook for reference</b>   |

<sup>2</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.

## 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>3</sup>) and HEFCE's *Guide to providing information to prospective undergraduate students* published in 2017.<sup>4</sup>

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

### 1. The Consumer Law Context

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

Schools should note that consumer rights are likely to extend to postgraduate students (see CMA Guidance, section 2.17) and may wish 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 pp. 5-8 and is reproduced in Appendix One 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<sup>5</sup> 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.

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<sup>3</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>4</sup> <http://www.hefce.ac.uk/lt/provinfo/>

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

| Provision of information to applicants/students governed by consumer law |  |  |  |
|--|--|--|--|
| What is 'material information' <sup>6</sup> ?                            | <ul style="list-style-type: none"> <li>Information about the Higher Education courses each School offers</li> </ul>                            | <b>Contained in:</b><br>Website Content <sup>7</sup> ;<br>paper prospectuses;<br>Verbal information provided e.g. at Open Days | <i>Information must be up to date, current and accurate at the time you open your admissions</i>   |
|  | <ul style="list-style-type: none"> <li>The structure of Higher Education courses</li> </ul>  |  |  |
|  | <ul style="list-style-type: none"> <li>The fees/costs</li> </ul>   |  |  |
|  | <ul style="list-style-type: none"> <li>The pre-contract information (see 'what is pre-contract information' below)</li> </ul>                  |  |  |
| What is 'pre-contract information'?                                      | <ul style="list-style-type: none"> <li>Terms and Conditions (durable medium)</li> </ul>  | <b>Held in:</b><br>Offer letters;<br>Website Content;<br>paper prospectuses  | <i>Information must reflect what is published on your website and prospectus; any changes must be clearly flagged in your offer letter/before you confirm an offer</i> |
|  | <ul style="list-style-type: none"> <li>Fees Policy (durable medium)</li> </ul>   |  |  |
|  | <ul style="list-style-type: none"> <li>Course Summary (durable medium)</li> </ul>  |  |  |
|  | <ul style="list-style-type: none"> <li>Accompanying policies and procedures (e.g. Complaints Procedures, Misconduct Procedures etc)</li> </ul> |  |  |

### 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 your School website, content in prospectuses and other published information.*

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

<sup>6</sup> Please refer to **Appendix 1b)** for the list of material information that comprises the list agreed by CEC covering areas that Shared Services will be consulted about, where Schools would like to propose changes to information.

<sup>7</sup> 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).



### 3. Additional Requirements for the Provision Of Material Information to Applicants and Students arising from the Covid19 Pandemic

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. CDD has highlighted in bold font information where Schools are required to act:

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24. *When assessing providers' 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.*

25. *As set out in our guidance on quality and standards during the pandemic, providers should **make all reasonable efforts to provide alternative teaching and support for students that is broadly equivalent to the provider's usual arrangements**. We also expect providers to ensure that they follow 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.*

26. *Providers have already adapted their 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 a provider's ability to satisfy conditions of registration.*

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

- *We require a provider to report to us when it intends or expects to cease teaching some or all of its courses to one or more groups of students, and we are likely to seek*

further information as a result of such a report. Further information about our reduced reporting requirements is available on our website.

- We will continue to encourage students and other third parties to notify us of any concerns about the arrangements put in place by an individual provider. Such notifications will be particularly important to help us identify any providers that may not have made reasonable efforts to protect the interests of their students.
- We will use our engagement with providers to understand their approaches to teaching and assessment during the pandemic, ensure they understand our guidance and expectations and to follow up any notifications that cause concern.
- As part of our normal regulatory approach we consider the number and pattern of complaints to the OIA and we will continue to use this information to inform our assessments after the pandemic and so will be able to take into account issues raised by a provider's students and the OIA's response to these.

28. In this context it is important that all providers **consider how their approaches to the current situation will affect all students, and in particular 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.

29. Providers should **engage with student unions or other student representative groups in order to understand the concerns of students collectively as well as considering concerns raised by individual students**.

30. It is also important that all providers **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 a provider 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 a provider with confidence on the basis of such information.

[...]

### Prospective students

37. Prospective students will have a different relationship with providers to current students of those providers. This is because they will be making decisions about which course to choose, and where to study, based on the information given by 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 a course would normally run.

38. Some information is therefore likely to have changed significantly as a result of the pandemic. Notwithstanding the significant uncertainty regarding the impact of coronavirus, **providers will need to 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 a provider 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 needs to 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 the provider is able to deliver the course as originally advertised, or whether they might choose a different course or different provider.**

39. 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.

40. **Sufficient information needs to be given to prospective students about the course, in line with CMA guidance, including information about any planned changes and the provider's plans for different scenarios. Providers must 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. We expect providers to 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 should 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 should be explicit up front and should not increase once the course has started and so if a provider 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. Providers should also 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, for example professional accreditation, as a result of the pandemic. If professional accreditation has not been confirmed for 2020-21 then this should 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 should be explicit.

41. We recognise that in the current circumstances it is difficult for providers to give exact information to students on how a course will be delivered. However, providers should **acknowledge what is definite and what is not, set out their plans for the delivery of the course and properly explain the differences in delivery that will apply in different circumstances.**

42. **Providers should 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. **Providers should also explain, if face-to-face teaching is resumed, what measures a provider would take in the event of a further lockdown.**

43. **Plans need to be explained in a way that would 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.**

44. **Providers should also let applicants know how they would communicate with them about these plans and any further changes that are necessary in response to changes in public health advice.**

45. **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, we would expect the provider to 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 providers have the opportunity now to 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.

46. **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.

47. **Changes to material information should be drawn to the attention of applicants in a timely way so that applicants, whether or not they have already accepted an offer, may 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 10 confirmation and clearing in August 2020. **For other students, information needs to be provided in order to inform decision making.**

### Current students (with existing contracts)

48. Providers have entered into contractual relationships with their current students and the material information they 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).

49. In the current circumstances where providers have 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 providers have existing contracts with their 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.

50. 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.**

51. The OfS will continue to expect providers to comply with its guidance on quality and standards. As set out in paragraph 8 above, we will generally only take regulatory action 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.

52. We consider that **providers 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.**

53. **Providers should 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.

54. Providers should note that while following this approach may be appropriate for regulatory purposes it does not imply that providers will be compliant with the law.

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

56. We expect providers to properly consider their obligations under consumer protection law, including students' rights to redress. Providers should seek their own legal advice and properly document their decisions in relation to consumer protection law.

57. As noted in paragraph 9, 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<sup>11</sup> including whether any remedies for consumers apply. Students also have the right to complain to the OIA if they have completed their provider's own internal complaints process.

## 4. What do Schools need to do?

- **Follow the Conservatoire model Terms and Conditions, Fees Policy, and Offer Letter templates. The Course Summary Template should be followed unless you have an equivalent document in place.**
- **Send through your Terms and Conditions, Fees Policy, Course Summary documents and Offer Letters for checking by Quality Team ahead of publication/dissemination.**  
Please allow enough time for Quality Team to 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 the Conservatoire 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 you seek student consent to changes to programmes, and let them 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.**  
Quality Team can help run a user test for you to advise on user-friendliness and can review your 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 Summary document** (see Appendix 4 for the template<sup>8</sup>)
  - **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)***

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<sup>8</sup> Where Schools already have a comparable Course Summary template in place they may use that in lieu of the Conservatoire exemplar.

- **Links in ‘pre-contract information’ to webpages must be working, or should redirect to new pages where the webpage has become obsolete.**

It is easier to avoid broken links if you link to ‘landing pages’ 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 you are unsure about anything contact the Academic Registrar/Deputy Academic Registrar for a discussion and/or advice.

## **5. Some further future considerations for the Schools**

- **How courses and services are being advertised to prospective students**

There are likely to be lasting changes to how courses are delivered, with a shift towards blended learning, even post-pandemic. This needs to be advertised in the course literature well in advance to mitigate any possible risks and allow for some manoeuvring for the school, as exclusively face-to-face delivery may not necessarily be achievable and advertising it as such may be misleading. This information needs to be clear and easily accessible. Any advertising with regards to full in-person delivery is a risk area as it is legally binding.

- **Variation clauses**

While all schools are currently using the CDD single Terms and Conditions, they may wish to review them at some point in the future after having gained their OfS registration, including the variation clauses. Variation clauses are very specific to the type of institution you are, the type of courses you are delivering, and the kind of students you have. In the event that circumstances mean changes need to be made to student contract, providers need to look at their variation clauses to be able to make changes unilaterally. However it’s a very fine balancing act between making these clauses fair and the institution shackling itself to what it can and cannot change. The key thing to bear in mind here is fairness – it is not going to stand the test of fairness if providers say they can change the course whenever they like, and HE lawyers are finding themselves spending increasingly more time looking at these variation clauses with different providers, making sure they are both right and fair.

Caution needs to be taken with promises of particular teachers, guest tutors, visiting choreographers, placement opportunities, specific productions etc., as in cases where a school is not able to deliver these things as promised, it will be in breach of contract, unless covered by its variation clauses. Course literature needs to be very clear that there can be no such guarantees.

Events outside of reasonable control are common in variation clauses, but even these types of clauses are subject to fairness and can be challenged – simply putting ‘fair’ in front of it does not necessarily make it so. However, if there are objective reasons why the change is being implemented, such as government legislation, providers are better protected.

- **When does the contract come into effect?**

Contracts can be engineered to come into effect at different stages of the process, but it is key for schools to understand when it comes into place, as that is when the 14-day cancellation period for the contract starts. It can be designed so that it happens when the student accepts the offer after it has been made, or after the confirmation email goes out thanking the applicant for accepting the offer – the latter seems to generally be the case across the sector, but not necessarily always. The CDD Terms and Conditions state that the legal contract is formed and becomes binding when the school confirms a student’s place on a course in writing, following their acceptance of an offer.

- **Distinction between when the contract is formed and when your policies and procedures apply**

Schools may wish to consider this and decide what the best position for them is. There may be instances where the contract is already in place, but the student hasn’t registered yet, and serious misconduct happens, or a school has significant concerns about a student’s physical/mental health and their ability to successfully engage with their studies. It is possible to give yourself flexibility by saying that policies and procedures apply from the point when the contract is formed (or from registration/enrolment).

- **Collaborations/partnerships**

In cases where a course is delivered jointly in partnership with another provider/company, there are likely to be two contracts and two sets of various other documentation, which becomes very multi-layered, as all of these things need to sit together neatly. There are also additional complexities about the degree being validated by yet another awarding body, who also has liabilities towards the students. Apprenticeships, partnerships, collaborations and other similar arrangements need to be scrutinised very closely on a case-by-case basis to understand who is responsible for what, who carries the liability, who is contracting whom etc. There is also the requirement that students understand all these aspects as well, and CMA advises providers against using long overly complex contracts. From a consumer perspective, everything needs to be written in a plain and easy to understand language, without complex legal terminology.