CONTRACTUAL DEALINGS WITH STUDENTS

Most Higher Education Institutions do not have a formal student contract. The contractual terms that apply to the relationship are instead often covered by documents such as the prospectus, course handbook, student regulations etc.

Some terms are also implied by law, for example, a duty deliver services with reasonable skill and care. In addition, HEIs must act in a fair and reasonable way and comply with the rules of natural justice in dealings with students. HEIs must also comply with statutory obligations like equality legislation and human rights.

Information and statements made to students

Information like that in a prospectus, aimed at attracting potential students, can have contractual effect, though much is seen in law as more akin to mere sales ‘puff’. This may depend on how specific and detailed such information is.

Verbal statements made can lead to problems, such as assurances of funding assistance that later is not available. Written or verbal statements that are later found to be incorrect can give rise to claims for misrepresentation, if these induced students to enter a contract with the HEI.

Whether oral statements have contractual effect can depend on whether the person making them has authority on behalf of the HEI. This can be actual or ‘ostensible’ authority (where someone is held out as having authority). If a student relies on what a member of staff says about a course and enrolls, only to find that information was incorrect, the HEI cannot rely on a defence that the staff member did not have its actual authority.

Supervision

The one-to-one nature of the supervision relationship sometimes leads to various claims or allegations of bias or discrimination. Defending these is difficult, as it can be essentially one word against another. Supervisors should ensure that records of significant interactions with students are properly maintained. It is difficult to rebut allegations of inadequate supervision, if there are no contemporaneous records.

Example - A postgraduate student who received several extensions to a submission deadline complained to the Office of the Independent Adjudicator that there had been poor supervision, no annual appraisals and not enough support. The OIA found that there should have been earlier warnings about failure to progress and failure to submit written work, plus firmer control by the supervisor (who should not have repeatedly supported requests for extensions). The OIA also considered that the student bore responsibility and should have taken steps to ensure that difficulties were being addressed.
The OIA recommended £1000 in compensation, with the University to improve its appraisal and upgrade procedures.

Assessment

HEIs tend to argue that this is a matter of academic judgment. There is a fine line between this and the procedures/processes involved. Procedures and processes must be as fair, consistent and transparent as possible.

Preventing claims

- Information given to students should be accurate, comprehensible and consistent. If something promised is contingent on things outside the HEI's control such as funding, then that should be made clear.

- Services and facilities should be delivered as promised or if they cannot be, steps should be taken as early as possible to offer alternatives or other remedies.

- Procedures should be clear and user-friendly. One of the most common complaints is that stated procedures were not followed.

Attitude to complaints

Some staff are not familiar with the wide reach of the anti-discrimination laws and may not see why they should, for example, adjust how they work to accommodate a research student's disability, or avoid language that could be construed as disparaging on grounds of race, religion or sexual orientation. Some also take student complaints as an insult or an affront, when in fact prompt and effective complaints handling can be critical in preventing escalation and damage to any relationship.

Good handling of complaints can reduce also legal risk. Having an open approach to complaints, simple processes and flexible use of alternative dispute resolution (such as mediation) can prevent a complaint escalating into a costly legal challenge.