SANCTIONS AND WITHOLDING AWARDS FOR STUDENT DEBTS

Universities sometimes use sanctions (such as threat of withholding an award) to encourage payment of debt owed by students. Unfortunately this risks legal challenge and there have been no major test cases as yet to show the exact lines the courts may take. Therefore basic guidance is set out below.

Firstly, to have any chance of enforcing this type of threat, there must be at least some **written provision to which a student has agreed**, to show there is a contractual basis to take such action (e.g. it is outlined in regulations to which a student has agreed). Ideally the student should agree to such provision **at the time of entering the contract with the University** i.e. during the usual offer and acceptance process. If the University wants to withhold/withdraw tuition or other services on the basis of non-payment of debt, the contractual documentation needs to make this clear, preferably by way of written policy/procedures to which the student is referred. These should be **clearly worded**, as any ambiguity will be construed in favour of the student, if challenged in court.

At present most universities, including York, do not have a formal written document which a student is asked to sign, so the contract with the student is made up of various important documents that play a part in the student’s decision to accept the offer e.g. prospectus, information on the website, details in the offer letter etc. The sector may move more towards having one formal document based on a good practice in forthcoming years.

Secondly, any policy/procedures need to be **fair and reasonable**, as otherwise they may be outlawed under consumer legislation. For example, a stipulation that unpaid library fines will cause suspension of tuition (rather than just suspension of library services) would be disproportionate. The OFT can consider complaints from students and apply for injunctions to prevent use of unfair terms. Trading Standards Departments can also investigate complaints. (It would be open a university to defend action brought against it, but it could then be embroiled in a test case with consequent cost, resource and publicity implications.)

**Timely action to deal with outstanding debts** should be taken. It is also important to ensure that **any policy is applied with regard to individual circumstances** and to act promptly to prevent the debt becoming unduly large.

Bear in mind that students also have **consumer protection rights**. There is a general requirement of **“good faith”**, which embodies the principle of **fair and open dealing** between universities and its students. It also protects students from **unfair terms**, so that if a term is significantly one-sided in favour of a university then it is unlikely to be upheld as fair. **Unfair terms are not legally binding** on a student, so a university cannot enforce them. (The remainder of the contract will usually be unaffected, unless it is unworkable without the unfair terms.) The legislation requires that plain and intelligible language is used in the contract. Onerous terms should be brought specifically to the students’ attention e.g. through being **emboldened/capitalised**.

**Examination marks** cannot effectively be withheld and must be given to a student if request is made under the Data Protection Act 1998. Furthermore, the European Convention on Human Rights includes the right to have educational achievement recognised, though a challenge brought under this alone is unlikely to succeed. Access to **Degree Ceremonies** may be denied if a student is in debt, but the circumstances should be set out in policy/procedures (as indicated above). The debt can still be recovered post-graduation. **Refusal of registration** for the following year is in order, if there are **outstanding tuition fees**, as then the student is in breach of contract in relation to paying for tuition. **Witholding Degree Certificates** is unlikely to be unfair when tuition fees have not been paid, provided...
there was written provision for this, as mentioned above. This should also ideally point out that by withholding the degree certificate, the University is not precluded from pursuing the debt, such as through a debt recovery agency, the reasonable cost of which will be passed to the student. However, it would be unfair to withhold a degree certificate simply where a student fails to pay debt recovery fees, as this could be construed as 'an unfair enforcement mechanism'.

**Agreements for accommodation** are separate from tuition (and York has its own legally-compliant student tenancy agreement), as accommodation is a separate service provided to a subset of students. The OFT and Trading Standards have indicated that a provision to withhold certificates for unpaid accommodation fees could be viewed as unfair. Therefore it is very likely to be unfair to withhold a degree certificate or to refuse to allow a student to re-register for the following year because of an accommodation debt (although of course further accommodation can be refused). The correct enforcement mechanism would be to terminate the accommodation contract and pursue the student for the debt.

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