



UNIVERSITIES & STUDENTS

G R EVANS JASWINDER GILL

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a guide to rights, responsibilities & practical remedies

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The authors have enjoyed their collaboration and would like to thank each other.

G R Evans would like to thank the officers of the Cambridge Students' Union for many interesting hours of discussions.

Jaswinder Gill is grateful to Hannah Reeves for always being dependable in the preparation of this book. He dedicates the book to his father, Autar Singh Gill, for being the perfect role model.

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Foreword

The Times Higher Education Supplement is delighted to be associated with this guide to the legal framework that binds student and university.

Most people find their university years among the most memorable and enriching of their lives, but inevitably from time to time things go wrong. In the past, it has not always been clear what students can do, or what institutions should do, when this happens although this is now beginning to change. As the number of people entering higher education continues to grow, and as tuition fees turn students into more demanding consumers, institutions face increasing pressure to improve the way they handle complaints. Many are already responding.

This book offers clear information to students and academics about the options open to them if conflicts arise, including some recent key developments. We hope it will prove to be a useful reference point for both students and institutions, and help clear up some of the misunderstandings that can create tensions between the two.

Auriol Stevens
Editor, The Times Higher Education Supplement

Preface

'All students have a legitimate interest in quality and standards in teaching.¹ They and their parents have increasingly become critical consumers.' 'The way complaints are handled says a good deal about how a university views its students, and its readiness to put right what has gone wrong.' In September 1999 the Education and Employment Minister Baroness Blackstone made these remarks to the annual meeting of the Committee of Vice-Chancellors and Principals. Students are now visible, and that makes them politically important; it gives them, as a group, an influence they have not had before. Yet individually they remain as vulnerable as ever to confusion on the part of the 'providers', to poor teaching and incompetent administration.

This book is chiefly about the vulnerabilities of the ordinary student. It is the first extended study to approach the problems from a student's-eye view, incorporating recent developments in the area of 'student matters'.

Far more students are now entering higher education and this rapid expansion, coupled with the transformation of the former polytechnics into universities in 1992, has placed great strains upon the system. This is making it necessary to clarify much that has previously been obscure about the position of students. It is also generating dissatisfactions and complaints, which students are becoming increasingly ready to voice. So student articulation of their perceptions of what is wrong forms an important substrate of any such study. We have done our best to listen to what students are saying.

Universities have been slow off the mark in responding to this culture change. They remain autonomous. They have not had to answer to anyone

¹ Both in universities and in courses franchised by universities to be provided by colleges and institutes of higher education.

for what they do until the relatively recent introduction of 'quality assessment' and the principle that funding can be withheld from the 'old' universities if standards are not maintained. The student who feels that he or she has not really been listened to when asking awkward questions may well be right. It is not healthy to allow organizations to police themselves yet if universities do not learn to do so openly, honestly and quickly, there is a danger that they will increasingly be policed by the state, which will bring with it other dangers.

It is better for disputes to be prevented or resolved informally than for them to go through the courts. It is expensive to do things that way and it is slow and uncertain; a student may lose years in battle with his or her university; the university suffers too, both financially and in its reputation.

The best way forward for the student and the university alike is for everyone to understand the ground rules. Students in particular need a practical guide to consult when things go wrong in their time at university because they do not have such ready access to the legal advice that universities can afford. We have taken a student's-eye look at a series of familiar problem areas. The main purpose is to provide students with information about their position in relation to their institution, their rights and the remedies that may be available to them if things go wrong. Those running institutions will also, we hope, find this book useful.

David Lepper MP wrote the following in a letter to the Quality Assurance Agency dated 1 June 1999:

The general concern which I have picked up is that the world of higher education is one in which generally there is a suspicion that old boy and girl networks dominate and that, particularly in the area of appeals relating to academic awards, there is a difficulty in judging the independence of those involved in administering and operating such procedures.

It is right that a deadline should be set for institutions to be able to demonstrate that they are adhering to precepts contained in the code but there is no indication of what will be the consequences for those institutions which are shown to be failing in this respect.

Abbreviations

CVCP – Committee of Vice-Chancellors and Principals

DfEE – Department for Education and Employment

HC Deb – House of Commons Debates

HL Deb – House of Lords Debates

Hyams – Hyams, O (1998) *Law of Education*, Sweet and Maxwell, London

LEA – Local Education Authority

LQR – *Law Quarterly Review*

PL – *Public Law*

QAA – Quality Assurance Agency

RAE – Research Assessment Exercise

THES – *The Times Higher Education Supplement*

Introduction

Is a university a business? If so, it goes about its trading in a funny way. How many car dealers refuse to sell a car to cash buyers because they do not have the right qualifications? Universities, however, will not admit you to 'buy' their courses unless you do. How many supermarkets refuse to hand over the goods at the cash desk because on the way through the supermarket the shopper did not stop at the bacon counter?¹ If students are late with an assignment or refuse to pay their fees, however, they may be barred from getting their degrees. The student is, in effect, expected to 'pay now and complain later', and even if he or she makes good his or her complaint, it may not be possible for the injustice to be put right. In a commercial and competitive market place that is not in line with recognized consumer rights involving purchase and sale.

Universities are now increasingly seen to have a duty to give value for money in return for public funds. But perhaps the most important change directly affecting students has been the reintroduction of the requirement that students should pay tuition fees. This is the most recent stage in a long development that has fundamentally changed the relationship of students to institutions of higher education. It heightens the presumption that there is a contract. And if there is a contract, the obligations are mutual. The student has to do the work, attend the lectures and seminars, and so on, and pass the examinations for a degree, but he or she is entitled to good quality teaching, adequate facilities and a well-designed course.

Alongside the figure of the student as 'consumer' stands the student as 'stakeholder'. He or she is not the only stakeholder. The government, employers, unions, schools, parents, taxpayers, are stakeholders, too.²

1 Adapted from examples in Birtwhistle, T (1998) Student academic appeals: a holistic assessment, *Education and the Law*, 10, pp 41–54 at p 50.

2 Birtwhistle, T (1998) Student academic appeals: a holistic assessment, *Education and the Law*, 10, pp 41–54 at pp 48–49.

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So the questions ‘what is a university?’ and ‘what is a student?’ now have to be answered in new ways that reflect these changing aspects of the relationship between the student and the university.

What is a university?

In the United Kingdom a university normally has powers to award both ‘taught’ and ‘research’ degrees; the list now consists of over a hundred institutions. They did not all come into existence in the same way. Oxford and Cambridge have origins so many centuries old that their constitutions have evolved, layer upon layer, into a considerable complexity. Then there is a category of ‘old’ universities, mostly founded about a hundred years ago; another group of ‘old’ universities born in the 1960s wave of expansion; a group of the former polytechnics which became universities in 1992; and a few that have been seeking recognition as universities since then.³

More important, perhaps, there have been profound changes of concept about what a university is *for*. Even among degrees about whose official authenticity there is no doubt, a degree is worth only what it is perceived to tell the world about the quality of its holder’s knowledge or skills. So universities are now beginning to be thought of as ‘quality service providers’. This kind of thinking takes students to be ‘customers’ for, or ‘purchasers’ of, or ‘consumers’ of what is being ‘provided’. That fits with the idea that their teachers are professionals who have the same duty to maintain high professional standards as those in other professions. All sorts of obligations follow from that.

But there are other ways of approaching the problem of the need to make sure that students get a good education. Universities used to think of themselves as ‘communities of scholarship’. Students and staff were first and foremost ‘members’ of the university – as in many places they still are.⁴ The pattern derived from the mediaeval *universitas*, which was a guild (rather like a cross between a modern professional association and a

3 There is a convenient summary of the different types of university in Hyams, O (1998) *Law of Education*, Sweet & Maxwell, London, p 497.

4 See pp 37–38.

modern 'trade union'). The students were the equivalent of apprentices; the Bachelors of Arts were like the journeymen and the Masters of the gild (Masters of Arts) were the teachers who formed the corporate body. The university set its own standards and answered to itself. It ran a closed shop, but it also determined for itself the nature and purpose of the work carried out within it, what 'intellectual skills' and what 'knowledge' it valued, and would reward both teachers and taught. There were advantages to the old model. It was humane and flexible and it encouraged the independence of mind that has made universities able to offer a public service in resisting the pressures of the state to conform to the changing political agenda.

The attitudes this bred have proved extremely persistent in upholding the ideal of university autonomy. Autonomy is a good thing in that it discourages interference by the state with the conduct of universities' legitimate academic business. It is less clearly a good thing if it makes it difficult to call universities to account if they do not maintain standards, do the right thing by their students and staff, and fulfil their traditional purposes of fostering education, learning and research. The point of balance between these two priorities is crucial now.

Governments have stood back from interfering directly in the way universities conduct their affairs, but this traditional autonomy remains a true independence only as long as it is coupled with financial independence – and universities are becoming less financially independent. A university may *govern* itself, but the state increasingly interferes with its running by the simple pragmatic method of giving or withholding funding on condition of compliance with government wishes ('conditions of grant'). Most higher education institutions (the private University of Buckingham is one exception) are funded by the Higher Education Funding Councils,⁵ which can require the repayment in whole or in part of the sums so paid.⁶ There are further statutory powers. A Higher Education Funding Council 'may arrange for the promotion or carrying out by any person of studies designed to improve economy, efficiency and effectiveness in the management or operations of an institution within the higher education sector'.⁷ It

5 The Further and Higher Education Act 1992, s65, provides that HEFC shall fund activities carried on by 'higher education institutions', that is the 'provision of education' and the 'undertaking of research'.

6 Hyams, O (1998) *Law of Education*, Sweet & Maxwell, London, p 502.

7 The Further and Higher Education Act 1992, s83(1).

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may require the governing body of any institution within the higher education sector 'to give information to the Council'.⁸ The Secretary of State has powers to give directions⁹ and even to dissolve a higher education corporation.¹⁰ So the potential for state interference is quite considerable.

The effect on students

The implications of these shifts for students are only gradually becoming clear. On the one hand there is a clear advantage in being a 'customer', because customers can complain about shoddy or unsatisfactory goods or service. This, however, is not an arena in which student customers, or consumers, are the most powerful voice. They are unequal in their bargaining power not only with the universities but also with 'funders' who may have their own agendas. Commercial funders are becoming increasingly necessary to cash-strapped institutions, which are not being fully or adequately funded by the state, and where their money is needed they may be able to call some of the tunes. The commercial funders may want pieces of scientific research and development done, and for that purpose they may wish to arrange for the time of leading scientists, who would otherwise be joining in the teaching of students, to be given to their own projects. The government, too, has been allocating funding on the basis of the outcomes of the Research Assessment Exercises, and that has led to a scramble for research-active academic staff and to complaints that good teaching is devalued in universities' structures of reward.

The introduction of business methods and business ethics may lead to greater efficiency, but that will probably mean that efficiency will be defined in terms of measurable outcomes. There is a visible loss of the old comfortable stretchiness in the system, of room for leisurely growth and sheer 'conversation' with tutors and supervisors and lecturers.

There have also been well-authenticated instances of 'dumbing down', where pressure has been put on teachers to pass more students or to diminish the content or lower the standards of courses. For example, one student

8 The Further and Higher Education Act 1992, s79.

9 The Further and Higher Education Act 1992, s81(1) and 89.

10 The Further and Higher Education Act 1992, s121.

who returned to higher education at the age of 34, chose the course in product design and manufacture for a BEng(Hons) degree at a local college because it was geographically convenient for him to study there and he saw that the degree offered was from an 'old' university. He was also assured when he went to the college for an interview that the course was 'properly validated and accredited by the Institute of Mechanical Engineering'. He originally enrolled for the BSc (Hons) in computer aided design and manufacture, intending to transfer to the product design and manufacture course if he found that he could cope with the mathematics required. He made the transfer with four others at the beginning of the second year. They understood that the course was still validated by the IMechE.

What he found at the local college was a standard that he alleges was so low that, for example, only six or seven out of nearly 40 students on the course had fulfilled the entry requirement of A-level mathematics.

He learned that from October 1997 the university was ceasing to award degrees for the college's courses because, he understood, it was concerned about the standards. A large percentage of students failed the first year of the course. The course leader left the faculty. The number of hours of assisted study fell from 16 to 13 per week (against a norm of over 19 on a government definition of what constituted a full-time course).

He put together a list of complaints, which was signed by a number of students on the course and sent to the Dean of Faculty at the local college. He sent a copy to the university, but received no response. He learned that the IMechE had withdrawn its accreditation from the course.

Pressure was put on the examiners to 'remark papers and pass a much higher number of students'. After more than two years' pressure he began to get acknowledgement that the course had indeed been 'dumbed down', elements had been removed from the course, quantitatively less was being asked and what was required was more elementary.

The question raised by this articulate and persistent mature student was whether the university could be called to account for its failure to police the provision of the course on which its own degrees were being awarded by the college. 'What I have witnessed is...the failure of...the systems put in place to police higher education,' he writes.

That is a natural reaction to the sense of helplessness many students feel in the face of what seems a failure to provide what they have been promised. The problem is that government intervention would not necessarily

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make things better or be primarily motivated by the wish to improve standards as an end in itself. The question of how universities are to be brought up to standard in their *treatment* of students (a matter inseparable from the maintenance of academic standards) without losing their academic autonomy will hover throughout the text of this book.

What, in such changing times, is a student? Or, perhaps most importantly in the new emerging framework, 'the ordinary student'? One answer can still be given in terms of the idea that a student is there to *study* something, that is, to learn and receive a qualification. From the university's point of view the student is also a source of money, or prestige, if he or she is a very able student. The old idea of the student as a child, *in statu pupillari*, continues to be important in the sense that staff and student are inevitably unequal in any confrontation. Yet modern management talk of 'partnership' and 'stakeholding' ought to be incompatible with such inequality. The student of university age is now (usually) legally an adult and that makes a difference; he is a citizen, a consumer like any other 'purchaser' of a 'service' or a 'product'.

For individual students now, and for universities anxious to get it right, the way forward is through the examination of individual cases and the patterns which emerge from them. We have used them in this book as a way of shaping the discussion.

There is inevitably a good deal here that assumes a basis of legal knowledge, but we hope that students will still find this book user-friendly. The 'student action checklists' are included as a starting point for students whose first need is to know 'what to do' and 'what to look out for'. These feature at the end of each chapter.

Becoming a student

The prospectus: reading between the lines

We hope this Prospectus will enable you to get a clear picture of what we have to offer and that you will find something in it which corresponds to your own aspirations.¹

Our aim is to provide the best possible range of Higher Education study opportunities.²

These are examples of the ways in which universities now tend to offer their wares. The way they present themselves may tell you a good deal about the kind of place a university is. What does it 'sell' as its advantages?

The prospectus, which sets out what the university is offering and describes the facilities and the courses on offer, may have as much to say about the scenery as about the university. Portsmouth's Undergraduate Prospectus in 1998 said:

The student experience is so much more than lectures, libraries and laboratories...Portsmouth has something special for all tastes and ages. We welcome you to experience Portsmouth's rich maritime and historical heritage, its unspoilt coastline for water sports or leisurely enjoyment, its busy and varied shopping centre or its lively social scene in pubs, clubs and

1 Undergraduate Prospectus, Newcastle, 1997.

2 Undergraduate Prospectus, Newcastle, 1997.

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restaurants...Portsmouth provides the ideal place to study for your degree and enjoy yourself.

It can be bland and vague:

The University is committed to achieving excellence in teaching and research. We monitor all our programmes constantly to maintain a learning environment of the highest quality.³

You may notice things which are not being said:

All new lecturing staff undertake a Certificate in Learning and Teaching in Higher Education during their period of probation to promote good practice.⁴

But most lecturers in the old universities have been in post for a long time and will not be caught by this provision, or by any training requirement.

The University has in place strict procedures for assuring and enhancing the quality of its provision.⁵

But the reader is not told where these may be found. The student is promised:

a personal tutor/supervisor who is responsible for your academic progress and can guide you towards the appropriate University service for any non-academic queries.⁶

But those services may be far from all embracing, especially when it comes to raising complaints or concerns.

Additional, more detailed, information about particular courses may also be sent out to inquirers. The prospectus is the main selling tool in that it enables the university to 'market' courses, which it offers to prospective students. The promotional literature may be glossy and enticing, designed to induce students to choose the university's courses and to part with their

3 Undergraduate Prospectus, Newcastle, 1997.

4 Undergraduate Prospectus, Newcastle, 1997.

5 Undergraduate Prospectus, Newcastle, 1997.

6 Undergraduate Prospectus, Newcastle, 1997.

money. This is now quite consciously a process of marketing. *Education Marketing* is published by Heist, Marketing Services for University and Colleges, with such headings as: 'Maximizing your marketing potential'; 'Marketing marketing'; 'Opinion-brand value' (Issue 13, March 1998). There are also (increasingly) promises made in material on the Internet, the newest 'selling tool' to be used to market the 'wares' of universities. The Internet reaches the international market directly and gives the university a global market place.

All of these publications are like holiday brochures in the sense that they make promises that bind the university, and that is the important point to keep in view. A couple was awarded damages in 1999 because photographs taken at their wedding abroad were of poor quality and so the holiday company's promise of a 'dream holiday' was broken (*The Times*, 1 September 1999). The point that mattered was that this was a very important occasion for the couple. The courts may award damages for broken promises in prospectuses in a similar way, and universities should bear that in mind in 'marketing'. A degree course is very important to the student; it is a big investment carrying all sorts of consequences for the student's professional future or career. One student was awarded £10,000 for a ruined graduation ceremony.

So prospective students should read any literature carefully and make note of any oral promises made on a visit or at an interview that seem to go beyond what is in print, or to conflict with it. That may be important if there is any disagreement later about what was in the stated ('express') or understood ('implied') terms of the contract between the student and the university.

Student charters

Students are now increasingly regarded as customers or clients, to whom the university is providing a service, so many universities have begun to produce 'student charters' on the model of the government's citizen's 'charters', which make promises. These are a recognition that along with the idea of 'student as customer' goes the principle that 'purchasers' have rights to get what they are paying for or to be compensated if they do not. These too are documents that become part of the university's bargain with