

**Designing and delivering undergraduate law courses in the shadow of the
UK consumer protection legislation**

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DECLARATION

I, Jennifer Rose-Hamilton confirm that the work presented in this thesis is my own. Where information has been derived from other sources, I confirm that this has been indicated in this thesis.

ACKNOWLEDGEMENTS

I would like to express my sincere thanks and gratitude to my supervisor Dr Bryan Cunningham, for his unfailing guidance, patience, and support during my EdD journey.

I also want to acknowledge the support of my Bruce Hamilton but especially that of my late father, Dr Gerald Rose, who was an excellent 'sounding board' and source of insight during my studies.

ABSTRACT

Using both a survey of university law school web landing pages, and an in-depth study with a small number of academic and compliance professionals within seven English universities, this thesis explores the impact of consumer protection legislation on the design and delivery of undergraduate law courses.

The legislation requires disclosure of particular information concerning aspects of the design and delivery of courses, including information on teaching and learning. This information, once disclosed, is binding on the university, and cannot be changed without student consent.

This study examines the extent to which the implementation of the legislation might be leading to a more instrumental approach to aspects of design and delivery, its implications for understandings of the purpose of legal education, and what this might mean for the role of law academics.

The findings suggest that the impact has been two fold, namely to slow down the pace of innovation and change within courses, to embed the role of centralised managerial professionals more firmly into centralised decision making processes that impact on the design and delivery of courses, in order to ensure legal compliance. This thesis argues that the interconnectedness of the managerial and academic processes around the design and delivery of undergraduate legal education has created the potential for reshaping the narratives, values and norms associated with legal education, and around the role of academics in the context of their teaching roles, in line with corporatist and consumerist values. Unless law schools are prepared to take a more proactive approach to publicly articulating the goals, norms and values of their undergraduate courses and the nature of their relationship with students, they risk these goals, values and norms and relationship expectations being shaped elsewhere, and their roles as law teachers becoming increasingly circumscribed. Ultimately the legislation, as a part of the broader marketisation policy agenda, has had a major impact not only on internal organisational arrangements but on academic life as well.

IMPACT STATEMENT

What this research has brought to the surface is that how universities are responding to consumer protection legislation can have subtle but potentially very significant implications for understandings of the role of higher education and of the respective roles of both academic and managerial professionals. The insights offered in this thesis should therefore be of interest to legal academics and academics more generally, particularly those interested in academic professionalism and concepts of academic freedom and authority, as well as those interested in questions around the philosophy and values of a discipline. It may also interest researchers exploring the impact of higher education policy, particularly around the marketization of higher education, as well as to researchers interested in the growth and roles of the managerial professions in higher education.

In the wider professional context the fact there has been so little research into the impact of consumer protection legislation and particularly the implications of the information disclosure requirements should make this research relevant to course designers as well as to university compliance officers and those responsible for marketing materials. For academics generally I believe this research signals the need to pro-actively engage with in those internal arenas in which the legislation is having most impact, if academics are not to become marginalised in deliberations over those areas they may have regarded as within their own prerogative – such as the concept of a ‘liberal education’.

The methods used in this research could be adopted by future researchers wanting to understand the otherwise inaccessible areas of peoples subjective attitudes and experiences of policy implementation within specific institutional contexts.

Although the focus of this research is on the implications of UK policy, and although I recognise that higher education and legal education may be culturally-specific and the values, experiences and views of academic and managerial professionals in one country cannot be assumed to be shared by those in others, the general trend towards a more marketised and consumerist approach is evident in several countries. This research may therefore prompt researchers in

other countries to think further about whether this research also raises issues for them.

There has been so little written about the application of the legislation to higher education that I believe this research is publishable in a range of journals which focus on different 'themes'. For example I think the Law Teacher Journal would be interested in my discussion in Chapter Four and Five, as would journals in the socio-legal studies field such as the Journal of Law and Society. While socio-legal scholars are very good at considering the implications of law for just about every other section of society, there has been relatively little consideration of laws implications for themselves. Publication in higher education policy journals is another source of potential dissemination, particularly those concerned with policy or studies in higher education.

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Glossary of acronyms and abbreviations

CMA	Competition and Markets Authority
CCR 2013	Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013
CPUTR 2008	Consumer Protection from Unfair Trading Regulations 2008, as amended
CRA 2015	Consumer Rights Act 2015
HEFCE	Higher Education Funding Council for England
OfS	Office for Students
OIA	Office of the Independent Adjudicator
QAA	The Quality Assurance Agency for Higher Education
Online/DL	online or distance learning
SQE	Solicitors qualifying examination
SRA	Solicitors Regulation Authority

PROFESSIONAL DOCTORATE STATEMENT

When I initially joined the Doctor in Education Programme (EdD) at the (now) University College London (UCL) Institute of Education (IoE) my interest was then in the regulation of transnational¹ education. This reflected the fact that I was at that point the Director of a very large transnational undergraduate law course. My interest, I thought at that stage, was at the macro level of different national policies and regulatory regimes for transnational higher education law courses. However, as I indicated when I wrote my supporting statement for my application, I thought that focus might well change as I progressed through my studies, and that has proven to be the case. Instead of focussing just on macro issues around policy I became increasingly interested in exploring the professional role of the law academic, and how understandings of this role may be changing, and why. My shift from a law school based teaching and research based academic role to an 'academic-manager' role not based within a specific law school required considerable interaction with professional (non academic) managers based in central university structures and made me increasingly aware of the challenges to more traditional understandings of the role and authority of the academic teacher, challenges emanating from government policy and particularly its marketisation agenda. These two foci are not unrelated: first, policy and regulation can act to shape these understandings, and second, it became clear to me through my studies that while understanding the professional role of lecturers in other countries is important to the success of transnational educational initiatives that rely on their co-operation, it was even more important to step back and explore the understanding, beliefs and values of academics in England who design and deliver undergraduate law courses. As a result my focus widened, beyond simply transnational courses to include law academics generally, in their teaching roles, and how, and why, understandings of their role might be changing.

For my Foundations of Professionalism (FoP) I decided to focus on the impact MOOCs² may have in providing a space to allow other, non-academic,

¹ I am using 'transnational' in the sense that the course was an English law course offered worldwide, rather than being a non-locally specific 'international' law course.

² 'Massive Open Online Courses'

professionals to challenge the exclusive (at least in pre-1992 universities) role of academics over teaching and learning. At the time I was writing my FoP MOOCs had captured the imagination of the press, university executives, and to some extent the government as they were seen, amongst others, as a potential way of maximizing student numbers (and attracting a more diverse range of students) and minimising overhead costs. At my (then) institution, there was a desire to invest in MOOCs and the course I directed was the first to deliver one. I observed at the time that introducing MOOCs was providing an opportunity for managerial professionals to embed themselves in their design and delivery rather than simply the administrative processes around them. The FoP provided me with a theoretical framework in which to analyse and critique this change. As a result I was able to situate my observations within the body of work analysing the concept of a 'profession' and the basis of academics' claims to authority over pedagogy and practice, but also within the work on 'third space professionals' (particularly Celia Whitchurch) and that of Gary Rhoades on the potential impact of information technology on academic roles and the risks it arguably posed of academics becoming simply 'content experts'. The FoP was immensely useful in my professional life as it drew my attention to the need for academics to clearly articulate the pedagogy underpinning the design and delivery of courses in the face of these potential risks.

This then led me to think about the need to be explicit about the particular pedagogy a law course purports to encourage, and how that pedagogy is understood by UK academics and by the teachers³ based in 'local' (non UK-based) institutions supporting transnational courses. This became to focus for my Methods of Enquiry 1 (MoE1). I have been especially concerned that while many academics (including myself) claim to promote 'active learning' and learner centred education ('LCE'), we may not always make it clear what we mean by these concepts, nor do we always link these concepts with our teaching methods, leaving us open to the charge we do not in fact do what we preach (what Argyris and Schon (1974) call the disconnect between 'espoused theories' and 'theories in use'), and even that in practice we may sometimes not be encouraging very positive learning behaviour by students. The assignment for MoE 1 enabled me

³ I am not using the term 'teacher' in a pejorative sense but simply to indicate that not all were situated in higher education institutions.

to explore the different concepts of LCE, its evidence base, and its ambiguities. During this research it became clear that while LCE and its associated practices of 'active learning' and 'problem based learning' have become a part of the discourse around what makes for 'good' legal education, the commitment to, and operationalization of, LCE can be shaped by many factors, including our social environment and dimensions of culture.

The design of the research itself – to explore teacher beliefs around what makes for 'good quality' legal education - required me to delve into territory previously unfamiliar to me, namely social science epistemologies, research methodologies and methods. This I have found enormously beneficial. While I was familiar with some of the research into effective teaching and learning, my lack of knowledge and skill in the social sciences meant I was not able to situate that research within any theoretical framework, with the result I found it difficult to compare and assess the particular perspectives reflected in that research. One of the most useful things about this exercise has been my realisation of how poorly as a law student I was trained in research methods.

Designing the empirical research project itself was a new learning experience for me. Although I have carried out research in the law discipline, this research has predominantly been theoretical. Where I have been involved in empirical investigations I have either worked with social scientists who provided the theoretical frameworks and methodologies, or, as is common with a lot of legal research, it has not contained any express epistemology or methodological justification at all. While this might not be problematic given that much legal research consists of the analysis of legal principles, where that research seeks to draw on research from the social sciences (for example around human behaviours, or around effective learning) there is, in my experience, often little, if any, reflection of the epistemology or methodology and methods used in that previous research, and no analysis (or acknowledgement) of alternative epistemological frameworks. Reflecting on articles I have read in journals related to the teaching of law – articles which may be based on surveys or evaluations or practical observations - I have sometimes been struck by the absence of reference to research frameworks or research design considerations. I have also been struck by how little attention seems to be paid to research from within

other disciplines, including education (although I also observe that this is changing and there is a core of legal academics who do draw from other disciplines).

The MoE 2 I found a challenging piece of research to carry out as it required me to implement my MoE1 proposal and evaluate the effectiveness of my research design. I found conducting the research a real learning curve, but as a result I became more confident in knowing how to structure a piece of research, and in identifying appropriate social science research methods. Interviewing and particularly my analysis of the interview was the area I felt least confident in. On reflection I think this is partly at least a result of my legal background and my focus on identifying or eliciting 'facts' or 'truths' rather than on recognising that interviews are '*a lens through which to view social contexts and arrangements*' (Gerson and Horowitz, 2002) and which demands reflexivity by the researcher to understand and acknowledge both how the interviewer can influence what is said, and how it is subsequently interpreted.

In going forward onto the Institution Focused Study (IFS) I wanted to use my newly found knowledge and experience to design and implement a piece of research that incorporated both the policy angle and its implementation at different levels within a university. The focus of this study was to explore the way in which my (then) institution had, through the enactment and implementation of its own internal 'policy', interpreted and applied a particular part of the UK Quality Assurance Agency's quality code for UK higher education provision. This research was deliberately structured as mixed method, allowing me to extend my skills through using Discourse Analysis' as the method to explore the values implicit in policy documents but also to build on the knowledge and skills of interviewing and data analysis I had developed in the MoE2 to explore the extent to which personal beliefs and values shaped the ways in which interviewees interpreted the Code, and understandings of what constitutes 'good teaching'.

The feedback from the MoE 2 and IFS, although very positive, did point to the need to pay greater attention to ensuring there was a strong rationale for the particular research, and to explaining my choice of research methods more fully.

This pointed to my tendency to assume that what is obvious to me is also obvious to the reader, something I have been careful to address in my Thesis.

In summary the EdD Programme has contributed to my professional development in a number of ways:

- The extensive reading I have undertaken has given me much greater awareness and knowledge of the research and literature on academic professionalism and educational policy in the broadest sense
- It has given a much stronger set of skills to evaluate existing research in these areas
- It has also given me a greater sense of confidence and authority in a number of ways:
 - I. over 'education' matters (as opposed to simply 'law')
 - II. over the need for greater incorporation of insights from higher education studies into law schools
 - III. in my understanding of qualitative research methodology, and
 - IV. in my ability to design and undertake that research
- Equally however it has also made me very aware that for everything I learn, there is still so much more to learn!

I am no longer employed in the higher education sector but have moved into the education consultancy sector. I have undertaken consultancy work for UK but also with NGOs and organisations in the higher education sector overseas and in regions where the higher education sector is at different stages of development in terms of the direction of broader policy. The insights from the EdD have been invaluable in giving me the knowledge and skills to, I believe, be able to contribute knowledgeably and effectively to local 'conversations' on higher education more generally.

CHAPTER ONE: General introduction to this study

1.1 Introduction

With universities required under consumer protection laws to publish more information about course⁴ design and course delivery⁵ methods such as the composition of the course, teaching and learning activities and assessment, and facing potentially significant sector regulatory as well as legal consequences for failing to do so, authority over course design and delivery may be shifting from academic to managerial staff.

The aim of this thesis is to undertake an in-depth study with a small number of academic and managerial professional⁶ staff in both 'new' and 'old' universities to understand the impact of this legislation on the design and delivery of undergraduate law courses. It will examine the extent to which this might be leading to a more instrumentalist approach to, and more centralised control and authority over, course design and delivery, and what this might mean more generally for the role of law academics.

1.2 Personal background to this study

Since the 1980s the higher education sector in England has experienced profound change as a result of government policy directed at opening out access to higher education and embedding market-based reforms (Collini, 2017; Filippakou, Salter and Tapper, 2012a; Marginson, 2013; McCaig, 2018; Molesworth, Nixon and Scullion, 2009; Shattock and Horvath, 2019). The most recent policy reforms implemented under the 2017 Higher Education and Research Act have intensified the shift away from a state funded system towards a demand-led, market (or perhaps more accurately quasi-market based system (Marginson, 2013)). Under this general policy framework market forces and particularly student preferences and competition are expected to play a very strong role in driving the sector. Higher education regulatory reforms have

⁴ I am using the term 'course' rather than 'programme' to refer to the full degree because this is the term used in the policy documents I refer to in this thesis.

⁵ I am using the term 'delivery' as shorthand to encompass how learning is structured to take place, rather than in the transactional sense of delivery of a product to the user.

⁶ I am aware this term is sometimes used pejoratively in the literature. I am not using the term in this sense, rather I am using it because I believe it best encapsulates the range of roles and job titles of non-academic university staff.

reinforced student choice, augmented by measures to ensure the sector's accountability to students and other 'stakeholders', including the requirement that the sector must comply with consumer protection laws as a condition of registration as a higher education institution in England.

My interest in the impact this is having on authority for course design and delivery stemmed from my previous role first as a law academic (which also included a period of school⁷ responsibility for teaching and learning) before moving to a central managerial role. In this latter role I had (amongst others) oversight of the design of a large undergraduate law course and its teaching and learning methodology.

I began my UK teaching career in the further education sector before moving to a polytechnic (which subsequently became a university post 1992). I followed this with a move in the mid 1990s into the Scottish 'post -1964' university sector⁸ and finally to one of the older civic universities in England. Coming into the university sector from the further education and polytechnic sector, both at that time under local authority control, I was familiar with a more circumscribed role for academic staff. Teaching hours in the further education sector were very high, and the focus was on vocational and practical education, while in the polytechnic sector teaching hours were lower and teaching more intellectually driven, but academic authority was limited in that examinations were set and marked by a national body.

Within the post-1964 university sector I had significantly more freedom over the design and delivery of my modules⁹ albeit that the undergraduate law degree is required to meet certain syllabus requirements imposed by the law professional bodies. I was largely free to develop, design and deliver courses or adapt courses to take account of or to incorporate changes in the law or in understandings of law and its role in society that I thought worthwhile and beneficial to students, subject to Law school approval processes.

⁷ I am using this term to cover discipline-based organisational units, alternatively called 'departments'.

⁸ An expansion of the sector popularly associated with the Robbins Report (1963).

⁹ I use the term 'modules' to refer to individual subjects or units within a course.

Over my time in the university sector, but particularly in England where the marketisation agenda has been very strongly pursued through government policy, I became aware that the incremental policy reforms, particularly those associated with marketisation and the emphasis on student choice as the primary driver of higher education provision, appeared to be shifting authority for course design and for elements of teaching and learning methodology to professional managerial staff situated in centrally located divisions variously called for example 'teaching and learning', 'quality assurance', 'the student experience' or 'educational technology'. Latterly as an academic manager straddling both an academic and managerial role I was in a unique position to experience these changes (and a participant in some of them) and the tensions that came with them.

Then, in 2015, the UK Competition and Markets Authority ('CMA'), the UK's general markets regulator, confirmed that consumer protection law applied to the higher education sector. Consumer protection law has arguably always applied to this sector (Farrington, 2012), but the general applicability of this law, including its implications for the legal nature of the relationship between higher education institutions and students, remained largely under the public radar. This changed in 2015 when the CMA issued advice for the sector setting out in some detail how specific elements of consumer protection law would, in its opinion, apply to higher education, including the legislation requiring institutions to disclose information about course design and delivery (CMA, 2015). This was followed by further guidance developed by the Quality Assurance Agency for Higher Education ('QAA')¹⁰ on behalf of the (then) UK higher education funding bodies (QAA, 2017), and then in 2018 by a requirement imposed by the new higher education regulator, the Office for Students ('OfS') making 'having due regard to' the CMA advice a condition of initial and ongoing registration of higher education providers in England and Wales (OfS, 2018, Condition C1).

This requirement to disclose information about courses was not new. Disclosure requirements had previously been imposed by the QAA. What was new is that this advice was issued by the UK's general markets regulator rather than the

¹⁰ The body responsible for standards and quality of UK higher education

higher education regulator, and this advice is based solely on general consumer law principles rather than on higher education sector specific policy considerations. I saw the source of this advice and its policy underpinnings as deeply symbolic. The general policy and principles underpinning general consumer law are based primarily on an instrumental and transactional market-based approach to relationships, relationships which are deemed to be entirely private and commercial in nature and where the focus is on the outcome of the transaction rather than the nature or value of the relationship itself. It serves to reinforce the centrality of the language of the market such as consumer choice and satisfaction (including graduate employment outcomes) over the language of knowledge, learning and education (Williams, 2013b, p. 17).

The consumer protection legislation not only requires that certain information be disclosed, but that the information be accurate. It is intended to foster a cautious and careful approach by 'suppliers' because once disclosed the information becomes binding on the supplier. Universities typically use a variety of mechanisms to publish information including (often multiple) web pages (university and school-based), printed materials such as prospectuses, course descriptors and 'programme specifications', and verbally at university or school open days etc, with the supply of information often dispersed across schools, faculty and units within the central university. In addition much of this information may be prepared and published many months in advance of the commencement of the course. For this reason the risk of inadvertent breach in the higher education sector is arguably greater than for suppliers in other sectors of the economy.

Specifically in the context of information disclosure, the CMA advice, based as it is on general market-based values and principles underpinning consumer protection law, has the potential to reduce the opportunity to develop or negotiate a more nuanced, sectoral approach to both the role, type, and effectiveness of published information with the disclosure requirements driving design and delivery rather than the other way round, especially when reinforced by a range of legal and regulatory enforcement measures. Breach of the requirements might also lead to negative publicity and reputational damage (and potentially impact on a university's various public and private ranking scores, scores which

universities take very seriously (Hazelkorn, 2008, 2017)). The challenge for universities and academics is how to balance these requirements against the need to provide courses that are flexible, up-to-date and innovative in terms of their content as well as their learning and teaching methods. To date there has been little research exploring how universities and academics are navigating these issues.

Carrying out this research I have focused primarily on the Advice on the information disclosure requirements imposed by the consumer protection legislation published by the CMA for the higher education sector, together with the Guidance subsequently published by the QAA in 2017.

The focus of my research is on university-based law courses. The legislation and CMA advice apply to all 'higher education providers'. Other higher education providers (such as colleges) also provide undergraduate law courses but they are usually offered via a franchising, validating or similar arrangement with a university who will generally retain responsibility for key features of the design and structure of the degree.

1.3. Undergraduate legal education

To summarise very briefly, historically legal training in England was undertaken by way of apprenticeship (solicitors) or pupillage (barristers) through one of the professional Inns (Tempany, 1885). Stuckey (2004) explains It was not until the 18th century that it was advocated that universities should take over legal education (Oxford and Cambridge at that stage only offered Roman and Canon Law rather than education in the English Common Law). Initial attempts to establish law schools teaching English Common Law at Oxford and Cambridge and University College London were short lived and not revived again until the mid 1850s when university law schools gradually began to reappear. By 1909 there were nine university law schools (Boon and Webb, 2008), and 25 in 1966 (Wilson, 1966). However in the second half of the twentieth century the number expanded considerably and by 1996 there were 86 (Boon and Webb, 2008). Between 1964 and 1971 the number of law students more than doubled, in large part through the rise of the polytechnics (Leighton, 2015). Today there are over

93 law schools in England alone¹¹ spread across the university sector including 'post 2012' universities (compared to only 34¹² medical schools, situated primarily in the 'pre-1992' sector).

Initially university law schools were regarded as simply promoting a trade (Hepple, 1996). The dominant paradigm until the latter part of the twentieth century was doctrinal law (rules), with the role of the legal academic being to describe and explain these rules (Cownie, 2012, p. 58). This doctrinal approach reflected a belief the law is '*benign, neutral, objective and autonomous*' (Thomas, 2006, p. 239). The result, as Cownie explains, was that university undergraduate legal education struggled to forge an identity separate from the profession (2012, p.59).

The legal profession did not stop providing apprenticeships as an alternative route into the profession. It was not until after the 1970s that legal education rigidly distinguished between academic undergraduate education and a professional stage (ultimately provided in the form of a nine month graduate professional course provided by post-1992 universities followed by a period of practical experience within the profession) (LETR, 2013). The profession nevertheless retains some control over the academic content of undergraduate law degrees through their syllabus requirements if the degree is to be recognised for professional practice. It remains the case that the issue of the purpose of the academic stage has never been far from the surface within legal scholarship. It has been suggested that there are differences between the approach taken by different law schools, with the older universities offering a more theoretical approach and the post-1992 law schools taking a more practical approach to undergraduate legal education (Boon and Whyte, 2010).

However, the wheel is turning yet again and in 2017 the professional body regulating the training of solicitors announced in effect that it would no longer require undergraduate law degrees to contain certain prescribed topics.¹³ This change will, if formally approved by the Legal Services Board (the oversight

¹¹ <https://www.sra.org.uk/students/courses/qualifying-law-degree-providers/>, accessed 31/5/2020

¹² www.medschools.ac.uk

¹³ Law Degrees will no longer be designated as 'qualifying law degrees' and the new route into professional accreditation as a solicitor will consist of a national licensing examination, assessed independently of law schools, which all degree holders ('or equivalent') must pass. <https://www.sra.org.uk/students/>. This change does not impact on entry into the profession as a barrister (a smaller branch of the legal profession) where the requirements for a 'qualifying law degree' will remain.

regulator of legal services in England and Wales), take effect from Autumn 2021. This presents an opportunity for law schools to revisit the purpose of the undergraduate law degree at the exact time as government policy is embedding the more marketised approach to higher education. How law schools adapt to this opportunity may provide further insights into how the role of the law academic is to be understood.

1.4. Theoretical perspective

In planning and undertaking this research I was conscious of the debate over whether there is, within the field of higher education study, any common knowledge base or set of shared methodologies. Certain theorists (for example Bourdieu) and theoretical approaches (critical and social realism) appear to be particularly influential in higher education research (Williams, 2011), but Williams also draws attention to Trowler's caution (Trowler, 2012c) not to become so attached to a theorist or theory so as to lose sight of the limitations of their approach, and to the benefits of having an open mind rather than being tied to a particular 'pet' theory.

In approaching this research I was conscious there were a number of possible perspectives I could adopt in which to situate my findings. One was organisation studies and the search to understand organisational adaptation to policy. Within organisation studies are a number of perspectives, including organisational fields (DiMaggio and Powell, 2000) and (neo/)institutionalism (Meyer and Rowan, 1977). Another possible perspective was structure and agency, and particularly the extent to which agents are constrained by the social settings they operate within. Neither of these perspectives seemed sufficient by themselves. Within organisational studies the focus is on 'fields' rather than the organisations within them (Spillane, Reiser and Reimer, 2002, p. 405) or on 'institutions' and their relationship with organisational design (Berthod, 2016; Wooten, 2015), underemphasizing the role of agency, while structure and agency are generally conceived as being in opposition to each other (the 'perennial antimony' - Levinson, Sutton and Winstead, 2009).

Instead, reading research in the policy studies field I became particularly interested in the concept of 'sense making' and particularly the 'integrative framework' used by Spillane, Reiser and Reimer to explore policy implementation in schools (2002). This framework seemed to provide a more insightful and comprehensive way of working with my data. Brown *et al* (Brown, Colville and Pye, 2015) draw attention to both the interpretive, social constructionist roots of the 'sense-making' concept (which some label a theory, perspective or a lens (Maitlis and Christianson, 2014)), and to its focus on analyzing practical activities of individuals engaged in social action, "*making it integral to the 'practice turn' ...in studies of organizing.*" (2015, p. 2). Based primarily on the work of Weick (Weick, 1995; Weick, 1969), Brown *et al* note there is no consensus on a single meaning, but there is emerging consensus that it refers "*generally to those processes by which people seek plausibly to understand ambiguous, equivocal or confusing issues or events.*" (2015, p. 2), leading them to rethink how they perceive themselves and their role within the organisation. It has been particularly influential in research concerned with 'the doing of managing' within organisations (Brown, Colville and Pye, 2015) including higher education institutions and with how sensemaking facilitates organisational change, learning, creativity and innovation (Maitlis and Christianson, 2014).

The integrative framework encompasses three elements: i) the individual implementing agent, ii) the situation in which sense-making occurs and iii) the policy signals the agent encounters (2002, p. 392). It provides a way of understanding how and why policy (in this case embodied in consumer protection legislation) might be interpreted and implemented differently within complex organisations such as universities. Spillane *et al* clarify the framework is not intended to supplant conventional models but rather to characterize how sense making processes can impact on policy implementation (2002, p.389). It provides a more subtle approach than conventional accounts whereby policies are 'finished objects' crafted at the top of the hierarchy and then simply transferred and applied by those below (Riveros and Viczko, 2015). It doesn't deny the role of structure or agency but rather focusses attention on how policy is actively interpreted by actors engaged in the policy implementation process.

Sense-making, explains Spillane *et al*, focuses on the prior beliefs, experiences and knowledge that bear on individual constructions of meaning (2002, p. 394), and which are themselves influenced by social contexts including what Spillane *et al* call 'thought communities' such as professions, organisational structures and traditions (2002, p. 404). This primarily individual-cognitive framework (Brown, Colville and Pye, 2015) Spillane *et al* suggest offers the potential to transcend the focus on organisational design and on the structure versus agency debate by taking a holistic approach illuminating the interrelationship of these three (in this case individual law academics and compliance professionals, individual university organisational structures related to course design and delivery, and policy signals such as those emanating from university websites). It recognises the situated character of policy reception and it also helps address what Greenwood *et al* identify as the gap between institutional logics (the "*belief systems and related practices that predominate in an organisational field*" (Scott, 2001, p. 139) and individual sensemaking (Greenwood, 2008, pp. 29-30).

In some ways the integrative framework appears to bear some similarities to Bourdieu's work around 'field' and 'habitus', but (like the organisation fields of organisational studies) there have been criticisms over the lack of clarity over these 'thinking tools', and too little focus on the internal content of a given field (Green, 2013; Jenkins, 1992; Naidoo, 2004; Rawolle and Lingard, 2013). Jenkins has observed that in looking at the uses to which some of Bourdieu's work has been put

"one often comes away with the impression that their [writers'] knowledge and understanding of it are, at best, superficial" (Jenkins, 1992, p. 2),

while Reay has cautioned of the temptation to use Bourdieu to explain the data rather than using the thinking tools as a way of working with the data (Reay, 2004, p. 440).

The integrative framework draws attention to individual sensemaking but at the same time it acknowledges that sensemaking is also a social affair in that it is situated in embedded professional and organisational contexts (Coburn, 2001). Policy implementation is influenced by a range of factors, some personal, some which may be shared across their professional sector while others may differ according to the university's organisational design and internal policy signals.

Bleiklie and Kogan observe that most studies into policy processes adopt either a top down (*"decisions at a higher level become structural conditions that affect behaviour at lower levels"*) or bottom up (exploring how individual agents influence policy making and/or implementation) (2006b, p. 10), but they fail to explain how the levels are related to one another. Bleikie and Kogan argue that this conceptual separation of levels fails to provide an adequate analysis of *"real world change processes"* (2006, p. 11). They observe that in their experience

"decisions in the different contexts of higher education are highly interwoven in a number of different ways that make a separate levels model unsuitable. Indeed it may even obscure rather than illuminate analysis." (2006, p. 11).

The value of the Spillane *et al* framework is that it recognises these interwoven contexts of the personal, social and organisational factors without denying the influence of the formal organisational hierarchy, while also allowing for what Bleiklie and Kogan refer to as the *'exceptionalism'* of the policy processes within higher education (2006b, p. 12) whereby power and autonomy may be diffused amongst different groups within universities.

This study is an interpretivist and social constructionist policy implementation study drawing on elements of this framework and directed at understanding responses within individual universities and their law schools. I am interested in the organisational environment in which implementation of the legislation takes place. Specifically I am interested in information published on university general (rather than law school specific) websites and in the role of university managerial professionals responsible for compliance and the extent to which these might impose constraints on design and delivery of law school courses, and the implications of this for the role of law academics. This study differs from other, normative or objective policy implementation studies directed at identifying cause and effect or at providing prescriptions for better implementation, by recognising that policy implementation is a social rather than an instrumental and hierarchical practice. My focus is not on whether the policy has led to the anticipated outcomes (although I do make some observations on this in Chapter Four) but rather on the way in which the policy is made sense of within universities.

This design involves interviews with a small number of law academic ‘directors of teaching’, and managerial professionals responsible for legal or compliance matters, plus a website review of 30 university websites promoting the undergraduate law degree. This design and methodology are discussed in Chapter 3.

1.5. Research Policy Context

Consumer protection legislation is part of the general law rather than law applicable only to the higher education sector. However the higher education and consumer policy context are both relevant to this research because of their potential to interact and reinforce each other and to shape how regulators and implementing agents perceive, interpret and operationalise the measures.

1.5.1 The higher education policy context

The reforms that have taken place in the higher education sector as a result of government policy have been well documented and critiqued (see for example Brown, 2015; Kogan *et al.*, 2007; Marginson, 2009; McGettigan, 2013; Molesworth, Scullion and Nixon, 2011; Williams, 2013a). These reforms have included the (re)introduction of student fees and the removal of maintenance grants, the introduction of the student loan system, the removal of teaching block grants (to all but a small group of disciplines), the removal of caps on student numbers as well as the abolition of the divide between universities and polytechnics and the opening up of the higher education sector to alternative providers. The period since the 1990s has been characterised as a period of particularly rapid change (Foskett, 2010).

Underpinning these reforms has been a policy supported by all political parties directed at the marketisation of the higher education sector (Brown and Carasso, 2013; Foskett, 2010; Kogan and Hanney, 2000). The intellectual underpinning of these policy reforms is generally explained in terms of the impact of the economic discourse of neoliberalism on successive governments beginning with Margaret Thatcher’s conservative government of the 1980s (Hall and Jacques, 1983). ‘Neo-liberal discourse’ has been described as functioning as a ‘social imaginary’ (Marginson, 2013, p. 354), or as a ‘meta-narrative’ (Gulson, 2007, p. 179) or a ‘*catch-all trope rather than a hypothesis to be tested*’ (McCaig, 2018, p. 16).

Nevertheless, it is most commonly used to refer to the encouragement of market mechanisms in the higher education sector. Unlike classical liberalism which wants to free individuals from state interference, neoliberalism envisages a positive role for the state in constructing markets and in creating the active, self-interested and 'responsibilised' consumer (Olssen and Peters, 2005). It is supported by four interrelated characteristics: rationalism, capitalism, technology and regulation (Malin, 2020, p. 22). As a result, government higher education policy has been directed both at providing greater market freedoms as well as more stringent regulation of aspects of its activities. Linked with the influence of neoliberalism on higher education policy has been 'new public management' ('NPM', also known as 'managerialism'), generally understood as promoting the empowerment of management and the introduction of performance measurement and management systems drawn from the private sector (Meek *et al.*, 2010), supported by 'the virtuous three 'Es' - economy, efficiency and effectiveness (Pollitt, 1990). In the higher education sector NPM has been equated with a shift of power from senior academics and schools to the central university and the subservience of academic values to systems and corporate mechanisms (Kogan, 2014, p. 76)

Employing a policy discourse analysis McCaig (2018) has identified and analysed the policy stages of marketisation in the UK higher education sector into distinct stages, beginning in the mid-1980s. He cautions that progress towards neoliberal marketisation has not been linear or necessarily proactive or deliberately cumulative; other policy goals (such as expansion in student numbers, public funding cuts) intervene, and policy sometimes appears contradictory - "*policy formation remains a chaotic business*" (Scott, 2013, p. 55). Scott has pointed out (2013) higher education has become increasingly dominated by management consultants, immediate objectives and shorter-range delivery timelines, rather than the more ideologically detached 'grand narrative' inquiries into higher education of the past policy reviews.

During the period 2000-2010 McCaig observes overtly market discourses entering the policy arena, although as Shattock and Horvath point out (2019, p. 20) the seeds were sown in the Government's 1991 White Paper *Higher*

Education: A New Framework, which stated “*The Government believes that the real key to achieving cost effective expansion lies in greater competition for funds and students.*” (DES, 1991 par. 17). The rhetoric of ‘student choice’ rose to prominence in the 2003 White Paper (DfES, 2003) as the sector was encouraged to be more competitive on quality and price, but also on outcomes (graduate employability). By the time of the Browne Report in 2010 into the financing of higher education it was anticipated that

“[s]tudents will control a much larger proportion of the investment in higher education. They will decide where the funding should go, and institutions will compete to get it.” (2010, p. 29)

Graduate employability was promoted as an important factor that should underpin student choice. In addition to student satisfaction surveys and information on examination results, information on the employment and incomes of graduates was to be made available, signalling not only the growing policy significance of student choice as a key driver of higher education provision but a shift towards a more utilitarian or instrumental view of the role of higher education, alongside the idea of human capital to meet the needs of the ‘knowledge economy’ (Temple, 2012).

After 2010 responsibility for higher education policy was shifted to the then Department for Business Innovation and Skills, a shift that reinforced the sector’s importance to the knowledge-based economy and to improving economic performance (Callender and Scott, 2013). McCaig identifies the specific economic discourses of supply and demand, return on investment and market segmentation as becoming more prominent in policy documents (2018, p. 89). The 2011 White Paper *Higher Education: Students at the heart of the system* (DBIS, 2011) in turn explicitly reinforces the ideal of market-based competition through ‘diversity’ (Filippakou, Salter and Tapper, 2012a), though now subsumed into a broad concept of ‘differentiation’. Unlike the earlier policy around promoting diversity and directed at breaking down the divide between universities and the polytechnic sector to address unmet demand for university places, differentiation now meant encouraging new ‘alternative providers’ to enter the market, driven by student choice (McCaig). Innovation in course provision and teaching to improve

student competition and choice was also a strong theme (BIS, 2016), Home student fees increased three fold (although primarily as a response to the costs to the public purse following the ‘massification’ of higher education), and student choice was to be facilitated even further by an enhanced set of course information for students (‘key information sets’).

Commenting on the White paper and the absence of any reference to the student as learner or to the idea of student development Barnett observes

“The latter silence is particularly astonishing: in a document subtitled ‘students at the heart of the system’ there is no reference, so far as I can see, to the idea that a process of higher education is one in which students actually develop, and in all manner of ways. On the contrary, what the Paper portrays, perhaps unwittingly, are students who are largely fixed, whose educational and pedagogical interests are well informed even before they enter higher education, and whose institutions function as a mere supplier of those wants.” (2013, p. 83)

Similarly Sabri has drawn attention to the absence of any reference to the academic in recent policy documents. The word ‘academic’ Sabri observes is not a part of the lexicon of higher education policymaking, favouring instead the word ‘practitioner’. This suggests that academics in their role as teachers are simply one amongst many groups of professional staff with the result

[i]t isolates the practice of teaching from academic identity and discipline: teaching itself becomes a generic practice. Furthermore, practitioner can be seen in contradistinction to theory and scholarship. If academics are simple and generic ‘practitioners’ then the notion of special expertise, as an essential character of higher education, is undermined. (Sabri, 2010, p. 195)

In what appears to be the first explicit policy reference to students as consumers, the Higher Education Funding Council for England was to take on a new role as ‘consumer champion for students and a promotor of a competitive system’. (2011, p. 6, par 14). Sabri has noted that concepts such as ‘student choice’, and ‘student experience’ have assumed almost totemic or reified significance (Sabri, 2011).

The 2017 Higher Education and Research Act, the first major piece of higher education legislative reform since 1992 set the ground for embedding the concept of the market (if not the actuality (Marginson, 2013)) and of the 'student as consumer' in UK higher education policy. As well as introducing a new regulatory framework for higher education providers, it introduced another major performance indicator, the Teaching Excellence Framework ('TEF'), while the rhetoric of competition, driven by active and informed student choice, continued apace. Shattock reports not only that the market created for the energy sector was apparently the model used for the higher education sector (2019a) but that a civil servant involved in drafting the regulations for the new sector regulator - the OfS - compared student consumer rights to those of '*an energy bill payer*' (Shattock and Horvath, 2019, pp. 33-34). The OfS was tasked with (amongst others) encouraging competition between providers in the interests of students and employers, promoting greater student choice (in the type of provider, courses provided and the means by which they are provided) and promoting value for money. Universities (and other higher education providers) are required to seek registration from the OfS. The registration process includes submitting a range of information to the OfS, including information on student complaints and graduate employment. More recently it has been suggested the government might restrict access to student loans for 'low value' courses that fail to reward graduates with an earnings premium¹⁴, further promoting an instrumentalist understanding of the purpose of higher education, a process made all the easier by what Readings (1996) and others describe as the vacuity of phrases such as the 'pursuit of excellence' used by universities to describe their mission, phrases which Williams believes have contributed to an intellectual vacuum readily filled by these more instrumentalist values (2013, p.140).

Within the higher education policy sector the concept of the student as consumer has gained policy and public traction, and the reforms signal a shift in power relations very strongly towards the student, with student choice ostensibly the primary driver in what is intended to be a competitive higher education market.

¹⁴ *Tory manifesto could freeze English fees and target 'low value HE'*, Times Higher Education 7/11/19, <https://www.timeshighereducation.com/news/tory-manifesto-could-freeze-english-fees-and-target-low-value-he>

The student in turn is framed as an individual whose main goal is to reap the future economic benefits from their financial investment in higher education (Tomlinson, 2016).

1.5.2 Consumer protection legislation policy context

Legislation governing contracts between suppliers and consumers has a relatively recent history in the UK, stimulated in part by accession to the European Economic Community ('EEC' as it then was) and its desire to create an internal EEC wide market in private goods and services. In addition to general legislation requiring suppliers to carry out their service with 'reasonable care and skill' contained in the UK Supply of Goods and Services Act of 1982, there is also more specific legislation imposing particular duties on suppliers in their dealings with prospective and current consumers including the duty to provide specified types of information and to ensure their contract terms are fair, arising from implementation of EU legislation.

The policy underpinning consumer protection legislation is not easy to identify as it has developed piecemeal over time and its origins lie in a mixture of UK and EU law. The starting point is the requirement for an economic exchange between a business and an individual acting primarily for personal purposes. This frames the broad context for the application of consumer protection law. Initially policy tended to perceive the consumer as vulnerable in the face of the superior bargaining power of the supplier. As a result it required the state to step in to markets to provide protection. Over time, the rationale has changed to one more in line with mainstream economics based on the assumption that markets work most effectively and efficiently when driven by individual consumer preferences to distribute scarce resources. Thus policy underpinning consumer protection has shifted (though not exclusively) from one which sees the consumer as vulnerable to one in which the consumer is envisaged as 'confident' and 'empowered', actively and purposively driving competition, innovation, quality and price (as demonstrated in the government consultation paper *Enhancing Consumer Confidence by Clarifying Consumer law* (BIS, 2012)). The primary role of consumer protection legislation under this approach is to promote and

safeguard the conditions under which consumers exercise sovereignty in the marketplace – by, for example, ensuring they have sufficient information to make informed decisions. As Malloy has discussed, this traditional economic perspective assumes there is a close equivalence between the pursuit of individual self interest and the promotion of the public interest (2004, p. 27).

This assumption that the public interest is best represented through individual choices is reflected in the CMA's Advice on the application of consumer protection legislation to higher education. The CMA is a non-ministerial department of government whose role is to

“promote competition for the benefit of consumers” and its responsibility is “work[ing] to ensure that consumers get a good deal when buying goods and services, and businesses operate within the law”¹⁵.

Its focus is on markets and competition and ensuring they work effectively to deliver a ‘good deal’ for consumers. Its principles reflect neo-liberal and economic values. It is not surprising then that the Advice does not indicate whether the CMA took other, non-economic values or perspectives, into account when preparing it. There is no reference to, for example, the extensive debates about the role and nature of higher education and whether it is a ‘public’ rather than a ‘private’ good (captured for example in Marginson (2016)), or any reference to whether it is appropriate to apply consumer protection legislation to the sector’s primary function of providing higher education (as opposed to its related functions of supplying accommodation and other student services). Just as with the 2011 White paper the concept of the ‘student as learner’ is absent (Brooks, 2018).

Some writers in the higher education sector have suggested a distinction be drawn between customers and consumers (Barnett, 2011, p. 43). The term ‘customer’ they argue suggests the existence of an ongoing relationship between the parties, one in which both the ‘supplier’ and the ‘customer’ are engaged in the provision of a service. A consumer on the other hand is simply a passive recipient of the service. ‘Consumer’, they suggest is more appropriate to goods,

¹⁵ <https://www.gov.uk/government/organisations/competition-and-markets-authority/about#our-responsibilities> accessed 31/5/2020

‘customer’ to services. Gabriel and Lang point out that the term ‘consumer’ is now so overused as to be almost meaningless

“At one level, to state that someone is a consumer is almost as meaningful as acknowledging that he or she is a living being” (Gabriel and Lang, 2015, p. 2).

Jung, discussing the concept, identifies four underlying archetypes: co-production (akin to the idea of a ‘customer’ suggested above), representation, product choice, and regulation. Jung suggests that while the consumer has a role in shaping the service in some way in the first two archetypes, in the second two the consumer has a more passive role. (Jung, 2010, p. 441). However all four archetypes still presuppose a ‘service to’ and ‘user of’ understanding of the nature of the relationship whereby the focus is on the individual user and outcome of the service is defined in advance. Others such as Williams suggest that neither term can properly encapsulate the concept of education as one in which students share in and further advance society’s collectively held knowledge (2013b, p. 141).

Either way, neither the legislation nor the Advice make such a distinction between ‘consumer’ and ‘customer’. There is no obligation under the legislation or Advice for a student to be an engaged participant in the education experience. To the extent that the CMA considered these matters it presumably thought they were ones for government.

The combined effect of both higher education policy and consumer protection policy (as reflected in the consumer protection legislation and CMA Advice) has been to reinforce reframing the relationship between the student and provider as a private commercial one, underpinned by general market principles and in which education is primarily a private good whose characteristics are driven primarily by student choice.

1.6. Contribution of this research

Gornitzka, Kogan and Amaral have drawn attention to what they see as the relative lack of interest in policy implementation studies in higher education (2005). This they attribute in part at least to the changing role of governments from one of direct control over higher education to one of ‘steering’ via ‘meta-

regulation' or 'co-' or 'self-'regulation whereby only broad objectives or frameworks are specified by the government and discretion over implementation is devolved to agencies or regulators which may be independent, quasi-independent or 'owned' by the sector. This makes it more difficult to identify specific measures introduced directly by government policy. In this case the consumer protection legislation consists of a range of legal instruments introduced over a period of time and which form part of UK general law. The legislation is not directed specifically at the higher education sector and its application to this sector has rarely been tested in the courts. It was the request by the government to the (then) Office of Fair Trading ('OFT') in 2014 to review the application of consumer protection legislation to the higher education sector (and later taken up by the CMA after the demise of the OFT) that signalled the government was looking to this legislation to form a part of its broader higher education policy framework.

This research contributes to the body of higher education policy implementation studies by providing an informative study of how measures co-opted into the service of higher education policy are being perceived, interpreted and operationalised 'on the ground'. It also contributes to the body of socio legal research identified as 'regulatory studies'. This is a relatively new field of (predominantly) legal scholarship that has developed since the 1980s. Research and scholarship around regulation studies is concerned with mapping, understanding and explaining the expansion of state, markets and civil society-based regulation (Parker and Nielsen, 2011). These two fields of study have areas of overlap, both in their theoretical perspectives and methodologies (each has an interpretivist social constructionist stream), as well as in the 'objects' of their research. Each define 'policy' and 'regulation' very broadly, to encompass measures that sit within both fields. Legislation is one such measure.

This research is also relevant to academics within law schools and within universities generally. Certain features of law schools and legal education, particularly the long standing debates over the nature and purpose of undergraduate legal education including the extent to which the undergraduate law degree could, and should, encompass both 'liberal' and 'vocational' education, and its relationship with professional legal practice has meant law

schools have long had to balance the extent to which a more instrumental, 'consumerist- like' agenda could and should drive design and delivery of courses. Similarly the considerable growth in the size and number of law schools and the number of law students (with law schools absorbing a greater increase in student numbers than any other discipline since the 1970's (Davies, 2018, p. 102)) has resulted in different law schools forging distinctive identities – with some (typically law schools in 'older universities') focusing on research while others (typically those in 'newer universities') focusing on teaching and on offering more professionally oriented courses. How different universities and law schools have adapted to the demands of consumer protection legislation is likely to be of broader interest to a range of disciplines, not simply the professionally oriented.

Much has been written about the impact of these broader changes for the higher education sector generally, but fewer writers have considered their impact within individual universities on the design and delivery of courses or for the role of academics in their teaching roles.

1.7 The structure of this thesis

This thesis consists of seven chapters and three appendices.

This Chapter has provided a general introduction to my thesis; explaining my personal background to this study, setting out my theoretical perspective, providing the broad research policy context and highlighting the contribution of this research.

Chapter Two reviews the literature I consider to be most relevant to this study. Most of the literature has explored the governance and organisational changes that have flowed from government policy including marketisation or has considered the impact of that policy agenda on student attitudes and values. The review identifies a gap in the literature exploring the impact of the marketisation policy or the application of consumer protection laws on the design and delivery of undergraduate courses. Lastly it sets out my research questions.

Chapter Three introduces my methodological perspective in order to establish this study meets the requirements of credible qualitative social science research. It identifies the theoretical field of this research, the research methodology and

research design. It explains why I consider the case study the most appropriate research design and discusses the use of the website review and semi-structured interviews to gather data, as well as rationalising my selection of the category of interviewees. How I analyse the data is also discussed. Finally, the chapter considers the ethical dimensions of this study.

Chapter Four sets out the key provisions of legislation relevant to this research focus together with the Advice and Guidance supplementing its application, followed by a review of 30 university websites offering the undergraduate law degree, in order to understand what policy signals are reflected in the way in which the legislation Advice and Guidance has been interpreted and implemented by universities.

Chapter Five explores how a small group of academics responsible for oversight of their School's undergraduate law course, and centrally based compliance professionals, view the legislation and the impact they believe it has had on the design and delivery of the courses but also on the role of law academics. It focusses in particular on drawing out the differences or commonalities in the way law is interpreted and implemented, and what shapes these perspectives.

Chapter Six draws together the findings of the web-based reviews and the interviews in relation to the theoretical framework. It draws attention to the interconnectedness of administrative and academic processes around the design and delivery of undergraduate legal education and the potential significance of these processes for (re)shaping the narratives, values and norms associated with legal education, and for the role of academics in the context of their teaching role.

Chapter Seven concludes this thesis by revisiting and addressing each of the research questions, summarising its contribution to educational research, and implications for further study. It also evaluates the research process employed, considers its limitations and identifies possible publication and dissemination opportunities.

CHAPTER TWO: Literature review

2.1 Introduction

The previous chapter outlined the impact of the marketisation and consumer protections policy agendas and how they have reframed the relationship between the student and the university. The purpose of this chapter is to consider the literature exploring how these changes have impacted internally, within universities, and particularly on the role and authority of academics.

This systematic review of the literature is divided into two main sections. Of necessity given the word limit applicable to this professional thesis I have had to be selective in the literature I consider therefore I am focussing on literature that relates closely to my research questions. Much of the existing literature and research has focussed on the broader governance and organisation changes that have been taking place within universities as a result of the marketisation policy agenda and the implications this is having for academics across a range of issues. These include academic identity, academic professionalism, academic research, and academic power, and the extent to which academics can, or should, challenge or accommodate these changes. Few writers have considered the implications of these changes for academics specifically in the context of the design and delivery of courses. Other literature and research has focussed on students and the extent to which they may be adopting consumerist attitudes and values, and how that may be shaping their understandings of the purpose of higher education, student approaches to learning, and student expectations. Although this research has focussed on students, the outcomes can nevertheless also have implications for the design and delivery of courses. It is important to review this existing literature and research because it provides a context in which to understand why consumer protection legislation and advice might be approached in a particular way, in a particular organisational context. As discussed in my Introduction, policy is not crafted at the top of the hierarchy and then simply applied by those below in isolation from the social and institutional context and policy signals academics encounter. In what way might this context have paved the way for, or contributed to, the way in which the law and formal advice is being made sense of?

This chapter begins with a discussion of the existing literature exploring the broader governance and organisational changes that have taken place within the university sector generally, related to the broad marketisation agenda, including the growth of the managerial professions and the expansion of the type of roles they undertake. This section will also consider the extent to which this impact is uniform across the university sector or is impacting some types of universities, and/or some disciplines differently, and if so, why. The second section will focus specifically on the literature concerning the evidence for consumerism (used in this sense to refer to the promotion of the interests of the consumer and the prioritisation of the instrumental value of higher education (Maringe, 2011) and its possible implications for the design and delivery of courses.

2.2 University governance and organisational structures

That the governance and organisational structures of English universities have undergone a period of intense change since the 1980s is well established (Brennan and Henkel, 2017; Brown and Carasso, 2013; Filippakou, Salter and Tapper, 2012b; Molesworth, Scullion and Nixon, 2011; Scott, 2010; Scott, 2015; Shattock, 2012b; Shattock and Horvath, 2019). Universities in England prior to the 1980s were typically characterised as largely autonomous self-governing organisations funded predominantly by the public purse but with little governmental interference or control (though as Shattock (2017) points out, in reality this ‘golden age’ only came about in the mid 20th century). Members of the academia occupied strategic governance positions within the university and power was horizontally rather than vertically distributed (Clark, 1983, 2002; Henkel, 2000). ‘Administrative services’ as they were commonly called were distributed across schools and schools operated in an almost semi-autonomous manner. Schools and thus disciplines had control of undergraduate education and this included control of the curriculum, the syllabus and teaching and learning.

Brennan and Henkel (2017) argue this structure has now largely been ‘turned on its head’. Instead, the governance model of the former polytechnics adopted after their incorporation in 1988 is now the defining feature of the sector. Power is now more commonly distributed vertically within governance and organisational

structures which reflect a more corporatist form. Today it is not uncommon for senior post holders to come from industry (and with titles from the corporate world such as 'executive') rather than from within academia (Shattock, 2010; Shattock, 2013; Shattock, 2017; Shattock and Horvath, 2019). Key strategic and executive powers now rest with Vice Chancellors and their executive teams or with university boards rather than academic senates, and

"[t]hey operate with a combination of hierarchical structures to ensure clearly defined authority and accountability at the top and down through the organisation and structural elaboration to accommodate multiple functions and facilitate the development of organisational strategic as well as operational capacity." (Brennan and Henkel, 2017, p. 6)

2.2.1 The rise of the managerial professions

It is also suggested these pressures have accompanied a shift in understanding of the fundamental purpose of universities at the political level, away from that of a community of scholars as the custodians and transmitters of knowledge to that of the university as a corporate enterprise (Bleiklie, 2006a, p46).

Accompanying the literature on these governance and organisational changes has been literature and research exploring the growth of the managerial professions within universities. (Handal, 2007; Locke, 2014; Scott, 2009; Shattock, 2017; Whitchurch, 2009; Whitchurch, 2010). This growth has been explained in part by a rebranding of administrative posts as managerial but also by the emergence of entirely new sets of managerial posts to support the expanded range of accountability measures imposed on universities including posts associated with curriculum design and teaching and learning support (Hogan, 2014; Whitchurch, 2007). These professional managers are likely to be university educated and qualified in their particular domain and very knowledgeable about the core functions of their university (Kogan and Teichler, 2007). While some may come from academic posts and are therefore acculturated to academic values, others will be external appointments. Kogan suggests that as a result academics and professional managers are likely to have different value sets

“The[re] might be shared territories of value, but obviously each group has specific views of the functions of higher education to be given priority, about the virtue of ‘academic freedom’ vs. ‘institutional autonomy’, about the legitimacy of various external expectations, about the criteria, validity and the consequences of the performance assessment, etc.” (2007, p. 14)

Shepherd writes (2013) that the dominant academic narrative accompanying much of the literature concerning these changes is one of the pervasiveness of ‘managerialism’ and the loss of academic authority. The implications of this literature are that the role and authority of academics has undergone radical change. Not only has strategic power been centralised, away from the previous ‘community of scholars’ but a swathe of new managerial posts have arisen that challenge the roles and authority of academics over matters traditionally regarded as core academic activities, including learning and teaching and the design and delivery of courses. Henkel suggests it is skill in pedagogy (a skill that has traditionally formed no part of academic training) rather than depth of disciplinary knowledge that has become the marker of an academic’s ability to deliver a good educational experience for students. Academics now have to engage with, and learn from, staff associated with supporting teaching and learning, who may or may not have teaching experience or an academic background in the particular discipline (Henkel, 2007b).

Modern universities are now likely to consist of a range of professional sectors beyond the traditional sectors of finance, human resources and estates. Their roles are likely to encompass functions much more likely to encroach on the traditional heartland of academic activity, sectors which are now increasingly under central rather than school control. Shattock and Horvath observe that criticisms that university governance is too top-down and that too much academic business is now handled by non-academic professionals are now commonplace (2019, p104). In their research into twelve higher education institutions in the UK they found that financial and reputational risk is a major factor shaping decision making at the executive level over academic priorities, particularly in the institutions without the resources of the stronger research-intensive universities. They also found that marketing departments in particular are developing a

significant influence over teaching programmes, even within strong pre-1992 universities.

Still, Shattock and Horvath write, ultimately

“[a] university’s core business is teaching and research, and it is performance in these activities that make up success both in reputational terms and in ranking tables. Both are dependent not simply on good performance as measured by standard indicators but on innovation and creativity in the development of new academic programmes or in new research ideas” (2019, p. 103)

2.2.2 What place ‘academic freedom’?

At the heart of much of the academic literature on these changes argue Åkerlind and Kayrooz (2009), is the concept of ‘academic freedom’ and the extent to which it privileges and protects academic work not just from external interference but also from internal interference or encroachment by, for example, non-academics. The difficulty with the concept of academic freedom is, Akerland and Kayrooz (2009) suggest, the lack of clarity and consistency as well as consensus about what academic freedom (or, as Henkel points out (2007a), the related concept of academic autonomy) actually means in practice, and what activities it applies to - any academic activity or only some such as freedom of speech and academic inquiry?

Discussing the concept of ‘academic work’, Tight *et al* observe

“[a]cademic work is basically about the activities described by Clark (1983, p. 12) as the “manipulation of knowledge”, whether it relates to “efforts to discover, conserve, refine, transmit” or “apply it” (2009, p.411).

This suggests academic freedom applies to the design and delivery of courses, not simply freedom of speech and inquiry. Yet there has been little discussion of academic freedom in the context of teaching and learning, or of the nature of this freedom – does (or should) it apply to all aspects of curriculum design and delivery, or to just some aspects such as, for example, content? Is academic freedom in the context of teaching and learning merely a debate over job demarcation, or does it have deeper, philosophical roots?

This debate is not helped by the Higher Education and Research Act 2017. It guarantees the *institutional* autonomy of English Higher Education *providers* (s2(8)). This autonomy includes

“the freedom of the provider to determine the content of particular courses and the manner in which they are taught, supervised and assessed” (Sn (2)(8)(b)(i)).

This provision suggests that curriculum design and delivery are matters for each university, rather than matters over which academics have freedom. Although this is similar to the earlier provision contained in the 1992 Further and Higher Education Act, the 2017 Act also contains a new provision specifically guaranteeing academic freedom, but this freedom is expressed as the freedom to

“(i) to question and test received wisdom, and (ii) to put forward new ideas and controversial or unpopular opinions” (sn2(8)(c)).

In other words it appears to conceive academic freedom as freedom of speech and freedom of inquiry (research) only. In October 2017, in response to a controversy over a request from a Conservative MP to universities for a list of tutors lecturing on Brexit, the then Universities Minister stated

“The government is committed to academic freedom. Academics must be free to put together their courses in the way that they see fit. The government can’t interfere in the manner in which they are taught, in the manner in which they are supervised or the manner in which they are assessed.” (Mason, 2017).

A political statement however carries no force of law and does little to resolve the tension in the Act or in the literature between the ambit of *provider* autonomy over curriculum design and delivery and that of *academic* freedom.

Musselin (2007) draws attention to the fact that academic activities are undergoing a transformation as a result of two main trends: the diversification and specialisation of academic tasks. Specialisation has occurred primarily between teaching and research activities (the government higher education statistics agency (‘HESA’) reports that in 2018/19 31% of academic staff in UK higher education institutions were on teaching only contracts¹⁶) and also according to type of contract (a report by the University and College Union (‘UCU’) published in January 2020 that 49%, teaching only staff are employed on fixed-term contracts (UCU, 2020)). Diversification of teaching activities has occurred as the scope of activities has evolved to include such activities as arranging student

¹⁶ <https://www.hesa.ac.uk/news/23-01-2020/sb256-higher-education-staff-statistics>. Accessed 08/06/2020. These figures are for the UK, and include all HE providers, not just universities.

placements and developing elearning or work-based learning. The result is that the relationship between academics and their university has become more like that of a straightforward employer-employee relationship with their roles and responsibilities no longer defined by their professional grouping but by their individual work relationship with each university (Musselin, 2007, p. 180). It can be understood as an example of what Evetts (2009) describes as 'organisational' rather than 'occupational' professionalism whereby autonomy and disciplinary judgement is replaced by managerialist controls.

A major strand of literature has explored how these changes impact on academic identity (Archer, 2008; Fanghanel and Trowler, 2007; Gornall, 2013; Krause, 2009) and on what it means to be an 'academic professional' (Cunningham, 2008b), with calls for the concept of academic professionalism to be reenvisioned as, for example, 'ecological Professionalism' (Barnett, 2014), 'learning professionalism' (Cunningham, 2008a), or 'organised professionalism' (Noordegraaf, 2011). Musselin goes further and suggests these changes represent a move towards the 'industrialisation' of academic activities, which she defines as

"the passage from craft production of ad hoc products to the production of mass products through organised production processes through three mechanisms: specialisation of tasks, rationalisation and normalisation" (2007, p. 182).

For Henkel (2007b)

"All of these developments entail new thinking about the definition of teaching and of academic work and the nature and boundaries of the arena in which teaching and learning occur" (p 201).

Shattock and Horvath in their interviews with academic staff from twelve UK institutions found that there has been increasing centralised control over aspects of the design and delivery of learning, ranging from controls over teaching hours, to the volume of work, including assessment, that can be demanded from students, as well as much more management control over changes to courses. They conclude that academic authority has been weakened which they believe ultimately impacts on the opportunity for intellectual renewal and innovation and creativity within universities (2019).

Williams (2016) cautions against seeing academic freedom merely as a battle over boundaries

“[b]attles fought in the name of academic freedom today, when separated from any greater knowledge project concerned with truth and knowledge, are quickly reduced to arbitrary and technical concerns with employment conditions or social media use.” (p. 52).

Williams associates this lack of clarity with ‘the end of knowledge’ and the rise of competing ‘truth’ claims, leaving a “*vacuum at the heart of higher education that becomes filled by a range of instrumental aims...*” (2016, p. 67) such as skills development, personal development and graduate employment outcomes, aims that can be pre-packaged and standardised with little or no academic input. Karran (2009), echoing the views of earlier writers, suggests that this lack of clarity makes it more difficult to identify threats to academic freedom and more difficult to defend the concept against other discourses, values or practices, or explain why it is indispensable.

2.2.3 The uniformity of change?

That change has taken place in university governance and organisational structures with implications for the role and authority of academics is not disputed in the literature. What is less clear from the literature is the extent to which these changes are uniform across the sector. Fumasoli, Gornitzka, and Maassen, (2014) observe that much of the post 1990s literature on organisational change has tended to focus on the relationship between universities and the state rather than on the impact of organisational change within universities themselves and specifically their impact on the role and authority of academics. Further, such literature as there is tends to be written at a level of high generalisation, and often take as their starting point the generalised organisational structures and academic roles and authority in ‘traditional’ universities. Generalisations are useful “*in order to enable some order to be depicted, interpreted and interrogated from often complex ...realities*” (Gordon and Whitchurch, 2010 p.14), but tend to reflect and reproduce existing ‘paradigms’, failing to reflect changes that may have taken place in practice. The reality is that the university sector in England now includes not just ‘traditional’ (pre-1992) public universities but the former polytechnics as well as private ‘for profit’ universities and, more recently former

further education and other specialist colleges. These different segments of the sector may have very different structures around the organisation of academic work, and different understandings of the role and authority of academics in practice. It may be that for academics in some universities working in hybrid teams has always been the norm, or that the design and delivery of courses has always been subject to a degree of centralised standardisation.

In 2005 and 2012 Hogan reported on his research into changing academic structures in the UK looking to identify changes since the abolition of the binary divide in 1992. He identified a trend towards universities re-organising in a smaller number of larger units (“faculties”) with these faculties acting as intermediaries between the central authority and schools. He found no significant difference in trends between the pre- and post-1992 universities. The reasons for the re-organisations he suggests were predominantly financial but also reflected a desire to increase the responsiveness of the academic structures to management needs. What he was unable to evaluate was the impact of this new organisational structure on the authority of the academic community (2012, p54). As Hogan points out *“the formal structures might be a poor guide to the actual authority and function of individual units.”* (2005, p.51)

Based on qualitative research undertaken in a number of pre- and post-1992 universities between 1994-97, Henkel (2000) observed that accompanying the governance changes a new range of organisational units were created ‘at the centre’ to support the more complex functions universities are now required to undertake. Some of these units undertook roles connected with academic functions such as teaching and learning support and curriculum design. Academic policy making was increasingly a function of the ‘the centre’. Unlike Hogan, Henkel concluded that academics gained and lost authority. Some academics became part of the central management structure while

“[a]cademics in the basic units [schools – p.19] could find that their autonomy was reduced and that areas of work which had previously been unquestioningly their preserve were now under scrutiny and even

intervention by not only senior academic management but by other organisational groups” (Henkel, 2012, p. 64).

Henkel further observed that impact could vary across different schools, with those schools with sufficient power within the university able to influence the operationalisation of policy or the organisational changes, while others were able to compartmentalise the changes as ‘administrative’, and so maintain their authority over academic matters. (2000, p. 261-262).

Similarly Høstaker, a member of the same international collaborative research team as Henkel (2000), identified the policy reforms in England had resulted in, amongst others, academics in the more highly esteemed English universities maintaining a high degree of “professional autonomy” while “*teachers in the lower level of the hierarchy could be subject to pre-packaging and close monitoring of their courses*” (2006, p.113).

In qualitative research carried out by Temple *et al* in 2014 with staff at six universities selected according to their research income (two high, two intermediate and two lower income), the researchers found that changes had taken place at all six with more centralisation of administrative services, more central oversight of teaching and learning and increased reliance on metrics in decision making. However these changes were not being applied to the same extent or in the same way in the high research income group as they were in the other two groups. There was less sense of a top down culture at the two high research income universities. Although the two high research income institutions had become more prescriptive about teaching and learning matters, changes were introduced through promoting ‘good practice’ rather than imposed from the centre, while in the intermediate and low research status universities there was evidence of greater standardisation and centralisation, and less school discretion.

Much of the research is limited to the extent that most predate the more recent expansion of the university sector to include for example former further education colleges. More recent research by Shattock and Horvath with a range of 12 higher education institutions in the UK, including six in England, suggests that

the range of academic courses offered is increasingly dominated by concerns over market risk and particularly recruitment concerns, with professional marketing departments involved in decisions over course design, particularly in those universities facing recruitment difficulties. In particular they observe the involvement of marketing departments in curriculum construction to be hardening even in strong pre-1992 universities (2019).

The research does suggest that the changes flowing from policies have ultimately impacted on the role and authority of university academics but they have not necessarily impacted all academics in the same way. While university governance structures appear to have converged around the post 1988 model of the (former) polytechnics with greater centralisation of authority, and while a new range of organisational units have emerged with functions related to curriculum and teaching and learning, these changes have impacted differently both between different 'types' (pre- or post- 1992) of universities but also within individual universities, according to the power and influence of individual schools. Consistent with Blieklied and Kogan's observations discussed in the Introduction chapter on the exceptionalism of the policy process within higher education, power and autonomy may be diffused amongst different groups within universities (2006b), with the result that broad generalisations are not possible.

2.2.4 But what of the disciplines?

Spillane's integrative framework perspective discussed in the Introduction suggests that 'sense-making' cannot be divorced from the beliefs, knowledge and 'thought communities' of the individual implementing agents. To what extent then might a discipline influence understandings of, and responses to, policy? Writers such as Neumann (2001) have expressed surprise at the relative lack of research attention given to the interconnection between teaching and the disciplines. In the influential text *Academic Tribes and Territories* Becher (1989) argued that academics live in 'disciplinary tribes'. These 'tribes' each have common sets of academic practices and understandings of how things should be done, reflecting distinctive knowledge properties. From a policy implementation perspective then this strong essentialist position suggests that

discipline will influence 'sense-making' as different disciplines will have different understandings of how courses should be designed and delivered based on "*different techniques for replication and validity*" (Donald, 2002, p. 8 quoted in Trowler, 2014 p. 1721).

Other literature has challenged this 'essentialist' position. Tracing earlier discussions on the contested concept of a 'discipline' ranging from realist, relativist, post-modern and socialist-realist approaches, Trowler suggests that localised social practices have resulted in the discipline becoming less relevant to at least some aspects of academic practice (2012b). Subsequently Trowler (2014) has suggested that while disciplines do not have essentialist characteristics they nevertheless bear 'family resemblances' and do have 'generative power' including the power to shape academic practice, but "*that generative powers are not consistent over time, place or context of expression.*" (2014, p. 1723). For Trowler

"...a moderate essentialist position argues that generative effects are contextually contingent and provisional upon other factors. Causality is multiple and the interplay of actors influencing behaviour plays out differently in different contexts. So no simple statements can be made about, for example, teaching and learning practices associated with particular disciplines across multiple sites." (p. 1728-9).

Others such as Lattucia *et al* suggest that other factors influencing academic practice include local context and variations *within* disciplines (2010), horizontal groupings within different universities (Bamber, 2012), personal ideology (Fanghanel, 2009), or the multiple identities of academics (some of whom straddle the professional and academic worlds) (Winberg, 2012). Bamber suggests that disciplinary knowledge systems are in fact

"fluid, dynamic and constantly nudged by non-disciplinary policies, initiatives, contexts and higher education trajectories" (2012, p. 105)

There is within the legal academy a view that legal education has a distinct set of ideologies and attitudes which influence law academics' practices. Leighton

(2015) suggests these have been shaped by the particular origins of English legal education, while Boon and Whyte suggest that with the expansion of the sector both in terms of the number and diversity of universities and of student numbers, the particular mission and decision making structures of the university in which the law school is situated may also play a role. However they acknowledge that it is not clear how far these changes in the sector impacted on *‘the deep structures, the values and purposes of the [legal] academy’*. (2010, p. 196)

The implication of Trowler’s moderate essentialist position is that it should not be assumed that discipline is the primary or only determinant of academic practices. Other factors can also be important; factors ranging from organisational structures within individual universities through to personal ideologies. This on the one hand reinforces the importance of researching *‘real work change processes’* (Bleikie and Kogan, 2006, p. 11) and how academics make sense of their environment, but also suggests that discipline is not the only determinant of practices. However, discipline remains important and negating its effect risks reducing disciplines to little more than a method of organisational structure. Trowler (2012a), referencing Bernstein (2004) and others, talks of the distinction between ‘discipline as curriculum’ and ‘discipline as research’. ‘Discipline as curriculum’ has become associated with the term ‘subjects’ rather than ‘disciplines’, a term which Trowler suggests *‘strips university departments of their sense of exclusivity and inherent value’* (p.12) and quoting Parker

“ ‘Subject’ is reassuringly concrete—a subject can be defined, has a knowledge base which can be easily constructed into a programme of knowledge acquisition and, perhaps most importantly, of quantitative assessment. However, subjects are also passive—they are taught, learned, delivered.” (Parker, 2002, p. 374)

The literature suggests the need for further research into the link between discipline and policy implementation ‘in practice’ where that policy has implications for academics’ practices in their educational roles, and the extent to which a sense of ‘discipline as curriculum’ may be becoming more prevalent.

2.3 The rise of ‘consumerism’ and its implications for design and delivery -

Themes from the literature

In my Introduction chapter I discussed the higher education policy context and the rise of consumerism and of the student-as-consumer. In this section I consider the research into the impact of these constructs in practice.

2.3.1 The pedagogic relationship

The theoretical literature suggests the constructs may have implications for the pedagogic relationship between academics and students. Consumerism, suggests Naidoo

“may ... be seen as an attempt to change more traditional cultures in higher education by introducing new modes of rationality and value systems in order to reconfigure higher education as a global service operating mainly on the basis of economic considerations.” (2008, p. 45),

reforming academic culture and pedagogic frameworks to reflect market frameworks and undermining relations of trust and risk-taking required of effective teaching and learning (2008, p. 47).

This could result in, for example, ‘defensive education’ (or ‘delivery’) - reducing the intellectual demands on students, and ensuring students receive good grades to avoid student complaints (Furedi, 2011; Williams, 2013b). It could also lead to a focus on second order functions such as quality assurance and auditing requirements rather than on first order functions of devising innovative educational courses and lecturer-student interaction, and a shift to ‘mode 2’ knowledge (Naidoo and Jamieson, 2005). Naidoo and Jamieson suggest there is the potential for the threat of legal action to “*elicit security-seeking tactics*” (2005, p. 274) for example through standardising feedback to students so as to protect academics from student complaints, or to opt for

“safe teaching’ which is locked into transmission mode where pre-specified content can be passed on to the student and assessed in conventional form.” (p. 275).

Empirical research in England however has almost exclusively focussed on students and the extent to which they are adopting a ‘student as consumer’ identity towards their higher education, rather than on the impact of consumerism for academics in practice.

2.3.2 The preponderance of the ‘student as consumer’

This research has focussed on a range of issues such as the link between consumerist attitudes and students’ academic performance (Bunce, Baird and Jones, 2016), students’ approaches to learning (North, 2005), willingness to complain to the regulator (Garner, 2009) and approaches to assessment (Raaper, 2019). There appears to have been little empirical research specifically exploring the practical impact of consumerism for the design and delivery of courses from the perspective of academics (or other professionals). Implications instead need to be extrapolated from the empirical research on students.

One challenge faced in reviewing the research is that often it fails to define how terms such as consumerism, or consumer, are used. A second challenge is identifying to what extent the presence of consumerist attitudes represents a *change* in student attitudes or whether this attitude has always been present, at least in some students. The idea of a change in students’ relationship with higher education resulting from adopting consumerist attitudes is, Tomlinson (2017) suggests, underpinned by four inter-related suppositions: first that students associate higher education as a ‘right’ based on their financial contribution, second ‘value for money’ is the primary appraisal measure, third that students equate higher education as similar to the consumption of other services, and fourth that all students approach these matters in a largely similar way.

Komljenovic *et al* (2018) used semi-structured interviews with 66 first year chemistry and chemical engineering students from two different UK universities – one they identify as research intensive and one as teaching-oriented – and with interviewee orientation to employability as a proxy for identifying consumerist attitudes. The teaching oriented university was identified as having a stronger preponderance of ‘consumers’ than the research intensive university, but that this did not necessarily translate into expectations from students around the teaching and learning process but rather around the extra-curricular experience (e.g. pastoral care, leisure, safety and infrastructure). They conclude that student consumerism, in the sense they define, is complex and affected by factors such as the discipline of study and student background.

In 2016 Tomlinson undertook a qualitative study with 68 students across a range of disciplines from four UK higher education providers, one Russell Group, one a member of the '1994 Group' (a former grouping of research-intensive universities that stress their teaching as well as research), a post-1992 university and a Guild of Higher Education Institution (Tomlinson, 2016). The research identified three broad types of attitudes: the 'active-service user' attitude in which students wanted value for money and regarded higher education as comparable to other services, the 'positioned consumerism' attitude whereby students wanted value for money but didn't regard higher education as fully comparable to other services, and the 'resisting consumerism' attitude which rejected the view that higher education is comparable to other services and regarded it as devaluing the degree qualification. Despite the three broad groupings the research identified some shared attitudes across these groups particularly around getting an equitable return and value from higher education and in relation to future employment opportunities. The research did not indicate whether there was a greater preponderance of one type of group at particular institutions, but the findings suggest a degree of instrumentalism across the students which may in turn have implications for the design and delivery of courses.

The challenge with these pieces of research is that only the Tomlinson research appears to provide evidence that students' attitudes and behaviours are sharpening towards a more consumerist focus. The Komljenovic *et al* study is a longitudinal study, but only the interim results have been published to date. Despite the limitations of these studies for the purposes of my research, the studies suggest that there may be growing pressure on universities from students themselves not just to deliver named degree courses whose content and structure are more closely aligned to the current employment market and the requirements of employers, but also to maximise opportunities for students to get good marks (as a study by Nixon, Scullion and Molesworth appears to indicate (2011)). More intellectually oriented subjects and more challenging or unfamiliar assessment structures might be resisted by students through choosing other subjects instead, forcing courses to be adjusted in the way they are designed and delivered to meet student demands and expectations. Overall the

research suggests that there is no simple correspondence between policy constructions of students and how students perceive themselves.

While this research suggests that student attitudes are changing and that this change reflects more instrumental and market-oriented student values and expectations about participation in higher education, none of the research explored how these student attitudes and values might actually be being played out within universities and how universities, schools and academics are responding to these changes. It would be hard to imagine that these changes, particularly when taken together with other market-oriented policy drivers such as student satisfaction surveys, are not having some impact within universities given the highly competitive nature of the sector.

2.3.3 Information disclosure

Another strand of literature has focussed on information disclosure, but primarily from the perspective of how to make student decision making more 'effective'. Much of the empirical research has been directed at informing the development of the Key Information Set ('KIS') and subsequent 'UNISTAT' initiative (for example Diamond *et al.*, 2014; HEFCE, 2015; Renfrew *et al.*, 2010). The KIS/UNISTAT system was first introduced in 2002/3 to assist prospective students (and their parents and advisers) to make choices about where and what to study. The genesis of this regime lay in the (then) quality assurance framework for UK universities, but the information disclosure requirements are now underpinned by the disclosure requirements mandated by consumer protection law (as will be discussed in Chapter Four).

A related strand of research has considered the ways in which prospective students make choices about where and what to study (Ball *et al.*, 2002; Brooks, 2002) and the relevance or impact of different sorts and sources of information provided, including university websites (Slack *et al.*, 2014). Yet, as Boon and Whyte observe in the context of studying law, the evidence for the impact of this information on student decision making is limited, as is evidence of its impact in terms of enabling students to drive competition, innovation and improvements in quality (government policy objectives).

A Universities UK survey published in 2017 found that 62% of undergraduate student respondents to an online survey indicated they thought they were protected by consumer protection law (2017), yet inquiry into how students are using their 'consumer rights' or how universities, schools and academics are responding, remains thin. Research into student union responses to the consumerist policy discourses at five Russell Group universities published in 2018 does provide some tangential evidence in that it found that while union officers were critical of the marketisation of higher education and the consumerist positioning of students they were willing to use consumer protection law in their negotiations with universities. The pervasiveness of the consumerist discourse within universities and their student population made it difficult for them to completely reject these tools (Brooks, Byford and Sela, 2016; Raaper, 2018), although exactly how they had used these tools was not discussed in the research. Shattock and Horvath in their research encompassing interviews with union presidents and three academics at each of twelve institutions in the UK consisting of three Russell Group, three pre-1992, five post-1992 institutions, and one private alternative provider found the evidence for consumerist attitudes to be nuanced, concluding

“our findings suggest that while British students are becoming more demanding and more litigious about their examination results, and sometimes talk about buying their degree, their attitudes are not driven by consumerism per se but by more general trends in society. Working relations with universities are exceptionally good by comparison with some periods in the past and, in participating in the design and monitoring of academic processes, students see themselves, and act accordingly, as partners with their academic teachers and not as self-interested critics; and the student input is welcomed by the academic community as making a positive contribution to course development.” (2019, p. 96)

However their research also suggested that consumerist attitudes are more prevalent in institutions with recruitment problems, or are situated in areas where employment opportunities are lower, with students becoming more instrumentalist about employment opportunities.

2.4 Conclusion

In my Introduction I discussed the broad policy background to provide a context to this research into the impact of consumer protection law on the design and

delivery of undergraduate legal education. This chapter has considered relevant literature on the impact of this policy internally within universities. That literature has concentrated on governance and organisational changes, including the growth in the number and roles of managerial professionals, and on the rise of consumerist attitudes amongst students. The literature review has revealed a gap in the research around the impact of these developments in practice for the design and delivery of undergraduate courses.

The literature establishes that governance and organisational changes imposing market-like discipline on the higher education sector is impacting on the traditional concept of role and authority of academics for the design and delivery of courses, but this impact is not necessarily uniform across the sector but can vary according to a range of factors including type of university. To the extent that academics may have sought to resist such change the concept of academic freedom has not provided a buffer because it lacks clarity, particularly in relation to authority over course design and delivery. Research into student consumerism on the other hand provides mixed evidence for its potential impact on course design and delivery. There is some evidence that consumerist and instrumentalist attitudes are developing and translating into service demands related to contract hours, teacher responsiveness, and academics' willingness to engage and personalise aspects of teaching.

2.5 Research questions

It is in this context of these findings that this research will explore the role played by the consumer protection legislation and particularly the 2015 Advice from the Consumer and Markets regulator on its application to the Higher Education sector and the subsequent Guidance from the QAA in shaping the design – how courses are structured - and delivery – how courses are taught and assessed – of undergraduate law courses and how this in turn might be impacting on academic roles and academic authority in relation to teaching?

My specific research questions are:

1. What do directors of teaching and compliance professionals identify as the key impacts of the consumer protection law and particularly the information disclosure requirements, on the design and delivery of undergraduate law courses?

- 2. Does the impact differ across different 'types' of law schools?*
- 3. How might consumer protection law be reshaping the relationship between academic staff responsible for the design and delivery of courses and managerial professionals?*

CHAPTER THREE: Methodological perspective

3.1 Introduction

Since the 1980s qualitative methods have constituted key methods in social research (Kvale, 2007). The essential elements of qualitative research are to help to better understand i) the meanings and perspectives of the people we study, ii) how these perspectives are “*shaped by, and shape, their physical, social and cultural contexts*”; and iii) the processes involved in “*maintaining or altering these phenomena and relationships*” (Maxwell, 2013, p. viii). Within qualitative methods there has been a “*flourishing of new approaches*” (Maxwell, 2013, p. vii) such that Flick observes it is difficult to identify a commonly accepted definition (2007). Researchers instead are free to employ a range of methods in social research in order to describe and interpret the human experience but Silverman posits there are nevertheless a number of criteria against which qualitative research can be judged, including i) the appropriateness of the methods to the nature of the question being asked ii) the clarity of the connection to an existing body of knowledge or theory, iii) the clarity of the criteria and procedure used for the selection of cases for study, the data collection and analysis iv) the adequacy of the discussion of the data analysis and iv) the clarity of the distinction between the data and the researcher’s interpretation – in other words the role of the researcher (2000, p. 12).

In this chapter, after locating this research in the field of qualitative research I will deal with the following: the research methodology; research methods; access and sampling; the interviews; data interrogation; and the role of the researcher, insider researcher and ethics.

3.2 Theoretical field of the research

This research is theoretically oriented with a social-constructionist epistemology that asserts that meanings are not discovered, rather they are constructed as we engage with the world we are interpreting (Crotty, 1998, p. 43), and in which we view our world “*through lenses bestowed upon us by our culture*” (Crotty, 1998, p. 54). The implications of this for my research are that for example, understandings and explanations of social phenomena such as policy implementation may vary between individuals and contexts.

At the same time this research is also consistent with a realist ontology. There is no inherent contradiction between social constructionism and realism and the fact that all meaningful reality is constructed does not make that reality any less real (Crotty, 1998, p. 63). A realist ontology can be understood as “*simply posit[ing] that there is a reality that stands over against our descriptions that give meaning to it*” (Rose, 2013). However constructionism is also ‘relative’ and researcher understandings cannot be seen as straightforward representations of the truth:

“It is not a case of merely ‘mirroring what is there’. When we describe something, we are, in the normal course of events, reporting how something is seen and reacted to, and thereby meaningfully constructed, within a given community or set of communities. When we narrate something, even in telling our very own story, it isthe voice of our culture -its many voices, in fact – that is heard in what we say.” (Crotty, 1998, p. 68)

This theoretical framework has implications for both my research methodology and for how my research can be understood.

3.3 Research methodology

This research is primarily an interpretative qualitative study in that its purpose is “*to understand how people make sense of their lives and their experiences*” (Merriam, 2009, p. 24). It could also be described as a case study in the sense described by Merriam: “*A case study is an in-depth description and analysis of a bounded system*”(2009, p 37).

In locating it as a case study I am aware of the lack of clarity over a number of aspects of the case study, including whether the case study is a methodology, method or research design (Harrison *et al.*, 2017; VanWynsberghe and Khan, 2007). VanWynsberg and Khan suggest the case study is rather

“a transparadigmatic and transdisciplinary heuristic that involves the careful delineation of the phenomena for which evidence is being collected (event, concept, program, process etc).” (2007, p. 84)

I am also aware of the lack of clarity over terms used to describe the case study, including ‘phenomenon’, ‘case’ and ‘unit of analysis’, and whether the ‘unit of analysis’ precedes the identification of the ‘case’ (as VanWynsberg and Khan

seem to suggest when discussing their legal example (p.87)) or whether determining the 'case' is the first step in a case study, whether in fact 'case' and 'unit of analysis' are one and the same (Miles and Huberman, 1994), or whether 'phenomena' and 'case' are one and the same (as Merriam also suggests (p.37)). However as Jones, Torres & Arminio (2013) explain,

“what distinguishes case study methodology from other qualitative approaches is the intensive focus on a bounded system, which can be an individual, a specific programme, a process, and institution or a relationship.” (p. 94).

Its particular advantage is that it offers the capacity to understand complexity in specific contexts (Bassey, 1999, p. 36), or as Kyburz-Graber explains

“Case study research is most meaningful ... for investigating social situations which are highly contextual, complex, subjectively and socially constructed and constantly interpreted and re-interpreted by people involved.” (2015)

The purpose of the case study is not to generate knowledge in the sense of the scientific paradigm but rather to understand and explain social situations (Kyburz-Graber, 2015). The case study also has the advantage that it allows for flexibility in the methods used in the research design, according to the goal of the research and its given situation (Yin, 2009, p. 21). For the purposes of this research I am adopting the description of the case study proposed by Creswell

“A case study is a problem to be studied, which will reveal an in-depth understanding of a “case” or bounded system, which involves understanding an event, activity, process, or one or more individuals.” (Creswell, 2002, p. 61)

The case study concept, irrespective of how it is conceived, therefore has provided me with a broad schema for investigating an event (the application of consumer protection law) within a 'bounded system' (the universities identified for this study), together with the flexibility to incorporate the methods I believe are most useful to my purposes. Defining it as a case study is therefore appropriate. Ultimately the outcomes of a case study should, according to Bassey enable sufficient data to be collected

“for the researcher to be able ... to explore significant features of the case ... create plausible interpretations ... test for the[ir] trustworthiness ... construct a worthwhile argument ...[and] convey convincingly to an audience this argument.” (1999, p. 58).

3.4 Research Design

My design of this research was shaped both by what I wanted to achieve, as well as by my own personal knowledge of how universities and particularly law schools function. I wanted to discover and understand the implications of the application of the consumer protection law to the undergraduate law course – the Bachelor of Laws (‘LLB’). This research consists of two elements: the first comprises a desk-based review of the public websites of 30 English universities offering the LLB; the second comprises a small number of semi structured interviews with law school based academics and with centrally based compliance professionals.

The interviewees were from seven different universities, and these universities were not necessarily included in the website reviews.

3.4.1 University websites review

The purpose of this review was to understand what policy signals are reflected in the way in which the legislation Advice and Guidance has been interpreted and implemented by universities. It provided both a contextual background for the second element of my research – the semi structured interviews – as well as providing me with an opportunity to check for personal biases I may have had towards the way in which universities were responding to the legislation. The review also added to the completeness of this research given the role that public websites play in demonstrating compliance with the legislation, as well as providing a form of triangulation and a more embracing understanding of the phenomena I am researching. In carrying out this review I have made an assessment of the extent to which I believe universities appear to be complying with the disclosure Advice and Guidance, but my purpose in doing so was to inform the overall qualitative analysis, and my focus was primarily on how they have demonstrated compliance rather than on producing any reliable judgement of compliance.

I chose to review 30 university websites (approximately one third of English universities offering the LLB). I believed this number was sufficient to enable me to get a sense of the way in which universities (rather than law schools themselves) are approaching disclosure. I focussed on university websites, rather than law schools' own websites, for a number of reasons. First, the university is responsible for compliance with the legislation, not individual schools or faculties etc., and a preliminary search indicated these were the pages where the requisite course information was to be found. Second, not all universities have a separate law school web presence and even with those which do, the information required to be disclosed is provided via a link back to the general university website. Law school websites on the other hand tend to focus on providing information on events, publications, 'latest news', student or staff achievements.

3.4.2 The interviews

The second element consisted of semi-structured interviews with seven members from within two groups within English universities: i) law school-based academics responsible for the design and delivery of the courses, and ii) centrally-based managerial professionals responsible for legal compliance ('compliance professionals'), on their understandings and experience of the legislation and the disclosure requirements in particular. These two groups have been chosen purposively because I believe they are two groups intimately connected with the phenomena being researched, and their understanding is therefore experiential and not merely attitudinal. I chose to include compliance professionals because academics and law schools do not make decisions about courses in a vacuum. Schools are required to comply with a range of formal procedures before introducing new courses or making changes to existing ones. Including compliance professionals provided useful and additional insights and perspectives on the impact of the legislation relevant to this research and not captured by interviewing school-based academics alone. I also chose to interview specifically those law academics who have broad oversight of teaching and learning and course management within schools ('director of teaching') because I was aware (again from personal experience) that these law academics

are likely to be involved in the implementation of internal university policy initiatives associated with academic teaching functions.

I judged the semi-structured interview to be an appropriate method because it is possible to reach otherwise inaccessible areas such as people's subjective attitudes and experiences of policy implementation, and through reflexive and interactive analysis to

“purposefully inform an understanding of the research problem and central phenomenon in the study” Creswell (2013, p. 136).

One discipline – law - was chosen for this research both for pragmatic reasons in that I am a former law academic and understand the current broad issues around course design within professionally regulated undergraduate law courses, and because if any discipline should be aware of the consumer protection law it is this discipline. Being familiar with the discipline of law and undergraduate law courses also had the advantage that I had a shared set of experiences and language that I believed would help me to ensure my questions were relevant and appropriate.

It is important to make clear that as with the website review the purpose of the interviews was not to establish the level of compliance or otherwise with the law or its associated Advice and Guidance, nor to make any value judgement on my part of the appropriateness or validity of the interviewee responses. Although I have my own views on the appropriateness of the law in the context of higher education - views which changed somewhat as the result of the interviews - the purpose of the interviews was to explore, document and understand interviewee perceptions of the impact of the legislation on the design and delivery of undergraduate law courses and to provide insights based on this research.

3.5 Territorial location of this research

For the purposes of the website review and the interviews I chose to focus on English universities with law schools. Although the consumer protection legislation and the CMA Advice is applicable to the whole of the UK, higher

education is a devolved matter and there are aspects of the devolved regimes that differ. For example, the funding and student fee arrangements and regulatory framework for higher education in Scotland differ from those in England, reflecting a different policy approach to higher education in Scotland than that in England. As a result, both the policy context and the experiences and perspectives of UK wide interviewees would likely differ. This does not mean my findings may not be of broader interest UK wide, but I do not claim that my observations and findings would necessarily apply to the devolved nations.

3.6 Sampling and access

3.6.1 The websites review

The 30 universities were chosen randomly, using the excel program randomisation feature. Information from Solicitors Regulation Authority ('SRA') list of 'qualifying law degree providers'¹⁷ was used to identify English universities offering the 'qualifying'¹⁸ undergraduate LLB. Removing from this list Welsh, Scottish and Northern Ireland universities and institutions that don't offer their own law degree left some 93 English universities. The universities were then organised into 'types': Russell Group (generally regarded as the elite universities) ; 'civic' (universities founded before 1992 but not members of the Russell Group); post-1992 (primarily former polytechnics that became universities pursuant to the Further and Higher Education Act, 1992) post-2004 (primarily colleges that obtained university status after the relaxation of the requirement that they have degree awarding powers and a minimum of 4000 students); and for profit universities and universities offering only online or distance learning ('online/DL') LLB courses. Each group was randomised using the excel randomisation program. I then selected the first names appearing on each list until I had a sample approximately proportionate¹⁹ to that group's size within the overall population of university LLB courses – three Russell Group; seven civic; 17 post-1992 (including six post-2004 universities); plus the three private universities and universities offering only online/DL LLB courses. Because of the very small number of private universities offering the LLB and

¹⁷ <https://www.sra.org.uk/students/courses/qualifying-law-degree-providers/>, accessed May/June 2018

¹⁸ See text associated with footnote 12.

¹⁹ Except for the Russell Group

universities that offer only online/DL (five in total), I reviewed three from amongst this group.

The purpose in dividing universities into groupings was because my literature review suggested that it should not be assumed that policy will be either understood or implemented in the same way accross the diverse English university sector. I was interested to get an indication of whether, for example, Russell group universities, with their high national and international rankings and status and resultant high student demand might approach the disclosure requirements differently to universities who are more reliant on student rather than research income. Or perhaps whether private universities because of their distinct funding structures and online/DL providers who provide a very different form of delivery approach compliance differently from 'public' universities, or whether the more recently established and smaller universities might, because of desire to establish themselves in an already well-established field, also approach disclosure differently to more established universities. The reviews took place between 2018 and 2019. I limited my research to the 'qualifying' undergraduate LLB to maximize the opportunity for comparability across the websites.

These divisions are only rough proxies, at best. Temple *et al*, for example, suggests that there are a considerable number of non Russell Group universities which are practically indistinguishable in most respects from the less research-intensive members of the Russell Group (2014). Boliver on the other hand in her research based on information from the early 2010s into publicly funded university clusters suggests a 'stark division' remains between the pre-1992 and the post-1992 universities in terms of research activity, economic resources, academic selectivity and social mix, although not with respect to teaching quality (Boliver, 2015). As regards law schools, Boon and Whyte, writing in 2010 suggested there remains an '*unbridgeable chasm*' between Oxbridge and to a lesser extent Russell Group Universities on the one hand and 'the rest', at least in terms of law graduate employment opportunities (2010, p. 191). While the subtlety of the groupings I have selected may be contested, given the absence of a generally accepted classificatory scheme and the purpose of this review, the groupings do provide one means, albeit limited, of flagging whether there may be some correlation between the broad 'type' of university and the way in which

universities approach the legislation, at least as reflected through their websites. The groupings also ensured I did not, for example, end up reviewing just 'elite' universities. I wanted to ensure that I had representatives from those categories that appear to be the most widely recognised.

3.6.2 The interviews

3.6.2.1 Directors of teaching

In considering how to approach obtaining interviewees I decided to write to the Heads of English university law schools to give an outline of the research and to ask them to identify a possible interviewee from within their law schools. This approach had a number of advantages: it alerted Heads to the research and provided them with an opportunity to contact me if they had any concerns over participation by academic staff within their school; and it also identified for me who might be the most appropriate person to interview particularly as the designation 'director of teaching' is not one used universally by all law schools²⁰, and there is no professional association for academics holding this type of role that would have enabled me to identify them easily. It is also the case that a Head might fulfil this role themselves. I approached the Committee of the Heads of Law Schools ('CHULS'), a body '*comprised of Institutions of Higher Education in the United Kingdom which offer their own law degrees, as well as the officers and members of the Executive for their terms of office.*'²¹ to ask if they could distribute my letter, which was agreed. The letter was circulated in the summer of 2018. I did not ask the Head to nominate a participant in my research, merely to identify a prospective interviewee that I might write to. The letter made it clear that while I would endeavour to protect the identity of interviewees and their university this could not be absolutely guaranteed. I also indicated that in the event of a smaller number of responses to my letter than I anticipated, I would seek to identify appropriate potential interviewees from university websites and contact them directly.

²⁰ 'Course/Programme director' is a term commonly used, but often these roles are more administrative than 'policy' related.

²¹ <http://chuls.ac.uk/>

I anticipated I might receive more positive responses than I needed, in which case I intended to try to obtain consents from directors of teaching across four types of law schools: Russell Group, civic, post-1992 and post-2004. Because of the very small number of online/DL and private universities and the increased possibility that interviewees and their universities may be easier to identify because of their unique characteristics, I have not placed this group into a separate category, rather they have been incorporated into the four categories, as appropriate. While this has limited my ability to specifically consider whether this group might offer particular insights, this was outweighed by considerations over confidentiality.

The letter in fact produced only a small number of responses. Only one Head responded to ask that no-one from their School be approached, and this was respected. I then wrote to the potential interviewees identified by those Heads who did respond, with a letter and Information Sheet explaining my research, and asking whether they would be willing to participate. I indicated again that while I would endeavour to protect their and their university's identity this could not be guaranteed. This produced only one positive response (from a Russell Group university law school).

I then proceeded to try to identify appropriate interviewees from law school websites. As I already had one participant from a Russell Group university law school I focussed on civic and post-1992 and 2004 universities. Again I used a randomised list of these three groups and worked my way down the lists until I had reached my target number of total interviews (ideally four-six). This proved a difficult, time consuming and frustrating exercise. It was not always possible to identify those occupying a 'director of teaching' type role within individual law schools, so I had to make an educated guess. Most letters produced no response. I eventually secured another three interviewees from across the four 'types', at which point I stopped seeking potential interviewees. One potential interviewee subsequently withdrew, however I nevertheless had a representative from three of the groupings.

3.6.2.2 Compliance professionals

Managerial professionals occupying a compliance function were identified from a range of sources. One Head of School provided me with the name of a potential interviewee. I also wrote to the Association of University Legal Professionals in similar terms to the Heads of Law Schools, asking for its assistance in circulating a letter to senior university legal practitioners or compliance officers. The Association circulated the letter in July 2018. Two interviewees agreed to be interviewed as a result of this process and a further two agreed to be interviewed as a result of a randomised individual approach conducted as for the directors of teaching. Two interviewees are from civic universities and two from post-1992 universities.

None of the seven interviewees are necessarily from the same universities included in the website review section – interviewees chose to opt-in to the former whereas the websites were chosen randomly from within the five original groups. The directors of teaching and compliance professionals were all from different universities.

3.7 Conduct of the interviews

The seven interviews took place in the second half of 2018 and first quarter of 2019. Interviewees were given the option of conducting the interview face-to-face or by telephone. Two interviews were conducted by telephone, for practical logistical reasons. All participants consented to the interview being recorded and then transcribed.

As already stated above I opted for semi-structured interviews, and open ended questions wherever possible. Semi structured interviews would, I judged, enable me to obtain information about the ‘social world’ of the interviewees. As Flick observes

“The interviewed subject’s viewpoints are more likely to be expressed in an openly designed interview situation than in a standardised interview or a questionnaire” (2006, p. 149).

I recognise that interviews are subject to a number of qualifications: interviewees may select information to suit their own needs, the interviewer’s background and personal world view can shape the questions asked, the language used and how

the information obtained is filtered and made meaning of - ultimately shaping the findings and conclusions (Berger, 2015; Kacen and Chaitin, 2006). Despite these qualifications I believe that two persons can communicate their perceptions to each other despite the inevitable presence of these 'pollutants' (Glassner and Loughlin, 1987, p. 33) and that all social science necessarily proceeds on this basis – *“talk and text are central to our ways of knowing the social world”* (Mason, 2002, p. 236)

The interviews began with a brief overview of my research, together with information on my background. Although this information had been provided to the interviewees prior to the interview, I invited interviewees to ask any questions for clarification. I then introduced a number of structured questions (the nature of their role, time in the role, their background) before moving to more semi structured questions to discover the way in which they perceive consumer protection law is impacting on both course design and delivery but also on their roles. Themes included: responsibility for website information, the impact of the legislation on design and delivery of courses and including processes and practices, roles of and relationships with managerial professionals (in the case of the directors of teaching) or law schools (in the case of compliance professionals), and student expectations. I saw my role as primarily that of an informed listener. The list of prompts I used included:

- Familiarity with the CMA Advice?
- How would you describe your role, and has it changed since you began?
- Have there been any recent changes (and if so when) in
 - Curriculum
 - Course delivery
 - Teaching and learning methods
 - Assessment methods/feedback requirements?
- What prompted these changes/have they been directly/indirectly driven by CP legislation
- What is the process for making course changes? Has this changed recently (when?), and why?
- Who is responsible for the university website information on the LLB?

- Your relationship with law academics/compliance professionals – has it changed? Why?
- How would you describe the impact of the consumer protection legislation?

Interviewees were made aware they had the opportunity to withdraw at any time, and to review their interview transcript. One interviewee subsequently asked that one section of their interview not be used, while another asked that any quotes I intended to use be agreed upon first. The interviewees were speaking in a personal capacity, based on their own experiences, and not in any representative capacity.

3.8 Data Interrogation

I elected to have the interviews professionally transcribed. Once completed I checked the transcripts for accuracy against the recordings, before commencing the analysis process. The advantage of professional transcription was that the interviews were time marked, making moving back and forth within the interviews during the analysis stage more manageable. The interviews were analysed manually and in this way I immersed myself in them. While the interviews were initially analysed according to a number of themes corresponding to topics identified for the semi-structured interviews, I remained alive to the presence of finer nuances present in these themes and to new themes emerging from the data, as well as to connections and divergences between different themes, in order to provide a rich understanding and explanatory model of my research. As Denzin has posited, data interpretation is “*. . . an art; it is not formulaic or mechanical*” (2000, p. 317), nevertheless it must be carried out rigorously, in order to explore the ‘puzzle’ lying at the heart of the research (Silverman, 2000)

3.9 Insider researcher and ethics

In Chapter 1 I acknowledged my ‘situatedness’ in relation to this research and I acknowledge the impact this can have on those being studied, the questions I asked, the data I collected, and its interpretation (Berger, 2015). In the sense that I was a former Law academic in the university sector I can be considered an ‘insider’ but equally I left this sector over four years ago so I no longer have close

professional contact with universities or colleagues in the sector. I am aware of the debate over the advantages and disadvantages of insider research (Alvesson, 2003; Brannick and Coghlan, 2007). The advantages include that I am already familiar with the setting, language and the phenomena being studied. The disadvantages include overfamiliarity – taking things for granted, interviewees withholding information they assume to be obvious to the researcher and potential bias, after all as Daly observes “*the research product is ultimately that of the researcher who narrates or authors the text*” (1997, p. 360). Through a process of reflection I sought to remain constantly alert to avoid using my own experience as the lens through which to understand interviewee experiences and observations (Berger, 2015), at the same time recognising that

“no research is free of the biases, assumptions, and personality of the researcher and we cannot separate self from those activities in which we are intimately involved” (Sword, 1999, p. 277 quoted in Berger (2015) at p. 229).

I believe my experience in the sector both enabled me to build rapport with the interviewees, but it also provided a form of triangulation, helping me to identify any (accidental or otherwise) mis-information. At the same time I recognised that my very background and experience in the sector may have induced greater caution amongst both the potential interview population and interviewees themselves. For this reason I was particularly careful to clarify my position with regard to confidentiality and ethics. As with my earlier research for the EdD Programme, I have been guided by the British Sociological Association Statement of Ethical practice (2017)²² which draws attention to issues such as informed consent, anonymity, confidentiality, participant wellbeing and clarifying obligations and rights. I felt a strong responsibility to do the right thing in terms of my research but also to do no wrong by the interviewees (or their universities). Although recognising the potential limits of the notion of ‘informed consent’ (Malone, 2003, p. 801) formal consents were obtained from the individual participants. I was notified of formal ethics clearance from UCL Institute of Education on 16 May 2018.

²² https://www.britsoc.co.uk/media/24310/bsa_statement_of_ethical_practice.pdf

3.10 Conclusion

The overall purpose of this chapter has been to evidence that my approach to conducting this research demonstrates it meets the requirements of credible qualitative social science research. In this chapter I have set out the theoretical field and research methodology that have shaped my approach, and detailed my reasons for using a case study approach employing primarily semi structured interviews. I then outlined how my data would be collected and analysed. Finally, I discussed potential issues as an 'insider' together with my ethical responsibilities.

In the next chapter I set out the key provisions of legislation relevant to this research focus together with the Advice and Guidance supplementing its application, followed by a review of 30 website of universities offering the undergraduate law degree, in order to understand what policy signals are reflected in the way in which the legislation Advice and Guidance has been interpreted and implemented by universities.

CHAPTER FOUR: Review of university websites

4.1 Introduction

In my first chapter I introduced the legal information disclosure requirements, its policy background and the subsequent Competition and Markets Authority Advice on the general application of the law to the higher education sector (CMA, 2015). Higher education providers including universities are required to comply with the law and have 'due regard to' this CMA advice as a condition of initial and ongoing registration with the sector regulator the Office for Students ('OfS'). This law stipulates that certain information be provided prior to students entering into the higher education contract. This information, once provided, becomes binding on a university and a failure to provide it at all or to provide sufficient, accessible or correct information can lead to both legal and regulatory consequences for the university. There are other elements of consumer protection law applicable to the higher education sector but I have chosen to focus on the disclosure requirements as I believe they have the greatest potential impact on the design and delivery of courses. What information is disclosed, and how, shapes expectations of higher education but also understandings of its purpose, and of the role of academics in their role as educators.

The first section of this chapter outlines in more detail the key provisions of the legislation relevant to my research focus, together with the provisions of the CMA Advice, while the second reviews the way in which universities have implemented the disclosure requirements, focussing particularly on the CMA Advice (2015) and the subsequent QAA Guidance (2017).

University websites are the most publicly accessible means by which universities promote their courses and provide the information mandated by the consumer protection legislation. What and how the information is presented indicates the way in which policy reflected in the legislation is understood within each university organisation.

4.2 The application of Consumer Protection law to higher education providers

Consumer protection laws typically are intended to ensure i) consumers have all the information they need to make informed purchasing decisions ii) they are not misled by false or misleading promises, iii) the terms of the contract are fair iv) the price is transparent, and v) consumers have adequate rights of redress.

In 2015 the Competition and Markets Authority published *Higher Education: Consumer Law Advice for Providers*. This Advice is specifically intended to help UK higher education providers of undergraduate education to

“understand their responsibilities under consumer protection law in their dealings with undergraduates” (2015, par 1.2).

This Advice appears to be the first time that i) it has been explicitly acknowledged by a UK market regulator that consumer protection law will apply to the relationship between HE providers and students, and ii) guidance issued setting out how and when that consumer protection law applies in the context of undergraduate higher education. It sets out the ‘*minimum requirements*’ for compliance with consumer protection law (par 1.9). The Office for the Independent Adjudicator (‘OIA’), the body which determines student complaints against universities, has referred to the CMA Advice in delivering its decisions²³.

In 2017 the QAA (responsible for safeguarding standards and improving the quality of UK higher education) issued Guidance to the sector on information disclosure ‘*Information for Students: a guide to providing information to prospective undergraduate students*’. This Guidance was developed by the QAA on behalf of the various UK higher education funding bodies, and took into account research into student information needs and decision making, the (then) expectation of the UK Quality Code for Higher Education, and the CMA Advice.

The OfS requires that higher education providers

“ha[ve] given due regard to relevant guidance about how to comply with consumer protection law” (Office for OfS, 2018, condition C1).

²³ See for example case summary ‘*Progression Regulations - PI071903*’ (<https://www.oiahe.org.uk/resources-and-publications/case-summaries/progression-regulations-pi071903/> accessed 26/1/2020)

Condition C1 makes specific reference to the CMA Advice but not the QAA Guidance, although it refers to other ‘relevant guidance’ or “*any other information available to the OfS*” (2018 par 371 and 372). It is possible this Guidance, which has neither been withdrawn or superseded by any other advice from the OfS, would also constitute ‘relevant guidance’. It is also possible the courts would take account of both of these documents when interpreting the provisions of the legislation in any legal action against a university.

4.2.1 Overview of the relevant legislation relating to information disclosure

The key provisions of consumer protection law relevant to this research are contained in two pieces of legislation: the Consumer Protection from Unfair Trading Regulations 2008, as amended (**‘CPUTR 2008’**); and the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (**‘CCR 2013’**). My focus is primarily on the information disclosure provisions of the CPUTR 2008 which requires universities to provide prospective students with certain information at the stage when they start their search for what and where to study. The other Regulation reinforces the information disclosure requirements and controls the ability of universities to make changes to courses after that information has been provided. In addition there is a third piece of legislation, the Consumer Rights Act 2015 (**‘CRA 2015’**). This Act controls ‘unfair terms’ in consumer contracts (CRA 2015 Part 2) and provides that a term is likely to be considered unfair and therefore unenforceable against a student where that term is, in effect, hidden from them. This provision is relevant to this research in the limited sense as discussed below.

In the discussion below I first provide a brief overview of the relevant general provisions, setting out the requirements to disclose information applicable to all consumer transactions. I then discuss the CMA Advice and QAA Guidance on the application of this law to the higher education sector.

4.2.1.1 The general provisions

i. Broadly, it is an offence under the CPUTR (2008) for a ‘trader’ to fail to provide consumers with accurate ‘material information’ about a ‘product’, with the result that the ‘average consumer’ makes or is likely to make a transactional

decision they would not otherwise have made (Reg's 3 and 6). 'Material information' is information the 'average consumer' needs, according to the context, to make an informed decision whether to proceed with the transaction or not (Reg 6(a)). This material information must also be clear, intelligible, unambiguous and provided in a timely manner (Reg 6).

ii. The CCR 2013 also requires certain precontractual information to be made available to the prospective consumer before the contract is finalised. This information includes the 'main characteristics' of the product and they must be accessible, clear and comprehensible. Specifically this Regulation provided that this information becomes binding on the trader once the contract is finalized. Any subsequent change is not effective against the consumer unless it has been expressly agreed by them²⁴. In other words, the product supplied must conform to the precontractual information unless the consumer has expressly agreed a change.

iii. The CRA 2015 provides that the terms of consumer contracts must not be unfair. Terms that are unfair are unenforceable against the consumer. The Act provides a non-exhaustive list of terms likely to be considered unfair. One such term is a term that the consumer has had no real chance of becoming acquainted with before entering into the contract (Sched. 2, 1.10).

In summary, the legislation requires that at the stage a prospective consumer is considering making a purchase the trader must make available 'material information' about the product so that consumers may consider their options. 'Material information' is information the 'average consumer' needs in order to make an informed decision whether to enter into the contract. Then, when a consumer is ready to enter into the contract but before they do so, the trader must again provide information to the consumer about the 'main characteristics' of the product. These main characteristics will then become binding on the trader and any change to the product will only be binding on the consumer if they have

²⁴ This is now provided for in the Consumer Rights Act 2015.

expressly agreed to it. In addition, under the 2015 Act, a term cannot be enforced against a consumer unless they have been made aware of it.

A breach of the various provisions can have a variety of consequences including civil and criminal enforcement action (for example by the CMA) and may give the consumer the right to redress, including a price reduction or damages.

4.2.1.2 The CMA Advice and the subsequent QAA Guidance

i. The CMA regards the CPUTR 2008 as a key piece of legislation applying at prospective students' search and application stage. The CMA makes it clear that, at least in its opinion, universities (and other HE providers) meet the definition of 'trader, seller or supplier' and irrespective of whether they structured as profit or non-profit institutions. It also believes a higher education course constitutes a 'product', and that students meet the legal definition of a 'consumer'²⁵. Although not made explicit, it is clear the CMA considers the 'average consumer' in this context is likely to be the average school leaver²⁶. The CMA advises this 'material information' must be made available at the stage a prospective student is researching what and where to study and should be provided whether or not requested (par. 4.4, 4.6 4.8).

In the case of higher education (and unlike for many other types of 'products') this search stage will generally commence well in advance of any contract being formed. It is likely to commence well before the application stage and the start of the university year in order that students can meet standard UCAS application dates (typically mid-January for courses starting in September/October).

The CMA also advises that the information disclosure requirements apply to websites, as well as to prospectuses, open days, course handbooks and potentially to advertisements. In other words, the information provided in these various sources should all be accurate and not omit any material information.

²⁵ The Report acknowledges that there may be instances where students may not fall within this definition – e.g. when they are studying as part of their job (par.2.17)

²⁶ The legislation also makes additional provision for particular types of consumers. In the case of higher education, the CMA identifies international students, part time students and distance learning students and students with disabilities.

The minimum ‘material information’ the CMA believes universities must provide specifically about course design and delivery under this Regulation includes:

(a) **Course information**²⁷:

.....

(iii) core modules for the course and an indication of likely optional modules, including whether there are any optional modules that are generally provided each year;

(iv) information about the composition of the course and how it will be delivered, and the balance between the various elements, such as the number and type of contact hours that students can expect (for example, lectures, seminars, work placements, feedback on assignments), the expected workload of students (for example the expected self-study time), and details about the general level of experience or status of the staff involved in delivering the different elements of the course (this would include general information about the experience or status of the staff involved in delivering the course, for example professor, senior lecturer or postgraduate student.);

(v) the overall method(s) of assessment for the course, for example by exams, coursework or practical assessments, etc (or a combination of these);
.....

The Regulation requires this information be provided in a clear, intelligible, unambiguous and timely manner (Reg 6(c)). No detailed guidance on the meaning of this phrase is given by the Regulation, but the CMA advises that material information should be easy to find and presented up front and in the same place as other relevant information:

*“[I]f material information is on a website that is hard to navigate or held in a number of places (for example across different prospectuses and other documents or across different websites) so that it is difficult for students to find and access, there may be a misleading omission under the [CPUTR]”.
(par. 4.17)*

- ii. The CMA also advises on the necessity to avoid ‘hidden’ terms and to disclose

²⁷ The CMA also requires disclosure of other course information such as course title, but the course information I have identified here is the information most likely to impact on course design and delivery.

(xi) ...any particular terms, such as those in the HE provider's rules and regulations, that apply to the course that students may find particularly surprising...or are otherwise important (par 4.10)

In a subsequent document the CMA has said:

“When prospective students are researching which course to study and where, they use the information available on providers’ websites, in prospectuses, other documents such as course handbooks, and at open days to make informed choices. It is important that prospective students at this stage are made aware of the likelihood of, and scope for, changes to the content and delivery of the courses described in this information, including the possible withdrawal of courses.” (2016, par. 4.27) -

lending support to the view that university ‘variation clauses’ in student contracts might be caught under the CRA 2015 unless they are accessible to students before they accept their offer of a place. A ‘variation clause’ – very common in the higher education sector because they provide universities with the ability to adjust or withdraw courses even after students have accepted their offers - therefore must be accessible (as per the CRA 2015) as well as clear, intelligible and unambiguous if it is not to amount to a material omission under the CPUTR 2008²⁸.

The CMA advises that there is significant overlap between the material information required under the CPUTR 2008 and the information about ‘main characteristics’ it believes universities are required to disclose under the CCR 2013 (and set out in CMA Advice, 2015, Annex B). What this means in effect is that any information given for example via websites that is both ‘material information’ under the CPUTR 2008 and pre-contractual information under the CCR 2013 will be binding on the university once a student has accepted an offer. Therefore the CMA advises that any changes to this information should be brought to the attention of prospective students before they accept the offer, so they can agree it in writing (2015, par. 4.21, 4.31-4.33). Once a student has accepted an offer the university cannot then make changes (subject to any valid and fair variation clause) without the consent of the affected students.

²⁸ Even if the term is accessible the CRA 2015 also requires any variation term be substantively fair (Sn. 62) . The CMA advises that so as not to fall foul of this particular provision, the variation clause should be limited to minor adjustments, or changes required by necessity (2015, par. 5.22-25). A wide variation clause is likely to be considered unfair and therefore unenforceable against the consumer (par. 5.22-25), even if the term is otherwise accessible.

iii. The QAA Guidance: Although it was not written under the auspices of the CMA, the fact that the (then) sector regulator decided further guidance was worthwhile and specifically took account of the CMA Advice gives weight to its importance. This Guidance appears not to have been superseded by or withdrawn by any new guidance from the current regulator (the OfS). The OfS has indicated it is looking to develop its approach its approach to consumer protection further, but has not done so yet²⁹.

The table below sets out the information required by the CMA Advice and the corresponding QAA Guidance.

Table A

CMA Advice:

QAA Guidance:

1.	Information about the composition of the course (4.10(a)(iv))	<p>1.1 how each year of the course is broken down into course units or modules</p> <p>1.2 how many course units or modules students are expected to take concurrently per semester, term or year</p> <p>1.3 how the modules contribute to the final course mark (i.e. degree classification) (page 9 and 10)</p> <p>1.4 Progression requirements (page 17)</p>
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²⁹ *Developing the OfS's approach to consumer protection: student information, contracts and complaints*, OfS, 27/11/19, par. 23, available at: <https://www.officeforstudents.org.uk/media/80806001-1364-46d5-8326-c0f60782dc1b/bd-2019-november-81-student-information-and-contracts.pdf>. An email from the OfS (dated 07/09.20) indicates this has not been progressed to date.

2.	Course Module information: “ <i>core modules ...and an indication of likely optional modules, including whether there are any optional modules that are generally provided each year</i> ” (4.10(a)(iii)):	<p>2.1 list the course core and potential optional modules</p> <p>2.2 make it clear if optionals may not run, <i>and</i> how they will be chosen</p> <p>2.3 Explain how <i>and</i> when any module changes will be notified (page 11)</p>
3.*	Course delivery: “[<i>h</i>]ow it will be delivered and the balance between the various elements and the type of contact hours students can expect...” (4.10(a)(iv))	<p>3.1 the type of teaching and learning activities offered</p> <p>3.2 indication of class size</p> <p>3.3 typical class contact hours (page 13)</p>
4.	Staff involved in teaching the course: “ <i>details about the general level of experience or status of staff involved in delivering the different elements of the course</i> ” ((4.10(a)(iv))	<p>4.1 information about the experience of staff delivering the course <i>and</i> individual modules</p> <p>4.2 Whether any post graduate student involvement in teaching, (page 13)</p>
5.	Assessment: “ <i>The overall method(s) of assessment for the course, for example by exams, coursework or practical assessments, etc (or a combination of these)</i> ” ((4.10(a)(v))	<p>5.1 Overview of summative course assessment methods</p> <p>5.2 Availability of formative assessment</p> <p>5.3 Percentage of summative assessment by each type</p>

		5.4 Frequency of summative assessment (page 17)
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- * Neither the CMA or the QAA documents make it clear if this information should be per module, per week, or per year.

The CMA also provides the following advice on ‘surprising’ or otherwise ‘important’ terms:

6.	Any particular terms that students may find particularly surprising or are otherwise important must also be provided (4.10(a)(xi)). Otherwise, a university’s terms and conditions should be provided to a prospective student at the latest by the time they accept an offer (5.4)	(the QAA provides no guidance, other than that contained in 2.2 above)
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In summary:

The effect of these consumer protection provisions is that universities must provide a range of course specific design and delivery information available at the stage when prospective students are likely to be researching what and where to study. This information must be given in a timely manner, it must be accurate, it must be given in a form that clear, intelligible, unambiguous, and it must be accessible. Information that is spread across different websites or different documents and hard to find will not comply with these requirements.

Because the information required by the consumer protection law will generally be provided well in advance of the start of the course, and is likely to be offered in practice via a number of different media (websites, prospectuses and the like) the practical effect may be for universities to centralise control over its provision

and for it to have a chilling effect on the ability of academics to introduce developments in the design and delivery of a course. The review of 30 university websites in the next section gauges how universities appear to be responding to the legislation by implementing the Advice and Guidance. Although I am inevitably making a judgement as to compliance, this is not the purpose of the review. Rather it is to identify how universities are making sense of the requirements both to help inform my analysis of the interviews and as a means of identifying if different types of universities are approaching the requirements differently.

4.3. The websites Review

In this study I have focussed primarily on the specific pieces of information identified in the QAA Guidance because it provides specific examples of the types of information identified by the CMA. I have made some adjustments to more closely align with current terminology used in the sector: I have interpreted 'year' in 1.1 and 1.2 of Table A (above) to mean either academic 'year of study' or 'level' (under the Further and Higher Education Quality Framework³⁰ Level 4, 5 or 6). In 1.3 I have interpreted 'final course mark' to mean degree classification, and 'module' to include 'subjects', 'units' or 'modules'.

4.3.1 Method

I began each website review by opening google and typing in 'LLB' plus the name of the university into the search engine. In every case I was taken to a landing page directed specifically at prospective students. None of these landing pages were situated within any law school specific or faculty specific website, though the majority of landing pages contained links to one or other (or both). This confirmed that landing pages were part of a centralised publishing process. My initial approach was to identify whether the information was available and whether it was clear, intelligible and unambiguous, and accessible. In approaching the review in this way I produced a table of 'compliance' for the 30 university websites, available as Appendix A.

³⁰ <https://www.qaa.ac.uk/quality-code/qualifications-and-credit-frameworks>

It is worth pointing out that in 2016 the CMA published a Report on its consumer law compliance review that included a review of the information publicly available on a number (unspecified) of higher education provider websites (CMA, 2016). The website review focussed on the availability of various types of information (such fee information and progressing student complaints) but also of the accessibility of terms including 'variation clauses'. Within those limited terms of reference the Report found examples of good practice; it also found some evidence of non compliance, particularly around the accessibility of university terms and conditions (which would include any variation clause). The Review does not set out the basis on which it determined whether information was available or accessible.

In making my judgement primarily on the basis of whether information was at least accessible, and in the absence of any guidance by the CMA,

- 1) I limited my time spent on each university website to 30 minutes. If I, as an experienced former academic used to working with this sort of information, was unable to locate it within this time limit I judged that the information, even if it existed, to be inaccessible to a predominantly young and inexperienced prospective student population, and
- 2) I adopted the approach of the State of Texas noted by Williams (2013b, p. 75), that the information should be no more than three clicks away.

Even with these criteria, evaluating compliance still necessitated personal judgements. For example, if the website indicated the information was available in an internal policy document but three clicks simply took me to a web page containing a long list of policy documents through which I had to search to identify the right document and then the relevant information, I deemed the information inaccessible. I should also acknowledge it is possible that given the proliferation of links and banners on some webpages I may have found the information within three clicks had I clicked another link. On the other hand this absence of clear signposting did not aid accessibility.

As an interpretative study based on my own judgement of what constitutes compliance the Table in Appendix A is intended to be indicative only. It would be

for a court or regulator to determine the appropriate and authoritative criteria for determining compliance. A 'Y' in the Appendix A table indicates I judged the information to at least be accessible. A 'N' indicates either I wasn't able to locate it within 30 minutes, or it was more than three clicks away. In the case of 'Staffing information', I did not limit my search to 3 clicks. The QAA Guidance indicates that individual staff profile pages can be used to provide information on the module teaching pool, with the result that often I had to navigate to separate staff profile pages, sometimes requiring more than three clicks.

In making my judgment on the accessibility of variation clauses in particular, I used the same criteria as set out in 1) and 2) above. Where this did not produce any result I used the general 'search' facility on each university home page to try to determine if the information existed on the web at all. Where I had to use a general search facility I judged the information to be inaccessible (even if I located it). As an experienced academic I knew what I was looking for and where I was likely to find it. I judged the 'average prospective student' as unlikely to have the same knowledge.

4.3.2 Preliminary observations

First it is worth observing the content of the both the CMA and QAA documents focus on the need to need to provide information on the objective, tangible aspects of courses. While this could be anticipated from the CMA Advice given its origins and authorship (the UK general markets regulator), it is also the approach adopted in the QAA Guidance, a document written by higher education professionals expressly for the higher education sector. Neither document makes any reference to the nature of the pedagogic relationship students will be entering into, or the particular 'dispositions' and 'qualities' students will need to have (Barnett, 2009), or to the possible need to contextualise the information for different disciplines (setting out for example what a law school believes to be the particular values of studying in that particular discipline). Instead the documents imply that all courses are largely generic, the only significant differences being in the particular mix of the tangible deliverables such as class contact hours, the teaching methods and the content of modules. Of course the fact that the documents take this approach does not prevent universities themselves from

contextualising the information within a broader discussion of the culture of a particular discipline – its basic “*beliefs, values, norms and aspirations prevailing in that culture*” – what Ylijoki calls a discipline’s ‘moral order’ (Ylijoki, 2000b, p. 341). The two documents also imply a fairly traditional understanding of how courses are delivered (the reference to ‘class contact hours’ suggests an assumption that courses are delivered face-to-face).

Typically all of the Landing Pages were structured around an introduction to the LLB (typically fairly brief), an outline of the course structure (usually consisting of the list of modules by year/level), information about teaching and learning methods, and assessment, and course fees. Around this core of information different universities tended to focus on other types of information that focussed on the strengths of that university: some focussed on law school research output and the university’s research ranking (typically but not exclusively Russell Group and civic), others on employment opportunities post degree, experiential opportunities available during the course, and student facilities and lifestyle.

In almost all cases the landing pages also provided links to other pdf documents and/or other web pages (typically law school or faculty pages). In some cases these links were very extensive. One LLB landing page at a post-1992 university contained more than 30 embedded links – and this was without including the further 45+ general university links contained in the top and bottom banners (which contained information about the university in general, including university regulations, student facilities, student services, accommodation, university news, blogs, etc). A related observation was the number of sublinks required to navigate to a particular piece of information, and to the circularity of some links. For example one landing page contained an embedded link to ‘read more about law at [link]’. The link went to the law school page which in turn contained another link ‘undergraduate’ but that link led straight back to the landing page.

Many websites also assumed a degree of familiarity with higher education language and terminology. For example most websites contained references to ‘credits’ but very few explained what a ‘credit’ is or its significance (for example for progression, award, or transfer). The terms ‘summative’ and ‘formative’

assessment, where used, were rarely explained. Links to other webpages or to documents such as 'programme specifications' did not always explain why a reader should access those links, or, more importantly, what important ('material') information they contained. In some cases the language and terminology used in linked documents suggested they were intended for audit purposes rather than to inform prospective students. Although universities were technically making information available it was certainly not clear these universities would satisfy the consumer protection requirements that it be provided in a manner that is clear and unambiguous as well as accessible.

4.3.3 General observations on provision of 'material information'

Overall, no university provided all of the pieces of material information identified in Table A in an accessible form. Of the 17 pieces of information searched for, the highest number provided by any one university was 11 (a Russell Group university). The lowest number provided was 2.5 (one post-2004 university). The Russell Group members ranged between 8 to 11, the civics between 4.5 to 9.5, the post-1992s between 5 and 10, with the post-2004 group between 2.5 and 7. The three online/DL/private universities ranged from 5.5 to 8, but arguably two of the indicators are not applicable to online/DL provision.

I found these results surprising. I had anticipated that because of the high reputation attributed to members of the Russell Group and thus their greater attractiveness to students that if any group was to be less concerned with compliance it would be this one. On the other hand I also anticipated that the post-2004 group would be keen to establish or embed their credentials with the regulator and their reputation with prospective students by prioritizing information identified by the CMA and QAA as important for student decision making, (particularly when universities have been '*spending millions in a cut throat battle to attract students*', the highest-spending universities reportedly being in the lower and middle ranks of the 'UK league tables' - typically but not exclusively post-1992 universities)³¹. One pragmatic reason for this mixed response may be a desire to try to maintain maximum flexibility to make adjustments to the

³¹ The Guardian 3 April 2019.

course. The broader and less detailed the information, the more room for manoeuvre universities may feel they have. This flexibility may be particularly important for universities with smaller staff cohorts and help explain why the Russell Group universities appear to be the most compliant and the post-2004 universities the least. However the small number of university websites sampled means that no firm conclusions can be drawn. These observations are not inconsistent with those of Hosein and Rao and their survey of university website compliance with previous QAA guidance on information disclosure which found limited adherence to that guidance (2015).

What the research also revealed was that all bar one of the universities' law courses adopted a similar structure, offering the seven professional topics as stand alone core modules, concentrated in 'years' one and two, with examinations conducted each year (either at the end of the module or at the end of the academic year). The structure adopted by the one 'outlier' differed in that the compulsory courses are offered over all three years, with examinations in 'years' 1 and 3. Where the courses clearly did differ was in the number of optional modules potentially available. However, it was not always easy to locate information on how many modules students were required to take each semester/term or year, let alone take concurrently and therefore how much choice students in practice actually had. Only five law schools offered interdisciplinary optionals, limited in three courses to just one module. Just three universities provided clear and accessible information on how the modules contribute to the degree classification (one civic, one online/DL/private and one post-1992) while only four provided information on progression requirements (two civic and two post-1992).

Only 14 websites made it clear how many modules students are expected to take per year (all three Russell Group, three of the seven civics, one of the online/DL/private, six of the 11 post-1992 and two of the post-2004 universities).

Most universities (24 – including the three Russell Group, and all three online/DL/private universities) provided accessible information on types of learning experiences students will encounter. However the information was often brief and generic - such as "*Teaching is carried out through a combination of*

lectures supported by seminars and tutorials", or the information simply consisted of a list of activities. Often accompanying this information were statements using adjectives such as 'excellent', 'high quality', or emphasising how these activities would enhance their intellectual or practical skills, yet few explained what these activities entailed, in their particular context. For example what is the difference between a seminar and tutorial, and what is expected of students in each?

This lack of explanation of methods also applied to assessment. While 28 universities (bar one online/DL/private and one post-1992 university) named the forms of assessment, again few explained what the terms meant. Some universities chose to give just an indication of the methods students would encounter during the course or the year/level, while others chose to be more specific and identified the methods for each module (but usually via a module descriptor). Over two thirds (22) indicated the percentage of summative assessment while only two (one post-1992 and 1 post-2004) gave an indication of its frequency. The distinction between summative and formative was rarely explained.

Only eight universities³² (two Russell Group, five post-1992 and one post-2004) provided clear and accessible information on typical class contact hours, but even then it tended to be couched in flexible language. One university simply stated

"Throughout your degree, you're expected to study for 1,200 hours per year. That's based on 200 hours per 20 credit module and it includes scheduled hours, time spent on placement and independent study. How this time's divided among each of these varies each year and depends on the course and modules you study."

Again the Advice and Guidance suggests prospective students want to know about who is teaching them. It was not straightforward to locate this information. Who teaches what was in most cases only available by navigating to the staff profile pages, but few landing pages provided a direct link to these pages, and to ascertain from them what individual staff members taught meant accessing the page for each and every academic. Seven universities either did not appear to

³² The question is arguably not relevant to purely online/DL courses

have staff profile pages, or the pages were not limited to law staff, necessitating a search of the whole university or faculty academic staff to identify who might teach law. Even on staff profile pages the information was very mixed. I accessed only the first entry on every university law staff profile page list to ascertain what modules they taught. Most pages contained simply a reference to 'teaching interests' or 'teaching summary'. On just 12 individual staff profiles was it possible to identify what modules they actually taught. It was also not possible (without reviewing each and every staff profile page) to identify if a module might be taught by a team of staff, or whether postgraduate students might be involved. Instead information typically available on the profile pages was their title (lecture/professor etc), their academic qualifications, their research profile (pre-1992 universities in particular) and a summary of professional and practical experience. Surprisingly, very few indicated if the staff member held a teaching qualification or fellowship, even amongst those universities which emphasised their teaching quality.

Finally, only seven universities provided an accessible link to the university's variation clause from the landing page. In all other cases the clause was located, but only by using the web page search engine and searching 'terms and conditions' or 'student contract'. This again was surprising because a self-assessment exercise conducted in 2016 through Universities UK (UUK) on universities' compliance with the CMA Advice (only), 84% of the 104 member institutions that responded reported that they now signpost students to terms, conditions and regulations on a stable website³³.

4.3.4 Discussion

i. What I found interesting was the degree of homogeneity across the 30 universities, both in terms of compliance, and in terms of the course structures. On compliance some information almost all the universities provided (a list of core and optional modules and course assessment methods), but equally some information almost all *didn't* provide (degree classification information, progression requirements, possible changes to options available, class size, post

³³<https://www.universitiesuk.ac.uk/policy-and-analysis/reports/Documents/2016/consumer-rights-universities.pdf>

graduate teaching involvement, frequency of summative assessment, accessible variation clauses). This apparent homogeneity extended to the structure of the individual undergraduate law course themselves. It was difficult to distinguish from the web pages what was obviously and significantly different in terms of course design and delivery between the courses (except for those where the delivery method was online/DL). The main differences between them appeared to be in the number of modules potentially available, but as already noted, it was not always clear how many options students were actually permitted to choose.

More particularly, it was difficult to identify from the websites anything distinctive about actually studying law as a discipline, or studying it at a particular school. One website did state it offered a “*distinctive ‘critical approach’ that places law within the wider context of society*”. ‘Critical’ can mean anything from finding fault, the type of analytical methods used, ethical attitudes, or to developing skills of reasoning (Davies and Barnett, 2015), but the website provided no explanation of how it was using the expression. As well as providing ‘material information’, the websites tended to focus on the practical experiential benefits of studying with its law school, such as work experience modules or placements, moot courts, pro bono opportunities, and skills, rather than on the educational experience.

One of the policy drivers behind the marketization agenda discussed in my Introduction was to promote competition and diversity led by consumer choice. This study rather suggests the possibility of what DiMaggio and Powell (2000) identify as organisational isomorphism whereby the existence of a common legal environment leads members of an organisational field (such as the university sector) to present similar organisational behaviours (2000). In this case an awareness of the risk of breach, coupled with uncertainty over concepts such as ‘clear’, ‘intelligible’, ‘unambiguous’ and ‘accessible’ might be encouraging universities to adopt or maintain a ‘herd like’ position, presenting at least ostensibly similar approaches to design and delivery and giving minimal or generic types of information.

ii. In my Literature Review it is suggested consumerism is associated with empowerment and ‘rights’. Rights in this context include the right to receive the product or service as described (Williams 2013, p6). The literature suggests that

consumerism in higher education promotes or encourages passivity rather than active intellectual engagement in the learning process (Molesworth, Nixon and Scullion, 2009; Williams, 2013b) and encourages an instrumental approach to education. To what extent did website language reflect this consumerist perspective? Universities gave little explanation of their specific learning and teaching methods, or their expectations of students. Where explanations were provided, some used the language more readily associated with markets. For example, in one post-1992 university

“In lectures, specific information is delivered to larger groups while in the smaller seminar groups issues can be explored in more depth.”

The focus here is on information (not understanding) and the implicit message is that it will be delivered to, rather than acquired by, the student. Another (Russell), while not using such extreme language nevertheless provided

“You will be taught through a combination of lectures, seminars, and tutorials with eight students. We encourage substantial student participation and class discussion in seminars and tutorials, on the basis of prepared work.”,

suggesting the key activity is the teaching rather than the learning, and that active participation (in seminars and tutorials only) is optional. One other university does make explicit the need for students to take responsibility for their learning:

“The approach to teaching and learning is 'student-centred': this means responsibility for achieving learning outcomes is placed on student initiative in self-managing your own programme of study”

but then goes on to provide

“You will be supported both academically and pastorally through this process by academic staff responsible for the modules studied and also by a personal tutor, who is an academic member of staff with special responsibility for looking after you throughout your education....”,

suggestive of what Williams (2013) describes as the infantilization of students and “replacing academic relationships with customer care contracts” (p.10).

Even where universities referred to the need for independent learning, few explained the purpose of that independent learning. For example, one provided:

“Outside of timetabled sessions, you'll need to dedicate self-study (around 20-30 hours per week) to prepare for coursework, presentations and exams”.

No mention is made of pursuing intellectual curiosity or expanding knowledge and understanding, rather the independent study is directed towards achieving prescribed tasks. Only one university referred to the concept of 'reading' for the LLB degree, but didn't explain what this means or how it differed from, for example, study (directed or otherwise).

iii. Overall it was difficult to identify the general intellectual and theoretical approach being adopted by universities to the teaching and study of law. This absence was surprising given the history of the development of law as an academic discipline and its struggle to forge an academic rather than a professional identity, as discussed in my Introduction. Even where there were links to law schools' own sites it was difficult to find more illuminating general information. On the other hand, there were extensive references on most websites to legal practice and other related employment. Almost every LLB course (all seven civics, one of the Russell Group and all bar one of the post-1992 and post-2004 universities) offered a module related to employment (such as 'law for entrepreneurs'; 'lawyers working with Business'; 'legal advice and representation') or a professional placement or other professional experiential opportunity.

The undergraduate ('qualifying') LLB is a professional qualification and the perception of law as a vocational rather than an academic discipline only changed with the emergence of a number of alternative approaches to the study of law such as the socio-legal or critical law approaches (Bradney and Cownie, 2000; Cownie, 2004). Ashwin argues that the power of higher education is that it changes students' understanding of their discipline, the world and themselves, and this requires educators to have a sense of what students will become through engagement in the discipline's body of knowledge, who they will become, and what they will be able to contribute to society (2019). The absence of any information on the intellectual and theoretical approach, even amongst the Russell Group universities who I would have anticipated would emphasise this aspect, combined with the functional language used together with the emphasis on professional knowledge, skills and experiential opportunities, implicitly supports an instrumental attitude to the LLB degree, one that encourages students to see the value of the LLB degree primarily in terms of being provided

with the knowledge and professional skills required to get employment rather than in terms of its transformative power.

4.4 Summary

What was most striking for me was both the way universities approached disclosing information but particularly what was absent from the web pages. They approached disclosure in a very literal fashion, providing very little by way of distinctive disciplinary or pedagogic context. The websites focused very much on the external world of being a student (Barnett, 1996). Yet text doesn't simply describe reality it also shapes it. What is not said can be as illuminating as what is (Trowler 2001) and can (intentionally or unintentionally) reinforce particular perspectives or values. At its most basic, the absence of any information about what studying law (as opposed to other disciplines) demands of students; or what intellectual knowledge and understanding studying law aims to promote, was striking in the context of what compliance professionals confirm as standardised templates for course information across the disciplines. As such the signals sent by university websites suggests disciplines are little more than internal organisational structures. The signals also appear very much in alignment with instrumental and transactional perspectives reflected in both the CMA and QAA documents.

In the next chapter I explore the perspectives of directors of teaching and compliance professionals on the consumer protection laws, identifying what I believe to be the salient observations, leading to my overall discussion of my findings in Chapter Six.

CHAPTER FIVE: Interviews with directors of teaching and compliance professionals

5.1 Introduction

Having considered how universities have approached the disclosure requirements through undergraduate law course websites, the purpose of this chapter is to explore how a small group of academics responsible for oversight of their School's undergraduate law course, and centrally based compliance professionals view the legislation and its impact on the design and delivery of the courses but also on the role of law academics.

The interviewees are not necessarily from universities whose web pages were reviewed in the previous chapter. In my methodology chapter I indicated that because of concerns over possible identification of either the interviewee or their university (or both), all interviewees have been assigned gender neutral names, and their individual universities will only be referred to as either 'Russell Group', 'pre-1992 civic', 'post-1992' and 'post-2004'. Because of the very small size of some of the law school groupings and therefore the possibility of identification, no reference will be made to whether any of the interviewees are from a public or for profit university or how they offer the undergraduate law degree (face-to-face, online/distance learning).

For the same reason I have not given interviewees their actual titles as it became apparent titles can be specific to specific universities. There is no generic or widely used title either for academic staff responsible for teaching and learning policy within law schools, or for legal compliance. In order to minimize the possibility of identification I refer to 'directors of teaching' ('directors') and 'compliance professionals' respectively, and a generic name is given to the internal division in which they are employed based on the primary function/s of that division. I also use the term 'managerial professional' where other non academic staff are referred to in the interviews.

5.2 The interviewees

<u>name</u>	<u>role</u>	<u>Division</u>	<u>University</u>
Jesse	Dir of teaching	Law School	Russell Group
Chris	Dir of teaching	Law School	Post-2004
Rowan	Dir of teaching	Law School	Pre-1992 civic
Bernie	Compliance professional	Central University legal Team	Pre-1992 civic
Jamie	Compliance professional	Central university recruitment & admissions	Post-1992
Kelly	Compliance professional	Central University teaching & learning	Post-1992
Ali	Compliance professional	Central University legal Team	Pre-1992 civic

5.3 Interview themes

The semi- structured interviews were clustered around the following broad themes (i) roles (ii) responsibility for website information (iii) processes for implementing the legislation for approving course changes (iv) the impact of legislation on how courses are designed and delivered, and (v) perceptions of student expectations. These were themes I anticipated would provide both the broad parameters for interviews but also provide sufficient scope to capture how

different roles, different organisational structures and their university's position in the higher education sector might shape their perceptions of the impact of consumer protection law.

5.4 Interviewee profiles

Understanding the roles of the interviewees and their place within their university's organisational structure is important for understanding how and when individual interviews engage with the consumer protection legislation in order to provide a context for, and better understanding of, their observations.

Of the directors of teaching, Jesse is a former member of the legal profession, part of the law school's senior management team and describes the role as including responsibility for strategic educational decisions and chairing the law school committee responsible for developing the school's internal teaching and learning policies, and plans.

Chris was formerly a member of the profession before moving into the university sector. The law school is strongly vocationally oriented, particularly towards legal practice. Chris's role is a broad management on encompassing quality and standards and including course design and delivery for the law school LLB.

Rowan, the third academic, had a background in a law related field before joining academia. Rowan is part of the school's senior management team and responsible for overseeing the law school's education strategy and chairing its committee dealing with curriculum and design and delivery of courses.

All three were appointed as directors of teaching within four years prior to the interview, but all three were academics in their law schools prior to taking up the post.

Of the four compliance professionals, two (Ali and Bernie) are currently university in-house lawyers. Both have experience of legal private practice; both were appointed within the past four years. One is the head of the in-house legal team, a member of the university's senior executive team (the only compliance professional interviewee who operates at executive level), and sits on a number of university governance committees and has specific responsibility for legal compliance (amongst others).

The other lawyer is a senior lawyer within an in-house legal section and reports to its head and has primary responsibility for commercial contracting matters which includes some oversight of consumer protection compliance and particularly the student contract. Unlike the other three compliance professionals, this role does not involve significant contact with directors so much as with other management professionals.

Jamie and Kelly on the other hand are managers in former polytechnics which both converted to universities post 1992. Jamie is a senior manager within a central university department dealing with recruitment and admissions, reporting to a head who in turn reports to the university chief operating officer. Jamie's first degree is in the creative arts field, with a Masters in a business related discipline. Jamie is primarily responsible for the university's compliance policy development.

Kelly is a former academic with a first degree in a technology related field and is a senior manager within a central university department responsible for supporting teaching excellence. As a result Kelly is heavily involved in the university's course development approvals processes, requiring oversight of consumer protection legislation compliance.

Consistent with research discussed in my Literature Review (for example Shattock (2019a) and Whitchurch (2009)) identifying the emergence of an entirely new set of managerial posts intended to support university accountability functions, all four compliance professionals occupy relatively new positions or positions that encompass new areas of responsibility for either general compliance functions or consumer protection legislation compliance. In both Ali and Bernie's case the inhouse legal team was either established at their appointment or expanded with their appointment, driven in part because of a need to have a more proactive and comprehensive understanding of the legal risks of the much more commercial environment in which their universities operate. Jamie was appointed to a new university post while Kelly's existing post was expanded to include compliance. Ali and Bernie are both members of an association of university legal practitioners but there is no equivalent association specifically for compliance professionals.

5.5 Interview analysis

My analysis of the interviews revealed some surprising convergences and divergences of views over the impact of the law on the design and delivery of undergraduate laws courses, and over attitudes towards the law as it applies to higher education. These did not reflect a simple divide between the directors of teaching and compliance professionals but are more nuanced, reflecting different organisational contexts, different university 'missions' and different personal beliefs and experiences.

The interviews exposed two main areas where the law has impacted. These are i) in reinforcing the role of managerial professionals over aspects of design and delivery, and ii) in the speed and willingness of universities to change and innovate course design and delivery. The interviews also revealed the extent to which the interviewees believe the law has played in reinforcing particular student expectations around the nature of the student experience. However the interviewees were also clear that it is not always possible to attribute changes solely to the consumer protection legislation. This legislation is part and parcel of the marketisation and commercialisation of higher education discussed in Chapter One, and there may be a number of factors collectively driving change in curriculum design and delivery in a particular direction including competitive forces, metrics and the demands of quality assurance. The interviewees were clear however that the consumer protection law has acted to reinforce the values and objectives underlying these changes.

The findings are organised as follows: 1. the impact on internal organisational processes resulting from the law and particularly the disclosure requirements, 2. the impact on innovation – the rise of risk aversion, and 3. interviewee perceptions of how the law is shaping a) understandings of the purpose and nature of higher education and the expectations students bring with them when they join the university and b) understandings of the role of academics.

It is important to acknowledge that while the interviewees distinguish between students and consumers or (customers) in their interviews, the term 'consumer' is a complex term and can be used in different ways. The generally understood

notion is connected with the payment of fees, products and to individual rights, even though some interviewees may adopt slightly different variants.

5.5.1 The organisational processes

5.5.1.1 Managing the production of promotional materials, including websites

The function of developing and publishing promotional and course material is particularly important in the context of the consumer protection legislation because it must contain the required 'material information'. How 'material information' is interpreted and presented is critical for compliance purposes. This link between published information and legal compliance means in effect that whoever has authority over i) how compliance is to be interpreted and implemented and ii) what information has to be published, has the ability to influence course design and delivery. The interviews revealed the important role of managerial professionals including compliance professionals in both the structure and content of the information disclosed.

The interviews revealed the presence of university wide standardised procedures for the development and publication of course promotional materials in all seven universities, but these procedures differed between the universities. In each university however these procedures will involve one or more of the following groups of professionals: legal, marketing, communications, digital, quality and compliance professionals. Both the compliance professionals and the directors of teaching confirmed academics have input into the materials, typically through completing a centrally developed form, or via producing a 'programme specification' or similar document at all seven universities. Standardised universal templates drive the structure of written promotional materials (including websites), so that the promotional materials for all the courses within the university have a common structure.

Strict centralised controls have been imposed over who can make changes to that material once it is published. In the case of the university websites this control does not now rest with academics at any of the seven universities. In the

post-2004 university this did not represent any change in procedures but, as far as the director of teaching was aware, has always been a feature.

The compliance professionals explained this centralisation and standardisation has primarily been driven by concerns over non-compliance with consumer protection legislation within schools where there had previously been more autonomy over these materials. At Ali's university for example, websites presented a particular compliance problem so control over them was removed from schools and centralised with management professionals. As Ali explained

"you employ a quality team and you employ marketing people and you employ lawyers for a reason. That's not why you employ academics."

Ali clearly saw this more properly situated with the managerial professionals' skills and knowledge sets, and not with those of academics.

One director (Rowan) felt these procedural and process changes and particularly the role of centralised units such as marketing have had implications for the identity of individual schools –

"it does kind of impose a much more kind of corporate sense and can lose some of the bespoke elements or the more, you know, unique identities of individual departments."

At the same time however, this director of teaching also acknowledged that there was a positive side to the increased centralisation and standardisation - it relieved academics from these tasks

"I can see some of the benefits of it as well, just in terms of I mean academics, our lives are so busy with so much without having to do all that stuff."

Rowan was also concerned how the language used by these centralised units can contribute to shifting perceptions about the nature of the relationship between student and university. Rowan gave the example of how an update to the central university student records system initially replaced the term 'student' with a term closer to consumer: -

"[It's a] tiny, tiny thing, but it reinforces the idea that actually, this is not a pedagogic relationship this is a consumer relationship. But to give credit, they changed it because a number of us raised objections to it, but it's these little things that you do feel like in terms of the policy and regulation, that there's this very acute sense of the shift from student to consumer."

The compliance professionals were also alive to this distinction between student and consumer, but saw the problem more as one of universities failing to properly articulate those situations where students are consumers and where they are not. Kelly explained:

“I think students are customers in certain aspects of their relationship with us. So they should be able to expect a certain level of service. So as a student, I would expect online enrolment, for example, and I would expect universities to be able to deliver that to me and that is me as a customer. When I walk into a classroom, I'm not a customer, I'm a student. And that relationship between me and the institution changes at that point, but I think at the moment, we are almost blurring the boundaries between where the student is a customer and where they're simply a learner. Where the university is delivering a service that is not a commodity that has to be treated differently.”

One compliance professional observed there was a view amongst some colleagues and students that as universities are happy to behave like commercial market entities when it suits them e.g. borrowing money or paying commercial market salaries for certain roles, they could not complain when students did the same.

5.5.1.2 Processes for approving course changes or developments

Internal scrutinization of course change and development is not new. What the interviews reveal is how compliance professionals have become central in the scrutiny and approval processes in these universities, although at different stages and via different mechanisms, according to the internal organisational structures of each university. Either the compliance professional will him/herself scrutinize the proposal and approve or reject it, or the compliance professional is embedded in the committee structures that make approval decisions. As Kelly, a former academic but now a compliance professional explained

“When I started in educationyou could make whatever changes you want and pretty much they never fed back through to the central teams so we're now looking to make sure that once we validate a course, we are locking those documents down. And there are formal processes now to actually make changes to those documents so that we can have visibility and oversight of it.”

This scrutiny can also extend to informal changes to courses. At one university the compliance professional explained this even extends to introducing monitoring to ensure classes are taking place when they are scheduled, in order

to be able to evidence the university is delivering the published class contact hours.

5.5.1.3 Standardisation of aspects of course design and delivery

Two directors of teaching observed there are now more policies across their respective universities standardising aspects of the design of courses. For example at the civic university there has been a move to standardise the required length of student assessments to ensure they are broadly of the same length across each level ('4', '5' or '6') of all courses, while at the Russell Group university there is a direction that assessment formats should satisfy certain requirements. Rowan observed this standardisation of assessment length has pedagogic implications and ignores the educational purpose of the assessment in favour of a standardised word count

I mean students do point out when they think that there's discrepancies and sometimes it's hard to explain to students that ... a short piece is sometimes is actually more difficult to write than a long piece. You know, or if you're evaluating a piece of theoretical material, sometimes like a shorter thing is more challenging. I do think sometimes there's this kind of reductive equivalences that happens.

Although neither director could attribute these initiatives specifically to either the consumer protection legislation or to the influence of compliance professionals, for Rowan there is a link

I think it does connect to this kind of consumer mentality. It's partly about fairness. It's like 'why should I have to do more work on this module than on this module' or ... like the number of times we get 'I am paying this much money and therefore...'

5.5.2 The impact on innovation and the rise of risk aversion

5.5.2.1 The speed of change

The consumer protection legislation requires that changes to courses cannot be implemented if they conflict with pre contractual information about the course (-

unless there is an enforceable ‘fair’ variation term in the student contract³⁴, or the students agree to the change). Any proposals to change elements of a course or to innovate must therefore be scrutinised against this published information. As one director put it *“we have to deliver what we promised”*. The interviews identified the impact of the legislation has been to slow the speed at which this change or innovation can be implemented.

At the post-2004 university the director (Chris) explained that if an academic comes with a proposal to change a course the director’s response would be to approach this much like a practising lawyer and ask

“Oh whoa, whoa, well, hang on. If you do it on LLBthat will be a fundamental change. What have we said on our website? When have we said it? From which point? Have we gone back to all the students who accepted at that point to tell them that this is going to change on so on. ... You know... it would go through other processes as well, I have to check the compliance.”

This director described the process as a procedural hurdle but not one that necessarily conflicted with the school’s ability to ultimately deliver change and innovation. Rowan on the other hand explicitly used the term ‘constraint’ to describe this impact –

“we’ve definitely come up with constraints before around website issues when we were trying to design something that was a bit more creative and sort of like ‘the systems says ‘no’ “,

implying that it is more than a mere procedural hurdle but rather a hindrance to delivering what the school believes to be the best educational experience for its students.

5.5.2.2. Risk aversion

Although the term was not used by all the compliance professionals, the interviewees identified the significance of risk as a driver of central decision making. As a result in their experience universities have become much more cautious not just about what courses they are willing to offer but also about the way they are willing to offer them. One compliance professional (post-1992) commented that with the introduction of the legislation

³⁴ The CMA has advised that in its opinion a ‘fair’ term should only permit minor changes (2015, par. 5.25).

“... universities were beginning, in my opinion, to be more 'risk averse' in terms of what [they] were willing to develop and offer. So I think, in some ways, some universities became less cutting edge, less innovative. Because they were worried about advertising something that they would have to change midstream maybe because a member of staff had left or they'd lost expertise in the area. And so that's then started to translate into curriculum design approaches.”

The role of the Office for Students in fostering this approach to risk was highlighted by Jamie -

“[I]n my dealings with [the OfS] so far... and this is the same experience from talking to other people...it's a regulator. Its over there somewhere and the only time it gets to here is when you've done something wrong.”

Jamie contrasted this with the previous regulator (Higher Education Funding Council for England ('HEFCE')) which, in this compliance professional's experience, had very clear channels of communication and was very willing to engage proactively with the university and provide advice to enable the university to navigate regulations successfully. The compliance professionals were conscious of the risk of damage to the university's reputation and three were acutely conscious the OfS has made it clear that higher education is a market and consolidations and/or market failures can be expected. However there was also a sense amongst these compliance professionals that in reality larger more well established universities are more likely to be able to weather these risks than smaller or newer universities, for a variety of reasons: larger and well-established universities have strong research programmes and therefore more academic expertise available generally to support innovative courses; smaller or newer universities tend to have younger and smaller academic cohorts; and younger staff are likely to move to advance their careers; and having a smaller academic base means expertise can be easily lost:

“We don't have the strong research base of other universities like the UCLs or Imperials et cetera and so it makes it more difficult in terms of retaining expertise in key areas. So...[discipline] has been one that has come up recently where if we lost a person who does [discipline] and who does the main research that we do in here in that field, we'll be in quite an awkward position in terms of what we're able to deliver in that field. So there is that restriction around having to think very carefully about how are you going to resource this should something change ... I think that tends to force us down the route of being less innovative because we are taking less risks.”
(Kelly)

There was also the view that older more well-established universities have deeper pockets to meet any financial consequences of non-compliance. Ali's observation "*this is no longer an amateur's game*", implies not only a belief that the sector has become more risky, especially for newer and smaller institutions, but that compliance professionals have an important role in managing that risk.

However the compliance professionals did not necessarily share the idea that the consumer protection legislation acts as a constraint to all innovation and change in course design and delivery. All of the compliance professionals wanted to be able to support schools to be innovative and they see it as a matter of how that change or innovation is approached, and in particular how information is presented to students. As one compliance professional (Jamie) commented, universities and schools haven't really helped themselves in this respect by the ubiquitous use of '*meaningless*' words such as '*excellence*' in their promotional materials or to describe the university experience instead of always being clear about what this experience actually means. Another compliance professional (Ali) commented

"I think it's good in that it has led institutions to be more thoughtful about how it engages with students and what they're genuinely offering to their students and ... when they make promises to students about what they're giving them or what the outcomes [are] and what we're going to try and work towards together, because obviously it requires students to do work too. It doesn't just say, there you go. You turned up. You get that. The fact it has raised the consciousness of the sector I think is a good thing."

Kelly, commenting on some of the broader criticisms of the CMA Guidance, suggests this criticism is based not so much on what it says as:-

"some of it I think is rather our interpretation of it and how we have chosen to implement aspects and how we've communicated that academic standard."

At the same time Kelly observed that how the CMA has interpreted 'material information' in its Guidance reflects a dated understanding of modern pedagogy. The notion of 'class contact hours' for example, suggests all delivery takes place face to face, so the requirement to publish this information has been particularly challenging for courses that use blended or online learning.

5.5.2.3 Disciplines, change and innovation?

The conservatism of law schools in terms of their willingness to innovate their curriculums was observed by one (post-1992) compliance professional currently involved in a law curriculum review. Kelly observed

“...I think looking at the history of the law course design here it has just been very conservative in terms of the way in which they have designed and delivered the programme. And this is where we're really challenged with law at the moment. They're going through a revalidation which is what we're currently doing with the law team looking to make the programme fit for the next five years and essentially what we got back initially was a rehash of the same programme.”

This compliance professional is aware that professional body requirements can also be used as a justification within schools for rejecting innovation:-

“I haven't seen the professional body requirements at this stage, but I haven't yet found any professional body requirements so rigid that you cannot work with them to enable you to do the things that you want to do. And a lot of the restrictions that people tell you about are restrictions in their head or restrictions that existed ten years ago that no one can now find in the professional body accreditation. And so when I back up against barriers like that, my [response] has always been 'let us speak to the professional body' “.

Kelly stressed the importance of developing good personal relationships with appropriate academic staff

“I think we're very fortunate to be working with the law school with a [director of teaching] who is a very experienced law academic - it has actually helped us to unpick some of the professional body requirements that have been holding them back - because of their interpretation of it.”

This conservatism within law schools was also alluded to by one of the directors (Russell) who commented that a current curriculum review of the undergraduate law course at this law school had the potential to be “a *bit more revolutionary*” this outcome was unlikely – in this director's experience change tended to ‘evolve’ rather than occur swiftly. On the other hand the post-2004 director explained that they had fairly recently introduced a revised structure for their LLB course, including introducing new forms of assessment, in part to better reflect course objectives. The (then) current students were heavily involved in consultations over this new structure.

Despite concerns over the impact of the legislation on course design and delivery the interviewees agreed that slowing down the speed of change could also be

beneficial. For the directors this slowing down enabled full reflection on the value of the change or innovation within the overall course structure, while for the compliance professionals it ensures legal compliance and allows for greater consideration over the wider implications of the change for the university's mission and its risk profile. Ultimately however Kelly commented in relation to academic staff in general

“My perception is that academic staff still don't care, and still don't appreciate the broader ramifications of the CMA et cetera and this includes working with the law team. You know, it is still very much a discussion about academic freedom. Still very much a discussion around ‘this is what is best for our discipline’ and it is still, for me, not being looked at in a broader context of the institution [and] the external environment in which we operate. I still think academic staff are very siloed in their thinking in terms of ‘this is my course, this is my module, this is what I want to do.’”

5.5.3 Shaping understandings and expectations

The interviews revealed a number of views on the impact of the legislation in shaping understandings and expectations around higher education and the role of academics.

5.5.3.1 The marketisation of higher education

Views on the desirability of treating higher education as a market differed between the interviewees. For one director of teaching (post-2004) this market oriented environment was one the university knowingly stepped into and this director is comfortable working within, including the concept of students as paying consumers. Regular consultation with students is embedded in the school. In addition the undergraduate law degree at this university is itself oriented towards the knowledge and skills graduates will need for future professional practice. The role of law in society is not ignored, but tends to be approached through its practical application -

“[t]he student that does want to have like a more philosophical aspect or an academic research [experience]...probably wouldn't apply to us.”

For Jesse (Russell director) the marketisation of higher education is acknowledged as the current reality, but nevertheless expressed awareness that other law school academics would welcome more pushback -

"[b]ut it's a very metrics-driven education system at the moment and we have to respond to that because we are in a market. I'm a pragmatist. Whether that's right or not is another matter. If somebody would say that's not my job as an academic to be a pragmatist, I shouldn't be responding to the students we've got, I shouldn't be responding to the situation we've got, I should be pushing back against those things but that just depends on your attitude. My view is, this is what we're dealing with so we'd be fools not to respond to it."

The third director (civic) offered a different perspective suggesting a concern with the implications for the broader public role of higher education:-

"I think the kind of consumer agenda can't capture what, you know, university, institutions were meant to do which was a kind of broader public education mandate.

[A]nd I worry that we're losing something that is about the power of change within education and the power of, you know, creativity and the level of learning that we can inspire in people which I think is a social good that we should be celebrating and not trying to reduce to something that's about productivity or training or job. I mean those things are good and important too, but I think that's not all."

This director believes that the idea of a collective community of learners based on a relationship of trust between students and academics is being threatened by one based on the individualistic and arms-length values of the marketplace, and a preoccupation with graduate employment outcomes.

Interestingly a similar perspective was also reflected in the views of two of the compliance professionals. One observed the marketisation and consumerist perspective has the potential to radically challenge universities and their sense of purpose - *"it's a totally different way to look at education"* with the result the relationship between the student and the university is becoming more transactional and

"focussed on the individual student and what that individual student wants from the institution and trying to satisfy that need as though it's a product...it's a commodity that they're getting, rather than an education."

A similar view was shared by another compliance professional who talked in terms of expanding as an individual. Jamie is concerned that higher education is

"something curated and modelled and put together for you the same way as when you go to...I'm probably coming across as being overly pessimistic here, I'm not one at all...but you know...you got into a museum

and you walk through something and you're guided all the way through it to the end. I don't think it should be like that."

Related to the issue of the purpose and nature of higher education is how 'quality' is to be understood. Concern for quality has become a ubiquitous feature of government policy, and underpinning consumer protection law is the principle that students-as-consumers will drive up quality through the exercise of informed choice. In addition to the disclosure requirements contained in consumer protection law, regulators and third parties (such as publishers) have developed a series of indicators of quality based on metrics such as student satisfaction surveys and graduate outcomes. While these indicators are not mandated by the law or classed as 'material information' by the CMA, they are consistent with and legitimised in a marketised approach to the provision of higher education, where choice is exercised based on information about the features of the 'product' and on the ability of the 'product' to perform to measurable standards.

Just as the directors expressed different views about the marketisation of higher education the interviews also suggested subtle differences in perceptions about the values reflected in the current metrics and their link with the principles underpinning consumer protection laws. The issue of metrics for Chris appeared that they don't really enable a true comparison between law schools, nor do metrics adequately reflect the quality of the teaching within them. What makes for quality for Chris includes factors such as the nature of the curriculum, the types of educational experience students will have, having academics with professional experience, and providing students with the opportunity to gain key skills for professional practice. Chris acknowledged however that this perspective was very context specific to the professional focus of the law course at this university. For Chris (post 2004) the issue was not so much with the principle of metrics to aid comparison, but with the nature of the current metrics.

For Jesse (Russell) there is a danger that metrics tend to focus on student satisfaction with the danger that quality becomes simply a synonym for popularity, while for Rowan (civic) on the other hand there was a concern metrics are a part and parcel of various measures that are contributing to undermining the transformative purpose of higher education:

“I feel like there's a real reductiveness in thinking about what quality means and this attempt to kind of quantify everything or to make everything into kind of equivalent measurable outcomes. And I think there's a lot about...like again, the quality of relationships that you have with students ...you can't quantify that. You know, I think about when I did my undergrad and the teachers that really inspire you or the teachers who took a bit of extra time to support you or to give you that feedback or the teacher who's interested and taught something, you know, you hadn't explored before that blew your mind and made you excited about something in a different way. All of the metrics that are used to measure quality, I don't think capture any of that...”

Quality higher education is something this director believes is more intrinsic to the transformative nature of higher education that cannot be captured by metrics.

The compliance professionals, like Chris, appear more sympathetic to measures used to provide relevant comparator information on the student experience. For them quality legitimately includes measuring provision against what a university promises to deliver, even if this doesn't capture the entirety of the educational experience. Jamie observes this is an almost inevitable consequence of student fees and the idea that students are 'purchasing' a degree – *“people want to know what they're purchasing.”*

5.5.3.2 Student expectations

The interviews revealed interviewee concerns that the law has had an impact on how students understand the nature and purpose of higher education reinforcing the more general trend of the idea of a consumer-like relationship between the university and students. This relationship is also one in which students (and their unions) expect to be able to shape the features of 'the product' delivered.

The interviewees gave examples of student demands concerning their undergraduate courses – ranging from minimum staff-student contact hours, changes to timetabling, one-to-one academic support, to wanting more – or less - variety in assessment, or wanting more optional modules. For the interviewees this trend began with the (re-)introduction of student fees and has continued through the introduction of metrics such as student satisfaction surveys, culminating in the CMA Guidance and supported by the Office for Students. The media has also played a role, and so have law firms who, as one compliance professional (Ali) describes, are

“running around trying to damage what is a relatively delicate although a constructive relationship between the university and a student...[who]... haven't come in and bought an off-the-shelf Dyson or insert name of other hoover”,

and encouraging students to join class actions.

There was concern over the basis for some of these demands. Kelly gave an example of how lecture capture technology was introduced by a university in response to a concerted student union campaign, despite research demonstrating it is an underutilised tool amongst students and academics and professionals agreeing it added little value to learning.

Ali observed that students are now much more aware of their consumer rights and they are quicker to submit lawyers' letters rather than to engage with university support measures or complaints processes, an observation also supported by one director (Rowan)

“the first stage is to try and deal with complaints informally which I think is good, but I think there can be attempts to escalate things in kind of very legalistic terms and I think that comes from that broader 'I'm paying for the product and if I don't get the product in the way that I expected or wanted it, then that's [your] problem.’”

For Rowan it seems not only are students coming to see higher education as a series of tangible deliverables - at least at the undergraduate level – but also as a passive experience:-

“I definitely think that actually the seminar's often where the key learning happens because that's where they ask questions and engage and we do the discussion, but we have certainly had plenty of students say well, the lecture's the real bitit's again this consumptive idea that the lecturer has knowledge that they're then passing on to the student through the lecture that they consume and we're going to take back. And we try very hard to kind of get students to think differently about that and to get students to think differently about even assessments, that writing is not a process of regurgitating knowledge back, that writing process itself is the learning process and it's about crafting your ideas and thinking about things and being able to critically analyse and that's the value as opposed to the kind of 'what the product is.’”

Another director went even further when describing some students' responses to the industrial action taken by university unions in 2018 that disrupted face-to-face classes. Some students responded with

“ “You the university have let me down. This is my entitlement.” And it’s not just entitlement in terms of hours, it’s entitlement in terms of entitlement not to be upset. Entitlement not to be disrupted. Entitlement to know exactly what’s happening at all points, and it’s that sense [of] a lack of appreciation that actually some things are genuinely beyond the control of people. So there is sort of that consumer idea not just in terms of physical provision, but that sense of, “My life isn’t good and it’s your fault.” ”

This suggests a concern that not only is consumerism breeding intellectual passivity in some students it is also fostering an emotional passivity or immaturity.

Again, for the interviewees these student expectations cannot be attributed just to external factors. One compliance professional expressed concern that some universities may be too concerned to acquiesce to student demands and in effect ceding power inappropriately to students. Referring to a successful student union demand related to an assessment practice the compliance professional suggested

“I think is very detrimental in terms of the university reacting to this sort of new student power shall we say, of reacting to the demands of the student voice and the need to make sure that the students are happy, et cetera. And I know that sounds negative to ... students, but I don't mean it in that context..”

5.5.4 Understandings of the role of academics

5.5.4.1 Role demarcation

The compliance professionals were keen to acknowledge the limits of their own role in the design and delivery of courses. Despite the challenges of working with schools, they felt it was possible to draw a clear line between their role and that of academics. Ali commented

“there was a very clear demarcation between the fact that they delivered academic provision to students and I'm the university's chief legal officer. We've never had any confusion, any crossed wires, anyone trying to advise, and I've certainly not tried to be a legal academic at any point. There's been no confusion.”

Kelly, the former academic, explained

“at the end of the day, from where we sit, the academic freedom is still very much in how people teach and deliver. So...once you go into your classroom, the classroom is yours to deliver the curriculum as we've designed it. So where we tend to see the change in the focus is around the actual curriculum structure and the curriculum design...”

Kelly gave an example of this distinction: -

“If law wanted to split up their degrees into a host of different pathways, we start to question that at the very beginning. ‘If you do that, what is the student experience going to be like when you have five pathways and one pathway only has two students?’ How are we going to be able to deliver that. Or, ‘how are we going to resource it, what's the experience of that student going to be like?’ And also trying to force people down this line now thinking about a programme as a five-year investment before [they] have a chance to change and update it again.”

The interviews suggest that compliance professionals believe there is a relatively straightforward distinction between their roles and the roles of academics, namely between matters of *curriculum structure* which includes matters such as pathways, contact hours, perhaps even assessment features such as word counts, and the domain of the academic, which encompasses the syllabus, and the teaching method employed in the class room. As one compliance professional explained in the context of having to reject proposals for change

“it very rarely relates to teaching method because at the end of the day, from where we sit, the academic freedom is still very much in how people teach and deliver.”

In the interviews with directors they did not specifically raise any role demarcation issues, and they regard compliance and other managerial professionals as generally trying to be helpful. Rather it was the values associated with these professional roles that attracted more comment, as well as student expectations about academics' roles.

Rowan (civic) raised concerns over the implications of the legislation's requirement that students must consent to changes that represent a change to the information published when students accepted their offer. These concerns are two-fold: students have the power to block change and innovation to their courses; and, flowing from this, academic authority over the design and delivery of courses is threatened:

“I'm definitely in support of co-creation and student involvement in...in design, I definitely think student involvement [in the co-creation of courses] has a particular place ...I mean they don't have a veto power but it kind of feels like there could be a kind of veto power.... . You know if we just teach students what they want to be taught [this] is not actually what they need to be taught. And there are reasons why those of us who have studied for many years [and] have PhDs ...[are] designing the curriculum with a whole

list or set of things in mind. Its not just about the kind of consumer demand for a certain type of product.”

Rowan was the only director to express this particular perspective on the implications of the consent provisions. From the post-2004 director on the other hand it is clear student engagement is a part and parcel of its provision and reflects the competitive environment this school operates within. My sense was this director saw it less as a diminution in academic authority and more as an opportunity to ensure the school meets its mission.

5.5.4.2 Relationships between academics and compliance professionals

The interviews make it clear that compliance professions do not simply fulfil support roles but are engaged in decision making over the design and delivery of courses, either in conjunction with academics or independently of them. This makes the relationship between these groups critical.

Compliance professionals commented that it has been difficult to get academics in general to take the consumer protection legislation seriously. Some considered that academics regard internal guidance produced by them as “*just another piece of information*” and compliance professionals as just administrators there “*to do their bidding*”, rather than an integral part of the education project. Three gave specific examples of previous practices where there were compliance failures because of a disconnect between what courses were offering or wanting to offer in their promotional materials and the reality of what was being delivered. One example was of an ostensibly integrated law Masters course promoted as such by the law school, but which when reviewed by the compliance professional was in fact two separate courses – a discrete undergraduate followed by the potential to pursue a masters - but only if certain conditions were met. What was delivered was not compliant with what was promoted.

These compliance professionals were clear that in their experience academics and schools do not like the constraints the legislation places on them, or being told ‘no’. The compliance professionals would prefer their role to be one of facilitating schools to manage their compliance obligations while they are at the early stages of considering course changes or developments, rather than to have to intervene once proposals have been submitted. One significant key to this,

believe compliance professionals, is being able to develop good personal relationships with senior academics within schools. For two compliance professionals the opportunity to develop this relationship, at least with some senior academics, comes through shared committee memberships. A third compliance professional felt it can be difficult to develop these productive relationships across all the schools:-

“[S]o I have a decent relationship with quite a few people, but ..more often than not people don't see me. They hear from me via a telephone call, an e-mail, they don't see me. Which does lead to problems. Because then it's treated as the university kind of enforcing something on an individual.”

5.6 Discussion

The interviewees were clear that the changes they have observed cannot be attributed solely to consumer protections laws. Changes have been driven by a number of factors including broader externally imposed requirements on ‘quality and standards’, and other policy changes such as the (re)introduction of student fees, as well as internal (school) factors such as keeping pace with competitor offerings. The interviewees suggested there are benefits to the legislation. However, what I believed the interviews have revealed is that the disclosure requirements have impacted most directly to slow down the process of change and innovation in courses, and to embed or reinforce the role of managerial professionals in decisions on aspects of their design and delivery, and this change has been felt in both the Russell, civic and post-1992 universities alike. For the post-2004 university it appears the requirements has not resulted in the same degree of change primarily because disclosure was part of the broad regulatory backdrop at the time the university was formed. .

On the whole, compliance professionals in the interviews were concerned with the impact of the law both in terms of the consequences of breach, and on increased risk, both of which they regard as critical to their university’s future. Compliance professionals also recognised what they saw as a shift in understandings of the nature and purpose of higher education from one based on transformation to one based on transactionalism. At the same time they expressed a concern for ‘fairness’ – a concept itself central to consumer protection laws generally - for students, which they saw as rightly reflected in

greater transparency over the objective characteristics of courses and in a degree of course standardization.

Directors focussed on how, in their view, while the slowing of the pace of change allows for reflection, it can also impact on the ability of academics to improve the educational experience for students. Directors also discussed the relationship between the legislation and understandings of the nature and purpose of legal education, and on student expectations. Their perspectives differed however, reflecting the interviewees' understandings of the 'missions' of their university, and their understandings of their role in that context.

The director of the post-2004 university law school perceived this university to be more of an outlier within the university legal education sector in that it has a very strong focus on graduate employment and is unashamedly market aware. For this director it seems the consumer protection legislation is not incompatible with this environment and helps support informed decision making by students. While the information universities are required to publish and other metrics may not fully capture all the aspects that make for 'quality' education this information does support prospective students to make comparisons of different law schools' offerings which is important in a competitive environment. The university website is an important recruitment mechanism and proactively frames not just the law school's activities but its conception of its role.

With the Director of the civic university on the other hand my sense was that there was a strong concern consumer protection law is contributing to undermining the understanding of the nature and purpose of higher education. For this director education is a collective public good rather than a private exchange and is shifting understandings of the nature of the educational experience from one that is transformative into one that is transactional. The university website was not considered to be so important for recruitment but nevertheless there was a perception the language used is contributing to creating an environment in which the values associated with markets and consumerism are the values which students increasingly expect academics, as educators, to reflect.

There was sense that the director of the post-2004 law school viewed intellectual and personal development as coming primarily through preparing students for

their professional roles, while for the director of the civic university personal development comes as a result of, and alongside, a collective experience through which the student and teachers together develop new understandings of the world and of themselves.

While aware of the impact of the law and its values on understandings of the purpose of legal education the Russell Group director expressed a strong sense of the need for pragmatism requiring both adaptation, particularly to changing student expectations, but also for a realisation amongst academics that they need to 'pick their battles' and work more strategically to influence change.

All of the directors were aware of the impact of the requirement that changes to courses have to be approved by students (unless they are minor). For the director of the post-2004 university this approval requirement appeared to heighten for them the importance of listening to student voices in the planning processes, while for the director at the civic university law school this requirement heightened a concern over the appropriate balance between academic authority and expertise, and over student expectations about teaching and learning matters.

All three directors expressed a strong commitment to teaching quality and to the student educational experience but held what appeared to me to be subtly different understandings of what this means. These meanings appeared intimately connected to what they individually understood to be the nature and purpose of legal education. For the post-2004 director this was tied to the particular university's mission to provide legal education with a strong professional focus, for the civic director it was primarily on student transformation, while for the Russell director it stemmed from the university's traditional mission, tinged with a dose of practical realism. These differences were also reflected in subtly different views on the issue of 'quality'. While all three directors had concerns over the current metrics and their inability to capture quality (though equally they recognised their value as marketing tool) the post-2004 director was more positive about the value of being able to compare the relevant features of different law schools' courses, particularly in the context of their missions.

The interviews also highlighted the role that compliance and other management professionals such as marketing professionals are playing in matters of the design and delivery of courses. This supports the literature discussed in my Literature Review identifying that these roles have been introduced to support the more complex functions universities are now required to carry out, and which are increasingly impacting on academic functions such as teaching and learning and curriculum design. While there were differences in the roles of the four compliance professionals and their level of direct engagement with courses, there were some common observations. Risk was one. This, they believed, was felt most keenly by universities who lack the financial or academic resources of more established universities to weather the risk of non-compliance. The compliance professionals understood the reasons for risk aversion but the same they thought change and innovation was crucial for university survival and growth. The two non-legal compliance professionals who were also the two most directly involved in course development approvals believe universities and schools themselves have contributed to changing students expectations by failing to adequately articulate the nature of the educational experience.

The compliance professionals were particularly concerned to distinguish their role in the design and delivery of courses from that of academics. For these professionals there is a clear divide between what might be called the 'structural' elements of courses – objective properties that can be classified and measured such as contact hours, pathways, assessment lengths – and the syllabus and '*what goes on in the classroom*'. It is a narrower concept than one which regards these structural elements as equally integral to pedagogy and therefore encompassed within more commonly articulated academic roles. Three of the compliance professionals stressed the importance of having good personal working relationships with key academics in the various schools and of working together with them to develop shared understandings. Neither of the three directors specifically raised the importance of working as a team or of building relationships with compliance professionals, but this may reflect a difficulty in working out who does what within central management structures as much as any lack of desire to do so. Equally it may reflect the view expressed by the civic

university director that administration is burdensome and a distraction from teaching and research.

In my Literature Review I noted Kogan's suggestion that different groups within universities will share specific views of the function of higher education or the legitimacy of external expectations (Kogan and Teichler, 2007, p. 14). The small number of interviews means that I cannot draw any generalisations, and I acknowledge that the perspectives shared by individual interviewees differed both in terms of focus and intensity, and as a result of their different roles within their university and experiences. Analysing interviews is an art, not mechanical or formulaic (Denzin, 2000), but the insights I have drawn from them I believe suggests that a simplistic divide between the views or values of academics and management professionals may not be appropriate. Rather within these broad groups there are different perspectives and value sets, some of which may be closer to those across the divide rather than within it.

CHAPTER SIX: Discussion of my findings from the web reviews and interviews

6.1 Introduction

The theoretical framework employed in this research draws attention to the need to explore policy implementation in its social context, considering both the implementing agent and their beliefs, experiences and knowledge, the context in which their 'sense making' occurs, and the policy signals the agent encounters. It provides a way of acknowledging the interconnectedness between the diffuse sites of power and authority within complex organisations such as universities.

That policy is a 'messy business' (Trowler, 2002) is widely acknowledged. The interviews revealed the complexity of the internal functions and relationships between various central units and the academic community within each university. The interviews with compliance professionals revealed that central management roles carrying specified compliance responsibilities are a recent development within their particular universities, and that their roles and responsibilities and position in the organisational structures of the universities differ. For one compliance professional the role was primarily focused around issues of course design and delivery processes, while for another it focussed around identifying and dealing with any changes in course information identified by other central teams responsible for publishing materials. For another their responsibility was as part of a team of managerial professionals with different responsibilities (including marketing and quality assurance) to establish the parameters of the information to be published. The role of the fourth involved responding to compliance queries raised by other managerial professionals involved in the production of material for publication. All of the interviewees identified the role of marketing professionals in the production of the websites, suggesting their role is central to this process. The interviews revealed there are differences in the degree of change brought about in response to the broader marketisation agenda, including the consumer protection regime, to academic authority over the design and delivery of courses.

What is clear is that decisions over design and delivery of courses are not simply a matter of academic judgement, nor do they take place in isolation from other centralised internal managerial processes such as the production of promotional materials including websites. Decisions over what is published on websites can drive or constrain course developments just as course developments can drive website information – the processes are interconnected. Websites are key means by which universities demonstrate compliance with the disclosure requirements of the legislation. While academics participate in website production, the interviews indicate their role is limited primarily to providing the information to populate a predefined structure for the information which will appear on it. What this research has drawn attention to is how the production of websites and other public facing materials has become a centralised activity led by managerial professionals, and not academics. This may not have mattered in more collegial structures whereby academic voices and values dominated organisational structures including public facing promotional materials, but it does matter when that authority rests with other professional groups who may not hold those same values or understandings of the nature and purpose of higher education.

The website review was striking because of the absence of ‘academic voice’. Information was rarely accompanied by any narrative that, for example, sought to contextualise the type of information universities are now required to disclose, or the style in which they are doing so. There was little on any of the websites to guide prospective students about the values and norms associated with studying undergraduate law as an academic discipline – what it means to be a member of this discipline - or of the nature of the relationship between the student and the law school or university. Instead the websites focused on tangible aspects of the courses such as the class contact hours, class sizes, the experience of teaching staff, together with information on career enhancing opportunities and graduate outcomes, facilitating, if anything, the more instrumental understandings of the purpose of law degrees and providing little counterbalance to the transactional values implicit in current government policy, including the consumer protection legislation. Not only was there no distinctive disciplinary voice, the websites implied there was little that was distinctive about

the study of law as a discipline, implying as well that teaching is largely a generic practice, irrespective of discipline.

6.2 Legal education – the place of values

Scott argues that universities are not only heavily value laden institutions, but they are

“perhaps the most value-laden institutions in modern society, following the decline of organised religion, which has been most obvious in the West”
(2004, p. 439),

yet says Scott, universities have been reluctant to acknowledge these values, preferring instead to be regarded as

“technically contrived service organisations that willingly accept whatever values their key stakeholders — notably, the government and industry — seek to impose.” (2004, p.439)

There are various meanings assigned to the concept of values amongst scholars, but a broadly accepted meaning within sociology is *“(enduring) beliefs or conceptions that construe something as preferable or desirable”* (Thome, 2015, p. 47).

Kogan has drawn attention to the possible presence of different value sets between the academic profession and the managerial professions within universities. He suggests that in addition to academic values, there are three professional values likely to be present in modern higher education institutions: the bureaucratic values of predictability, rule conformity and collective productivity traditionally associated with administration, newer corporate values associated with service, compliance and market share and entrepreneurial values associated with institutional gain (Kogan, 2007).

From their interviews conducted in 2015 with eight managerial professionals involved in providing data for websites at different universities, Rao and Hosein conclude the interviews suggest that professional practice within universities appear to be driven by the values of consumerism and an understanding of the nature of the relationship between the university and the student as one that is essentially transactional (2017, p. 9).

The interviews in this thesis suggest the prevalence of similar values and attitudes amongst the four compliance professionals, aligning strongly with Kogan's articulation of 'corporate' values. The compliance professionals appear motivated particularly by a sense of fair play for students, a concern for consistency of service across the university, and an overriding concern for the financial survival of the university. This was despite differences in their professional backgrounds as well as their place in the organisational structure of their universities. What this suggests is that these values are widespread amongst managerial professionals and are the values that are likely to be foregrounded in those areas of professional work where managerial professionals are the key decision makers.

The views of the three directors of teaching on the other hand revealed subtle differences in the values expressed. This would seem at odds with scholarship suggesting the distinctiveness of academic values from other values, but it also raises issues about the distinctiveness of the values and norms within the discipline of law itself. Ylijoki argues that disciplines differ cognitively as well as socially. Disciplines have both their own traditions and categories of thought which provide members with shared concepts of theories, methods, techniques and problems; they also have their own social and cultural characteristics including values, norms, pedagogic and ethical codes – what she calls the 'moral order' of the discipline (Ylijoki, 2000a, p. 339). In other words, a discipline is more than just a body of knowledge, it is also the site of a particular 'moral order', a moral order that is reflected in not just what is taught, but how it is taught, and in the types of relationships teachers have with their students. In the context of legal education Burridge and Webb explain

"[t]he relationships which law teachers establish have the potential to develop the personal and community values that will inform and fashion

the corporate and professional mindsets that otherwise permeate the law school." (2007, p. 89)

The place of values within the law discipline and legal education has attracted a small, but consistent body of scholarship within the legal academy, but as noted in my Literature chapter, scholars have observed this has remained of fairly marginal interest to legal academics in the UK, particularly within the undergraduate course (Cownie, 2008). There is broad consensus amongst the 'values' scholars that law is value laden and therefore values are impossible to avoid, either in terms of substantive content or in the way it is taught (Brownsword, 1999; Cownie, 2008; Rochette, 2011). Refusing to engage with values is therefore not a value neutral position, but simply masks the values inherent in legal education and the 'moral order' of the discipline itself.

Lying at the heart of the issue of values and the moral order are questions about the purpose of higher education and of undergraduate legal education. The Robbins report (Robbins, 1963), still regarded by some as the most thorough review of higher education in the UK (Palfreyman, 2012), affirmed a modern version of the 'liberal tradition' (Boon and Webb, 2008, p. 74) It set out what it believed to be the four essential purposes of higher education: first, to educate for specific skills and vocations; second, to promote the general powers of the mind such that *'even where it is concerned with practical techniques, it imparts them on a plane of generality that makes possible their application to many problems'* third; to advance scholarship and learning; and fourth, to transmit a common culture and common standards of citizenship (1963, par. 25-28). It is not averse to practical education but this must be set within a broader frame of advancing knowledge and a set of values associated with common culture and citizenship. This sense of purpose was broadly shared by the subsequent Dearing Report (Dearing, 1997) into higher education (although this was more explicit about the link between higher education and the economy).

Since then the fundamental purpose of higher education in general has attracted much scholarly attention in light of the various government policy changes discussed in my Introduction chapter. Scott, writing in 1984 in his book 'The Crisis of the University' (1984) asked whether beneath the (then) changes lay

deeper questions about the *long duree* of universities in which old values and understandings are undergoing a period of fundamental change. Several ‘grand narratives’ have been identified as running through these debates: individual self realisation and social transformation; professional formation; higher education as a research engine for economic growth or civic and community engagement (Watson, 2014b). Each has its supporters and critics (Watson, 2014b loc 1043). These different narratives, argues Watson, have in turn shaped the specific purposes, or ‘mission’ of the individual higher education institution. This suggests is that it difficult to speak of a common understanding of an overarching ‘grand narrative’ of the mission of universities (or even the higher education sector more generally) and what this means for the concept of a liberal education, let alone a liberal legal education. More recently Ashwin has emphasized the need to reiterate a common understanding of the purpose of higher education – one which he articulates as providing access to a structured body of knowledge – which will differ according to discipline - in order to transform a student’s sense of who they are and what they can do in the world (Ashwin, 2019). To this could be added ‘and what they see in the world’.³⁵ This structured body of knowledge would not preclude professional knowledge or even preparation for work readiness, but that would be secondary to engaging students with a structured body of knowledge³⁶ It would, to borrow from Scott, prioritise education-as-process rather than education-as-outcome.(Scott, 1984)

Understanding legal education as a liberal education not tied to any specific vocation was confirmed in 1996 by the Lord Chancellor’s Advisory Committee on Legal Education and Conduct as part of its widespread review of legal education and training (ACLEC, 1996, p. par. 4.6). The report did not spell out what it understood by a liberal legal education or make reference to the values inherent in the discipline. Instead it articulated the values it believed should underpin the practice of law -

“commitment to the rule of law, justice, fairness and high ethical standards, commitment to acquiring and improving professional skills, commitment to

³⁵ D McVitty, CGHE ‘book launch’ podcast, Thursday, 24 Sep 2020, <https://www.researchcghe.org/events/book-launch/book-launch-transforming-university-education-a-manifesto/>.

³⁶ S Marginson CGHE ‘book launch’ podcast, Thursday, 24 Sep 2020, <https://www.researchcghe.org/events/book-launch/book-launch-transforming-university-education-a-manifesto/>.

representing clients without fear or favour, commitment to promoting equality of opportunity, and to provide legal services to those who cannot afford to pay for them” (1996, par. 2.4),

with the result that the discussion of disciplinary values has tended to focus on the place of these professional values within the curriculum, rather than on the values inherent in the discipline itself. Added to this is the difficulty that while there appears to be broad support amongst law teachers that legal education should be in the ‘liberal tradition’ there is no one definition of a ‘liberal education’. Bradney notes it is often used as a shorthand for what it is not – typically ‘not vocational’, rather than setting out what it is (2003), and therefore no common understanding of the moral order inherent to the discipline and reflected in legal education.

The QAA Benchmark Statement for undergraduate law (QAA 2019)³⁷, intended to define the academic standards that can be expected of a graduate, provides that studying law

“instils ways of thinking that are intrinsic to the subject.... These include an appreciation of the complexity of legal concepts, ethics, rules and principles, a respect for context and evidence, and a greater awareness of the importance of the principles of justice and the rule of law to the foundations of society.” (2019, par. 2.2)

Underpinning this articulation is a recognition that there is something distinctive about the discipline, its ‘ways of knowing’ as well as the particular contribution its members can make to society, It also acknowledges that there are different perspectives and approaches that law schools may take to meeting these requirements, but with the requirement that it is acquiring and applying *understanding*, rather than simply *knowledge* that is fundamental to legal education -

[t]he common denominator is the requirement on the student to apply their understanding of legal principles, rules, doctrine, skills and values (2019 par. 1.2).

³⁷https://www.qaa.ac.uk/docs/qaa/subject-benchmark-statements/subject-benchmark-statement-law.pdf?sfvrsn=b939c881_16

6.3 Challenges to articulating the values and norms of legal education

If legal education carries a distinctive purpose that is broader than simply preparation for the profession, and reflects a distinctive 'moral order', why then might it be so difficult to find published articulations of this purpose encompassing more than just preparation for the profession (or the development of 'generic skills'), or of how the values inherent in that purpose are reflected in the pedagogy employed and the course design and delivery?

There are a number of possible reasons:

6.3.1 Diversity of interpretations of 'liberal legal education'

One reason is the very diversity of possible interpretations of the concept of a liberal legal education (Brownsword, 1999), with the result there is no shared understanding of that purpose or its underpinning legal order, making law schools unwilling to 'nail their colours to the mast'. This diversity has in large part been shaped by the origins of the discipline and its relationship with the legal profession, focusing around whether the undergraduate degree should be a 'liberal' education, or should be more avowedly vocational with an emphasis on teaching legal skills and prioritising employment opportunities.

Related to this is a concern that a liberal legal education precludes some of the pedagogies associated with clinical or practice-focussed legal education favoured by some law schools, on the basis of their "*technocratic and skills-focused emphases*" (Burridge and Webb, 2008b, p. 94).

More fundamentally perhaps is the issue of what 'liberal' means in a modern pluralistic society, and the extent to which liberal education imposes a particular conception of 'the good' and if so what that 'good' is - what particular conception of 'virtue' does it represent, and is a legal education to be *in* or *about* virtue? (Burridge and Webb, 2007). But Burridge and Webb suggest that just because these are thorny issues does not excuse legal education from taking responsibility for addressing them –

whatever path we follow (even silence) it will lead us ultimately to supporting certain value positions in the law curriculum, whether we like it or not. It surely behoves academics to acknowledge that, and take responsibility accordingly. (2007, p.87)

- yet, as they argue, this would require the development of a distinctive theory of legal education (2007, p. 90).

Law academics have identified a general reluctance of law teachers to engage with educational theory (Cownie, 2000; Cownie, 2008; Rochette, 2011). Instead law academics tend to fall back on practices that are largely self-replicating -

“the practices which they value and feel familiar with (doctrinal analysis, empirical enquiry, impartial explanation).” (Burridge and Webb, 2008a, p. 353).

Theory matters, Webb (1996) explains

“because, without it, education is hit-and-miss: the quality of education suffers; student choice suffers; and ultimately we risk misunderstanding not only the nature of our pedagogy, but the epistemic foundations of our discipline.” (p. 23)

6.3.2 Academic freedom and autonomy

Another possible reason relates to academic freedom and autonomy and the issue of whether articulating the moral order of legal education is a collective (law school) responsibility or an autonomous responsibility falling on each individual law teacher. Some scholars such as Bradney (2003) and Cownie (2008) suggest that a collective approach risks undermining academic freedom and autonomy. Others (such as Brownsword (1996), Burridge and Webb (2008a), and Pue (2008)) suggest that the achievement of a liberal or ‘post liberal’ legal education is only achievable as a collective enterprise. After all, say Burridge and Webb, *Law schools must be able to stand for something* (2008b, p. 269)

6.3.3 Engagement with ‘administration’

A further reason for the absence of the law academic voice may be far more prosaic: a lower prioritisation of engaging in ‘administrative’ type duties associated with teaching in the face of other demands on academics’ time.

Teaching, research and administration are the three tasks generally associated with academic life. Watson draws attention to the fact that research as a key function of a university is a relative newcomer and *‘that in the long sweep of things the university project is about teaching, teachers and students’* (Watson, 2014a). The reasons why research has now become so central to academic life have

been explored elsewhere (for example, Barnett, 2003; Cashmore, Cane and Cane, 2013; Scott, 1984) and although not all universities engage to the same degree in research activity, the impact of the intellectual and policy shifts towards the prioritisation of research and the production of knowledge has been to devalue the activity of teaching generally (Cashmore, Cane and Cane, 2013; Cownie, 2000; Cownie, 2004; Young, 2006), and with it general interest in education philosophy or theory (Cotton, Miller and Kneale, 2018). The introduction of the Teaching Excellence Framework by the government in 2016 was intended (amongst others) to raise the esteem for teaching, but research to date suggests the results have been equivocal. Rather than raising the status of teaching or education-related activities, it may simply add to the demands placed on individual academics (Perkins, 2019).

If teaching has become devalued in favour of research, academic participation in administration as an academic activity carries even less reward. Bryson, on a survey of higher education academics in the UK in 2004 on perceptions about their work found that

“The overwhelming ‘least favourite task’ for teaching staff was administration (70 per cent cited this compared to 45 per cent of research staff)” (Bryson, 2004, p. 45),

Cownie’s research into the professional lives of law academics identified that administration tends to be regarded as a ‘necessary evil’ (Cownie, 2004, p. 144) and earned no ‘brownie points’ in terms of career progression or status within the academy. Certainly two of the directors (Russell and civic) commented on the time demands associated with central administration, with the civic director welcoming the involvement of management professionals for this reason.

Bradney (2003) has drawn attention to the paucity of discussion or analysis of administration as part of academic life. Yet he argues that far from being a necessary evil, participation in administration and management across the range of university activities is important for the concept of ‘collegiality’ as a form of university governance. Implicit in this view is the recognition of the importance of participation by academics for the promotion of academic values, norms and attitudes. In collegiate structures of governance where administration and management are decentralised, academic values are likely to be dominant, but

in centralised and professionalised structures this cannot be assumed. By marginalising academic participation in the more centralised administration and management functions (whether by choice or through perceived necessity), the opportunity for academics to debate and influence the norms and values that underpin a university's mission, objectives and activities and to defend academic values are arguably diminished. Purely internal debates within disciplines on these matters risk becoming increasingly irrelevant as universities resettle and reorganise around them. It also means prospective students have no other point of reference other than those presented in promotional materials, policy and regulatory documents, and the press. By the time students arrive at university it may be too late.

Legal scholars such as Bradney and Cownie have sought to re-evaluate and recentre teaching scholarship and administration within the discipline. What my research suggests is that irrespective of individual academics' position on the collegial/managerial governance or liberal/vocational education issues, if legal academics want to retain a sense of what Evetts describes as 'occupational professionalism' based around academic freedom, autonomy and discretionary judgement (Evetts, 2009) in teaching, academics need to re-evaluate the importance of administration, finding effective ways to engage with central managerial professionals.

6.4 Conclusion

What I believe this research has highlighted through the website survey and the interviews with compliance professionals and directors of teaching is the interconnectedness of administrative and academic processes around the design and delivery of undergraduate legal education, and the potential significance of these processes for (re)shaping the narratives, values and norms associated with legal education, and for reshaping understandings of the role of academics in the context of teaching. The research also points to the role of institutional context in shaping responses to policy.

Kogan and Teichler have identified three possible scenarios resulting from the changes in the internal structures within universities: one in which academics lose control over both the overall goals of their work practices and their 'technical

tasks', becoming in effect content deliverers. The second is where academic roles change but traditional academic values survive.

"A third view would see a 'marriage' between professionalism and managerialism with academics losing some control over the goals and social purposes of their work but retaining considerable autonomy over their practical and technical tasks." (2007, p. 11)

This research suggests one determinant of which scenario materialises might be the degree to which academics are willing or able to engage with managerial professionals to shape not only the goals, norms and values of the law degree, but also the appropriate role of academics in delivering it. The interviews with the compliance professionals revealed they shared a quite particular understanding of the role of academics, a role at odds with that often assumed in the literature by academics themselves.

Barnett has posed the question whether the presence of a market dimension *necessarily* causes an impaired the pedagogic relationship and poorer student experience. The answer he suggests depends on empirical evidence whether the more pernicious aspects of marketisation can be ameliorated and its virtuous aspects heightened (Barnett, 2011, p. 50). In such a diverse and competitive legal education sector different law schools will identify with different university 'missions'. This research suggests that unless law schools are prepared to engage directly and publicly with legal education's purpose and educational theory, albeit oriented within the context of that mission, there is a risk the values and norms underpinning legal education will simply be shaped elsewhere. It is not only the diversification and specialisation of academic work discussed in my Literature Review chapter that is changing the nature of academic work, it is also the way in which the academic voice has become more marginal in the structures and processes that shape public understandings of that work.

Understanding law's culture and being able to articulate how this influences the design and delivery of legal education is important because it provides the basis for shaping students' experience of studying and the basis on which they decide what they are aiming for, what they consider crucial, what they expect from the teacher, as well as how they assess quality (Ylijoki, 2000a, p. 342). But it goes further than being able to better manage students' expectations: it may also

enable the discipline to better orient itself to interpret and address the values reflected both in government higher education policy and in the way those values are implemented internally within universities.

CHAPTER SEVEN: Conclusion

This final chapter concludes my thesis by returning to my three research questions, highlighting the contribution of my work, evaluating the research process including improvements I would make if I were to repeat the study, and discussing the implications for my professional role and the wider professional context and possible ways of disseminating my findings.

7.1 The research questions

1. What do directors of teaching and compliance professionals identify as the key impacts of the consumer protection law and particularly the information disclosure requirements, on the design and delivery of undergraduate law courses?

All of the interviewees cautioned that it is not always possible to attribute the impact just to consumer protection law. The changes that they have observed may be a result of a combination of factors including, for example, quality assurance processes and also market related factors such as competition for students, but the interviewee perceptions of the impact of consumer protection law could be grouped into two main themes:

- i. The speed of course innovation and change

A university's core business is teaching and research, and it is performance in these activities that make up success both in reputational terms and in ranking tables. Both are dependent not simply on good performance as measured by standard indicators but on innovation and creativity in the development of new academic programmes or in new research ideas. (Shattock and Horvath, 2019, p. 103)

The interviews revealed the legislation is having a chilling effect on change and innovation, but the directors and compliance professionals emphasised different sites of impact. For the directors of teaching it is primarily the internal processes schools are required to go through to ensure compliance that are impacting on schools' abilities to introduce improvements in courses which academics believe will benefit students' pedagogic experiences, either as quickly as they might wish, or at all.

The interviews with compliance professionals suggest the legislation has contributed to a more risk averse attitude which has filtered down to different levels of decision making, potentially impacting on universities' abilities to adapt to a very competitive higher education market for students. This has been driven by a number of factors including student recruitment issues, but it has been amplified by the financial, regulatory and reputational implications potentially flowing from a breach of the legislation. However compliance professionals did not lay the blame for the slower pace of change or innovation solely at the door of executive governance. There is a perception that law schools can be particularly set in their ways and use professional or regulatory requirements to justify their unwillingness to engage in and plan for opportunities to thoroughly review their courses. This suggests that disciplinary culture also has a role in the pace of innovation and change.

The irony is that while government policies have been keen to promote the need for innovation in education provision, as reflected in various policy documents discussed in Chapter One, this research suggests that market-based regulation such as that provided by the consumer protection legislation may be doing exactly the opposite.

ii. student expectations

The interviews point to the impact the consumer protection legislation is having on student expectations about their educational experience. They suggest as a result universities and schools are having to pay more attention to responding to or accommodating demands or expectations that students bring with them when they join the university, demands or expectations shaped by more consumerist attitudes. Although once again this could not be attributed solely to the consumer protection legislation, the interviews sense students are becoming more litigious and are approaching their educational experience from a more impersonal and consumerist '*we pay therefore we are entitled to....*' perspective. A range of different factors were identified by interviewees as encouraging this, including the role of the media and the Office for Students, law firms who see

student complaints as a lucrative source of business, and also by complaints handling personnel within universities whose decisions are sometimes perceived to be motivated more by a desire to avoid publicity rather than by the merits of individual complaints.

One director was particularly concerned with the legislative requirement that students be consulted before changes could be introduced to existing courses where that change would contravene binding 'precontractual information' supplied under the CCR 2013. This director is concerned this provision sets up an expectation students in effect have a veto over proposed course developments, potentially reducing pedagogic developments to matters of negotiation and compromise with students, rather than to matters of expert judgement. It was also potentially contributing to changing understandings of students about the nature of the relationship between students and academics - from one based on trust and personal transformation to one based on transactional outcomes.

Compliance professionals were also concerned about changes in student understandings and expectations. However compliance professionals were more sympathetic to the concept of university wide service standards covering aspects of course design and delivery. Their views were informed by a combination of factors including broader commercial concerns for the competitive position of the university, but also by a conception of fairness to students. This conception of fairness appeared based primarily on transparency and consistency across the board rather than necessarily discipline or course specific. Compliance professionals also observed that in their experience individual schools can be poor at articulating the nature of the student experience to prospective students.

The survey of websites discussed in Chapter Four provides some support for this view. The university websites focussed on providing practical, tangible information about modules available, types of learning and teaching activities, class contact hours, types of assessment plus opportunities to engage in activities related to the practice of law, together with marketing 'puff' about the general 'excellence' of it all, but what was conspicuously absent was information

about the distinctiveness of the discipline; its 'moral order' and its relationship with the pedagogy employed, or the nature of the relationship between the school and the students.

2. Does the impact differ across different 'types' of law schools?

For over a hundred and fifty years, it has been acceptable to talk of 'the idea of the university'. Now, that phrasing, with its implication that there is or could be simply a single idea of the university, is problematic. ... given the complexity of modern society, there will be many ideas as to what it is to be a university. (Barnett, 2010, p. 1)

In my Introductory chapter I provided a brief description of the development of the law discipline within English universities. From there being only 25 university law schools in England in 1966 there are now over 93. A large part of this growth is due to the conversion of polytechnics - with their more vocationally and teaching (rather than research) oriented focus (Scott, 1984) - to universities in 1990s but also the subsequent expansion of the university sector after 2004 and 2012 to incorporate colleges and specialist institutions. Today there are few English universities - of all types (including private and online/distance learning providers) - without a law school. The result is that law schools are situated in a variety of types of universities whose origins reflect specific government policy priorities at the time of incorporation and reflect a range of different missions accordingly.

The small number of interviews and the fact they are predominantly in the post-1992 grouping of universities does not enable me to draw any generalisations or unequivocal conclusions based on distinctions between law schools in different types of universities. Nonetheless the interviews do provide an illuminating perspective on those factors that appear to be shaping implementation of the legislation 'on the ground'. Contrary to what I had anticipated, these suggest that the 'type' of university (Russell, civic, post-1992, post 2004, for profit or online/DL) in which the law school is situated may play a role, but it is not necessarily the only, or even a major factor as regards the impact of the legislation.

The directors of teaching revealed differing views about consumer protection law and its impact on law courses, views that don't reveal a simple divide between

the type of university in which the law school sits. All three directors acknowledged they were in a competitive environment for students. In the post-2004 university this was reflected in the gearing of the course at inception towards preparing students for graduate employment and primarily legal practice. For this director, the relationship between the law school and student has been shaped in the context that students pay for their education. The director saw value in the information required to be disclosed for prospective students comparing law schools. While this director did have concerns about some aspects of the marketisation policy agenda, including aspects of the consumer protection regime, overall it seemed clear this director did not view the law as problematic because that agenda framed the establishment of the university and the law school in the first place.

The interviews with directors suggest that the impact of the legislation has been greater in the civic and the Russell Group universities, but perceptions of that impact differed. For the Russell Group law school director the legislation is a part and parcel of the marketised higher education sector, requiring law schools to adjust to the more demanding student expectations this marketised and consumerized environment has engendered. This director was concerned the legislation is contributing to greater passivity and emotional and intellectual immaturity in some students. The response of the civic university director on the other hand suggested the impact isn't limited to changes in student expectations or attitudes, but rather has the potential to reshape the nature of the educational experience altogether. This director, who unlike the other two directors, is also research active, drew what they believed to be an important link between the values and attitudes that underpin research such as curiosity, creativity and self discovery, and the values and attitudes that should underpin the study of law, suggesting this risks being lost in a more consumer oriented environment wherein that study becomes more transactional, based around service-provision in return for payment. Consumerization for this director risks reducing education to a more reductive, homogenized intellectual experience both for students and for staff, and schools within universities losing elements of their unique identities. In this sense this director's views come closest to

reflecting the concerns of Trowler discussed in the Literature Review about the drift towards a sense of 'discipline as curriculum' (2012a).

The size of the university, its funding streams and financial position and the size and profile of its academic staff were factors observed by compliance professionals as relevant for the impact of the legislation, suggesting these universities are likely to take a more risk averse and cautious approach to innovation.

What is interesting is that, contrary to my expectations and to the views of compliance professionals, this cautious approach to the legislation by newer universities did not appear to be borne out in terms of my own assessment of compliance with website disclosure requirements. The post-2004 group appeared to demonstrate lower compliance levels than the other groups. However, as discussed in the previous chapter, this apparent lower compliance could also be interpreted as evidence of just such a cautious approach. By interpreting the disclosure requirements guidance in the least prescriptive (or, to put it another way, minimalist) fashion the university may be hoping to retain maximum flexibility to adjust courses to changes in local circumstances without contradicting published information.

3. How might consumer protection law be reshaping the relationship between academic staff responsible for the design and delivery of courses and managerial professionals?

This research has pointed to the role of compliance and other managerial professionals in aspects of the design and delivery of course, supporting findings of earlier research discussed on Chapter 2 that managerial professionals are playing an increasing role in decisions related to the design and delivery of courses.

The consumer protection disclosure requirements have resulted in greater centralised control over what course information is published to prospective students, and the changes that can be made to courses. Marketing professionals have a key role in relation to information publication, and compliance

professionals in relation to course changes, although the interviews indicated others such as quality assurance or information technology professionals may also be involved. Although not necessarily a direct result of the legislation, this research has also indicated that some standardisation is occurring across universities over matters such as the number and type of class contact hours and assessment formats, matters that are generally regarded in the literature as matters within the domain of the academic profession and intimately related to individual disciplines. The way in which the compliance professionals reconcile their and other managerial professionals' roles in these decisions is through defining academic roles and academic freedom in narrow terms, as related to the syllabus and to 'what goes on in the classroom' while matters of structure (class contact hours, types and length of assessments) are, they believe, legitimate matters for central university management, suggesting a view more aligned with that of 'discipline as curriculum'.

What this research suggests is that given the key roles of managerial professionals (including compliance professionals) in the processes and decision making over the educational experience offered to students, there is a risk that the values, norms and goals of courses will be shaped by these professionals rather than by members of the discipline, with consequences not just for students' understandings of the nature of higher education but also for understandings of the role of academics as teachers. It points to the need for law schools to engage with and promote the purpose of legal education, educational theory and the moral order of the discipline within the context of that particular university's mission, and of the importance of engaging with university processes that now shape the published narratives about studying law.

7.2 Contribution to education research and knowledge

It is important to acknowledge that the number of interviews reported on in this research is small and this limitation needs to be borne in mind when considering the contribution of this study to education research and knowledge more generally.

In my Introductory chapter I anticipated this research would help redress the relative lack of interest in policy implementation studies in higher education identified by Gornitzka, Kogan and Amaral (2005). The particular contribution of this research has been to explore how legislation co-opted into the service of higher education policy is being perceived, interpreted and operationalised 'on the ground'. In doing so it has highlighted how the legislation is acting as a force to slow down the pace of innovation and change not just within law schools and university courses more generally, and is embedding centralised compliance and other managerial professionals into decision making processes that impact not simply on the design and delivery of courses but on the role of academics.

What this research has revealed is how the values and norms associated with a liberal legal education have the potential to be displaced by other values and norms associated with corporatism and bureaucratization. This potential is not simply the result of the growth of the managerial professions but is also the result of the failure of law schools to articulate to prospective students and the public the purpose of the law degree and the values and norms that underpin it, including the nature of the relationship between academics and students. In the era of the collegiate university this absence was arguably less significant because it was academic values and norms that permeated university governance structures and public consciousness. Academic understandings of the purpose of legal education and their associated values and norms were arguably 'the only game in town'. This is no longer the case. Sabri has observed that an increasingly interventionist government policy since the 1970s now means that both students and universities, rather than academics, have become the primary 'interlocutors' of government (Sabri, 2010). This research suggests that even for universities with (arguably) a more collegiate tradition, the rise of more corporatist forms of governance and the growth and power of centralised management professionals, and government policy as reflected in the consumer protection law risks other understandings, values and norms coming to dominate.

This will not necessarily be easy for law schools to counter because of issues within the discipline over the purpose of legal education and the discipline's underpinning norms and values. It may also require a re-evaluation by law

schools and academics of the value of engaging with university management processes that now govern aspects of design and delivery of courses.

This task of clarifying issues of the purpose of legal education, educational theory and the moral order of the discipline within the context of particular universities' missions has current relevance because of the decision of the Solicitors Regulation Authority that LLB graduates wanting to enter the profession as solicitors will no longer be required to have a 'qualifying law degree' – an LLB degree that contains certain prescribed subjects. Instead, in order to become a solicitor an applicant simply needs to hold a first degree (in any discipline), pass a centrally administered Solicitors Qualifying Examination ('SQE') consisting of multiple choice questions on specified areas of legal knowledge, professional skills-based exercises and complete a period of work experience (the work experience can include work placements undertaken during the undergraduate degree)³⁸. The SRA anticipates that some if not all law schools will want to integrate SQE preparation into the undergraduate law degree. Given this change will necessitate law schools revisiting their undergraduate courses, this makes it even more opportune for law schools 'to nail their colours to the mast'.

Although this research has focused on law schools, it clearly has wider relevance. The impact of changes in forms of governance and the rise of the managerial professionals for the design and delivery of courses and for the role of academics is not confined to law schools but affect every discipline. The impact on law schools has highlighted how the law has brought into sharp relief the tensions between competing understandings of the purpose of higher education and its associated norms and values. It is also worth noting that the OfS has indicated

"we are concerned that the current consumer protection arrangements are not sufficient to deliver fully the outcomes we would wish to see for students."

It has suggested that it may replace the current CMA Guidance with its own set of regulatory guidance to ensure higher education institutions could be held to account in relation to students' consumer protection rights.³⁹ Understanding the

³⁸ As well as meeting certain good character requirements. <https://www.sra.org.uk/students/sqe/>

³⁹ *Developing the OfS's approach to consumer protection: student information, contracts and complaints*, OfS, 27/11/19, par. 23, available at: <https://www.officeforstudents.org.uk/media/80806001-1364-46d5-8326-c0f60782dc1b/bd-2019-november-81-student-information-and-contracts.pdf>.

potential impacts of this possible development requires understanding the impact of the current regime.

This research also contributes to the body of socio-legal research identified as 'regulatory studies'. The higher education sector has attracted relatively little attention within this research field, which is interested in mapping, understanding and explaining the expansion of the state, markets and civil-society based regulation.

7.3 Evaluation of the research process, improvements, and implications for further study

In planning this research I was aware there were a number of possible theoretical perspectives I could potentially use. Essentially I adopted the perspective that reactions and adaptations to policy and changes in organisational structures don't just happen in a vacuum but are a response to policy. What I have been privileging in this research is in a sense internal 'policy' rather than external policy. I chose to use sensemaking and the theoretical framework of Spillane *et al*, because it seemed to me to provide a more nuanced way of understanding how and why policy might be interpreted and applied differently within individual universities. In particular it seemed to provide a way of working with the data, avoiding the danger of imposing a particular interpretative structure on it and fitting the data to that interpretative structure. In other words it seemed to allow me to explore the relationship between beliefs, experiences and knowledge that bear on constructions of policy meaning by individuals occupying similar posts, in different universities, without locking me into a particular theoretical perspective.

What I found however was that this very flexibility was also a limitation. A limitation in the sense that I found there were so many potential avenues presented by the data that I felt focussing on one avenue (such as values) meant I had to ignore others - such as the role of relationships or communities of practice in sense making, in order to comply with the word length. The importance of establishing good personal working relationships with academics was emphasised by the compliance professionals, and their ability to empathise with academic values and to recognise concerns over the changing nature of the

educational experience expressed in these interviews suggests these relationships may also be an important social factor in shaping the values and norms within individual universities.

In terms of the effectiveness of the research methods, the literature, interviews and website survey data has produced a body of data that has enabled me to explore the research questions in depth and which suggest possible themes that could be explored in further research. For example, the interviews tentatively suggest that academics with 'teaching only' roles may have different values sets and understandings of the role of the academic as teacher than do academics with 'teaching and research' roles. Sabri (2010) has suggested there are different value sets accompanying the general concept of higher education 'teaching' as opposed to that of 'professing', particularly as regards the level of responsibility accorded to students for the outcomes of their learning and the processes that lead to those outcomes (p.198). Whether this distinction between 'teaching' and 'professing' might be reflected in that between 'teaching only' roles and 'teaching and research' roles, and what this might mean for the future of the disciplines – at least in the context of student education - might be a fruitful area of further research. A further study might explore whether the research, or teaching, ranking of a particular university, rather than the particular university groupings ('types') I have used, might have a more significant role in shaping the impact of the consumer protection legislation on the academic 'teaching' role and on the design and delivery of courses, in much the same way as the Temple *et al*/ research (2014) explored how the value of research income appeared to lead to different responses to managing the undergraduate student experience.

7.4 Summary of the key findings of this research

In designing this research I was interested to explore how the consumer protection law and particularly the disclosure requirements are impacting on the design and delivery of undergraduate law courses and what this might mean for the role of law academics and whether this impact might differ across different types of law schools.

As discussed in my Introductory chapter, much of the consumer protection legislation concerning the provision of services has arguably always applied to

the higher education sector (and certainly since the reintroduction of student fees). However this application to the provision of education (as opposed to just the provision of other related services such as accommodation) remained largely 'under the radar' until the publication of the CMA Advice in 2015.

My research methodology has been designed to understand and explain social situations rather than to generate knowledge in the scientific paradigm, using the concept of 'sense making' as my particular theoretical perspective to explore the way in which external policy is made sense of within universities. To do this I conducted both a review of university 30 websites promoting the undergraduate LLB course and a small number of in depth semi-structured interviews with law school directors of teaching and compliance professionals from seven different universities (not necessarily from the universities whose websites were reviewed).

I have identified the key findings emerging from this research as follows: that the consumer protection law is having a major impact on the design and delivery of courses. This impact is revealing itself through the internal processes and procedures universities have in place to ensure compliance and through the central role of compliance and other managerial professionals in them. The legislation is also contributing to orienting the values and purposes associated with higher education towards those associated with market-based transactions. Both have implications for the life of academics in their role as educators.

More particularly the research suggests:

- That published materials promoting courses is largely a centralised rather than school based activity,
- that compliance with the disclosure requirements appears to be stronger amongst the 'older' universities, but at the same time there is a strong degree of homogeneity in what information is presented and how it is presented, with the information being largely generic with very little discipline based contextualisation.
- The lack of the 'academic voice' in these materials is creating the space in which transactional values reflected in the consumer protection law have become prominent

- Contrary to the policy aims associated with marketisation, consumer protection law is slowing the pace of change and innovation in course design and delivery, with risk aversion a key driver at executive level, particularly for newer, smaller or less financially resourceful universities
- Attitudes towards the benefits of the legislation and to the values reflected in it differ, and do not reflect either a simple divide between 'academic' and 'professionals' or necessarily the presence of a shared set within these groups. Rather these attitudes and values are shaped by a range of factors including the particular mission of the university, understandings of their particular roles, organisational design as well as internal policy signals.
- Compliance professionals share a particular understanding of the role of academics that enables them to clearly delineate their role, but this understanding reflects a narrow conception of academic freedom and autonomy in the context of the design and delivery of courses.

7.5 Implications for my professional role and the wider professional context

I have now left the university sector but in my role as a consultant on both Legal Education, and Higher Education (particularly as a reviewer), both in the UK and overseas, this research has enabled me to become much more familiar with the implications of the legislation both for legal academics but also for university management. A key reason for me selecting this area for research was that for many years I taught consumer law, yet I thought that awareness of the application of this piece of 'general purpose' legislation and its associated Advice and Guidance to higher education amongst academic colleagues in particular appeared to be fairly low, and lost amongst concerns over other policy measures such as the research and teaching excellence frameworks and quality assurance measures. What this research has brought to the surface for me is that how universities are responding can have subtle but yet potentially very significant implications for understandings of the role of higher education and of the respective roles of both academic and managerial professionals, and the importance for me of understanding and engaging with the potential contextual nature of these implications in my role as a consultant or reviewer.

In the wider professional context the fact there has been so little research into the impact of consumer protection legislation and particularly the implications of the information disclosure requirements should make this research relevant to course designers as well as to university compliance officers and those responsible for marketing materials. For academics generally I believe this research signals the need to pro-actively engage with in those internal arenas in which the legislation is having most impact, if academics are not to become marginalised in deliberations over those areas they may have regarded as within their own prerogative – such as the concept of a 'liberal education'.

Although the focus of this research is on the implications of UK policy, and although I recognise that higher education and legal education may be culturally-specific and the values, experiences and views of academic and managerial professionals in one country cannot be assumed to be shared by those in others, the general trend towards a more marketised and consumerist approach is evident in a number of countries. This research may therefore prompt researchers in other countries to think further about whether this research also raises issues for them.

7.6 Disseminating my findings

There has been so little written about the application of the legislation to higher education that I believe this research is publishable in a range of journals which focus on different 'themes'. For example, I believe the Law Teacher Journal would be interested in my discussion in Chapter Four and Five, as would journals in the socio-legal studies field such as the Journal of Law and Society. While socio-legal scholars are very good at considering the implications of law for just about every other section of society, there has been relatively little consideration of laws implications for themselves. Publication in higher education policy journals would be another avenue I will be keen to explore. I am also continuing preliminary discussions with former law colleagues about contributing to an edited collection on aspects of consumer law.

REFERENCES

- ACLEC (1996). *First Report on Legal Education and Training*.
- Åkerlind, G. S. and Kayrooz, C. (2009). 'Understanding academic freedom', *The Routledge International Handbook of Higher Education*. New York and London, Routledge (pp. 453-467): Routledge.
- Alvesson, M. (2003). 'Methodology for close up studies—struggling with closeness and closure'. *Higher education*, 46 (2), 167-193.
- Archer, L. (2008). 'Younger academics' constructions of 'authenticity', 'success' and professional identity'. *Studies in higher education*, 33 (4), 385-403.
- Argyris, C. and Schon, D. A. (1974). *Theory in practice: Increasing professional effectiveness*: Jossey-Bass.
- Ashwin, P. (2019). Transforming university teaching: Centre for Global Higher Education Working Paper.
- Ball, S. J., Davies, J., David, M. and Reay, D. (2002). 'Classification' and 'Judgement': Social class and the 'cognitive structures' of choice of Higher Education'. *British Journal of Sociology of Education*, 23 (1), 51-72.
- Bamber, V. (2012). 'Learning and Teaching in the Disciplines: Challenging Knowledge, Ubiquitous Change'. In P. Trowler, M. Saunders and V. Bamber (Eds), *Tribes and Territories in the 21st-century: Rethinking the significance of disciplines in higher education*. Abingdon: Routledge.
- Barnett, R. (1996). 'Being and becoming: a student trajectory'. *International Journal of Lifelong Education*, 15 (2), 72-84.
- Barnett, R. (2003). *Beyond all reason: Living with ideology in the university*: Open University Press
- Barnett, R. (2009). 'Knowing and becoming in the higher education curriculum'. *Studies in higher education*, 34 (4), 429-440.
- Barnett, R. (2010). *Being a university*. London UK: Routledge.
- Barnett, R. (2011). 'The marketised university: defending the indefensible'. In M. Molesworth, R. Scullion and E. Nixon (Eds), *The marketisation of higher education and the student as consumer* (pp. 39-51). Abingdon: Routledge.
- Barnett, R. (2013). 'The end of mystery and the perils of explicitness'. In C. Callender and P. Scott (Eds), *Browne and beyond: Modernizing English higher education* (pp. 73-88). London: IoE Press.
- Barnett, R. (2014). 'Towards an ecological professionalism'. In C. Sugrue and T. Solbrekke (Eds), *Professional Responsibility: New horizons of praxis* (pp. 47-59). London and New York: Routledge.
- Bassey, M. (1999). *Case Study research in Education Settings*. Buckingham: Open University press.
- Becher, T. (1989). *Academic Tribes and Territories (Milton Keynes, Open University Press)*. Milton Keynes: Open University Press.
- Berger, R. (2015). 'Now I see it, now I don't: Researcher's position and reflexivity in qualitative research'. *Qualitative research*, 15 (2), 219-234.
- Bernstein, B. (2004). *The structuring of pedagogic discourse*. London and New York: Routledge.
- Berthod, O. (2016). 'Institutional theory of organizations'. *Global Encyclopedia of Public Administration, Public Policy, and Governance*. Springer International Publishing. <https://doi.org/10.1007/978-3-319-31816-5>.
- BIS. (2012). Enhancing consumer confidence by clarifying consumer law. In BIS (ed): HMSO.

- BIS. (2016). Success as a Knowledge Economy: Teaching Excellence, Social Mobility and Student Choice. In BIS (ed). London.
- Bleiklie, I. (2006a). 'Policy regimes and policy making'. In M. Kogan, M. Bauer, I. Bleiklie and M. Henkel (Eds), *Transforming Higher Education: a comparative study* (2nd ed., pp. 39-67): Springer.
- Bleiklie, I. a. K., M. (2006b). 'Comparison and Theories'. In M. B. M. Kogan, I. Bleikie, M. Henkel (Ed.), *Transforming Higher Education A Comparative Study (2nd edition)*. Dordrecht: Springer.
- Boliver, V. (2015). 'Are there distinctive clusters of higher and lower status universities in the UK?'. *Oxford Review of Education*, 41 (5), 608-627.
- Boon, A. and Webb, J. (2008). 'Legal education and training in England and Wales: Back to the future'. *J. Legal Educ.*, 58, 79.
- Boon, A. and Whyte, A. (2010). 'Will there be blood? Students as stakeholders in the legal academy'. In F. Cownie (Ed.), *Stakeholders in the law school*. Oxford: Hart.
- Bradney, A. (2003). *Conversations, choices and chances: The liberal law school in the twenty-first century*. Bloomsbury Publishing.
- Bradney, A. and Cownie, F. (2000). British university law schools in the twenty-first century. In D. Hayton (ed), *Law's future (s): British legal developments in the 21st century* (pp. 1-17): Hart.
- Brannick, T. and Coghlan, D. (2007). 'In defense of being "native": The case for insider academic research'. *Organizational research methods*, 10 (1), 59-74.
- Brennan, J. and Henkel, M. (2017). 'Higher Education Systems and Institutions, United Kingdom', *Encyclopedia of International Higher Education Systems and Institutions* (pp. 1-10): Springer, Dordrecht.
- Brooks, R. (2002). 'Edinburgh, Exeter, East London-or employment?' A review of research on young people's higher education choices'. *Educational Research*, 44 (2), 217-227.
- Brooks, R. (2018). 'The construction of higher education students in English policy documents'. *British Journal of Sociology of Education*, 39 (6), 745-761.
- Brooks, R., Byford, K. and Sela, K. (2016). 'Students' unions, consumerism and the neo-liberal university'. *British Journal of Sociology of Education*, 37 (8), 1211-1228.
- Brown, A. D., Colville, I. and Pye, A. (2015). 'Making sense of sensemaking in organization studies'. *Organization studies*, 36 (2), 265-277.
- Brown, R. (2015). 'The marketisation of higher education: Issues and ironies'. *New Vistas*, 1 (1), 4-9.
- Brown, R. and Carasso, H. (2013). *Everything for sale? The marketisation of UK higher education*. Routledge.
- Browne, J. (2010). Securing a sustainable future for higher education : an independent review of higher education funding and student finance. In BIS (ed): HMSO.
- Brownsword, R. (1999). 'Ethics in legal education: High roads and low roads, mazes and motorways'. *The Law Teacher*, 33 (3), 269-283.
- Bryson, C. (2004). 'What about the workers? The expansion of higher education and the transformation of academic work'. *Industrial Relations Journal*, 35 (1), 38-57.

- Bunce, L., Baird, A. and Jones, S. E. (2016). 'The student-as-consumer approach in higher education and its effects on academic performance'. *Studies in Higher Education*, 1-21.
- Burridge, R. and Webb, J. (2007). 'The Values of Common Law Legal Education: Rethinking Rules, Responsibilities, Relationships and Roles in the Law School'. *Legal Ethics*, 10 (1), 72-97.
- Burridge, R. and Webb, J. (2008a). 'On liberal neutrality, the value of experience and the loneliness of the long-distance academic: Further reflections on the values of a common law legal education'. *The Law Teacher*, 42 (3), 339-354.
- Burridge, R. and Webb, J. (2008b). 'The values of common law legal education reprised'. *The Law Teacher*, 42 (3), 263-269.
- Callender, C. and Scott, P. (2013). *Browne and Beyond: Modernizing English Higher Education*. Bedford Way Papers No. 42. London: IoE Press.
- Cashmore, A., Cane, C. and Cane, R. (2013). 'Rebalancing promotion in the HE sector: Is teaching excellence being rewarded'. *York: Higher Education Academy*.
- Clark, B. R. (1983). 'The higher education system. Berkeley'. *Cal.: University of California Press*.
- CMA. (2015). *UK higher education providers – advice on consumer protection law; Helping you comply with your obligations*. London.
- CMA (2016). *Consumer law compliance review: Higher Education undergraduate sector findings report*. London.
- Coburn, C. E. (2001). 'Collective sensemaking about reading: How teachers mediate reading policy in their professional communities'. *Educational evaluation and policy analysis*, 23 (2), 145-170.
- Collini, S. (2017). *Speaking of Universities*. London: Verso.
- Cotton, D. R. E., Miller, W. and Kneale, P. (2018). 'The Cinderella of academia: Is higher education pedagogic research undervalued in UK research assessment?'. *Studies in Higher Education*, 43 (9), 1625-1636.
- Cownie, F. (2000). 'The importance of theory in law teaching'. *International Journal of the legal profession*, 7 (3), 225-238.
- Cownie, F. (2004). *Legal Academics: cultures and identities*: Hart Publishing.
- Cownie, F. (2008). '(Re) Evaluating values: A response to Burridge and Webb'. *The Law Teacher*, 42 (3), 302-311.
- Cownie, F. (2012). 'Law, research and the academy'. In Paul Trowler, Murray Saunders and V. Bamber (Eds), *Tribes and territories in the 21st century: Rethinking the significance of disciplines in higher education* (pp. 57-67). London and New York: Routledge.
- Creswell, J. W. (2013). *Qualitative Inquiry and research Design: choosing among five approaches*. (3rd ed.). California: Sage.
- Crotty, M. (1998). *The foundations of social research : meaning and perspective in the research process*: Sage.
- Cunningham, B. (2008a). 'Critical incidents in professional life and learning'. In B. Cunningham (Ed.), *Exploring Professionalism*. London: IoE Press.
- Cunningham, B. (2008b). *Exploring professionalism*. London: IoE Press.
- Daly, K. (1997). 'Re-Placing Theory in Ethnography: A Postmodern View'. *Qualitative Inquiry*, 3 (3), 343-365.

- Davies, M. (2018). 'Changes to the training of English and Welsh lawyers: implications for the future of university law schools'. *The Law Teacher*, 52 (1), 100-125.
- Davies, M. and Barnett, R. (2015). 'Introduction'. In M. Davies and R. Barnett (Eds), *The Palgrave handbook of critical thinking in higher education* (pp. 1-25). New York: Palgrave Macmillan.
- DBIS. (2011). Higher Education: Students at the Heart of the System. In I. a. S. Department for Business (ed) (Vol. CM 8122): HMSO.
- Dearing, R. (1997). *The Dearing Report*. London.
- Denzin, N. K. (2000). 'The art and politics of interpretation'. In N. K. Denzin and Y. Lincoln (Eds), *Collecting and Interpreting Qualitative Materials*. California: Sage.
- DES. (1991). Higher Education: A New Framework,. In DES (ed): HMSO.
- DfES. (2003). The Future of Higher Education. In DfES (ed) (Vol. CM 5735): HMSO.
- Diamond, D. A., Roberts, P. J., Vorley, D. T., Birkin, D. G., Evans, D. J., Sheen, J. and Nathwani, T. (2014). *UK Review of the provision of information about higher education: Advisory Study and Literature Review*. London: HEFCE.
- DiMaggio, P. and Powell, W. (2000). 'The iron cage revisited institutional isomorphism and collective rationality in organizational fields'. In J. Baum and F. Dobbin (Eds), *Economics Meets Sociology in Strategic Management (Advances in Strategic Management, Vol. 17)* (pp. 143-166): Emerald Group Publishing Limited. Available [Online] at: [https://doi.org/10.1016/S0742-3322\(00\)17011-1](https://doi.org/10.1016/S0742-3322(00)17011-1). [Last accessed 2020/02/19].
- Donald, J. G. (2002). *Learning To Think: Disciplinary Perspectives*. : John Wiley & Sons.
- Evetts, J. (2009). 'The management of professionalism: a contemporary paradox '. In S. M. Gewirtz, P. Hextall, I. Cribb, A. (Ed.), *Changing teacher professionalism: International trends, challenges and ways forward* (pp. 19-30). London: Routledge.
- Fanghanel, J. (2009). 'The role of ideology in shaping academics' conceptions of their discipline'. *Teaching in Higher Education*, 14 (5), 565-577.
- Fanghanel, J. and Trowler, P. R. (2007). 'New academic identities for a new profession? Situating the teaching dimension of the academic role in a competitive enhancement context'. *RESUP 2007. Les Universités et leurs marchés, Paris, 1-3 février 2007*.
- Farrington, D. J. (2012). *The law of higher education*. (2nd ed. ed.). Oxford: Oxford : Oxford University Press.
- Filippakou, O., Salter, B. and Tapper, T. (2012a). 'The changing structure of British higher education: How diverse is it?'. *Tertiary Education and Management*, 18 (4), 321-333.
- Filippakou, O., Salter, B. and Tapper, T. (2012b). 'Higher education as a system: the English experience'. *Higher Education Quarterly*, 66 (1), 106-122.
- Flick, U. (2006). *An introduction to qualitative research*. London: Sage.
- Flick, U. (2007). 'What is qualitative research'. In U. Flick (Ed.), *Designing qualitative research* (pp. 2-16): Sage.
- Foskett, N. (2010). 'Markets, government, funding and the marketisation of UK higher education'. In M. Molesworth, E. Nixon and R. Scullion (Eds), *The*

- marketisation of higher education and the student as consumer* (pp. 39-52). London and New York: Routledge.
- Fumasoli, T. G., A. Maassen, P. (2014). 'University autonomy and organizational change dynamics (Arena Working Paper 8)'.
- Furedi, F. (2011). 'Introduction to the marketisation of higher education and the student as consumer'. In M. Molesworth, R. Scullion and E. Nixon (Eds), *The marketisation of higher education and the student as consumer* (pp. 15-22). Abingdon: Routledge.
- Gabriel, Y. and Lang, T. (2015). *The unmanageable consumer*. Sage.
- Garner, R. (2009). 'Why Are Students Complaining so Much and do They Have a Case?'. *The Independent*, pp. 05-09.
- Gerson, K. and Horowitz, R. (2002). 'Observation and interviewing: Options and choices in qualitative research'. In T. May (Ed.), *Qualitative Research in Action*. London: Sage.
- Glassner, B. and Loughlin, J. (1987). *Drugs in adolescent worlds: Burnouts to straights*. Springer.
- Gornall, L. C., C. Daunton, L. Salisbury, J. Thomas, B. (2013). *Academic working lives: Experience, practice and change*. A&C Black.
- Gornitzka, A., Kogan, M. and Amaral, A. (2005). *Reform and change in higher education*. Dordrecht: Springer.
- Green, E. (2013). 'Research in the New Christian Academies, Perspectives from Bourdieu'. In M. Murphy (Ed.), *Social theory and education research: Understanding Foucault, Habermas, Bourdieu, and Derrida* (pp. 138-152). Abingdon: Routledge.
- Greenwood, R. O., C. Sahlin, K. Suddaby, R. (2008). 'Introduction'. In R. O. Greenwood, C. Sahlin, K. Suddaby, R. (Ed.), *The SAGE Handbook of Organizational Institutionalism*. Los Angeles and London: Sage.
- Gulson, K. N. (2007). 'Neoliberal spatial technologies': On the practices of educational policy change'. *Critical studies in education*, 48 (2), 179-195.
- Hall, S. and Jacques, M. (1983). *The politics of Thatcherism*. Lawrence and Wishart London.
- Handal, G. (2007). 'Identities of academic developers. Critical friends in the academy?'. In R. a. D. N. Barnett, R (Ed.), *Changing Identities in Higher Education*. London: Routledge.
- Harrison, H., Birks, M., Franklin, R. and Mills, J. (2017). *Case study research: Foundations and methodological orientations*. Paper presented at the Forum Qualitative Sozialforschung/Forum: Qualitative Social Research.
- Hazelkorn, E. (2008). 'Learning to Live with League Tables and Ranking: The Experience of Institutional Leaders'. *Higher Education Policy*, 21 (2), 193-215.
- HEFCE (2015). *UK review of information about higher education: Report on the review of the Key Information Set and Unistats*.
- Henkel, M. (2000). 'Academic identities and policy change in higher education'. *HIGHER EDUCATION POLICY SERIES-LONDON-JESSICA KINGSLEY PUBLISHERS LIMITED*, 46.
- Henkel, M. (2007a). 'Can academic autonomy survive in the knowledge society? A perspective from Britain'. *Higher Education Research & Development*, 26 (1), 87-99.
- Henkel, M. (2007b). 'Shifting boundaries and the academic profession'. In M. Kogan and U. Teichler (Eds), *Key challenges to the academic profession*

- (Vol. 65, pp. 192-220). Paris and Kassel: UNESCO Forum on Higher Education Research and Knowledge.
- Hepple, B. (1996). 'The renewal of the liberal law degree'. *The Cambridge Law Journal*, 55 (3), 470-487.
- Hogan, J. (2005). 'Should Form Follow Function? Changing Academic Structures in UK Universities'. *Perspectives: Policy & Practice in Higher Education*, 9, 49-56.
- Hogan, J. (2012). 'Restructuring revisited'. *Perspectives: Policy and Practice in Higher Education*, 16 (4), 129-135.
- Hogan, J. (2014). 'Administrators in UK higher education: who, where, what and how much?'. *Perspectives: Policy and Practice in Higher Education*, 18 (3), 76-83.
- Hosein, A. and Rao, N. (2015). *An Impact Study of the Guidance Documents for Higher Education Providers Published by QAA in 2013*.
- Høstaker, R. (2006). 'Policy change and the academic profession'. In M. Kogan, M. Bauer, I. Bleiklie and M. Henkel (Eds), *Transforming Higher Education: A comparative study* (pp. 103-126). Dordrecht: Springer.
- Jenkins, R. (1992). *Pierre Bourdieu*. Florence, UNITED STATES: Taylor & Francis Group. Available [Online] at: <http://ebookcentral.proquest.com/lib/ucl/detail.action?docID=178135>.
- Jung, T. (2010). 'Citizens, co-producers, customers, clients, captives? A critical review of consumerism and public services'. *Public Management Review*, 12 (3), 439-446.
- Kacen, L. and Chaitin, J. (2006). 'The Times They are a Changing': Undertaking Qualitative Research in Ambiguous, Conflictual, and Changing Contexts'. *The Qualitative Report*, 11 (2), 209-228.
- Karran, T. (2009). 'Academic freedom: In justification of a universal ideal'. *Studies in Higher Education*, 34 (3), 263-283.
- Kogan, M. (2007). 'The academic profession and its interface with management'. In M. T. Kogan, U. (Ed.), *Key Challenges to the Academic Profession* (pp. 159-174).
- Kogan, M. (2014). 'The Role of Different Groups in Policy Making: institutional politics and policy making'. In P. Trowler (Ed.), *Higher Education and Institutional Policy Change*. Leicester
- Kogan, M., Bauer, M., Bleiklie, I. and Henkel, M. (2007). *Transforming higher education: A comparative study*. (Vol. 13): Springer Science & Business Media.
- Kogan, M. and Hanney, S. (2000). *Reforming higher education*. (Vol. 50): Jessica Kingsley Publishers.
- Kogan, M. and Teichler, U. (2007). 'Key Challenges to the Academic Profession and its Interface with Management: Some Introductory Thoughts'. In M. Kogan and U. Teichler (Eds), *Key Challenges to the Academic Profession*. Paris and Kassel: UNESCO Forum on Higher Education.
- Komljenovic J, P. A., J McArthur, K Rosewell. (2018). *To be or not to be consumers: the imperfect alignment of English higher education marketization policy and the narratives of first year university students*. [Online].
- Krause, K. (2009). 'Interpreting changing academic roles and identities in higher education'. *The Routledge international handbook of higher education*, 413-425.

- Kvale, S. (2007). *Doing Interviews, Doing Interviews*. London: SAGE Publications, Ltd.
- Kyburz-Graber, R. (2015). 'Case Study Research on Higher Education for Sustainable Development'. In G. M. M Barth, M Rieckmann, I Thomas (Ed.), *Routledge Handbook of Higher Education for Sustainable Development*. Routledge. Available [Online] at: <https://www.routledgehandbooks.com/doi/10.4324/9781315852249.ch9>. [Last accessed 2020/09/07].
- Lattuca, L. R., Terenzini, P. T., Harper, B. J. and Yin, A. C. (2010). 'Academic environments in detail: Holland's theory at the subdiscipline level'. *Research in Higher Education*, 51 (1), 21-39.
- Leighton, P. (2015). 'The LLB as a liberal degree? A re-assessment from an historical perspective'. *International Journal of the Legal Profession*, 22 (1), 87-102.
- LETR (2013). *Legal Education and Training Review*.
- Levinson, B. A., Sutton, M. and Winstead, T. (2009). 'Education policy as a practice of power: Theoretical tools, ethnographic methods, democratic options'. *Educational policy*, 23 (6), 767-795.
- Locke, W. (2014). *Shifting academic careers: implications for enhancing professionalism in teaching and supporting learning*. York, UK: HEA.
- Maassen, P. and Stensaker, B. (2019). 'From organised anarchy to de-coupled bureaucracy: The transformation of university organisation'. *Higher Education Quarterly*, 73 (4), 456-468.
- Maitlis, S. and Christianson, M. (2014). 'Sensemaking in organizations: Taking stock and moving forward'. *Academy of Management Annals*, 8 (1), 57-125.
- Malin, N. (2020). *De-Professionalism and Austerity: Challenges for the Public Sector*. (1 ed.): Bristol University Press. Available [Online] at: www.jstor.org/stable/j.ctvw1d50s. [Last accessed 2020/05/23/].
- Malloy, R. P. (2004). *Law in a Market Context: and Introduction to Market concepts in legal reasoning*. Cambridge, UK: Cambridge University Press.
- Malone, S. (2003). 'Ethics at home: informed consent in your own backyard'. *International Journal of Qualitative Studies in Education*, 16 (6), 797-815.
- Marginson, S. (2009). 'The limits of market reform in higher education'. *Institute for Higher Education (RIHE)*. Hiroshima, Japan: Hiroshima University. Retrieved from http://www.cshe.unimelb.edu.au/people/marginson_docs/RIHE_17Aug09_paper.pdf.
- Marginson, S. (2013). 'The impossibility of capitalist markets in higher education'. *Journal of Education Policy*, 28 (3), 353-370.
- Marginson, S. (2016). *Higher education and the common good*: Melbourne Univ. Publishing.
- Maringe, F. (2011). 'The student as consumer: affordances and constraints in a transforming higher education environment'. In M. S. Molesworth, R. Nixon, E. (Ed.), *The Marketisation of Higher Education and the Student as Consumer*. Abingdon: Routledge.
- Mason, J. (2002). 'Qualitative interviewing: Asking, listening and interpreting'. In T. May (Ed.), *Qualitative Research in Action*. 1st ed. London: SAGE Publications (pp. 226-241). London: Sage.
- Mason, R. (Wed 25 Oct 2017 10.14 BST, 2017). *The Guardian*

- Maxwell, J. A. (2013). *Qualitative Research Design: An Interactive Approach: An Interactive Approach*: SAGE.
- McCaig, C. (2018). *The marketisation of english higher education: A policy analysis of a risk-based system*: Emerald Group Publishing.
- McGettigan, A. (2013). *The Great University Gamble*: Pluto Press. Available [Online] at: <http://www.jstor.org/stable/j.ctt183p3ns.11>.
- Meek, V. L., Goedegebuure, L., Santiago, R. and Carvalho, T. (2010). 'Introduction'. In V. L. Meek, L. Goedegebuure, R. Santiago and T. Carvalho (Eds), *The Changing Dynamics of Higher Education Middle Management* (pp. 1-14). Dordrecht: Springer Netherlands. Available [Online] at: https://doi.org/10.1007/978-90-481-9163-5_1.
- Merriam, S. B. (2009). *Qualitative Research: A Guide to Design and Implementation*. San Francisco: Josey-Bass.
- Meyer, J. and Rowan, B. (1977). 'Institutionalized organizations: Formal structure as myth and ceremony'. *American journal of sociology*, 83 (2), 340-363.
- Miles, M. B. and Huberman, A. M. (1994). *Qualitative data analysis: An expanded sourcebook*: sage.
- Molesworth, M., Nixon, E. and Scullion, R. (2009). 'Having, being and higher education: the marketisation of the university and the transformation of the student into consumer'. *Teaching in Higher Education*, 14 (3), 277-287.
- Molesworth, M., Scullion, R. and Nixon, E. (Eds) (2011), *The Marketisation of Higher Education and the Student as Consumer*. Abingdon, Oxford: Routledge.
- Musselin, C. (2007). 'Transformation of Academic Work: Facts and Analysis'. In M. Kogan and U. Teichler (Eds), *Key Challenges to the Academic Profession* (pp. 175-190). Paris and Kassel: UNESCO Forum on Higher Education Research and Knowledge.
- Naidoo, R. (2004). 'Fields and institutional strategy: Bourdieu on the relationship between higher education, inequality and society'. *British journal of sociology of education*, 25 (4), 457-471.
- Naidoo, R. (2008). 'Building or Eroding Intellectual Capital? Student Consumerism as a Cultural Force in the Context of Knowledge Economy'. In J. Välimaa and O.-H. Ylijoki (Eds), *Cultural Perspectives on Higher Education* (pp. 43-55). Dordrecht: Springer Netherlands. Available [Online] at: https://doi.org/10.1007/978-1-4020-6604-7_4.
- Naidoo, R. and Jamieson, I. (2005). 'Empowering participants or corroding learning? Towards a research agenda on the impact of student consumerism in higher education'. *Journal of Education Policy*, 20 (3), 267-281.
- Neumann, R. (2001). 'Disciplinary Differences and University Teaching'. *Studies in Higher Education*, 26 (2), 135-146.
- Nixon, E., Scullion, R. and Molesworth, M. (2011). 'How choice in higher education can create conservative learners'. In M. Molesworth, R. Scullion and E. Nixon (Eds), *The marketisation of higher education and the student as consumer*. (pp. 196-208). Abingdon: Routledge.
- Noordegraaf, M. (2011). 'Risky business: How professionals and professional fields (must) deal with organizational issues'. *Organization studies*, 32 (10), 1349-1371.

- North, S. (2005). 'Different values, different skills? A comparison of essay writing by students from arts and science backgrounds'. *Studies in Higher Education*, 30 (5), 517-533.
- OfS. (2018). Regulatory Framework: Office For Students.
- Olssen, M. and Peters, M. A. (2005). 'Neoliberalism, higher education and the knowledge economy: from the free market to knowledge capitalism'. *Journal of Education Policy*, 20 (3), 313-345.
- Palfreyman, D. (2012). 'Bring back Lord Robbins?'. *Perspectives: Policy and Practice in Higher Education*, 16 (3), 98-102.
- Parker, C. and Nielsen, V. L. (2011). *Explaining compliance: Business responses to regulation*: Edward Elgar Publishing.
- Parker, J. (2002). 'A New Disciplinary: Communities of knowledge, learning and practice'. *Teaching in Higher Education*, 7 (4), 373-386.
- Perkins, G. (2019). 'The Teaching Excellence Framework (TEF) and Its Impact on Academic Identity Within A Research-Intensive University'. *Higher Education Policy*, 32 (2), 297-319.
- Pollitt, C. (1990). *Managerialism and the public services: The Anglo-American experience*: Blackwell.
- Pue, W. W. (2008). 'Legal education's mission'. *The Law Teacher*, 42 (3), 270-290.
- QAA. (2017). Information to Students: a guide to providing information to prospective undergraduate students. In Q. A. Agency (ed): DfENI, HEFCE, HEFCW and SFC.
- Raaper, R. (2018). 'Students' unions and consumerist policy discourses in English higher education'. *Critical Studies in Education*, 1-17.
- Raaper, R. (2019). 'Students as consumers? A counter perspective from student assessment as a disciplinary technology'. *Teaching in Higher Education*, 24 (1), 1-16.
- Rao, N. and Hosein, A. (2017). 'The limits of Higher Education Institutions' websites as sources of learning and teaching information for prospective students: a survey of professional staff'. *Perspectives: Policy and Practice in Higher Education*, 21 (1), 4-10.
- Rawolle, S. and Lingard, B. (2013). 'Bourdieu and educational research: Thinking tools, relational thinking, beyond epistemological innocence'. In M. Murphy (Ed.), *Social theory and education research: understanding Foucault, Habermas, Bourdieu and Derrida* (pp. 117-137): Routledge.
- Readings, B. (1996). *The university in ruins*: Harvard University Press.
- Reay, D. (2004). 'It's all becoming a habitus': beyond the habitual use of habitus in educational research'. *British journal of sociology of education*, 25 (4), 431-444.
- Renfrew, K., Baird, H., Green, H., Davies, P., Hughes, A., Mangan, J. and Slack, K. (2010). *Understanding the information needs of users of public information about higher education*: HEFCE.
- Riveros, A. and Viczko, M. (2015). 'The enactment of professional learning policies: Performativity and multiple ontologies'. *Discourse: Studies in the cultural politics of education*, 36 (4), 533-547.
- Robbins, L. (1963). *Report of the Committee on Higher Education (the Robbins Report)*. London.
- Rochette, A. (2011). 'Values in Canadian legal education'. *Web Journal of Current Legal Issues*, (2).

- Rose, G. D. (2013). *Re-imagining church producing sacred spaces for the experience of the transcendent in an evolving experiential culture*. Monash University.
- Sabri, D. (2010). 'Absence of the academic from higher education policy'. *Journal of Education Policy*, 25 (2), 191-205.
- Sabri, D. (2011). 'What's wrong with 'the student experience'?''. *Discourse: Studies in the cultural politics of education*, 32 (5), 657-667.
- Scott, P. (1984). *The Crisis of the University* Beckenham: Croom Helm.
- Scott, P. (2004). 'Ethics 'in' and 'for' higher education'. *Higher Education in Europe*, 29 (4), 439-450.
- Scott, P. (2009). 'Markets and new modes of knowledge production'. In E. D. W. J Enders (Ed.), *The changing face of academic life* (pp. 58-77): Springer.
- Scott, P. (2010). 'Higher education: an overview'. In E. B. PL Peterson, B McGaw (Ed.), *International encyclopedia of education* (3rd ed., Vol. 4, pp. 217-228): Elsevier.
- Scott, P. (2013). 'The Coalition Government's reform of higher education: policy formation and political process'. In C. Callender and P. Scott (Eds), *Browne review and beyond: Modernizing English higher education* (pp. 32-56). London: IoEPress.
- Scott, P. (2015). 'Mass to market higher education systems: new transitions or false dawn?', *Higher Education Reform: Looking Back-Looking Forward* (2nd ed., pp. 49-63). Frankfurt am Main: PeterLang.
- Scott, W. R. (2001). *Institutions and Organizations*. (2nd ed.). Thousand Oaks, CA: Sage.
- Shattock, M. (2010). *Managing successful universities*: McGraw-Hill Education (UK).
- Shattock, M. (2012a). *Making policy in British higher education 1945-2011*: McGraw-Hill Education (UK).
- Shattock, M. (2012b). 'University governance'. *Perspectives: Policy and Practice in Higher Education*, 16 (2), 56-61.
- Shattock, M. (2013). 'University governance, leadership and management in a decade of diversification and uncertainty'. *Higher Education Quarterly*, 67 (3), 217-233.
- Shattock, M. (2017). 'University governance in flux. The impact of external and internal pressures on the distribution of authority within British universities: A synoptic view'. *Higher Education Quarterly*, 71 (4), 384-395.
- Shattock, M. (2019a). University governance and academic work: the 'business model' and its impact on innovation and creativity (Vol. WP 48). London: Centre for Global Higher Education.
- Shattock, M. and Horvath, A. (2019). *The Governance of British Higher Education: The Impact of Governmental, Financial and Market Pressures*. (1 ed.). London: Bloomsbury Academic. Available [Online] at: <http://www.bloomsburycollections.com/book/the-governance-of-british-higher-education-the-impact-of-governmental-financial-and-market-pressures/>. [Last accessed 2020/04/02/].
- Shepherd, S. (2013). Appointing Pro Vice Chancellors in Pre-1992 Universities: The Myth of Managerialism? , *Society for Research in Higher Education (SRHE) Annual Conference*.
- Silverman, D. (2000). *Doing Qualitative Research: A Practical Handbook*. London: Sage.

- Slack, K., Mangan, J., Hughes, A. and Davies, P. (2014). 'Hot', 'cold' and 'warm' information and higher education decision-making'. *British Journal of Sociology of Education*, 35 (2), 204-223.
- Spillane, J. P., Reiser, B. J. and Reimer, T. (2002). 'Policy implementation and cognition: Reframing and refocusing implementation research'. *Review of Educational Research*, 72 (3), 387-431.
- Stuckey, R. (2004). 'The evolution of legal education in the united states and the united kingdom: How one system became more faculty-oriented while the other became more consumer-oriented.'. *International Journal of Clinical Legal Education*, 6 (1), 101-148.
- Sword, W. (1999). 'Accounting for presence of self: Reflections on doing qualitative research'. *Qualitative Health Research*, 9 (2), 270-278.
- Taylor, J. (2003). 'Institutional diversity in UK higher education: Policy and outcomes since the end of the binary divide'. *Higher Education Quarterly*, 57 (3), 266-293.
- Tempany, T. (1885). 'The Legal Profession in England-Its History, Its Members, and Their Status'. *Am. L. Rev.*, 19, 677.
- Temple, P. (2012). *Universities in the knowledge economy: Higher education organisation and global change*: Routledge.
- Temple, P., Callender, C., Grove, L. and Kersh, N. (2014). *Managing the student experience in a shifting higher education landscape*: HEA.
- Thomas, P. (2006). 'Legal education: Then and now'. *The Law Teacher*, 40 (3), 239-253.
- Thome, H. (2015). 'Values, sociology of'. In J. D. W. (editor-in-chief) (Ed.), *International Encyclopedia of the Social & Behavioral Sciences* (2nd ed., Vol. 25, pp. 47-53). Oxford: Elsevier.
- Tight, M., Mok, K.-H., Huisman, J. and Morphew, C. (2009). *The Routledge International Handbook of Higher Education*. Florence, UNITED STATES: Routledge. Available [Online] at: <http://ebookcentral.proquest.com/lib/ucl/detail.action?docID=425455>.
- Tomlinson, M. (2016). 'The Impact of Market-Driven Higher Education on Student-University Relations: Investing, Consuming and Competing'. *Higher Education Policy*, 29 (2), 149-166.
- Tomlinson, M. (2017). 'Student perceptions of themselves as 'consumers' of higher education'. *British Journal of Sociology of Education*, 38 (4), 450-467.
- Trowler, P. (2001). 'Captured by the Discourse? The Socially Constitutive Power of New Higher Education Discourse in the UK'. *Organization*, 8 (2), 183-201.
- Trowler, P. (2002). 'Introduction'. In P. Trowler (Ed.), *Higher education policy and institutional change*: Citeseer.
- Trowler, P. (2012a). 'Disciplines and Interdisciplinarity'. In P. S. Trowler, M. Bamber, V. (Ed.), *Tribes and territories in the 21st Century*
- Trowler, P. (2012b). 'Disciplines and Research: key themes'. In P. Trowler (Ed.), *Tribes and territories in the 21st Century*. Abingdon: Routledge.
- Trowler, P. (2012c). 'Wicked issues in situating theory in close-up research'. *Higher Education Research & Development*, 31 (3), 273-284.
- Trowler, P. (2014). 'Depicting and researching disciplines: Strong and moderate essentialist approaches'. *Studies in Higher Education*, 39 (10), 1720-1731.

- UCU (2020). *Second class academic citizens: The dehumanising effects of casualisation in higher education*. London.
- UUK (2017). *Education, consumer rights and maintaining trust: What students want from their university*.
- VanWynsberghe, R. and Khan, S. (2007). 'Redefining Case Study'. *International Journal of Qualitative Methods*, 6 (2), 80-94.
- Watson, D. (2014a). 'John Furlong and the 'university project''. *Oxford Review of Education*, 40 (4), 520-524.
- Watson, D. (2014b). *The question of conscience: Higher education and personal responsibility*. Institute of Education University of London.
- Webb, J. (1996). 'Why theory matters'. In J. Webb and C. Maughan (Eds), *Teaching lawyers' skills* (pp. 23-54): Lexis Law Publishing (Va).
- Weick, K. (1995). *Sensemaking in organizations* Thousand Oaks, CA: Sage
- Weick, K. E. (1969). *The social psychology of organizing*. . Reading, Mass: Addison-Wesley Publishing.
- Whitchurch, C. (2007). 'The changing roles and identities of professional managers in UK higher education'. *Perspectives: Policy and Practice in Higher Education*, 11 (2), 53-60.
- Whitchurch, C. (2009). 'The rise of the blended professional in higher education: a comparison between the United Kingdom, Australia and the United States'. *Higher Education*, 58 (3), 407-418.
- Whitchurch, C. (2010). 'The Challenges of a Diversifying Workforce'. In C. Whitchurch and G. Gordon (Eds), *Academic and Professional Identities in Higher Education: The Challenges of a Diversifying Workforce* (pp. 245-56). London: Routledge. Available [Online] at: <http://books.google.co.uk/books?id=2dSLAgAAQBAJ>.
- Williams, G. (2013a). 'A bridge too far: An economic critique of marketization of higher education'. In P. S. C Callender (Ed.), *Browne and beyond: Modernizing English Higher Education* (Vol. Bedford Papers vol 42). London: IOE Press.
- Williams, J. (2011). 'A review of the Higher Education Close Up 5 conference'. *Teaching in Higher Education*, 16 (3), 353-363.
- Williams, J. (2013b). *Consuming Higher Education: why learning cant be bought*. London: Bloomsbury Academic.
- Williams, J. (2016). *Academic freedom in an age of conformity: Confronting the fear of knowledge*: Springer.
- Wilson, J. F. (1966). 'A Survey of Legal Education in the United Kingdom'. *Journal of the Society of Public Teachers of Law (New Series)*, (1), 1-144.
- Winberg, C. (2012). "We're engaged': Mechanical engineering and the community'. In P. Trowler (Ed.), *Tribes and territories in the 21st century: Rethinking the significance of disciplines in higher education* (pp. 142-55). Abingdon: Routledge.
- Wooten, M. (2015). Organizational Fields. In J. Wright (ed), *International Encyclopedia of the Social & Behavioral Sciences* (2nd ed., Vol. 1): Elsevier Science Ltd.
- Yin, R., K. (2009). *Case study research : design and methods*: Sage.
- Ylijoki, O.-H. (2000a). 'Disciplinary cultures and the moral order of studying—A case-study of four Finnish university departments'. *Higher Education*, 39 (3), 339-362.

- Ylijoki, O.-H. (2000b). 'Disciplinary cultures and the moral order of studying – A case-study of four Finnish university departments'. *Higher Education*, 39 (3), 339-362.
- Young, P. (2006). 'Out of balance: lecturers' perceptions of differential status and rewards in relation to teaching and research'. *Teaching in Higher Education*, 11 (2), 191-202.

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1. Course composition & delivery

Russell 1	2	3	Cmc	2	3	4	5	6	7	Online/D Update	2	3	1992+	2	3	4	5	6	2004+	2	3	4	5	6	Total Y
1.1 indicate the modules available each 'year' for 'year 1' have a 'so accepted stage or level'	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	29

1.2 how many course units/modules students are expected to take concurrently per semester, term or year

Y	Y	Y	N	N	Y	Y	Y	Y	N	N	N	Y	N	N	N	Y	N	Y	Y	Y	N	Y	N	Y	15
1.3 explain how the modules contribute to the final course mark (ie degree classification)	N	N	N	N	N	N	N	Y	N	N	N	Y	N	N	N	Y	N	N	N	N	N	N	N	N	3

1.4 progression requirements

N	N	N	N	N	Y	N	Y	N	N	N	N	N	N	N	N	Y	N	N	Y	N	N	N	N	N	4
2.1 list the core and potential options	YY	YY	YY	YY	YY	YY	YY	YY	YY	YY	YY	YY	YY	YY	YY	YY	YY	YY	YY	YY	YY	YY	YY	YY	28
2.2 make it clear if options may not run, and how they will be chosen	NN	NN	YY	NN	NN	NN	NN	NN	NN	NN	NN	NN	NN	NN	NN	NN	NN	NN	NN	NN	NN	NN	NN	NN	4

2.3 explain how and when module changes will be notified

NN	YY	YY	NN	NN	NN	NN	NN	NN	NN	NN	NN	NN	NN	NN	NN	NN	NN	NN	NN	NN	NN	NN	NN	NN	4
3.1 the type of teaching and learning activities offered	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	23

3.2 indication of class size

Y (var's)	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	3
3.3 indication of typical class contact hours	N	Y	Y	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	8

4. Staff

4.1 Name staff involved in the various modules (I have accepted as a minimum the name of the module leader)	N	Y	Y	N	Y	Y	Y	Y	N	N	N	Y	N	N	N	Y	Y	Y	N	Y	N	N	N	N	13
4.2 information indicating any post graduate student involvement in teaching	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	0

5. Assessment

5.1 course assessment methods	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	28
5.2 availability of formative assessment	Y	N	Y	N	N	N	Y	Y	N	N	Y	N	N	N	N	N	N	N	N	N	N	N	N	N	8
5.3 percentage of summative assessment by each type	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	22
5.4 frequency of summative assessment	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	2
6.1 accessible variation clause?	Sr	Sr	Y	Sr	Sr	Sr	Sr	Sr	Sr	Sr	Sr	Sr	Sr	Sr	Sr	Sr	Sr	Sr	Sr	Sr	Sr	Sr	Sr	Sr	7

6. variation/ terms and cond's

TOTAL	8	8.5	11	7.5	4.5	6.5	7	9.5	8	5	5.5	7	8	5	6.5	6.5	8.5	7.5	8.5	9.5	5.5	10	8.5	2.5	7	5.5	6	5	6
-------	---	-----	----	-----	-----	-----	---	-----	---	---	-----	---	---	---	-----	-----	-----	-----	-----	-----	-----	----	-----	-----	---	-----	---	---	---

Key

Y= I judge the information to be accessible

N= information not found within the parameters used for this study

*= deemed not relevant to the type of course delivery

Sr= required to use the general search facility to locate

Sr-N= required to use the general search facility and the information was not located.

tut's = for tutorials only

lec's = for lectures only

Letter to Heads of Law Schools

Subject: Assistance with a Research Project

Dear Head of School

I am a former law academic and now studying for a Doctorate in Education through the UCL Institute of Education. This is a professional doctoral programme and I am now in the final stage of the programme and working on my thesis. The topic of my thesis is: **Designing and delivering undergraduate law programmes in the shadow of UK consumer protection legislation.**

My research for the thesis will consist of a number of components (including a review of some English law school websites), but I also want to include interviews with a small number (no more than six) of academics carrying out the roles normally designated as 'Directors of Teaching/Programme' on undergraduate qualifying law degree LLB programmes, and 'Legal / Compliance Officers' in English law schools/universities. The focus of the semi structured interviews will be on the implications of consumer protection laws for the design and delivery of legal education, but it is likely to also touch on such issues as academic identity, the role of the non-academic 'manageriat', consumerism and understandings of quality, and whether the implications might be different for different types of law schools (for example public/private; Russell group/post '92).

I anticipate the benefits of this research will include identifying possible gaps in understandings and perceptions within institutions of the implications of consumer protection laws and how these might be mitigated, and to identify areas of good practice. I also hope to understand how compliance-related initiatives based on a consumption model are impacting on the design and delivery of undergraduate laws programmes and on the roles of academics and managers within different types of institutions (e.g. public/private, research intensive/teaching intensive). It may also contribute to a better understanding of how concepts of 'quality legal education' might be being reshaped under this model.

The reason I am writing to all Heads of Law Schools in England is to ask if you could assist to identify the appropriate academic (and possibly legal/compliance officer) I could write to in order to ask if they might be willing to participate in this research, via a semi-structured interview? (If not, I will seek to identify appropriate potential interviewees from law school websites and contact them direct.) I will then write to them giving them further information about the research (including ethics compliance, confidentiality) and asking if they would

consent to be interviewed.

Even if an interviewee from your institution consents to be interviewed I may ultimately choose not to interview them. My decision will be influenced by factors such as logistics (ease and cost of travel etc) and on the type of institution to which interviewees belong. Heads will not be advised of my decision either way.

Should someone from your institution choose to participate, I will endeavour to protect both their and your institution's anonymity by using pseudonyms. **However**, I need to make it clear that I cannot absolutely guarantee anonymity - it may be that because of a combination of attributes and/or through views expressed or comments made during the interview and which I then use in my thesis it becomes possible to identify the interviewee and/or your institution.

The outcomes of the research will be reported in my thesis submission to the Institute of Education and a bound copy will be held by the UCL library. All or parts of my thesis may subsequently be published or otherwise presented by me (either in its current form or reworked), and prior permission will not be sought.

Just to confirm, I am not asking you to volunteer anybody for this research, only to indicate if possible the best persons I could approach to ask if they might be willing to volunteer.

I am hoping to conduct the interviews in late summer.

If you could provide me with the appropriate names I will write to them directly, or you may want to forward this email to them so that they can respond personally. My email is xxxx.

If you would prefer that no-one from your law school takes part in the interviews could you please let me know by responding directly to me at xxxx.

Jenny Hamilton

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XXXX

If you would like to receive an executive summary of this research once it is completed, please also let me know.

Letter to University Legal Practitioners

Subject: Assistance with a Research Project

Dear University Legal Practitioner

I am a former law academic and now studying for a Doctorate in Education through the UCL Institute of Education. This is a professional doctoral programme and I am now in the final stage of the programme and working on my thesis. The topic of my thesis is: **Designing and delivering undergraduate law programmes in the shadow of UK consumer protection legislation.**

My research for the thesis will consist of a number of components (including a review of some English law school websites), but I also want to include interviews with a small number (no more than six) of academics carrying out the roles normally designated as 'Directors of Teaching/programme' on undergraduate qualifying law degree LLB programmes, and 'legal / compliance officers' in English law schools/universities that offer these programmes. The focus of the semi structured interviews will be on the implications of consumer protection laws for the design and delivery of legal education, but it is likely to also touch on such issues as academic identity, the role of the non-academic 'manageriat', consumerism and understandings of quality, and whether the implications might be different for different types of law schools (for example public/private; Russell group/post '92).

I anticipate the benefits of this research will include identifying possible gaps in understandings and perceptions within institutions of the implications of consumer protection laws and how these might be mitigated, and to identify areas of good practice. I also hope to understand how compliance-related initiatives based on a consumption model are impacting on the design and delivery of undergraduate laws programmes and on the roles of academics and managers within different types of institutions (e.g. public/private, research intensive/teaching intensive). It may also contribute to a better understanding of how concepts of 'quality legal education' might be being reshaped under this model.

The reason I am writing to all members of the Association of University Practitioners in England is to ask if you could assist to identify the appropriate legal/compliance officer I could write to in order to ask if they might be willing to participate in this research, via a semi-structured interview? (If not, I will seek to identify appropriate potential interviewees from university websites and contact them direct.) I will then write to them giving them further information about the research (including ethics compliance, confidentiality) and asking if they would consent to be interviewed.

Even if an interviewee from your university consents to be interviewed I may ultimately choose not to interview them. My decision will be influenced by factors such as logistics

(ease and cost of travel etc) and on the type of institution to which interviewees belong. Your university will not be advised of my decision either way.

Should someone from your university choose to participate, I will endeavour to protect both their and your university's anonymity by using pseudonyms. **However**, I need to make it clear that I cannot absolutely guarantee anonymity - it may be that because of a combination of attributes and/or through views expressed or comments made during the interview and which I then use in my thesis it becomes possible to identify the interviewee and/or your institution.

The outcomes of the research will be reported in my thesis submission to the Institute of Education and a bound copy will be held by the UCL library. All or parts of my thesis may subsequently be published or otherwise presented by me (either in its current form or reworked), and prior permission will not be sought.

Just to confirm, I am not asking you to volunteer anybody for this research, only to indicate if possible the best persons I could approach to ask if they might be willing to volunteer. On the other hand if you are the appropriate person to interview and are happy in principle to participate, please let me know.

I am hoping to conduct the interviews in late summer.

If you could provide me with the appropriate names I will write to them directly, or you may want to forward this email to them so that they can respond personally. My email is XXXX.

If you would prefer that no legal/compliance officer from your university takes part in the interviews could you please let me know by responding directly to me at XXXX.

A similar letter has already been sent to Heads of Law Schools in England through the Committee of Heads of UK Law Schools.

Jenny Hamilton

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XXXX

If you would like to receive an executive summary of this research once it is completed, please also let me know.

Letter to Individual Academics

Subject: Assistance with a Research Project

Dear XXXX

I am a former law academic and now studying for a Doctorate in Education through the UCL Institute of Education. This is a professional doctoral programme and I am now in the final stage of the programme and working on my thesis. The topic of my thesis is: **Designing and delivering undergraduate law programmes in the shadow of UK consumer protection legislation.**

My research for the thesis will consist of a number of components (including a review of some English law school websites), but I also want to include interviews with a small number (no more than six) of academics carrying out the roles normally designated as 'Directors of Teaching/programme' on undergraduate qualifying law degree LLB programmes, and 'legal / compliance officers' in English law schools/universities that offer these programmes. The focus of the semi structured interviews will be on the implications of consumer protection laws for the design and delivery of legal education, but it is likely to also touch on such issues as academic identity, the role of the non-academic 'manageriat', consumerism and understandings of quality, and whether the implications might be different for different types of law schools (for example public/private; Russell group/post '92).

I anticipate the benefits of this research will include identifying possible gaps in understandings and perceptions within institutions of the implications of consumer protection laws and how these might be mitigated, and to identify areas of good practice. I also hope to understand how compliance-related initiatives based on a consumption model are impacting on the design and delivery of undergraduate laws programmes and on the roles of academics and members of management within different types of institutions (e.g. public/private, research intensive/teaching intensive). It may also contribute to a better understanding of how concepts of 'quality legal education' might be being reshaped under this model.

The reason I am writing to you is that I understand you carry out the role normally designated as 'Director of Teaching/Programme leader' on your undergraduate qualifying law degree LLB programme and to

to ask if you would consent to participate in this research, via a semi-structured interview? If you think you might be interested I will send you the Information Sheet and Consent Form for you to consider.

On 4th June all Heads of Law Schools received a letter from me via the Committee of the Heads of Law Schools informing them of this research. I also asked Heads to contact me if they would prefer no academic from their institution took part. Your Head has not contacted me.

Should you consent to participate, I will endeavour to protect both you and your university's anonymity by using pseudonyms. **However**, I need to make it clear that I cannot absolutely guarantee anonymity - it may be that because of a combination of

attributes and/or through views expressed or comments made during the interview and which I then use in my thesis it becomes possible to identify you and/or your institution.

The outcomes of the research will be reported in my thesis submission to the Institute of Education and a bound copy will be held by the UCL library. All or parts of my thesis may subsequently be published or otherwise presented by me (either in its current form or reworked), and prior permission will not be sought.

I am hoping to conduct the interviews in late summer, either face-to-face or via skype.

If you have any queries please don't hesitate to contact me at XXXX.

With many thanks

Jenny Hamilton

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XXXX

If you would like to receive an executive summary of this research once it is completed, please also let me know.

Information Sheet

Title of Study:

Designing and delivering undergraduate law programmes in the shadow of UK consumer protection legislation

Department:

Education Practice and Society, Institute of Education

Name and Contact Details of the Researcher(s):

Jenny Hamilton, UCL Institute of Education, 20 Bedford Way London, WC1H 0AL

XXXX

I am a former law academic studying for a Doctorate in Education through the UCL Institute of Education. This is a professional doctorate and I have now reached the third and final stage of this programme, which requires me to submit a thesis.

For my thesis I intend to explore how law schools in England are negotiating the legal environment and embedding consumer rights when designing and delivering undergraduate qualifying law degree programmes.

My main research questions are:

1. What do programme directors/directors of teaching and compliance/legal officers identify as the key impacts of the consumer protection law, and particularly the information disclosure requirements, on the design (e.g. learning outcomes, assessment methods) and delivery (e.g. who teaches and how) of their programmes?
2. Does the impact differ across different types of law schools for example public/private; Russell Group/ post '92?
3. How might consumer protection law be reshaping the relationship between academic staff responsible of the design and delivery of programmes and HIE legal/compliance officers

Why am I writing to you?

As part of this research I want to conduct a small number of semi-structured interviews (no more than six) with both academic staff responsible the design and delivery of undergraduate LLB programmes (typically programme directors or directors of teaching) and legal/compliance officers responsible for regulatory compliance, from a range of English law schools.

You have been identified either by your Head of School/line manager or through my web search as someone who potentially meets the criteria above, and who I hope might be willing to be interviewed for this research.

Themes of the semi-structured interviews are likely to include exploring whether this negotiation and embedding may differ according to the 'type' of the law school (e.g. public/private; research intensive/teaching intensive); identifying possible gaps in understandings within institutions about the implications of consumer protection laws and if so how these might be mitigated; exploring how compliance-related initiatives may be impacting on both the autonomy of academic staff for learning and teaching methods and on the role for research and practitioner informed teaching methodology; the roles of legal/compliance officers; and for understandings of 'quality'.

What are the benefits of participating?

The benefits will include helping to identify possible gaps in understandings or perceptions within institutions of the implications of consumer protection laws and how these might be mitigated, to identify areas of good practice, but also to reveal how compliance-related initiatives based on a consumption model are impacting on the design and delivery of undergraduate laws programmes and on the roles of academics and managers within institutions. Your participation might also contribute to a better understanding of how understandings of 'quality legal education' might be being reshaped under this model.

Participation and confidentiality

Participation by you is entirely voluntary. You may decide to participate or not, and I will not inform anyone in your institution (including the Head of Law School/line manager) of your decision either way.

Even if you do consent to be interviewed I may ultimately choose not to interview you. My decision will be influenced by factors such as logistics (ease and cost of travel etc) and on the type of institution to which interviewees belong.

If you do consent to take part and are selected, I propose to interview you over the summer of 2018. I anticipate the interviews will last no longer than 30 minutes. The interviews may be conducted face-to-face either at your institution or at a mutually convenient location, or via the telephone/skype (or equivalent). Unfortunately it will not be possible to reimburse any expenses.

You will be free to pause or discontinue the interview at any time.

The interviews will be recorded and transcribed to enable analysis by me alone. The data will be stored securely (on my home computer and on my encrypted laptop or an encrypted USB. Any hard copies of raw data will be stored in a locked cabinet). If a professional transcriber is used, they will be asked to maintain anonymity and confidentiality.

The recording will be deleted as soon as your interview is transcribed. You can request a copy of the interview transcript from me, to ensure the accuracy of the transcription.

The transcriptions will only be held until by me until formal submission and grading of my thesis.

What are the risks?

My submission is likely to contain segments of raw data including quotes to illustrate my analysis and findings. I will not use your real name or the name of your institution in my thesis submission and I will endeavour to ensure that you and your institution remain anonymous by using pseudonyms. However, I need to make it clear that I cannot absolutely guarantee anonymity - it may be that because of a combination of attributes and/or through views expressed or comments made during the interview and which I then use in my thesis it becomes possible to identify you and/or your institution.

The outcomes of the research will be reported in my thesis submission to the Institute of Education and a bound copy will be held by the UCL library. I also need to make you aware that all or parts of my thesis may be published or otherwise presented by me (either in its current form or reworked), and I will not seek your prior permission. Again, I will not use your real name, or the name of your institution and I will endeavour to ensure that you and your institution remain anonymous by using pseudonyms. However again I need to make it clear that I cannot absolutely guarantee anonymity for the reasons stated in the paragraph above.

Withdrawal of consent to participate?

You are entitled to withdraw at any time from this research, before submission of my thesis, and without giving a reason. If you decide to withdraw, any personal data you have provided up to that point will be deleted unless you agree otherwise.

In carrying out this research I will be guided by the BSA Statement of Ethical Practice 2017, available at: https://www.britsoc.co.uk/media/24310/bsa_statement_of_ethical_practice.pdf .

Data Protection Privacy Notice The data controller for this project will be University College London (UCL). The UCL Data Protection Office provides oversight of UCL activities involving the processing of personal data, and can be contacted at data-protection@ucl.ac.uk. UCL's Data Protection Officer can also be contacted at data-protection@ucl.ac.uk.

Further information on how UCL uses participant information can be found here: www.ucl.ac.uk/legal-services/privacy/participants-health-and-care-research-privacy-notice. The legal basis that would be used to process your personal data will be performance of a task in the public interest. The legal basis used to process special category personal data will be for scientific and historical research or statistical purposes/explicit consent.

Your personal data will be processed so long as it is required for the research project. If we are able to anonymise or pseudonymise the personal data you provide

we will undertake this, and will endeavour to minimise the processing of personal data wherever possible.

If you are concerned about how your personal data is being processed, or if you would like to contact us about your rights, please contact UCL in the first instance at data-protection@ucl.ac.uk.

If you consent to participate please complete the attached consent form and return it to me via email ([XXXX](#)), or if that is not possible, by post to the address below.

If you would like any further information, please feel free to contact me at XXXX.

Thank you for responding to this request

Jenny Hamilton

Address:

Jenny Hamilton c/o XXXX

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CONSENT FORM FOR Undergraduate Law directors of teaching/heads of programme / University Legal/compliance officers

Please complete this form after you have read the Information Sheet and/or listened to an explanation about the research.

Title of Study: *Designing and delivering undergraduate law programmes in the shadow of UK consumer protection legislation.*

Department: Education, Practice and Society, Institute of Education, UCL

Name and Contact Details of the Researcher: _

Jenny Hamilton
XXXX
UCL Institute of Education
20 Bedford Way London WC1H 0AL

Thank you for considering taking part in this research. The person organising the research must explain the project to you before you agree to take part. If you have any questions arising from the Information Sheet or explanation already given to you, please ask the researcher before you decide whether to join in. You will be given a copy of this Consent Form to keep and refer to at any time.

I confirm that I understand that by ticking/initialling each box below I am consenting to this element of the study. I understand that it will be assumed that unticked/initialled boxes means that I DO NOT consent to that part of the study. I understand that by not giving consent for any one element that I may be deemed ineligible for the study.

		Tick Box
1.	I confirm that I have read and understood the Information Sheet for the above study. I have had an opportunity to consider the information and what will be expected of me. I have also had the opportunity to ask questions which have been answered to my satisfaction and I consent to taking part in an individual interview.	
2.	I consent to the processing of my personal information collected for the purposes of obtaining my voluntary participation in this research and from the interview. I understand that such information will be handled in accordance with all applicable data protection legislation.	

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3.	I understand that my participation is voluntary and that I am free to withdraw at any time without giving a reason. I understand that if I decide to withdraw, any personal data I have provided up to that point will be deleted unless I agree otherwise.	
4.	I consent to my interview being audio recorded and understand that the recordings will be destroyed immediately following transcription	
5.	I consent to the interview being transcribed by a professional transcriber who has signed a confidentiality agreement with Jenny Hamilton.	
6.	I understand that I am entitled to request a copy of my transcript, free of charge.	
7.	I understand that every endeavour will be used to ensure that I and my institution remain anonymous. However, I understand anonymity cannot be absolutely guaranteed. It may be that because of a combination of attributes and/or through views expressed or comments made during the interview and which are then used in the research it becomes possible to identify me or my institution.	
8.	I understand that in addition to this research being submitted to the Institute of Education for the purposes of the Doctorate in Education, some or all of the research data or findings obtained in this project may be published or otherwise presented and my prior permission will not be sought.	
9.	I voluntarily consent to take part in this study.	

If you would like your contact details to be retained so that you can be contacted in the future by UCL researchers who would like to invite you to participate in follow up studies to this project, or in future studies of a similar nature, please tick the appropriate box below.

<input type="checkbox"/>	Yes, I would be happy to be contacted in this way	
<input type="checkbox"/>	No, I would not like to be contacted	

Name of Participant_____

Signature_____

Date_____

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