

OIA briefing note: complaints arising from strike action

The purpose of this note is to outline the approach which we would take to complaints from students arising from strike action.

The current industrial dispute over proposed changes to the USS pension scheme has generated a great deal of publicity. Some students have called for refunds of tuition fees or other financial redress to compensate them for teaching time lost as a result of strike action. Both the Education Secretary and the Higher Education Minister have encouraged higher education providers to consider compensating students.

Complaints about teaching that has not been delivered for some reason are not new to us. For example, we receive complaints about lectures which have been cancelled because of unexpected absence, supervision which is not delivered because the supervisor has left, and about modules which have been discontinued.

The first point to make is that students need to complain to their higher education provider before bringing a complaint to us. This gives the provider the opportunity to try to resolve the complaint internally. If the student remains unhappy at the end of the internal process they can complain to us.

Students can complain to us individually or in groups. We will look at every complaint on its own merits. As an ombudsman scheme, we look at whether a higher education provider has fair procedures, whether it has followed those procedures correctly, and whether the outcome for the student is reasonable.

A relevant factor for us to consider will be the terms of the contract between the student(s) and the higher education provider. The OIA does not determine legal rights and responsibilities in the same way that a Court would do. But we will consider the duties and responsibilities of higher education providers under consumer protection law in order to decide whether the provider has acted fairly. We will always consider the terms of a contract through the lens of the CMA's guidance, but we do this in a broader context than the strict legal principles the Courts have to apply.

Our approach is to establish what the higher education provider promised, and what the student could reasonably expect (taking into account our understanding of sector norms and consumer protection law). In this context this would mean looking at what the student could reasonably expect in terms of contact hours and other learning opportunities. Then we will look at what the higher education provider delivered, and whether the delivery matched the promises and reasonable expectations. If there was a shortfall in delivery, has the higher education provider recognised and remedied this during its internal complaints procedures? If the higher education provider has not recognised and remedied a shortfall in delivery, and the complaint is Justified or Partly Justified, we will consider how best to put things right for the student.

If the higher education provider is relying on a *force majeure* clause excluding liability for losses caused by strike action, we would consider that clause in the context of consumer law principles: terms and conditions, including rules and regulations, should be clear and transparent and should strike a fair balance between the higher

education provider's rights and obligations and those of its students; higher education providers should make sure that surprising or important terms are specifically brought to students' attention, and will not be able to enforce terms and conditions that are unfair. There is also a debate to be had about whether strike action is genuinely *force majeure* – that is, out of the control of the provider.

Perhaps most importantly, we will look at what the provider has done to try to put things right for the student. In this context, this means considering what the provider has done to minimise disruption for students affected by the strike action. Has the provider acted reasonably and have the students been treated fairly? What has the provider offered to make up for missed teaching sessions?

We will consider what the consequences are for the students who complain to us. It is difficult to make a direct correlation between missed contact hours and annual tuition fees. You cannot simply divide £9,250 by the number of teaching weeks, and the number of taught sessions per week to work out the “cost” of the missed sessions. Such a crude measure does not take account of other learning opportunities, facilities, or the potential difference in “value” of final year teaching compared to first year teaching.

As well as considering any actual financial losses the student might have sustained, we can look at whether they have been caused distress and inconvenience. This might be particularly relevant for students approaching crucial assessments. Often students are more interested in a practical remedy than financial compensation and we might look at whether the provider could offer extra or different learning opportunities to make up for the teaching that has been lost.

Students do not have to pay to make a complaint to us. Our processes are informal and designed to be an alternative to the adversarial legal processes and so students do not need to use lawyers.

Finally, we need to acknowledge that the OIA's staff are themselves members of the USS scheme, although they are not taking part in industrial action. We do not believe this creates a conflict of interests. This is because our case handlers are considering the effects of lost teaching time (whatever the cause) and the actions of higher education providers to mitigate those effects. We are not passing comment on the causes of, or weighing up the rights and wrongs of the industrial action itself.

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