

Students claim contract breach for university disruption

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There is a lot of press around the ongoing case of *Hamon and another v University College London (UCL)* which concerns breach of contract claims by nearly 1,000 current and former students arising from in-person tuition being disrupted due to COVID-19 and strike action. This is the first case of this kind to reach Court.

To stay or not to stay?

Recently, the Court had to consider an application made by UCL for the proceedings to be stayed. UCL sought the stay to enable the Claimants to utilise UCL's internal complaints procedure and the statute backed ADR scheme operated by the Office of the Independent Adjudicator (OIA).

The Claimants submitted that (1) they could not be compelled to take part in ADR as a condition of pursuing claims; and (2) whilst the Claimants were not against ADR, they believed that the OIA scheme was inappropriate as the OIA recommendations were not informed by legal analysis.

The judge, Senior Master Fontaine, accepted UCL's submissions that ADR was still worth pursuing even where liability is denied given the litigation risks including adverse costs. However, the judge did accept that some of the Claimant's concern around the OIA scheme was valid.

Shifting to remote learning

Firstly, this related to OIA assessing claims based upon whether UCL acted reasonably by shifting to remote teaching (for example) as opposed to considering the impact on students who still paid the same fees for the more restricted delivery of courses online as opposed to in person. The judge accepted that if that remained unchanged then ADR through the OIA scheme was likely to be unproductive.

Secondly, the judge also accepted that there was a genuine and reasonable concern that neither the UCL complaints procedure nor the OIA referral process were equipped to deal with the number of complaints likely to be made in a reasonable time frame. UCL had not provided much information as to how those concerns would be alleviated.

Reservations around group claim recruitment

The judge did express reservations around how the group claim had been recruited, particularly concerning the information given to students around bringing a claim and the need to properly particularise those claims in terms of the compensation sought.

The Court ultimately granted UCL's application for the proceedings to be stayed for a period of eight months, with the strong recommendation that the parties engage in ADR (be that the statutory-backed ADR process which provides for complaints to be handled by the relevant academic institution in the first instance with scope for complaints to be referred on to OIA, or another ADR process).

The judge accepted that the information sought by UCL from the Claimants (including proper particulars) will be crucial to ADR being successful, highlighting costs sanctions if the explanations are unsatisfactory.

Setting a precedent

Given this is the first such group action case that has reached Court, this case will likely set the precedent (if it does not settle). Student Group Claim alleges that it represents c120,000 student claimants which means that this could be the tip of the iceberg.

The OIA will need to really consider how it can address the potential volume of complainants together with how it would assess the impact on students who paid for courses in person and received those courses virtually. This is going to be key if the OIA scheme is going to be viewed as a viable ADR process.

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