

## Briefing note: Disruption to students caused by industrial action

### Purpose of this note

The purpose of this briefing note is to set out the Office for Students' (OfS's) approach to disruption for students caused by industrial action at registered providers. It does not impose new requirements beyond those set out in the regulatory framework.<sup>1</sup> Instead, it highlights particular existing regulatory requirements that providers should consider when addressing the disruption of industrial action. It also summarises providers' obligations under consumer protection law.

We expect providers to take all reasonable steps to avoid or limit disruption to students. We also expect providers to make up for any teaching time or learning that students lose. For example, providers might make up for lost teaching time later in the academic year or offer full or partial fee refunds. Any changes made to examinations or other assessments should not disadvantage students, while also maintaining standards. Providers should communicate regularly and clearly with students to ensure they understand the impact that disruption will have on their studies and the steps being taken to mitigate the impact of any disruption.

In the event of significant industrial action, the OfS will use its public communications channels to ensure that students understand their rights and the options available to them to resolve any issues.

### OfS requirements

It is not our role to take sides in any industrial dispute. Our focus is ensuring that providers remain compliant with the OfS's conditions of registration.

All conditions of registration continue to apply throughout any period of disruption. We therefore expect providers to maintain quality and standards and to manage any disruption effectively. Providers must also continue to have regard to relevant guidance about how to comply with consumer protection law (more details below).

Providers should consider in particular the following conditions of registration when deciding on their response to industrial action.

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<sup>1</sup> Available at [www.officeforstudents.org.uk/advice-and-guidance/regulation/the-regulatory-framework-for-higher-education-in-england/](http://www.officeforstudents.org.uk/advice-and-guidance/regulation/the-regulatory-framework-for-higher-education-in-england/).

- C1: The provider must demonstrate that in developing and implementing its policies, procedures and terms and conditions it has given due regard to relevant guidance about how to comply with consumer protection law.
- C2: The provider must:
  - i. Cooperate with the requirements of the student complaints scheme run by the Office of the Independent Adjudicator for Higher Education, including the subscription requirements.
  - ii. Make students aware of their ability to use the scheme.
- B1: The provider must deliver well designed courses that provide a high quality academic experience for all students and enable a student's achievement to be reliably assessed.
- B2: The provider must provide all students, from admission through to completion, with the support that they need to succeed in and benefit from higher education.
- B4: The provider must ensure that qualifications awarded to students hold their value at the point of qualification and over time, in line with sector recognised standards.
- E2: The provider must have in place adequate and effective management and governance arrangements to:
  - i. Operate in accordance with its governing documents.
  - ii. Deliver, in practice, the public interest governance principles that are applicable to it.
  - iii. Provide and fully deliver the higher education courses advertised.
  - iv. Continue to comply with all conditions of its registration.

## Students' consumer rights

Consumer protection law continues to apply during any period of disruption resulting from industrial action. Providers have entered into contractual relationships with their students, and providers must continue to meet their obligations to students. Those that do not may be in breach of consumer protection law and their students may be entitled to repeat performance or price reductions.

All registered providers are subject to condition of registration C1, set out above. The 'relevant guidance' referred to is 'UK higher education providers: advice on consumer protection law' published by the Competition and Markets Authority (CMA).<sup>2</sup>

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<sup>2</sup> Available at <https://www.gov.uk/government/publications/higher-education-consumer-law-advice-for-providers>.

## Contract terms

The CMA guidance states that providers should not use contract terms that are unfair. It gives examples of terms that, in the CMA's view, could be open to potential legal challenge under unfair terms legislation.

These examples of possibly unfair terms are relevant to disputes between students and providers that may arise because of industrial action. In legal proceedings, if a term is found by a court to be unfair, it will not be binding on students and cannot be enforced.

First, it is important that students receive what they expected, in terms of their course and how it will be delivered, rather than something different. Terms allowing a provider an unreasonably wide discretion to vary course content and structure during the course are unlikely to be considered fair.

Second, it is important that providers do not attempt to limit or exclude their liability (beyond what is possible under the general law). Terms seeking to limit a provider's liability for non-performance or substandard performance of the educational service are inappropriate and potentially unfair.

Third, terms should be easily located and accessible. Any important terms should be drawn to prospective students' attention before they accept an offer – and terms may be considered unfair if this has not happened.

## Complaint handling

The CMA guidance states that providers should ensure that their complaint handling procedures and practices are easy to locate, accessible, clear and fair to students. This is clearly relevant in the event of disruption from industrial action when students are more likely to be disappointed or dissatisfied with their experience.

The CMA guidance gives examples of providers' practices that may amount to misleading omissions about complaint handling procedures. It also gives examples of unlawful practices in relation to the handling of student complaints.

Alongside consumer protection law obligations, providers must also cooperate with the requirements of the student complaints scheme run by the Office of the Independent Adjudicator for Higher Education (OIA). This is required by OfS condition of registration C2, set out above.

The OIA has published guidance for providers about handling complaints arising from significant disruption, such as industrial action.<sup>3</sup> This states that providers may wish to depart from their usual processes so that they can resolve students' concerns as quickly as possible.

The OIA released a briefing note in 2018 that gives relevant information about the OIA's approach to complaints from students arising from industrial action.<sup>4</sup> In handling complaints, the OIA's approach is to establish what the provider promised, and what the student could reasonably expect.

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<sup>3</sup> See <https://www.oiahe.org.uk/providers/handling-complaints-arising-from-significant-disruption/>.

<sup>4</sup> See <https://www.oiahe.org.uk/resources-and-publications/briefing-notes/oia-briefing-note-complaints-arising-from-strike-action/>.

The OIA has also published a series of case summaries illustrating its approach to complaints from students arising from industrial action.<sup>5</sup> These include examples of where providers had not done enough to make up for lost teaching hours or course content that was not delivered. In these cases, the OIA has often recommended partial tuition fee refunds for students.

Finally, the OIA has recently adapted its review process so that it can handle Large Group Complaints more efficiently.<sup>6</sup> These are complaints from a large group of students at a single provider, with a high degree of commonality between the complaints meaning they can be considered collectively. This may be relevant for complaints resulting from the impact of industrial action.

### **Repeat performance and refunds for students**

In the event of disruption caused by industrial action, students may be entitled to repeated learning opportunities or tuition fee refunds. These remedies are determined by the contents of the provider-student contract, as well as relevant consumer protection law.

The CMA guidance explains that if a provider delivers a substandard service, then a student may be entitled to ask the provider to put this right. This could mean providers giving students options to re-take certain elements of the course, rescheduling activities for a later date or delivering course content in a different way.

Changes to courses and the way they are delivered should be communicated directly to students, explaining clearly how their studies may be affected. Providers should consider highlighting how students can resolve issues and ensuring that complaints and redress procedures are clearly signposted and explained.

If a provider does not offer repeat performance – or only offers options outside a reasonable timeframe or with significant inconvenience to students – then students may be entitled to a refund.

## **OfS monitoring**

We will continue to monitor compliance with our conditions of regulation throughout any period of industrial action. We will do this through the following established systems:

- **OfS requests for information** – We may ask individual providers to submit information about the impact of industrial action and their response. This is so we can take a view on the potential risks to compliance.
- **Notifications** – Students, staff, and other third parties can raise concerns about compliance through our notifications system.

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<sup>5</sup> Available at <https://www.oiahe.org.uk/resources-and-publications/case-summaries/?keyword=Industrial+action&type=&sort=desc&>.

<sup>6</sup> See <https://www.oiahe.org.uk/about-us/our-scheme/our-rules/additional-rules-that-apply-to-large-group-complaints/>.

- **Information from other bodies** – We expect to receive information from the OIA about cases that relate to the impact of strike action on students and will consider whether further regulatory action is necessary in such cases.
- **Reportable events** – Providers are required to report certain events to the OfS, some of which may be relevant to disruption caused by industrial action.
  - Before 1 January 2022, our reportable events requirements during the coronavirus pandemic remain in place.<sup>7</sup> Under these requirements, providers must report ceasing or suspending the delivery of higher education, including the inability to award qualifications or credit. This means that a provider is required to report to us if, for example, it has suspended delivery of any higher education courses without providing students with equivalent alternative study options.
  - From 1 January 2022, new requirements and guidance for reportable events will come into effect.<sup>8</sup> These requirements set out a new definition for reportable events, a list of matters or events that are always reportable for all providers, and a non-exhaustive illustrative list of examples of matters or events that may be reportable. Providers must refer to this guidance to determine if a matter is reportable.

Where concerns are identified through these monitoring mechanisms, the OfS may undertake further investigation and, if appropriate, enforcement action. In doing so, we may consider the following:

- Whether the provider can demonstrate that effective arrangements were in place to oversee and manage the impact of industrial action on students.
- The efforts the provider has made to engage with students and communicate with them about any disruption – including for any particular groups of students who may be more affected (such as international students whose visa conditions could be affected, or students with caring responsibilities).
- The mitigation the provider has put in place to minimise the impact on students.
- What the provider originally promised and what students could reasonably expect.
- Where delivery did not meet promised standards or reasonable expectations, what alternative action the provider has taken to remedy this.
- Whether the provider can demonstrate that it has followed its own processes and procedures for maintaining standards.
- Whether the provider made relevant provision in its student protection plan and, if so, whether this provision has been implemented.
- Whether the mitigations providers put in place met the needs of all students.

<sup>7</sup> See [www.officeforstudents.org.uk/publications/guidance-on-reportable-events-during-the-coronavirus-pandemic/](http://www.officeforstudents.org.uk/publications/guidance-on-reportable-events-during-the-coronavirus-pandemic/).

<sup>8</sup> See [www.officeforstudents.org.uk/publications/regulatory-advice-16-reportable-events/](http://www.officeforstudents.org.uk/publications/regulatory-advice-16-reportable-events/).