

Covid-19 and the Class of 2020 – can students claim compensation from their universities?

By [Alex Leonhardt](#)

3PB Barristers

On-line classes, quarantine in halls: the university experience of the class of 2020 is proving sadly different to what they may have imagined when they accepted their offers to study. Many students are asking whether they have a legal route to claiming compensation or refunds from their universities in light of their frustration and disappointment.

Breach of Contract and Misrepresentation

The relationship between students and their education providers is primarily contractual: fees are paid, whether directly or by the relevant government agency, in consideration of goods and services to be provided by the university, and the relationship is subject to the contractual terms agreed between the parties as well as consumer law. That a student can bring a private law claim against a university has been established since *Clark v University of Lincolnshire and Humberside* [1988] 1 WLR 2000.

As with any claim for breach of contract, the crux will be the terms of the contract entered into by the parties. These can vary significantly between universities and from year-to-year. Statements made on university websites, in prospectuses and on open days on behalf of the university may also be relevant, potentially giving rise to claims based upon misrepresentation. Where the fundamental reason that a representation turns out to be false is the Covid-19 pandemic, it seems unlikely that a court would find that the university had the requisite lack of belief or recklessness as to the truth of the relevant statement so long as the statement was made before the pandemic and the effects of it became clear. However many students took up their offers when the general effect of the pandemic was far more obvious. Students and universities may want to look carefully at the contractual statements and representations that were made about teaching and learning and the wider student experience at a time when the university arguably could and should have been able to predict what provision was likely to be possible.

Force majeure Clauses

Where the contract between student and university contains a clause excluding liability for certain events which are outside the control of the university, a university may well be able to rely upon this clause to defeat any claim for breach of contract. However, courts generally interpret *force majeure* clauses restrictively. In addition, such clauses will be deemed unenforceable where they are regarded as unfair within the meaning of the Consumer Rights Act 2015, which would depend on the specific terms of the clause and the extent to which its provisions caused an imbalance of power between the student and university. Generally speaking, the more expansive the scope of the clause, the greater the chance it would be deemed unenforceable.

Total and Partial Failure of Consideration?

Potential claimants should note the generally deferential approach taken by the courts to matters of academic judgment, which arguably can include certain questions regarding the extent to which methods of teaching delivery meet more general descriptions of learning outcomes or objectives of a given course. Unless the method of teaching delivery is specified without qualification in the contract or marketing material a claimant may well find it difficult to persuade a court that an alternative method of teaching or assessment constituted a breach of contract. Where a university has been forced to move face to face teaching to online versions of the same broad kind of teaching, for instance where a series of small group seminars have been replaced by large group lectures complemented by increased feedback and office hours, it may be difficult for a student claimant to argue that the method does not deliver the same broad outcome.

There may be examples where a course website promised particular modes of delivery well past the time when the university should have known that such delivery was unlikely to be possible in the pandemic. In such cases a student may well have a claim in misrepresentation. Potential student claimants should be mindful, however, that it may be challenging to quantify damages in such a claim, and compensation may be minimal at best where alternative provision was made that the university can show meets broadly the same learning objectives. A court is likely to consider that the student received the bulk of the benefit of the contract in such cases.

A Contract for Enjoyment?

The majority of cases between students and their universities that have been considered by the courts are cases where the student disputed the ultimate outcome of their degree. In general, the outcomes of such cases have not been happy for the student claimants. Such disputes frequently revolve around the core questions of teaching, learning and assessment that courts are wary to intervene in.

However, a question which to date has never, to this writer's knowledge, received serious consideration by the courts is whether the student contract can be considered a contract for enjoyment. For most people the experience of learning and 'student life' is a major factor in their decision to undertake a degree course, their choice of course and their choice of university. In these pandemic times it may appear to many students that they are getting very little enjoyment out of their student experience beyond the seminars and lectures on their timetable.

The Office of the Independent Adjudicator and internal complaints

Where a complaint relates to a failure to provide a service set out in a contract, a student may bring a claim in the county court. Potential litigants should be aware, however, that an unreasonable failure or refusal to make use of an education provider's internal complaints procedure or the complaints scheme run by the Office of the Independent Adjudicator (OIA) could be relevant to questions of costs. Members of the 3PB Education Law team often act for students and their families in relation to internal university procedures and complaints to the OIA. The OIA website provides information for students who are unhappy with what their education providers are offering, although no Covid-19 related case studies are currently published on the site.

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November 2020



Alex Leonhardt

Pupil Barrister
3PB

0330 332 2633

alex.leonhardt@3pb.co.uk

3pb.co.uk