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| Student ComplaintsGuidance to SUs on industrial action and compensation |
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When the strike action was announced, a number of students’ unions asked for guidance about handling complaints from students, who would seek redress for the loss of teaching and other services during industrial action. Our initial advice was to ensure that students were aware of how the action was affecting them and to consider the action in terms of mitigation should it impact their results.

The extent of this action, however, was somewhat unprecedented. Concerns were put forward by members about potential assessment boycotts as well as teaching and service closures. In light of the guidance from the Competition and Markets Authority (CMA), unions wanted to be prepared to support their members’ right to redress. **We wanted firmer guidance to protect students’ interests during industrial action, and in particular any claims for compensation.**

NUS, of course, entirely rejects the marketisation of education and the notion that students can be reduced to being seen as consumers in an education market. However, this is not to say that students cannot have rights or expectations which are owed to them in their role as students - which must be defended, and which can be legitimately challenged when they are not met.

### Refund versus Compensation

It is NUS’ belief that rather than refunds, students should be seeking compensation. Although the language of a refund might initially make more sense, this is yet another example whereby the fee system, and the market approach to HE does not work: you can’t take your degree back or get a refund, certainly not the level of refund that would make any difference to the student or graduate. Indeed, in Scotland there are no tuition fees on which to base a refund.

*How would a refund be given? Would it be an amount shaved off a student’s total student loan bill?*

Given that, in England for example, 83% of students will not pay back their loan in full, such a ‘refund’ would be nothing more than an accounting trick, sleight of hand which gives, in reality, nothing back to the students affected. Organisations like the NHS give compensation, and the Office of the Independent Adjudicator often recommends compensation payments.

Through this we are not placing an arbitrary monetary value on a specific lecture or a certain number of contact hours. However, even outside of this action and indeed outside of this fee regime, students are entitled to compensation. This guidance gives support for students seeking compensation within this specific context.

We are in the process of seeking further advice on potential remedies for students, and will share this when it is available.

### Scope of the Guidance

NUS instructed Wrigleys Solicitors LLP to produce [legal guidance](https://www.nusconnect.org.uk/resources/students-rights-as-consumers-in-relation-to-the-ucu-strike) which answered the following questions about students’ rights in light of this action, taking into account all UK jurisdictions:

* General advice on whether this falls within the consumer rights legislation.
* General advice on what information SU advice centres should be asking affected students for.
* Some general guidance on the effectiveness of force majeure clauses.

### Does this issue fall within consumer rights legislation?

Most university students will be regarded as 'consumers' for the purposes of the consumer rights legislation, regardless of whether they are undergraduate, postgraduate, home or international students. The CMA issued a statement in July 2016 saying that *"The CMA expects all higher education providers to comply with consumer protection law…"*

It is possible that some universities may try to argue that some postgraduate students are not contracting as 'consumers' as to be a consumer someone must be acting for purposes that are wholly or mainly outside their trade, business, craft or profession.  However, **it is up to the university to prove that a student is not a consumer if they dispute it**, so we would suggest that all students work on the basis that they are consumers, unless it is proved otherwise.

This guidance suggests that a number of aspects of the industrial action could affect students’ rights as consumers, and there are a number of steps which students who have been adversely affected by the strike action and action short of strike can take.

There will be a balancing act for students to achieve in terms of waiting to see what impact the strikes have on them, and making sure that they are not 'timed out' for the purposes of any complaints procedures. Students who do wish to pursue a legal claim may be able to bring a class action with other students.

The exact options, processes and potential remedies available to each student will depend on, amongst other things:

* Their individual circumstances and the nature of any loss they may have suffered.
* The terms of their contract with their Institution.
* The date when they entered the contract with the Institution. This is because consumer rights legislation changed on 1 October 2015. This means that slightly different rules apply for contracts made on/after 1 October 2015 compared to those entered into before that date.
* Where they are studying (England and Wales, Scotland or Northern Ireland), as there are some slight regional variations in consumer protection law e.g. there are different ombudsmen in the different jurisdictions.

### Is industrial action a *Force Majeure*?

With regards *force majeure* clauses, they are open to interpretation. The clearer and more explicit they are about the specific events which will count as 'force majeure' events, the more likely they are to be effective. A clause stating that the 'usual "force majeure" clauses shall apply' has been held void for uncertainty. Students will be in a stronger position if any force majeure clause forming part of their contract with the Institution does not include specific reference to labour disputes, strikes, or industrial action.

**The burden of proof is on the Institution to show that the strikes (and action short of a strike) fall within the 'force majeure' clause**, and that non-performance of the contract was due to the strikes (and action short of a strike).

This guidance includes a checklist for students’ union advice centres and a summary of rights and excluded contract clauses.

[THE LEGAL GUIDANCE CAN BE FOUND HERE](https://www.nusconnect.org.uk/resources/students-rights-as-consumers-in-relation-to-the-ucu-strike)**.**