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# COMPENSATION AND REFUND POLICIES – DEVELOPING GOOD PRACTICE

## EXECUTIVE SUMMARY

This briefing aims to aid consistency in how universities approach refund and compensation policies for students. It has been developed by Universities UK (UUK) in consultation with the Association of Heads of University Administration (AHUA) and the Academic Registrars Council (ARC), and sets out

regulatory and legal requirements, principles for good practice and questions for consideration when developing policies.

**Please note this briefing does not constitute legal advice.**

## 1. OBJECTIVE

Compensation and refund policies are necessary so that institutions can protect the consumer rights of students. The priority should always be to ensure that students receive the education they are entitled to expect based on their contract. As far as possible, complaints should be resolved through dialogue between the student and institution, and where necessary, via the Office for the Independent Adjudicator (OIA) in England and Wales<sup>1</sup>, the Scottish Public Services Ombudsman, or the Public Services Ombudsman in Northern Ireland.

In the rare event of an institution not being able to meet its obligations, it will be necessary to consider whether compensation or refund is appropriate for students. Compensation and refund policies should not be relied upon in the first instance to settle academic disputes relating to student success. Rather, the policies should aim to provide a clear and simple framework, so students can understand when they may be entitled to compensation or a refund of university fees or another type of remedy, and how to make a claim.

Financial compensation will not always be an appropriate response to complaints and it is unlikely that most issues will be resolved in this way. Institutions will strive to ensure that students receive what was promised from their degree and university experience. There are many ways for universities to resolve disputes with students. Alternatives to financial compensation might include an apology or goodwill gesture, or an offer of alternative learning methods if the course cannot be delivered in the way it was originally intended. Institutions should take a student-centred approach to resolving complaints, and refund and compensation policies will reflect this.

## 2. REFUND, COMPENSATION AND NON-FINANCIAL REMEDIES

While there are no formal legal definitions of refund and compensation, the difference can be understood as:

A **refund** relates to the repayment of sums paid by a student to the university or an appropriate reduction in the amount of sums owed in future by the student to the university. This could include tuition fees, other course costs, or accommodation costs.

**Compensation** will relate to some other recognisable loss suffered by the student. This normally falls into two categories, either: (a) recompensing the student for wasted out-of-pocket expenses they have incurred, which were paid to someone other than the university (such as travel costs) or (b) an amount to recompense for material disadvantage to the student arising from a failure by the university to discharge its duties appropriately.

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<sup>1</sup> Please note that in response to the industrial action in February/March 2018, the OIA published a briefing note on its approach to [handling complaints arising from strike action](#).

Compensation may take the form of a financial payment, a discount, or some other form of benefit. Universities may also consider remedies that satisfy a student’s complaint without the need for a refund or financial compensation. These might include an apology or goodwill gesture. Students also have the right to seek non-financial remedies under the Consumer Rights Act 2015 (CRA) through repeat performance or an order for specific performance. Further detail on this is provided below.

### 3. REGULATORY CONSIDERATIONS

#### 3.1 Competition and Markets Authority (CMA) Guidance

Institutions are familiar with the CMA guidance to higher education providers concerning their obligations under consumer law. In England, it is now a condition of registration with the Office for Students for providers to demonstrate they have given due regard to this – or equivalent – guidance when drafting policies and procedures that make up the contract between university and student. This requirement applies to policies on refund and compensation, as they will form part of the student contract.

Highlighted below are the relevant changes brought in by the Consumer Rights Act to remedies for services delivered without reasonable care and skill, which institutions will need to be mindful of when drafting policies on refunds.

- The Consumer Rights Act 2015 introduced an additional statutory remedy of repeat performance and reduction of price. If a higher education provider delivers a substandard service, a student may be entitled to ask them to correct this to be delivered at the required standard. This could mean repeating a part of the course that did not meet this standard, which would be repeat performance.<sup>2</sup>
- If it is not possible to repeat the service, or it has not been done in a timely and convenient way for the student, they may be entitled to a price reduction, which can be up to the full amount of the price of the course.<sup>3</sup> Therefore, institutions should not include terms limiting liability to less than the total contract price, as a refund can be requested up to the total price.
- Partial or full refunds must be provided within 14 days from the agreement that a refund is due.

In the case of industrial action giving rise to the above remedies as a result of disruption to the promised delivery of the course, the Office for Students (OfS) has stated:

“These remedies are only likely to be available to the extent that the industrial action does not fall within the scope of a valid force majeure clause, or the

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<sup>2</sup> pp. 66-67,

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/428549/HE\\_providers\\_-\\_advice\\_on\\_consumer\\_protection\\_law.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/428549/HE_providers_-_advice_on_consumer_protection_law.pdf)

<sup>3</sup> p.67,

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/428549/HE\\_providers\\_-\\_advice\\_on\\_consumer\\_protection\\_law.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/428549/HE_providers_-_advice_on_consumer_protection_law.pdf)

disruption caused constitutes a variation outside the scope of any valid variation clause.”<sup>4</sup>

### 3.2 The QAA quality code

The revised UK Quality Code for higher education sets out a quality framework for the UK, articulating the fundamental principles that should apply to higher education quality across the UK, regardless of changing national contexts. The Code makes it clear that the provider must have fair and transparent procedures for handling complaints and appeals, which are accessible to all students. Institutions will therefore need to ensure this is reflected in the way that refund or compensation is handled as a result of a student making a complaint.

### 3.3 Student Protection Plan template

In England, the template produced for providers by the Office for Students (OfS) sets out that refund and compensation policy should make provision for:

- refunds for students in receipt of tuitions fee loan from the Student Loans Company
- refunds for students who pay their own tuition fees
- refunds for students whose tuition fees are paid by a sponsor
- the payment of additional travel costs for students affected by a change in the location of their course
- commitments to honour student bursaries
- compensation for maintenance costs and lost time where it is not possible to preserve continuation of study
- compensation for tuition and maintenance costs where students have to transfer courses or provider

Although compensation tends to indicate financial redress, compensation policies would also benefit from addressing options for non-financial redress that an institution may wish to offer.

## 4. GOOD PRACTICE FOR REFUND AND COMPENSATION POLICIES

Refund and compensation policy documentation should make very clear the circumstances under which they apply. For example, institutions would generally expect a student to have been through the internal complaints procedure, and any exceptions to this rule should be made clear.

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<sup>4</sup> <https://www.officeforstudents.org.uk/for-students/guidance-for-students-affected-by-recent-industrial-action-in-relation-to-the-uss-pension-scheme-dispute/>

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The link to the complaints procedure should be clearly stated so that students understand at what point in the process the refund and compensation policies may apply, and how to make a claim.

The language throughout should be clear and unambiguous, so that all students are able to easily understand the process. Institutions may wish to consider displaying the steps involved in a visual format, for example, using a simple flowchart diagram.

Institutions may adopt varying approaches to refunds and compensation depending on the category or severity of the complaint – different forms of compensation may be considered to remedy different types of complaint. It is important that this is fair, transparent, and consistent, and that institutions communicate appropriately with students.

Where a problem has potentially affected a large number of students, such as industrial action, institutions may wish to consider the use of a separate, streamlined process for dealing with groups of complaints efficiently and consistently. Such a process should be consistent with the existing complaints procedure, and adhere to the terms and conditions agreed with the student. The OIA has advised that in this instance, the provider must make clear to students what it is doing and why, ensure that students are not disadvantaged, and that the process is fair and proportionate. The following points should also be considered:

- If a student would prefer to use the standard complaints procedure, they should not be prevented from doing so, or from issuing a court claim (unless it is a claim for judicial review).
- If students use a bespoke process and are dissatisfied with the outcome, at this stage they should be offered the option of receiving a Completion of Procedures letter or access to the standard complaints procedure.
- If students use the bespoke process and are satisfied with the proposed outcome, this can be done in full and final settlement of all claims arising out of the same issue. Students would not then be able to take this claim to court. Although a student could request a Completion of Procedure letter and take the complaint to the OIA, it is unlikely the OIA would review it.

Refund and compensation policies should also highlight upfront where there are links to their responsibilities and duties in law, at a sector level and at an individual institutional level. This includes:

- Statutory responsibilities
  - Consumer Rights Act 2015 (CRA)
  - Higher Education and Research Act 2017 (HERA)
- In England – registration with the Office for Students
- Sector-wide responsibilities
  - OIA and/or QAA guidance
- Institutional responsibilities
  - Ensuring consistency with institutional regulations

### **4.1 Principles**

#### *Fair*

Terms and conditions must be fair.<sup>5</sup> Terms should be certain, and not ambiguous or vague. A term is unfair ‘if, contrary to the requirement of good faith, it causes a significant imbalance in the parties’ rights and obligations arising under the contract, to the detriment of the consumer’. The requirement of ‘good faith’ is an expectation of fair and open dealing on the part of the provider.<sup>6</sup>

#### *Consistent*

Although the circumstances of each case will be different, the process for considering claims needs to be consistent so that students know they are being treated equally.

Terms and conditions and other information which forms the student contract should be consistent with the pre-contract information available to prospective students.<sup>7</sup> Consistency in the way the information is presented will also make it easier to understand and navigate. Information should also be sense-checked with student representatives for consistency.

#### *Clear and accessible*

This includes ensuring clarity over the expectations on both the student and the institution. Students must be able to understand what the policy means for them, the key factors in considering claims, and the process for doing so. It should also be drafted in plain English, meaning the language used should be clear, unambiguous and accessible for all students. The use of simple visual aids can be considered where appropriate, to help with students’ understanding of the process.

The policy should also be easily locatable for students, and be linked to via the institution’s complaints policy and procedure.

### **4.2 Further considerations include**

- Does the policy address the requirements set out in the OfS student protection plan template?
- Is there a clear, accessible process for students to make a claim for a refund or compensation? The policies should set this process out, indicating what the student would need to do, including what they would be required to demonstrate, and the university’s commitment to respond.

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<sup>5</sup> Guidance on university obligations under unfair terms legislation is provided by the [CMA guidance](#).

<sup>6</sup> p.18, [CMA guidance](#).

<sup>7</sup> Pre-contract information is information that must be given to prospective students under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013. If any of the information does change before the contract is agreed, these changes need to be highlighted to the student when the offer is sent. The [CMA guidance](#) provides further details on pre-contract information.

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- Is the policy consistent with the other policies, procedures, terms and conditions that make up a student's contract with the university?
- Does the policy reference when and how the student can access the Office of the Independent Adjudicator (OIA) or equivalent services in Scotland and Northern Ireland?
- How does the policy interact with what has been promised to the student in the contract they have entered into?

### **4.3 Considering claims for compensation or refunds**

The focus in all situations should be on ensuring that students receive the education that they are entitled to expect based on their contract. However, in some circumstances it may be necessary to consider whether compensation, refunds or other forms of non-financial redress are appropriate. Key questions to consider in these circumstances include:

- Have specific undertakings been given to the students by the provider for the way in which the course is delivered?
- Has there been a failure to deliver against material information agreed with the students at the point of acceptance of the offer?
- Has a period of prolonged disruption jeopardised the ability of a provider to offer guided learning in a manner that ensures students have a fair and reasonable opportunity to develop appropriate levels of understanding required for the programme?
- Has there been a demonstrable loss to the student? In particular, has the student been able to achieve the learning outcomes for their course?
- Has the student met their own responsibility to minimise losses?
- Have you followed your own processes in delivering the programme? For example, quality assurance processes and communications to students.
- Has the student been affected in relation to:
  - final degree award
  - accreditation award
  - ability to take up a job offer
- Consideration of any alternative arrangements or adjustments that were implemented for students to mitigate against any loss.
  - Did the student take up what was offered?
  - Were they still disadvantaged despite alternative arrangements?
- If a complaint is made due to disruption to a student's learning experience which is beyond the student's control, for example disruption to the course due to industrial action, how have you communicated with students throughout the process? Have

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communications been clear and consistent so that students were aware of any changes and how it might affect them?

- Is compensation or a refund the most appropriate way to deal with the complaint. For example:
  - Would an apology from the institution be an appropriate response?
  - Would a 'goodwill payment' be an appropriate response?
- Is a refund or compensation the most appropriate way to address any material failure to deliver the appropriate learning opportunities? This should consider:
  - the basis for a claim – such as loss of teaching time or material impact on learning outcomes and future prospects
  - consider the fact that in the case of a reduction to a student's tuition fee which is covered via a loan from the Student Loans Company (SLC), the institution will need to complete a Change of Fee Notification with the SLC. The student's loan repayments will then be altered to reflect the reduced amount.<sup>8</sup>

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<sup>8</sup> In its briefing setting out its approach to remedies and redress, the OIA states that where it recommends a refund of fees, it would normally recommend that the provider return the money to the source it came from.