Neutral Citation Number: [2023] EWHC 1812 (KB)

Case No: KB-2023-000930

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/07/2023

Before :

SENIOR MASTER FONTAINE

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Between:

David Hamon and others	**Claimant**
- and -	
University College London	**Defendant**

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Anna Boase KC and Patricia Burns (instructed by **Asserson Law Offices and Harcus Parker Limited**) for the **Claimants**
John Taylor KC and Claire Darwin KC (instructed by **Pinsent Masons LLP**) for the **Defendant**

Hearing dates: 24 May 2023

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Approved Judgment

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SENIOR MASTER FONTAINE

Senior Master Fontaine:

1. This was the hearing of the Claimants' application for a Group Litigation Order ("GLO") dated 18 July 2022 pursuant to CPR 19.22, and of the Defendant's application dated 4 April 2023 for a stay of the proceedings pursuant to CPR 3.1 (2) (f). The Claimants' application is supported by the first witness statement of Shimon Goldwater dated 18 July 2022 ("Goldwater 1") and in reply by the first witness statement of Ryan Paul Dunleavy dated 15 December 2022 ("Dunleavy 1"). The Claimants' application is opposed by the Defendant, which responded with the first and second witness statements of Julian Mark Sladdin dated 28 October 2022 and 19 January 2023 ("Sladdin 1 and Sladdin 2"). The Defendant's application relies also on the witness statements of Mr Sladdin, and is opposed by the Claimants.

2. The claim was issued on 12 January 2023 on behalf of 924 Claimants, although there is now an intention to add a further 2,147 Claimants by amendment to the claim form, although no application to amend has yet been issued. Group Particulars of Claim ("GPOC") were served on 23 February 2023. UCL deny liability, causation and quantum in a Defence dated 28 April 2023, served without prejudice to its case that the claims should be stayed for ADR and that the claims are inadequately particularised.

3. The Claimants and proposed additional claimants are all current or former students at University College London ("UCL"). Their claims are for breach of contract in respect of UCL's failure to provide in-person tuition during the academic teaching years 2017-2018, 2019-2020, 2020-2021 and 2021-2022, where teaching days have been cancelled due to strike action and/or where tuition was moved online and access to facilities restricted due to Covid. In summary their claim is that they are consumers who contracted on standard terms with UCL for the provision of in-person tuition and campus facilities, who paid substantial tuition fees for those services ranging from £9,250 p.a. for UK-resident undergraduates to £25,000 p.a. or more for UK graduate students and international students, but they have not received the services for which they contracted and paid.

The GLO application

4. The Claimants have filed and served a draft GLO which includes draft GLO issues at Schedule 2, as follows:

    1. Whether UCL owed an express contractual duty to provide the claimants with (i) in-person, campus-based tuition and/or (ii) physical access to facilities to support the claimants' learning in one or more of the academic years 2017-18, 2019-20, 2020-21 and 2021-22.

    2. Whether UCL owed an implied contractual duty to provide the claimants with (i) in-person, campus-based tuition and/or (ii) physical access to facilities to support the claimants' learning in one or more of the academic years 2017-18, 2019-20, 2020-21 and 2021-22.

3. Whether (if such a duty was owed) UCL breached its contractual duty to provide the claimants with in-person, campus-based tuition by cancelling teaching during the periods of industrial action in one or more of the 2017- 18, 2019-20 and 2021-22 academic years.

4. Whether (if such a duty was owed) UCL breached its contractual duty to provide the claimants with (i) in-person, campus-based tuition and/or (ii) physical access to facilities to support the claimants' learning by (a) cancelling teaching, (b) moving teaching online, and/or (c) restricting physical access to facilities during the Covid-19 pandemic in one or more of the 2019-20, 2020-21 and 2021-22 academic years.

5. Whether UCL is entitled to rely on any contractual clauses which purport to allow it to (a) cancel teaching, (b) move teaching online and/or (c) restrict physical access to facilities, without providing compensation to the Claimants, or whether any such clauses are unenforceable under the Unfair Terms in Consumer Contracts Regulations 1999 or the Consumer Rights Act 2015 (as applicable).

6. Whether the Claimants have suffered any recoverable loss, including non-pecuniary loss, in respect of any breach of contract by UCL.

7. The formulae by which damages are to be calculated, if the Claimants have suffered recoverable loss.

5. The Claimants submit that the claims meet the threshold for the court's jurisdiction to make a GLO under CPR 19.21, namely "*to provide for the case management of claims which give rise to common or related issues of fact or law (the "GLO Issues*")", and under CPR 19.22 "*where there are or are likely to be a number of claims giving rise to GLO issues*". It is submitted that the court should exercise its discretion to make a GLO, in respect of which the following matters are relevant:

i) A GLO can facilitate the disposal of large numbers of claims in a single set of proceedings, avoiding the proliferation of individual claims in different courts and the risk of inconsistent judgments.

ii) A GLO can facilitate access to justice where claimants have modest claims which would be uneconomic to pursue individually and/or where claimants do not have the resources to fund individual litigation. Claimant common costs can be shared, and costs can be managed by the Court.

iii) If common issues are determined in favour of the defendant, the need to determine potentially thousands of individual claims may be avoided. If common issues are determined in favour of the claimants, individual issues may be capable of resolution through ADR.

iv) An applicant for a GLO must consider alternative procedural mechanisms for dealing with multi-party litigation.

6. It is submitted that the following consequences of making a GLO would be beneficial in this claim:

i) A GLO will usually direct that all claims which raise one or more of the GLO issues should be started in the management court and entered on the group register: CPR 19.22(3)(b). Provision is usually made for a cut-off date after which no new claimants may join the register without court permission: CPR 19.24(e).

ii) Where judgment is given in a claim on the group register in relation to one or more GLO issues, it usually binds all parties: CPR 19.23(1).

iii) Where there is a GLO, special provision is made for "common costs" and "individual costs": CPR 46.6. This has a number of consequences, for example, any order for costs against group litigants imposes several liability for an equal proportion of common costs: CPR 46.6(3).

7. UCL's primary submission is that there should be a stay of proceedings to enable Claimants to utilise the statute backed ADR scheme referred to in some of their contracts with UCL that was put in place for resolving student complaints without the need for court proceedings established by the Office of the Independent Adjudicator ("the OIA"). The scheme involves students filing a properly particularised complaint with UCL and, if not content with the outcome, the complainants have the right to refer their complaint to the OIA. The OIA was established pursuant to the Higher Education Act 2004 ("the HEA") and has been designated by the Secretary of State for Education and the Welsh Assembly as the operator of the independent student complaints scheme for England and Wales. In this judgment I refer to the submission of a student complaint to UCL as "the UCL complaints process", referral to the OIA as "the OIA referral process" and to the overall statutory ADR process of both the UCL complaints process and the OIA referral process as "the OIA scheme".

8. UCL's secondary submission is that there is no basis for making a GLO for the following reasons:

i) The claims have been formulated at an inappropriately high level of abstraction. The particularisation necessary to advance any of the claims show that issues of liability and quantum are fact sensitive and there are no or no sufficient common issues to justify making a GLO.

ii) Given the disparity amongst Claimants of contractual terms, many different programmes and modules, years of study, different strike dates and different effects of Covid-19, there are numerous different small groups of claims within the Claim Form. Contrary to PD 19B para 3.2(5), the written evidence in support of the GLO does not identify any such groups.

iii) The case law makes clear that before the parties and the court are committed to the allocation of substantial resource to the conduct of group litigation, it is necessary to consider whether there are other means of managing the litigation

outside of a GLO. The court's existing case management powers are more than sufficient to manage these claims without the need for a GLO. It is submitted that none of the reasons put forward by the Claimants justify a GLO. In particular, it is not the purpose of a GLO to attract additional claimants.

iv) The consequence of granting a GLO in this case is the prospect of High Court claims being issued by current or former students of 17 other universities, with the consequent incurring of significant costs and use of Court time: see extract from the Claimants' solicitors' response dated 13 November 2020 to online comments on the website of WonkHE, a website hosting commentary and articles about the UK higher education sector at Exhibit JMS 1 page 726. It is submitted that such an outcome would be incompatible with the principles that underpin the CPR, which make clear that parties should seek to resolve their disputes by ADR, that court action should be a last resort, that legal costs and court time should be proportionate and not be unnecessarily incurred. It would also sidestep the free, statute-backed OIA scheme for resolving student complaints.

v) UCL draws the court's attention to the costs already incurred, and the fact that the Claimants' solicitors' agreement with the Claimants in respect of costs is that they will take up to 35% of any recoveries made, and that it is unknown what remuneration will be paid to litigation funders TRGP Operating Company LP, a Delaware partnership.

9. Alternatively, UCL's position is that if, contrary to its submissions, the proceedings are not stayed for ADR, the Claimants should be ordered to properly particularise their claims and the matter listed for a CMC to consider how best to manage the claims.

The Stay Application

Summary of UCL's submissions

10. UCL seeks a stay for "*a period of time sufficient for the Claimants to participate in the statute backed ADR process*". It was submitted at the hearing that a period of 8 months would be likely to be sufficient to allow for participation in the OIA scheme.

11. UCL relies on Paragraph 3 of the Practice Direction - Pre-action Conduct and Protocols, which states that before proceedings are issued the court expects the parties to have exchanged information to "*try to settle the issues without proceedings*", "*consider a form of Alternative Dispute Resolution (ADR) to assist with settlement*" and Paragraph 8 which states: "*Litigation should be a last resort*" (White Book Vol 1 p2539).

12. Once proceedings are issued, the CPR requires the Court to further the Overriding Objective by actively managing cases. CPR r.1.4(2)(e) specifies that active case management includes:

> "…encouraging the parties to use an alternative dispute resolution procedure if the court considers that appropriate and facilitating the use of such procedure."

13. The use of ADR to resolve disputes is an integral part of the litigation process. The White Book Section 14-2 states:

> "ADR is promoted by both the CPR and its pre-action protocols, which form an integrated means of managing litigation (*Jet 2 Holidays Ltd v Hughes* [2019] EWCA Civ 1858 at [36]–[43]; see Vol.1 para.C1A-002). Its promotion is an explicit aim of the Pre-Action Protocols (See Vol.1 paras C1A-004, C1-002). Its use is also to be encouraged by the courts, while it is both encouraged by a number of provisions in the CPR (see Vol.1 paras 1.4.9 and 3.1.15)."

It is submitted that this is particularly the case where the threatened litigation is brought against a charitable institution. Reference is made to the comments of Lord Woolf in *R. (on the application of Cowl) v Plymouth City Council* [2002] 1 W.L.R. 803 at [1-3] in the context of public authorities, which also apply here.

14. It is submitted that if the Claimants participate in the free, statute backed OIA scheme, the time and cost of High Court proceedings might not be incurred; and any claims that are not settled will at least then be properly particularised.

15. UCL also notes that there is no witness evidence from any Claimant explaining why ADR has not been pursued. UCL's request for confirmation that each Claimant has been informed of UCL's invitation to submit a complaint form in the free UCL complaints procedure has not been answered.

16. The court was referred to recent examples of Court orders which encourage or facilitate ADR, such as:

i) An order refusing to grant permission for proceedings to commence until the parties had engaged in a meaningful way with a professional mediator, see *Hussain v Chowdhury* [2020] EWHC 790 (Ch) at [18].

ii) An order for a stay of the whole or part of the proceedings for mediation or some other ADR procedure, for example the 12 month stay that I ordered (despite objections by some claimants) in the *Grenfell Tower Litigation* [2022] EWHC 2006 (QB).

iii) Ordering early neutral evaluation even if one of the parties objects, for example *Lomax v Lomax* [2019] EWCA Civ 1467; [2019] 1 W.L.R. 6527 and in particular Moylan LJ's observations at [32].

17. Although the Claimants rely on *Halsey v Milton Keynes NHS Trust* [2004] EWCA Civ 576; [2004] 1 WLR 3002*,* it is submitted that UCL is not seeking an order compelling all students to enter into ADR, but an order staying these proceedings. *Halsey* does not deprive the court of the power to stay proceedings with a view to giving the parties opportunity to undertake ADR. The ordering of a stay with a view to the parties engaging in ADR does not contravene Article 6 European Convention of Human Rights. Such stays have been ordered or approved in many reported cases. If the case does not settle during the stay, the claimants still have their right to litigate, albeit that they will be at risk of adverse costs orders if they refuse to participate at all in ADR during the stay.

18. UCL rely on *Andrew v Barclays Bank* [2012] CTLC 115, a claim by numerous consumers for PPI mis-selling. Barclays set up an internal complaint handling process in compliance with its regulatory obligations. A customer not satisfied with the outcome of that process could take their complaint to the Financial Ombudsman Service. The bank sought a stay of court proceedings to permit it to consider the complaint made by the claimants. Waksman J rejected the claimants' argument that a stay was a fetter on the claimants' access to justice at [28]. The judge said at [24] that the courts can give "*robust encouragement*" to the parties to use ADR and a stay was ordered at [41]. Other cases have ordered stays for the purposes of ADR despite the opposition of one or more of the parties, including in the context of group litigation: *Grenfell Tower Litigation* [2022] EWHC 2006 (QB) [99] per Senior Master Fontaine.

19. The fact that the claims are defended is no reason not to order a stay: that argument was rejected by Waksman J in *Andrew v Barclays* at [36] where he described that argument as *"absurd*" and pointed out "*there are many cases that are defended and defended vigorously which nonetheless end up in settlement"*.

20. It is submitted that it is also relevant to the exercise of this discretion that the 2021 report by the Civil Justice Council expressed the view that *Halsey* was wrong to say that the court could not also direct a claimant to actually participate in ADR. After *Halsey* was decided, the Court of Justice of the European Union held in *Rosalba Alassini* [2010] 3 CMLR 17 at [61]-[66] that Italian legislation requiring a consumer to attempt mediation before suing phone companies was compatible with Article 6. To similar effect is the CJEU's decision in *Menini v Banco Popolare Societa Cooperative* [2018] CMLR 15. Speaking extra judicially in 2010 (in '*Compulsory ADR'* para 47 produced by the CJC) Lord Dyson (who gave the leading speech in *Halsey*) concluded that "*it is clear that in and of itself compulsory mediation does not breach Article 6*". The cases are clear that this court can order a stay with a view to the parties undertaking ADR.

21. Furthermore, some of the Claimants agreed to use UCL's complaints procedure. The undergraduate terms for students commencing studies in the 4 academic years 2018 to 2021, and the post-graduate terms for students commencing studies in the two academic years commencing 2020 and 2021, contain a term that: "*UCL has an established Student Complaints Procedure…which you should use for dealing with both academic and non-academic complaints that you wish to make*". In *Cable & Wireless v IBM UK Ltd* [2002] CLC 1319, Colman J held at 1326-1327 that the court should uphold clauses requiring ADR procedures to be undertaken. This was recently approved by the Court of Appeal in *Kajima Construction Europe (UK) Ltd v Children's Ark Partnership* [2023] EWCA Civ 292 where it was noted at [1] and [79-81] that a court is likely to stay proceedings until the dispute resolution procedure has been completed. The remedy of a stay is of course discretionary, but there is good reason why the complaints procedure should be used for these small claims which has the potential to avoid wasting court time and legal costs.

22. The OIA has been approved by the Chartered Trading Standards Institute as the consumer ADR body for higher education complaints (pursuant to Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes).

23. Section 14 of the HEA provides that the designated operator must comply with the duties set out in Schedule 3 to the Act. Paragraph 2 of Schedule 3 obliges the OIA to provide a "*scheme for the review of qualifying complaints*" which must meet the conditions set out in Schedule 2 to the Act. Those conditions include that a reviewer must make a decision as to the extent to which a qualifying complaint is justified (paragraph 5 of Schedule 2).

24. The OIA, in common with almost all other forms of ADR, was not established to be another court of law or tribunal "*but as a more user friendly and affordable alternative procedure for airing students' complaints and grievances*" per Mummery LJ in *R (Maxwell) v OIA* [2011] EWCA Civ 1236, [2012] P.T.S.R. 884 at [37]. Mummery LJ also noted at [38] that processes such as the OIA scheme "*have the advantage of being able to produce outcomes that are more flexible, constructive and acceptable to both sides than the all-or-nothing results of unaffordable contests in courts of law*."

25. The Administrative Court has made clear that the making of a complaint to the OIA is a form of ADR and falls within the ambit of ADR procedures envisaged by Lord Woolf in his Access to Justice report (June 1995) (*R. (on the application of Crawford) v Newcastle upon Tyne University* [2014] EWHC 1197 (Admin) [38-44]).

26. The CPR, the Higher Education Act and the caselaw all firmly support UCL's application for a stay for the purpose of the Claimants participating in the statute backed OIA scheme.

27. UCL has waived the requirement for the Claimants to bring their complaints within three months (Sladdin 1 §19).

28. Although Dunleavy 1 at §15 suggests that all students would need to go through the UCL complaints procedure and and then also the OIA referral procedure, that presupposes that UCL would reject all complaints, and there is no basis for such an assumption. Sladdin 2 explains that UCL has upheld complaints about both the impact of industrial action and Covid (see Sladdin 2 §10). Further, UCL has already set up funds to compensate students affected by industrial action which has paid out a total of £281,725 in respect of 854 applications made by the Applicants (Sladdin 1 §171.1 – 174.3).

29. The National Union of Students endorsed the OIA scheme as the preferable route for resolving claims for compensation for missed teaching time as a result of strike action in its newsletter dated February 2020 (Exhibit JMS 1 729).

30. It is submitted that the Claimants' other objections to the use of ADR are also without merit, for the following reasons:

i) It is right that for some Claimants UCL's complaints process is non-mandatory. For all Claimants it is non-binding and non-judicial, but so are most forms of ADR. The very point of ADR is that it is an alternative to a judicial process. The UCL complaints procedure and the OIA referral process are alternatives designed to avoid the need for all questions of law being judicially determined. It would be perverse if all questions of law had to be determined in the context of an ADR process designed as an alternative.

ii) The fact that the High Court has jurisdiction to hear the Claimants' claims does not properly explain the Claimants' refusal to engage with ADR or undermine the point that resort to the High Court is a last resort. There is no reason to think that Parliament intended that students should be entitled to litigate without reference to the principles in the CPR. Indeed, the CA in *R (Maxwell) v Independent Adjudicator* at [7] made clear that Parliament's intention is that students should use the "*affordable out-of-court*" OIA scheme in preference to litigation.

iii) UCL is not seeking an "*indefinite stay*" as the Claimants have contended. UCL proposes that the Claimants lodge their complaint forms within 3 months; it is expected UCL would determine them within 60 days and the OIA usually provides an outcome within 90 days (Sladdin 1 §20 and §27).

iv) Contrary to the Claimants' solicitors' assertions, the OIA is well equipped to deal with these complaints. It has experience of dealing with group complaints and has already determined complaints against other institutions about strike action and Covid and published "*public interest*" decisions (Sladdin 1 §36). The OIA has confirmed to UCL that it is able to "*consider large group complaints*" and has said a complaint of this size would be treated as "*a high organisational priority*".

v) The suggestion that UCL ought already to have determined complaints is entirely without merit. UCL has been asking from the outset for each Claimant to particularise their complaint and set out what they seek. That has not been done. This is a necessary step to resolving the claims and ought to be done as part of the free complaints procedure.

vi) UCL does not understand why Dunleavy 1 §12 suggests that the quantum of damages would be a matter for expert evidence**.** It would not be normal for independent experts to quantify damages which turn on questions of fact. In any event, this does not provide good grounds for the Claimants' refusal to engage in ADR. UCL and/or the OIA are both well placed to assess the appropriate compensation due to individual students if their complaints are well founded.

vii) UCL does not accept that the Claimants "*cannot realistically pursue their claims without legal advice and representation".* The students who successfully brought complaints about strike action and Covid did so without legal advice or representation (Sladdin 2 §10). Further, the Court can take judicial notice that low value contract and consumer claims are pursued by litigants in person all the time. In any event, the fact that the OIA scheme is a costs free jurisdiction is a reason why the students should use it, because they face no costs risk and no other prejudice by doing so.

31. In summary, UCL submits that the various objections put forward by the Claimants for not using the statutory-backed OIA procedure do not withstand scrutiny and that their denigration of UCL and the OIA is unwarranted. UCL also stated that there would be an adverse impact on the Claimants' solicitors' financial interests if the Claimants' claims are resolved without recourse to litigation (see Sladdin 1 §47-48), an assertion which is disputed by the Claimants.

Summary of the Claimants' submissions

32. The Claimants note that a stay is sought because the OIA cannot review a complaint which is the subject of court proceedings unless they have been put on hold: OIA Rule 5.7. Thus the common practice of building time for ADR into the case management timetable is therefore not an available option for this particular form of ADR. Further the OIA will not review a complaint unless the student has completed the UCL complaints procedure which means that the stay would not take effect until complainants have completed the two-stage process of (1) complaint to UCL, and (2) referral of their complaint to the OIA, unless their complaint under the UCL complaints procedure is resolved to their satisfaction.

33. The Claimants submit that they cannot be compelled to take part in ADR as a condition of pursuing claims: *Halsey* at [9], cited with approval by the Court of Appeal in *Swain Mason v Mills & Reeve (a firm)* [2012] EWCA 498 at [76]. In *Wright v Wright* [2013] 4 Costs LO 630 the court queried whether *Halsey* should be reviewed (at [3]), but *Halsey* was subsequently endorsed by the Court of Appeal without criticism in *PGF II SA v OMFS Company 1 Ltd* [2014] 1 WLR 1386 at [22].

34. However the Claimants are not averse to taking part in an appropriate form of ADR, whether now or later. They consider the OIA scheme to be inappropriate because the recommendations are not informed by legal analysis. The Claimants rely on *R (Siborurema) v Office of the Independent Adjudicator* [2007] EWCA Civ 66 at [17] where the then holder of the Office, Baroness Deech, gave a witness statement in which she said the OIA desires "*to avoid a legalistic approach*" and that OIA decisions are based on "*fairness and a consideration of higher education practices rather than legal rights*".

35. The Claimants also refer to *R (Shelley Maxwell) v OIA* [2012] PTSR 884 at [23(2) and (4)], where the Court of Appeal held that the OIA scheme involves conducting a fair and impartial review of a complaint against a university, drawing on its own experience of higher education, with a view to making recommendations. It considers whether the relevant regulations have been properly applied by the university, whether it has followed its own procedures and whether its decision was reasonable in all the circumstances. It is submitted therefore that it is not the function of the OIA to determine the legal rights and obligations of the parties involved, or to conduct a full investigation into the underlying facts. It was held in *Maxwell* at [23(5)] that "*Those are matters for judicial processes in the ordinary courts and tribunals. Access to their jurisdiction is not affected by the operations of the OIA.*".

36. The GPOC and the Defence raise issues of law with which the OIA scheme is not equipped to deal. Those issues include, but are not limited to, the construction of the student contracts, the consideration of implied terms, the interpretation and application of consumer rights legislation, and the doctrine of estoppel by convention. The UCL Complaints Procedure at [1.6] states that "*[l]egal representation is not permitted at any meeting held under this Procedure*" and the Complaints Panel would not necessarily include any individual with legal expertise (Complaints Procedure at [6.2]).

37. It is submitted that this is not a case in which there is an agreement by the parties to submit their disputes to ADR. The Defence at [11(9)], [12], [13(4)], [14(6)] and [15],

cites various clauses of the standard terms which refer to the UCL complaints procedure, but does not allege that such clauses oblige the student to use that procedure prior to or instead of bringing legal proceedings, nor is the stay application made on such a basis. All versions of the applicable standard terms expressly and unequivocally state that the courts of England and Wales have jurisdiction over any disputes, and none provides that the UCL complaints procedure and the OIA referral process must be used first.

38. It is also submitted that there are reasons of principle why a stay should not be ordered:

i) UCL's attempt to impose the OIA scheme as the exclusive first instance destination for student complaints is contrary to the intention of Parliament. By deliberately removing the exclusive jurisdiction of university Visitors, and making the jurisdiction of the OIA non-exclusive, Parliament intended to give students a choice as to how their complaints were resolved.

ii) The proposed stay would create many months of delay. UCL's internal complaints procedure normally takes 2 months (Sladdin 1 §20) and the OIA referral process should in theory take 3 months, but according to its 2022 Annual Report in that year the OIA failed to meet its key performance indicator of closing 75% of complaints within 6 months, and only 69% of complaints were resolved within that timeframe, with no indication of how much longer the remaining 31% of complaints took to resolve. The potential claimants represented by the Claimants' solicitors dwarf the 2,821 complaints which the OIA resolved in 2022, and there is no evidence that the OIA's capacity to deal with complaints has materially increased since 2022. It is reasonable to assume that it could take substantially longer than a year for the Claimants' complaints to be resolved by UCL and then the OIA.

iii) Compelling parties to enter an ADR process to which one of them is opposed is unlikely to be an effective means of resolving a dispute, as recognised in *Halsey* at [9]. The court in *Halsey* also recognised that ADR processes do not offer a panacea, can have disadvantages and are not appropriate in every case (at [16]). UCL proposes a two-stage ADR mechanism; neither stage of the process is suitable.

iv) The assertion in Sladdin 2 at §10 that "*I am informed by Mr Daniel Cooper, a senior casework Officer within UCL's Registry Team that UCL's complaints process has been used to the satisfaction of other UCL students in respect of complaints about both industrial action and the effect of Covid-19*" is of little value without further particulars as to precisely what those complaints alleged and the resolution reached, which UCL has refused to provide, citing confidentiality and without prejudice privilege. It is said that UCL gives no indication as to how many complaints regarding strikes and Covid have been rejected by UCL. Moreover, even if it is correct that some students have chosen to use the OIA scheme and have had their complaints resolved to their satisfaction, that is not a reason to oblige others to use the OIA scheme against their will.

v) While the OIA referral process at [2.3] provides for the consideration of group complaints, UCL has made no attempt to explain how the OIA scheme would cope with a group complaint on this scale, involving thousands of complainants. It is common ground that issues of quantum will require the consideration of claimant specific information. UCL's assertion that it will seek to follow the time limits set out in the UCL complaints procedure, and usually expects to have completed internal consideration within 60 days in Sladdin 1 at [20] indicates either that UCL has not properly considered the nature and scale of these claims or that it does not intend to give adequate consideration to the complaints.

vi) It is clear from UCL's Defence that it rejects the claims wholesale. It denies duty, breach, causation and loss. There is no reason to suppose it would adopt a different position if the same complaints were submitted through the OIA scheme.

39. The two stage complaints procedure is unsatisfactory for the following reasons;

i) The UCL complaints procedure does not purport to involve any impartial assessment of the claims. It is simply an opportunity for UCL to decide whether it admits liability to a student and, if so, make an offer.

ii) The Claimants have already given UCL the opportunity to decide whether to admit liability: they engaged in pre-action correspondence between 21 April and 13 July 2022 and served the GPOC on 23 February 2023. UCL has had an opportunity to decide its position (a) as regards the points of principle and (b) as regards the individual claims.

iii) UCL have been able to verify 2,136 of the Claimants as current or former registered students of UCL, "*in terms of establishing their student number, dates of enrolment and Programme(s)*" (Sladdin 1 [10.1], as corrected by Sladdin 2 [18.1]). In relation to each fully verified Claimant, UCL could already have interrogated its own records to establish the extent of the relevant shortfall in its own contractual performance. It is difficult to see what will be achieved by the mere fact of a Claimant making an internal complaint, as opposed to complaining in pre-action correspondence. It would simply delay the Claimants' access to justice.

iv) The OIA scheme involves a non-legal review, the function of which is not to determine the parties' legal rights and obligations. OIA Rule 9.2 states: "*Our review does not have to follow the same rules of evidence as legal proceedings and we do not have to follow decisions we have made about other complaints*" and Rule 14.2 states, "*The Recommendations we make may be different from an outcome that a Court might reach applying legal rules.*" The OIA's review would be based on, amongst other things, its assessment of the reasonableness of the actions taken by UCL, as demonstrated by the case summaries set out at Sladdin 1 at [36.2]. However, the reasonableness (or otherwise) of UCL's response to strikes and Covid is irrelevant to the Claimants' claims. They seek a determination of UCL's legal obligations (including, if necessary, by reference to the fairness test under consumer legislation), which the OIA will not provide. It follows that if complaints to the OIA were unsuccessful, that is

unlikely to provide a useful indication as to the merits of the claims and would not deter the litigation.

v) The outcome of the OIA's review would not be binding as it can only make recommendations. UCL would not be compelled to implement a recommendation to make payments to the Claimants, with the result that the parties could end up in litigation anyway. Given the scale of these claims, the cumulative financial liability for UCL if they succeed is potentially very large.

vi) While the OIA can consider group claims, there is no indication that it has ever dealt with a group claim on this scale. The OIA's inability to estimate the time it may take to resolve a group complaint of this size suggests that it has no prior experience of dealing with such a large number of complaints**.** By contrast, the Court is well-used to dealing with large group litigation.

vii) Lastly, the OIA does not normally recommend that Higher Education Institutions contribute to the student's legal costs: Dunleavy 1 §14. The nature of these claims is such that they cannot realistically be pursued without legal advice and representation. To compel the Claimants to refer their complaints to the OIA might therefore (a) stymy the claims altogether, if the Claimants felt unable to pursue them without the benefit of legal representation; or (b) compel the Claimants to incur costs that they could not recover, regardless of the merit of their claims.

40. For these reasons, it is highly unlikely that either the UCL complaints procedure or the OIA referral process will lead to a speedy, cost-effective resolution which is satisfactory to all parties. These thousands of claims will almost certainly end up back before the Court when the processes of the OIA scheme have been exhausted. The consequences of requiring the Claimants to pursue their complaints through these channels will be (1) increased (irrecoverable) costs and (2) delay to the Claimants' access to justice.

Discussion

The Stay application

41. I propose to address the stay application first, as if a stay is ordered then I consider that it would be appropriate to adjourn the GLO application.

42. The court has power to order a stay pursuant to CPR 3.1(2)(f), which provides:

> "Except where these Rules provide otherwise, the court may… stay the whole or part of any proceedings or judgment either generally or until a specified date or event".

43. The rule does not specify the basis for making a stay, and stays are ordered for many different reasons, but one of the most common reasons is so that parties can engage in ADR or discussions with a view to achieving settlement of the whole of or part of a claim if possible.

44. CPR r.1.4(2)(e) specifies that active case management includes:

> "…encouraging the parties to use an alternative dispute resolution procedure if the court considers that appropriate and facilitating the use of such procedure."

45. There is significant guidance in many authorities demonstrating that the courts encourage the use of ADR to resolve disputes prior to and at all stages in the litigation process, as referred to in UCL's submissions, as summarised above.

46. In *R(Maxwell) v OIA* the Court of Appeal considered the OIA scheme in the context of a complaint about a failure of a university to make reasonable adjustment. At [21] - [22] the Court described the role of the OIA. The Court held at [32] to [33] that the courts were:

> " …not entitled to impose on the informal complaints review procedure of the OIA a requirement that it should have to adjudicate on issues,…. which "usually involves making decisions on contested questions of fact or law,…."
>
> And at [37]:
>
> "If the approach advocated by Mr. Jones (counsel for the claimant) were correct, it is difficult to see what point there would be in having a scheme, which was established under the 2004 Act not as another court of law or tribunal, but as a more user friendly and affordable alternative procedure for airing students complaints and grievances."

47. Thus it is apparent that the OIA scheme will not attempt to determine the legal rights of the parties in considering any complaint. However, not all processes of ADR involve adjudication on issues of fact or law, although it is true that many processes of ADR do take the strengths and weaknesses of the parties' legal claim into consideration, such as without prejudice meetings/discussions or more formal processes such as mediation. But there are many other factors why parties agree to settle, for commercial reasons, to avoid publicity, and to cut short the time-consuming, costly and sometimes uncertain outcome of litigation. I therefore do not consider that the Claimants' complaint that the OIA scheme is not equipped to make determinations as to the legal issues involved, such as interpretation of the contracts, whether exemption clauses are binding or the Claimants' rights as consumers, is a valid objection (subject to my comments at Paragraphs 52 to 57 below). If the OIA scheme is used and a decision is unsatisfactory, that Claimant would have the ability to continue their legal claim. In any event, a different process of ADR could be attempted, such as mediation, where the merits can be taken into account in bringing parties together to reach a compromise.

48. In *Maxwell* at [38] Mummery LJ said that:

> "Recent years have seen the growth of alternative processes of inexpensive dispute resolution: they are not intended to be fully judicial, or to be operated in accordance with civil law trial procedures, or to be dependent on what is fast becoming a luxury of legal advice and representation. The new processes have the advantage of being able to produce outcomes that are

> more flexible, constructive and acceptable to both sides than the all-or-nothing results of unaffordable contests in courts of law."

49. It is also the case that the court has power to order a stay for ADR to be attempted even where one or both or all parties oppose such a stay, as was the case in the decisions in *Hussain v Chowdhury* [2020] EWHC 790 (Ch) at [18], *Grenfell Tower Litigation* EWHC 2006 (QB) at [99] and *Andrew v Barclays Bank* [2012] CTLC 115 at [24], [28] and [41].

50. In *R (Cowl) and ors v Plymouth City Council* [2011] EWCA Civ 1935 at [1] (cited in *R(on the application of Crawford) v Newcastle upon Tyne University* [2014] EWHC 1197 (Admin) at [38] Lord Woolf said:

> "The importance of this appeal is that it illustrates that, even in disputes between public authorities and the members of the public for whom they are responsible, insufficient attention is paid to the paramount importance of avoiding litigation wherever this is possible. Particularly in cases of these disputes both sides must by now be acutely conscious of the contribution alternative dispute resolution can make to resolving disputes in a manner which both meets the needs of the parties and the public and saves time, expense and stress."

51. I accept UCL's submission that ADR is still worth pursuing even where liability is denied in the legal proceedings. A very significant number of legal claims bear some litigation risks, greater or lesser, for both parties, and if a compromise can be achieved, that can often be a more satisfactory outcome than incurring significant costs, and a risk of an adverse costs order.

52. However, I consider that some of the Claimants' concerns about the OIA scheme are valid. First, that the approach to be taken to such claims is likely to be to assess whether UCL acted reasonably in relation to the challenges of strike action and the Covid pandemic. In *Maxwell* at [32] Mummery LJ said:

> "The OIA's task was to review the claimant's complaint,... to see whether the university's decision was reasonable in all the circumstances and was justified and, if so, to what extent, and what recommendations should be made to the university. "

53. UCL has provided a selection of anonymised summaries of some OIA decisions in respect of complaints made by students (not necessarily from UCL) about the consequences of strike action and Covid, some of which were found to be justified and some partly justified, but quite a high proportion not justified. Ms Boase also referred to one Claimant, Ms Thompson, an overseas student who had to attend her course online during the Covid pandemic, but whose request to be charged the same fees as a home student was refused under the OIA scheme. A letter from UCL to that student dated 18 February 2022 is exhibited. The approach taken by OIA in these cases was to decide whether UCL had been reasonable in deciding to put teaching online in response to strike action or the pandemic. There does not seem to have been any consideration as to whether it was reasonable for UCL to do so <u>without</u> providing

an adjustment to the fees charged for the period of on-line teaching and where there was no physical access to resources.

54. If such an approach is maintained, i.e. determining the question of UCL's reasonableness from the perspective only of what was done to enable teaching and access to facilities to continue in a different format, without considering the effect upon the students, who were asked to pay the same fees for the more restricted delivery of courses online as they would pay for delivery of such courses in person, where there would also be physical access to facilities on the university premises, then ADR through the OIA scheme is likely to be unproductive.

55. Secondly, there is a genuine, and in my view, not unreasonable, concern that neither the UCL complaints procedure nor the OIA referral process are equipped to deal with the number of complaints likely to be made in a reasonable time frame. UCL have provided some limited evidence about complaints from students about the effect of industrial action and of Covid on the educational service provided to them at Sladdin 2 §10. It is said that compensation has been paid to students who submitted complaints during academic years 2019-20, 2020-21 and 2021-22, but no information is provided about the number of such complaints, what payments were made, what type of courses were in issue or how long such complaints took to be resolved. In Sladdin 1 at §5.3.4 more detail is provided about payments made to students from two Learning Opportunities Funds to which students could apply to cover the cost of replacement teaching. Mr Sladdin says that 942 of the Claimants (about a third) applied for funds, with almost all being successful and £281,725 was paid out to these Claimants.

56. UCL have thus not provided very much information as to how the Claimants' concerns can be alleviated. A letter from Jo Nuckley, Head of Outreach and Insight at the OIA dated 12 October 2022 has been exhibited by UCL, which states that the OIA has reviewed a large number of complaints from students concerning the impact of both industrial action and the Covid pandemic, and consider that they would be able to review decisions in similar cases and that under Additional Rules applying to large group complaints they are able to create sub-groups of claims to consider the most similar complaints together. Ms Nuckley goes on to say:

> "It is difficult for us to estimate the time that it may take to resolve a group complaint of this size. This will depend on exactly what the students remain dissatisfied with at the end of the provider's internal process; whether the students are well placed to coordinate their views and to respond to any questions we may have. It is very likely that we would consider a complaint from a group of this size as a high organisational priority."

57. If UCL wish to persuade the Claimants, or a substantial proportion of them, to engage with the OIA scheme, in my view they must provide some concrete proposals as to how the practicalities of dealing with a large tranche of claims, as well as its usual workload, in a timely fashion, are intended to be addressed. Ms Boase mentioned that in the case of *Andrew v Barclays,* relied on by UCL, Barclays employed an additional 2,000 complaint handlers to meet the expected volume of complaints. There has been no detailed information from UCL as to how they and the OIA would plan to deal

with a large volume of complaints. The court was told that Ms Thompson's complaint had taken seven and a half months to be resolved just at the OIA referral process stage, and that a group of students from the Royal College of Arts made a complaint that took 9 months to resolve (albeit that this was apparently caused in part by their own educational institution). The OIA's 2022 annual report is also not encouraging, as it shows that it has never dealt with this level of complaints before, and that only 69% of complaints were resolved within 6 months.

58. The Claimants have also expressed concerns as to how UCL or the OIA will assess quantum. The Claimants' legal representatives must have given some thought to this. There is a combination of factors that will affect quantum, such as how many days of a student's course was affected by online reaching/access to resources, whether their course involved practical work that was not possible, such as science, engineering, geography and medical courses, and comparators with other courses delivered wholly online. If the UCL/OIA route is to be followed both parties must be prepared to provide information about the factors that will be relevant to quantum to assist the OIA. If the issues of quantum in each case are too complex for the OIA scheme to deal with, that may be a factor in considering whether a more bespoke form of ADR would be preferable.

59. In addition, the Claimants should be prepared to make proposals as to how different cohorts of students in similar factual circumstances could be grouped together for the purposes of making progress as to how quantum could be assessed. That is work that would have to be done in any event if the litigation continues. Where a Generic POC and a Generic Defence have been served, the court would expect to have proposals in that regard, preferably at the hearing of the GLO application, or at the latest at the first CMC, so that an order could be made as to what further information needs to be provided in any Schedules of Claimant Information/Questionnaires.

60. The concerns outlined above in relation to the use of the OIA scheme must be balanced against the substantial costs that are likely to be incurred in group litigation, and the length of time that would be required to resolve these claims through litigation in the courts, whether by a GLO or by a group action case managed by an assigned judge without a formal GLO. The legal issues are complex because many different contractual terms apply to different students, depending upon which course they studied and/or when they started their course. UCL have identified 14 different sets of contractual terms that cover graduate and undergraduate students who commenced studies in 7 different academic years. There are factual differences that apply in relation to, for example, science, medical and engineering courses, and arts and humanities courses. The evidence is that UCL has 440 undergraduate and 675 post graduate programmes. There are many Claimants who accepted their offers after the effects of Covid were known, and when UCL say that it had made it clear that in-person teaching and access to physical facilities would be restricted, although this is disputed by the Claimants. Their legal position may differ from those who entered their contracts before March/April 2020.

61. The costs likely to be incurred in pursuing this multi-party litigation through the justice system are a significant concern. I note that the claims are funded by a damages based agreement, so that the Claimants will not receive 100% of any sums awarded, even if successful. The evidence of the sort of costs likely to be incurred by the parties are the statements of costs filed by their solicitors for the one day hearing

of this application. The Claimants' statement amounts to £227,454.71 and UCL's costs are over £100,000 more, at £329,432.96. I am told that litigation funding of £4.4million has been obtained by the Claimants and ATE insurance to cover their adverse costs risk. Sladdin 2 at 12.1 also mentions the costs of the premium for the Claimants' ATE Insurance. A Stage 1 premium of £740,000 was paid within 30 days of 24 March 2022 and a Stage 2 payment was due by 24 March 2023. Those statements of costs for a one day hearing, and the level of the funding and of the ATE premiums paid so far, provide an illustration of the level of costs likely to be incurred if the litigation proceeds, for which the Claimants individually, if they succeed, will receive only some two thirds of the damages awarded to them. The damages at even 100% would be likely to be a modest sum for each Claimant. UCL would of course have to bear the costs if it were to fail in its defence (subject to any payments into court or offers). Of course the court has the power to control costs through costs management, but inevitably a group claim such as this will require numerous hearings, including probably separate trials of various issues, and quantum issues may have to be dealt with on individual bases. UCL is a charitable institution, and a leading UK university, and its management time and funds could be more productively spent than on substantial legal costs.

62. In *Hussain v Chowdhury* at [18], HHJ Jarman KC said, "*I am not satisfied on the information presently available that litigation is the least worse course…*", and that could equally well be said here. HHJ Jarman also said (albeit in the context of a mediation) "*They* [the parties] *should engage fully with the mediation, which to be successful usually requires give and take on both sides*." That also applies to the parties in this case, neither of whom have been prepared to compromise thus far as to how to resolve these proceedings in a proportionate and timely manner.

63. I accept the Claimants' point that those students whose contracts include a clause relating to the UCL complaints procedure and OIA referral process are not bound to engage in it, and there is no suggestion by UCL that such is the case. However the court's exercise of its discretion to order a stay is not limited to claims where there is a compulsory contractual ADR clause. A stay can be ordered to encourage the parties to engage in ADR, whether through the OIA scheme or otherwise, during the period of the stay.

64. In any event, I do not propose to make a mandatory order for the Claimants to engage in ADR, but I do intend to make an order for a stay, with the express intention of encouraging the parties to use the period of the stay to engage constructively in some form of ADR. I consider that in this claim the usual sanction for failure to engage appropriately in ADR will be sufficient. The Claimants have stated that they are willing to engage in ADR, both in open court and in correspondence in May and July 2022. They are just not willing to do so via the medium of the OIA scheme. Whether their objections to that scheme, if persisted in, are reasonable or not will be a matter for future determination.

65. I encourage the parties in the strongest possible terms to engage in an appropriate form of ADR, which will involve serious attempts by both parties to find a compromise in the manner in which that can be achieved. If UCL/the OIA can provide satisfactory assurances as to the concerns noted above, then there is a ready-made ADR process that will, if successful, limit costs substantially because legal representation may be unnecessary. I accept that it was not Parliament's intention to

give the OIA exclusive jurisdiction in respect of student complaints against universities, unlike the previous regime where complaints had to be submitted to the University Visitor. In the debate of the Bill in the Lords on 19 April 2004 before the HEA was passed, the Minister introducing the Bill, Baroness Ashton of Upholland, said of the OIA scheme, which replaced the exclusive jurisdiction of university visitors in respect of student complaints:

> "… there will be a system of independent review, which we intend to be performed through the Office of the Independent Adjudicator, already set up by the sector and headed by Dame Ruth Deech. We believe it right to create legislative underpinning for a scheme set up by and for the sector and with student representation on its board,….."

In my view, Parliament, in establishing the OIA scheme via the HEA, are likely to have intended it to be the usual first process for complaints before embarking on the costly process of litigation through the courts.

66. The CPR and the many authorities referred to by UCL support the encouragement of ADR as an alternative to litigation whether before proceedings are issued, at the commencement of proceedings or during proceedings. The most important considerations are that both parties know the other parties' case, so that the litigation risk can be assessed, and that ADR is attempted at a sufficiently early stage to enable costs to be saved, so that parties are not discouraged from settlement by the extent of incurred costs. These claims are all individually of low or modest value, group litigation can be costly, and there is a statute backed ADR scheme in place, all factors that point in favour of the parties attempting construction discussions through some medium of ADR. The fact that the OIA scheme is not aimed at addressing legal issues would not prevent satisfactory resolution of at least a reasonable proportion of claims, and potentially a significant number, if sufficient resources are committed.

67. There is also nothing to prevent UCL agreeing to some form of ADR outside the statutory scheme, such as mediation, and if the Claimants were to propose a reasonable alternative, my view is that this should also be given appropriate consideration. In any event, in order for the stay to have the best chance of being constructive, both parties should be willing to provide information to enable some progress to be made in identifying facts relevant to quantum, such as dates when teaching for the courses affected moved online, whether this was by reason of strike action or Covid, and dates when physical access to the university for study or research was not possible.

68. I note that UCL have complained that the Claimants have never properly particularised their claims in terms of what amount they seek from UCL. Sladdin 1 at §43 refers to a transcript of the Claimants' solicitors' webinar of 15 December 2020 for students, (exhibited at JMS 1 page 722) where Mr Goldwater says:

> "People, I don't know whether everyone on this call has signed up to participate in the claim. It's very easy to do, it takes, you know, less than 30 seconds to fill in the form. And that's, you know if, as I said, if you want that's the only time you spend on

> it until the compensation comes through. It's very straightforward….."

69. That does underline UCL's concerns that Claimants may not have been made aware of the obligations they have to provide verifiable information that they must sign with a statement of truth. The Claimants' solicitors must inform their clients that they will have to verify by a statement of truth the factual details of their loss, e.g. periods and if possible dates of online teaching, when online research was all that was possible, and when access to, for example laboratories or other practical resources was not possible. The Claimants' solicitors must be in a position to explain at any further hearing what they have done to explain to their clients their obligations to the court in this regard.

70. Where a GLO is sought at the stage where the parties have exchanged generic statements of case, the court would expect the parties to have identified what claimant specific information is required, and in what form it should be provided, to allow the parties to agree or the court to decide which claimants should provide individual particulars of claim, so that lead or test cases can proceed, if the managing judge decides to proceed in that way. That information will be required in any event if the litigation progresses and it would enable some attempt to be made at identifying cohorts of students whose complaints/claims could reasonably be considered together. Mr Taylor identified in submissions the information that UCL have sought from the Claimants to enable some progress to be made in how quantum issues can be dealt with, and this will be crucial to ADR being successful, whether via the OIA scheme or otherwise. If it is unsuccessful and the matter comes back to the court, the court will expect the reasons for that to be explained, and costs sanctions may be imposed if the explanations are unsatisfactory.

71. Even if the ADR process is unsuccessful the litigation will not progress unless such material is provided. This is emphasised in *Nomura International plc v Granada Group Ltd* [2008] Bus LR at [37] where Cooke J. said:

> "……the key question must always be whether or not, at the time of issuing a writ, the claimant was in a position properly to identify the essence of the tort or breach of contract complained of and if given appropriate time, to marshall what it knew, to formulate particulars of claim. If the claimant was not in a position to do so, then the claimant could have no present intention of prosecuting proceedings, since it had no known basis for doing so."

72. A stay of 8 months would of course delay the progress of the litigation, but it may also end all or a substantial number of the claims with the substantial saving of time and costs. I do not consider that it is realistic to order a more limited period, subject to Paragraph 74 below. The GLO application was issued nearly a year ago, some 6 months before issue of the claim form, and no final Particulars of Claim produced until February 2023, so the application has not thus far progressed with any particular degree of urgency (although it is accepted that the court's listing difficulties contributed to the delay in listing the GLO application). I recognise that co-ordination of a large group claim takes time, but equally progress of such a claim through the courts will take a very considerable time, which could potentially be saved if ADR is

wholly or partly successful. It is generally the case that stays for ADR to be attempted need to be longer in group actions than in single actions, simply because of the number of claims to be considered. I note that in previous group litigation stays of a substantial length of time have proved successful. In the *Grenfell Tower Litigation* stays of first 9 months and subsequently 12 months were ordered. That allowed the vast majority of the Bereaved, Survivors and Residents to settle their claims before the GLO application was determined. In the *Hillsborough Victims Misfeasance Litigation* all claims were successfully settled through ADR after consensual stays were ordered for substantial periods of time without the litigation progressing beyond the obtaining of a GLO.

73. I shall accordingly order such a stay of 8 months from the handing down of judgment. I expect the parties to adopt a more consensual approach than has been the case previously, and do their best to use this time productively.

74. This order will however include a provision for permission to apply after 4 months. This is due to my concerns as to:

i) whether UCL and the OIA have sufficient resources to deal with this volume of complaints;

ii) whether UCL/the OIA are prepared to consider not just the reasonableness or otherwise of moving courses and facilities online (which is not disputed by the Claimants) but also the reasonableness of charging full fees for the delivery of teaching and facilities solely online;

iii) whether the parties will be able to find common ground in agreeing on a method of ADR that would be acceptable to each party; and

iv) whether the parties can agree on a process for each of them providing information to enable the individual claims to be determined.

75. That permission should be used only as a last resort, and if an application is made the court will expect the applicant to explain what had occurred since this judgment was handed down and justify why they consider that ADR was not proving to be successful or why, if that were to be the case, it had not been attempted.

The GLO application

76. It follows from my decision on the stay application that the GLO application will be adjourned. In any event I do not consider that the GLO application is able to proceed until some proposals are made as to what information is needed from Claimants and UCL to enable consideration of the factors that would enable smaller groups/cohorts with similar contractual terms/factual circumstances to be identified, and the proposed GLO issues to be expanded to accommodate these different cohorts. Without this information the court will not be in a position to determine whether there are sufficient common or related issues, and what they are likely to be, for the purposes of making a GLO.

77. If the stay is unsuccessful in bringing about settlement of all or a substantial proportion of claims UCL should engage collaboratively with the Claimants as to how

these claims can be most proportionately and efficiently managed, and the issues for determination, whether by GLO or otherwise. The parties should also have discussions with a view to agreeing draft GLO issues and a suitable and proportionate method of providing additional individual Claimant information. But however these claims, and other similar claims are managed, it would clearly not be proportionate for them to proceed separately as single actions.