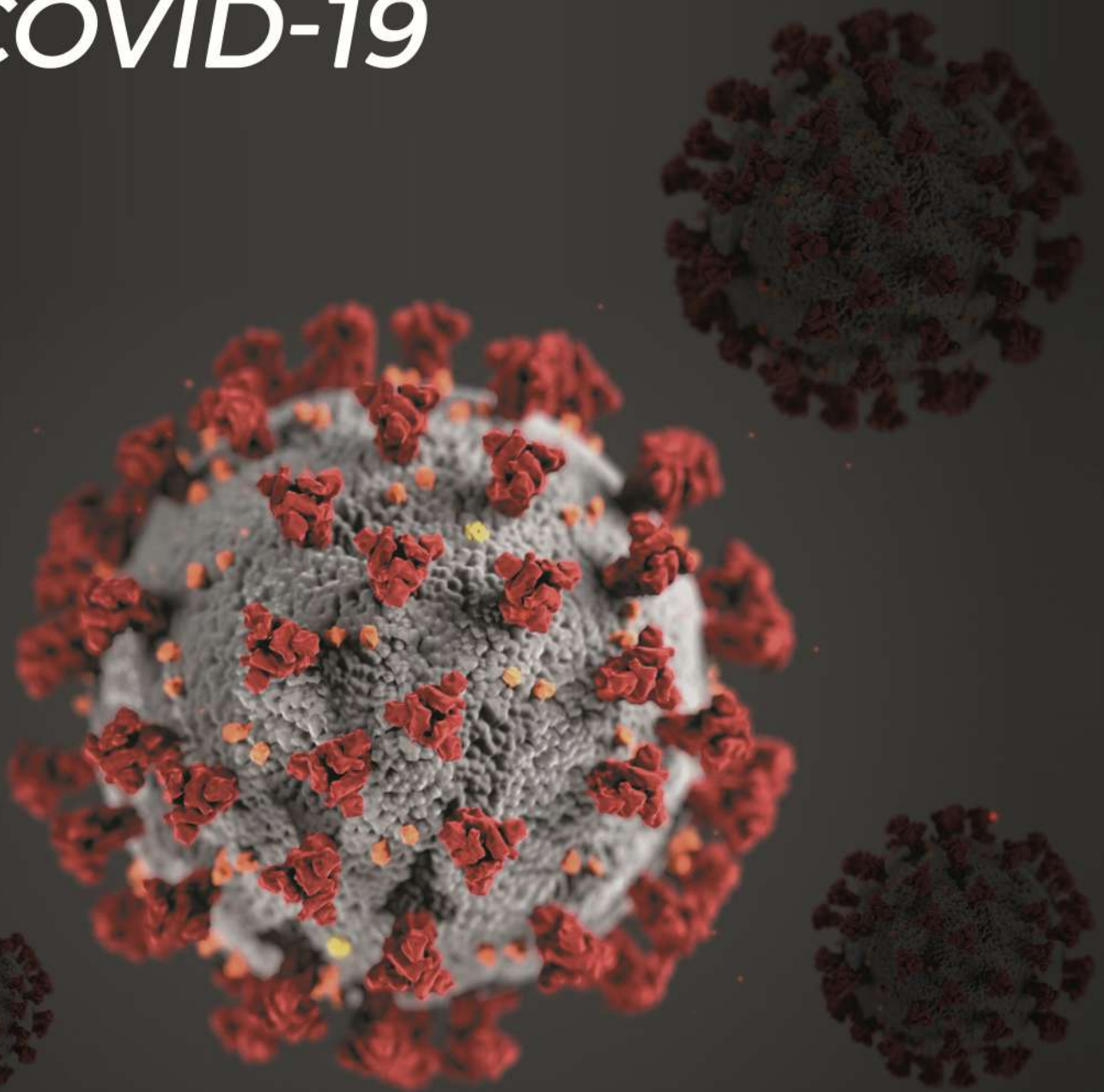
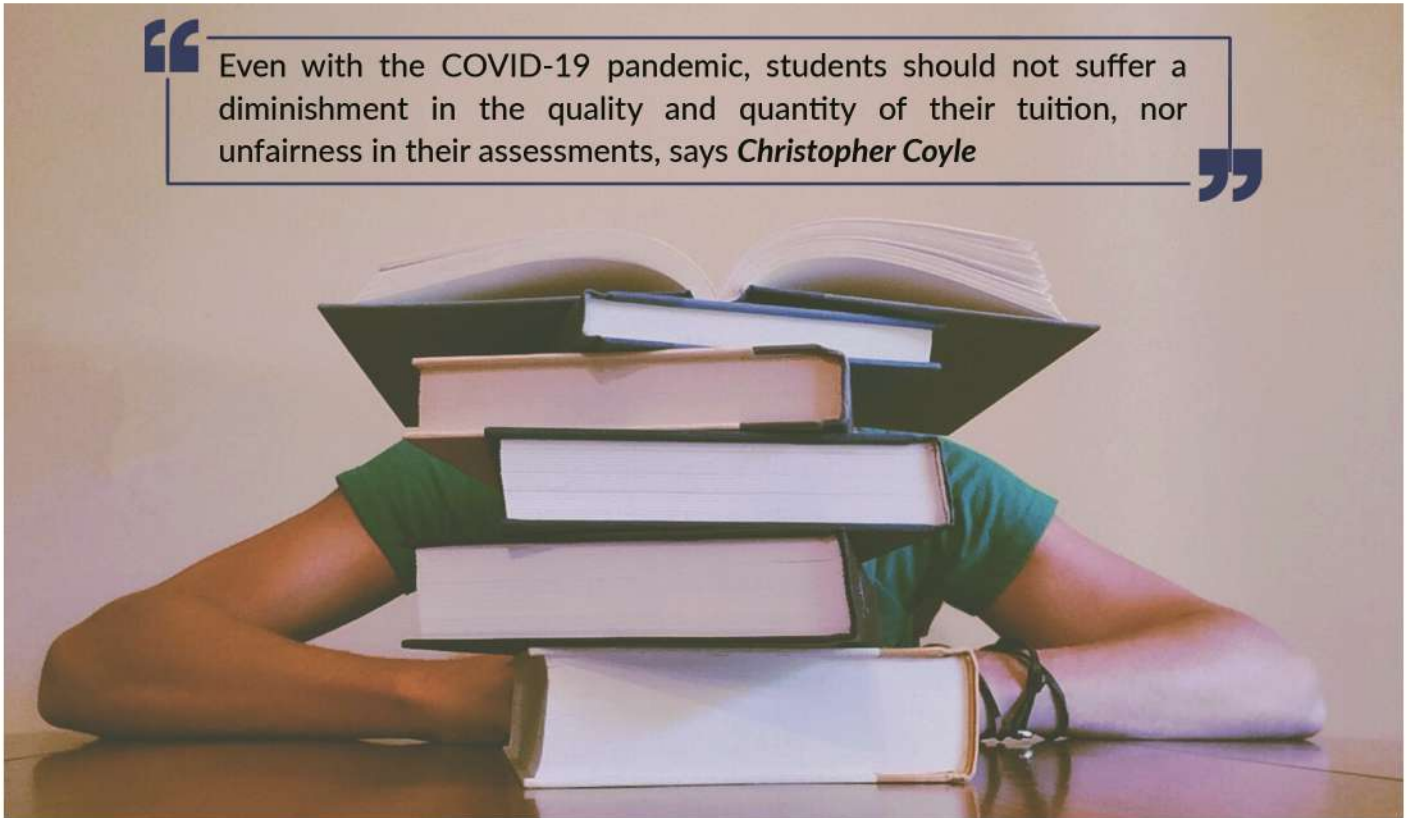


UNIVERSITY APPEALS AND COMPLAINTS *IN THE AGE OF COVID-19*



University teaching and fair assessment in the age of COVID-19 – a guide for students

“ Even with the COVID-19 pandemic, students should not suffer a diminishment in the quality and quantity of their tuition, nor unfairness in their assessments, says *Christopher Coyle* ”



The lockdown of our nation has brought many challenges and forced seismic change on society. In this regard, the hallowed realm of higher education has been no different, with all universities and professional bodies grappling with the question of how to teach and assess students in the present circumstances.

Many universities have answered this clarion call with the mantra “No student will be disadvantaged by this”. But that is a heavy promise to make. The current lockdown will end, but what matters is how it has affected academic life whilst it is in place. The QAA has noted that despite most higher education institutions adopting some form of ‘no detriment’ policy, what that means in practice varies widely between institutions.

In normal times the legal and moral obligations on higher education institutions have led to the adoption of rules and procedures to facilitate the various needs of any student cohort. Just as students can be disadvantaged by an institution’s policies or decisions during ‘normal’ times, it is inevitable that some may still feel that they have been disadvantaged by any changes arising from COVID-19, even where an institution has attempted to adopt a sophisticated approach to differentiate between these variances. We have already received many queries from students feeling they have been short-changed by their university’s “solutions”.

COVID-19 AND STUDENT DISADVANTAGE

Such disadvantage can arise for a range of reasons, for example:

- Lacking any or sufficient access to specialist equipment, software, or hardware;
- The effects of a student or their loved-one becoming infected by COVID-19;
- Suffering a bereavement;
- The effects of the lockdown on a student's family situation, such as having to home-school children or a lack of day-care facilities;
- Failing to provide sufficient/adequate tuition, whether in quality and/or quantity;
- Adopting a new form or method of assessment that does not satisfy requirements of integrity of its processes;
- Postponing assessments unnecessarily with the potentially harmful effects rippling out into career progression;
- Failing to ensure that any changes to mark schemes or methodologies adequately reflect the innate differences and difficulties posed by alternative forms of assessment; and/or
- Failing to ensure that any such changes are effectively communicated and explained to all affected students;
- Failing to ensure that adequate provision continues to be made for reasonable adjustments for students eligible under the Equality Act 2010.

At their heart, these concerns reflect the core question of whether marks and qualifications will suffer as a result of any changes and, particularly in light of the fees that have been paid, whether or not the institutions have fulfilled their contractual obligations.

It is worth noting that in the UK contracts can contain force majeure clauses, which in certain circumstances can excuse a party from the performance of its obligations under the contract in whole or in part. Each case will depend upon the terms of the clause, but generally for an institution to successfully rely on force majeure to avoid some/all of its obligations to students it would need to prove that COVID-19 detrimentally impacted its performance of the contract in whole or part, despite all reasonable endeavours to mitigate the effects of the virus having been taken.

EXTENUATING CIRCUMSTANCES & ACADEMIC APPEAL PROCEDURES

Every university has provision within their rules/regulations for students to apply for Extenuating/Mitigating/Special/Exceptional Circumstances ('EC') in respect of an assessment. Whilst the terminology differs across the various institutions, a student must be able to show that their academic performance in an assessment was, or will be, negatively affected by certain circumstances. Often this may require a close nexus in time between circumstances and the assessment affected.



Care should be taken as to when the regulations require a student to notify the institution of these circumstances, and any application must always be supported by robust evidence if at all possible. Some institutions have taken the progressive step of relaxing the evidential requirements in respect of medical evidence during the current lockdown period to limit non-essential impositions on the time of doctors. However, this approach has not been adopted uniformly across the UK so students should find out what temporary changes to the usual requirements may be in place.

If a student does not submit an application for EC or fails to do so within the specified time limit, it is often still possible to rely on these circumstances within an academic appeal if they resulted in a 'fail' or a poor result. However, in such an instance a student must explain why an application for EC was not made earlier, i.e. you must demonstrate that there is a good reason for these circumstances not being disclosed to the institution sooner.

DISABILITY AND REASONABLE ADJUSTMENTS

Students who are suffering from physical or mental health difficulties should consider whether to inform the university that they may be suffering from a 'disability', or a worsening of a previously notified disability, that would warrant 'reasonable adjustments' to their assessment.

All universities are obligated under the Equality Act 2010 to make such adjustments for students where their condition has a substantial and long-term impact on their ability to do normal daily activities. The development or worsening of a disability may be a valid basis for an academic appeal of a failed assessment.

The Office for Students has recently produced a series of briefing notes for universities on supporting student mental health during the COVID-19 pandemic and it is hoped these will result in a more compassionate and charitable approach to appeals related to poor mental health.

The formal process and potential remedies available from an academic appeal can vary. It is therefore vital that anyone considering an appeal checks their institution's regulations as soon as possible to understand the procedure and avoid any prejudice from delay. Often a successful academic appeal can result in fresh consideration of the marks for an assessment, being allowed an additional attempt to avoid withdrawal from a course, or a further attempt being regarded as a 'first-sit' and therefore being uncapped in its marks.



COMPLAINT PROCEDURES

As with academic appeals, each university has provision within their rules/regulations to allow students to raise a complaint. If a student has concerns over their course provision, supervision or placement, this is generally more suited to a complaint rather than an academic appeal. However, the intention in such circumstances is to attempt to remedy the situation, for example through the provision of appropriate reasonable adjustments or a change of supervisor. A successful complaint can rarely lead to any change in the marks for an assessment. As with appeals, there are tight deadlines for lodging a complaint.



BEYOND THE UNIVERSITY

An unsuccessful academic appeal or complaint can be further challenged via a Complaint to the Office of the Independent Adjudicator ('OIA'). The OIA has recently issued preliminary guidance to assist universities in dealing with the issues that could potentially arise from COVID-19. In particular, the OIA has sought to emphasise that good communication is critical, not only to ensure fairness to all students and avoid unnecessary anxiety, but also to ensure that students who are more seriously impacted by COVID-19 are effectively supported.

Although litigation should be a last resort, there may also be grounds to pursue legal proceedings against the university for failing to fulfil its obligations to each student under contract, common law, or public law. This can take the form of a claim for damages based upon breach of contract and/or negligence or a judicial review challenge to a decision/policy of the university that has negatively impacted you, which is usually based upon the reasonableness and fairness of its decision-making and policies.

Ultimately any consideration by the courts of issues arising from the COVID-19 pandemic will not be determined in a vacuum, and so students should expect some leeway to be given to institutions grappling with these issues. However, as with a Complaint to the OIA, that does not equate to immunity for all COVID-19 connected complaints.

Please do not hesitate to contact us at Alpha Academic Appeals if you need any assistance with your appeal or complaint during the COVID pandemic.

The preceding views are not intended to replace legal advice from an instructed lawyer who can deal with any specific queries concerning such issues.

Christopher Coyle is a Barrister, a former university Director, and a Senior Adviser at Alpha Academic Appeals.

