[2024] EWHC 1744 (KB)

Case No: KB-2023-000930
KB-2024-000623

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date:10 July 2024

Before :

SENIOR MASTER COOK

- -

Between :

DAVID HAMMON
And the other individuals identified in schedule 1 to the Claim Forms

Claimants

- and -

UNIVERSITY COLLEGE LONDON

Defendant

- -
- -

Anna Boase KC and **Alyssa Stansbury** (instructed by Asserson Law Offices and Harcus Parker) for the Claimants
John Taylor KC and **Claire Darwin KC** (instructed by Pinsent Masons LLP) for the Defendants

Hearing dates: 18th and 19th June 2024

- -

Approved Judgment

This judgment was handed down remotely at 10.00 am on 10th July by circulation to the parties or their representatives by e-mail and by release to the National Archives (see eg https://www.bailii.org/ew/cases/EWCA/Civ/2022/1169.html).

.....

SENIOR MASTER COOK

Senior Master Cook:

1. This is the adjourned hearing of the Claimants' application for a Group Litigation Order [**GLO**] and the first case management hearing in this litigation.

Background to the claim

2. The Claimants are or were students at University College London [**UCL**] in one or more of the four academic years 2017-18, 2019 - 20, 2020 -21, 2021 – 22 [**the relevant years**]. It is the Claimants' case that they contracted with UCL for the provision of tuition and related services on a variety of UCL's standard terms and conditions.

3. During the relevant years 2017 – 18, 2019 – 20 and 2021 – 22, the University and College Union called on its members to take part in industrial action in support of a dispute concerning proposed changes to the Universities Superannuation Scheme. Some teaching staff at UCL took part in the industrial action.

4. During the relevant years 2019 - 20, 2020 - 21 and 2021 - 2022, some tuition was provided online and/or physical access to facilities was restricted by measures taken by UCL in response to the COVID 19 pandemic.

The claim

5. It is the Claimants' case that UCL breached its contracts with them by failing to provide:

    i) In-person, campus based tuition and/or access to facilities during the relevant years affected by the COVID 19 pandemic; and

    ii) In person, campus based tuition in respect of periods of cancelled teaching during the relevant years affected by industrial action.

6. The Claimants assert they are entitled to claim:

    i) Performance based damages, based on the difference between the market value of the services promised and the services actually provided; and

    ii) Damages for distress and disappointment.

7. UCL defends the claims in full on the basis that:

    i) It was not under a contractual duty to provide in-person, campus based tuition and access to facilities;

    ii) Various clauses included in each student's contract permitted UCL to deliver teaching in the way it did, and in particular to move teaching on line and restrict access during in the pandemic; and to cancel or postpone teaching as a result of industrial action.

    iii) An estoppel arises in connection with students who commenced courses in September 2020 and 2021 (following the beginning of the COVID 19 pandemic).

8. Further, UCL denies that the Claimants are entitled to performance interest damages or damages for distress and inconvenience. UCL also raises issues of causation and mitigation.

The litigation

9. The parties' respective cases have been pleaded in; a Group Particulars of Claim dated 23 February 2023, a Defence dated 28 April 2023, a Group Reply dated 3 July 2023 and a Rejoinder dated 19 April 2024.

10. These claims and the GLO application first came before the Court on 24 May 2023 when Senior Master Fontaine heard an application made on behalf of UCL to adjourn the GLO application and to stay the proceedings in order to permit the Claimants to participate in a statute backed ADR process. The Senior Master directed that there should be a stay of 8 months for that purpose. Her judgment is reported as ***Hamon and ors v University College London*** [2023] EWHC 1812 (KB).

11. In addressing the issue of whether or not the claims should be stayed Master Fontaine made the following observations;

> "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."

And:

> "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."

12. And directly in in relation to the GLO application, Senior Master Fontaine said:

> "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"

13. It is apparent to me from the Senior Master's observations that in the event ADR did not succeed she was concerned that sufficient information should be provided by the Claimants in advance of any further hearing to enable proper consideration of the factors which would enable sub groups of claimants to be properly identified together with the necessary information relating to quantum. It is also clear she envisaged that some form of collective action, GLO or otherwise would be appropriate.

14. Since the previous hearing further witness statements have been submitted by the Claimants in support of the GLO application; Mathew Patching dated 17 May 2024 and Shimon Goldwater dated 11 June 2024. UCL rely on a further witness statement from Julian Sladdin dated 4 June 2024.

The position of the parties

15. Ms Boase KC appearing on behalf of the Claimants submitted that the Court should make a GLO in the terms of a draft order which had been produced by the Claimants' solicitors and attached to the Notice of Application. The draft order set out the following GLO issues:

    i) Whether, pursuant to Contracts entered into between UCL and the Claimants on Terms Groups A, B, C or D, UCL owed an express or 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.

    ii) Whether, on their true construction UCL was (i) entitled to rely and (ii) did in fact rely, on the Contract Variation Clause, the Programme Alteration Clause, the Force Majeure Clause and/or the Cooperation Clause in Contracts entered into on Terms Group A, B, C, or D, to (a) cancel teaching, (b) move teaching online and/or (c) restrict physical access to facilities, without providing compensation to the Claimants, and, (iii) if so, whether any such clauses are unenforceable under the UTCCR and CRA as applicable.

    iii) 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.

    iv) 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.

v) Whether UCL and Claimants who entered Contracts on Terms Group D to commence their studies in September 2020 or September 2021 are estopped by convention from alleging that UCL acted in breach by (a) cancelling teaching, (b) moving teaching online, and/or (c) restricting physical access to facilities during the 2020-21 and 2021-22 academic years.

vi) Whether the Claimants have suffered any recoverable loss, including non-pecuniary loss, in respect of any breach of contract by UCL, and, if so, how should damages be calculated.

16. Ms Boase KC was however prepared to concede that the proposal for a phased approach to the trial of individual cases advocated in paragraphs 29 to 35 of Matthew Patching's witness statement should be replaced with a proposal for the trial of up to 10 test cases to be listed as soon as possible in 2026. This suggestion was first made by the Claimants' solicitors in a letter dated 18 June 2024, the first day of this hearing.

17. Mr Taylor KC on behalf of UCL opposed the making of a GLO on the basis that the Court's existing case management powers were wide enough and flexible enough to achieve a proportionate resolution of the claims through the trial of test cases in early 2026.

18. In the event that the Court were to order a GLO Mr Taylor KC made some concessions as to the form of the GLO. In the event the Court were to order conventional management of claims Ms Boase KC made some concessions as to the form of case management order. Counsel's alternative suggestions were helpfully distilled into a list of common ground and issues and competing draft orders for each eventuality.

19. By the end of the hearing the most substantive issue between the parties was whether there should be a GLO or not. Therefore I propose to deal with this threshold question before moving to the detail of case management. However some issues of case management are relevant to the basic threshold question.

The Claimants' submissions

20. At the heart of Ms Boase KC's submissions was the statement of Mr Goldwater at [11] of his second statement that a GLO is "the best way" these claims could be managed. She maintained that a GLO would provide access to justice, an efficient and proportionate method of resolving the claims, and an effective means of resolving common issues whilst still enabling Claimant-specific issues to be determined.

21. Ms Boase KC started with the GLO issues identified above. She submitted that the proposed GLO issues capture at a high level the issues that will need to be determined in relation to all Claimants or key cohorts. The GLO issues will serve a dual purpose in determining which claims fall into the GLO and which decisions will bind particular cohorts. She put forward two particular examples:

i) A decision that, as a matter of construction, the Tuition Clause in Terms Group B contained an express duty to provide students with in-person tuition would bind UCL and all Cs who contracted on Terms Group B.

ii) A decision that the Programme Alteration Clause in Terms Group B required UCL expressly to rely upon the clause in giving notice of the alteration would bind UCL and all Cs who contracted on Terms Group B. A decision that the clause was unfair could be relied upon by all such Cs who were consumers.

22. In the circumstances Ms Boase KC submitted that there is sufficient commonality for a GLO to be made and this is so notwithstanding that (i) the claims include Covid and strike claims; and (ii) there are some issues of liability and quantum that apply to smaller groups of Cs or individuals. Having GLO issues does not shut out individual circumstances and claimant-specific determinations from the scope of the litigation.

23. Ms Boase KC accepted that UCL's proposals contained acceptable provisions to deal with existing claims, Schedules of Information and costs sharing. However she pointed to the following features which were omitted.

i) Management of future claims. Under the Claimants' proposal future claims issued after the cutoff date provided by the proposed GLO would be bought within the GLO. UCL have made no provision for this. She pointed to the evidence of Mr Patching and Mr Goldwater that; (i) there are approximately 75,000 UCL students eligible to bring claims; (ii) approximately 6,500 have so far instructed the Claimants' solicitors, of whom 5,000 have so far brought claims; (iii) it is likely that a significant number of the remaining 1,500 will issue proceedings in the future; (iv) it is likely that further Claimants will sign up: in particular, when advertising is in place it is effective, with students joining up on a continuing basis (including a few hundred in 2024); and there appear to have been particular flurries of sign-ups after periods of activity in this claim.

ii) The binding nature of decisions. CPR 19.23 contains provisions for judgments and orders to bind all claims on the Group Register. UCL makes no proposals as to how or when decisions within its proposed consolidated claims would bind the Claimants.

iii) A Group Register. A Group Register is beneficial as it enables the parties to know where they stand in terms of who is in the Claimant group. The cost of establishing a Group Register is the sole example given by UCL in arguing that a GLO would increase costs. She pointed to the evidence of Mr Goldwater in his second witness statement [13] that the annual costs of maintaining a Group Register (c.£5,000) would be incurred in any event and would be far less than the costs of applying to consolidate or join future claims and additional Claimants.

24. In the circumstances Ms Boase KC submitted that the GLO regime offers tangible benefits to a defendant (as well as claimants and the court), in particular the efficient funnelling of all claims into a single proceeding which is cost effective for the defendant to deal with and the existence of a cut-off date which gives the defendant certainty about the size and shape of the claimant body.

25. Ms Boase KC then identified two particulars features of UCL's opposition to a GLO that she described as misconceived. First, what she described as desire to shut the gates on this litigation and prevent further Claimants joining the group. She submitted that the evidence demonstrated that there are tens of thousands more eligible Claimants,

limitation deadlines do not start to arise until early 2026 (for Covid claims) and there is in fact evidence of an ongoing flow of new Cs signing up to the group. In these circumstances, it would not be in the interests of justice to shut potential claims out of this litigation and force them into one or more separate sets of proceedings. Second, what she described as UCL's apparent belief that this litigation is not really for the benefit of any individual Claimants with genuine claims and a desire for justice, but rather about the commercial interests of the lawyers and funders who are supporting the Claimants in the litigation. She submitted that these claims have a strong legal and factual foundation and there is no doubt that Mr Hamon and many of his co-Claimants feel passionately about pursuing them. Litigation funding and contingency fee arrangements are legitimate and accepted mechanisms which offer access to justice; it would not be proper to hold the use of such tools against the Claimants.

The submissions of UCL

26. At the heart of Mr Taylor KC's submissions was the proposition that a GLO is inappropriate and unnecessary and that the Court can manage this litigation under its existing case management powers. He maintained a GLO will only add work and costs. He relied upon the letter from the Claimants' solicitors of 16 April 2024 in which it was stated:

> "As we said in our letter dated 9 February 2024, our clients intend to pursue their GLO application. Having said that, as we have also said before, our clients are primarily concerned about the substance rather than the form of any case management order made in these proceedings."

This he submitted demonstrated that the Claimants' solicitors accepted that the Court's existing case management powers could provide for the effective case management of this litigation and that really ought to be the end of the GLO Application.

27. In the course of the hearing Mr Taylor KC drew back from the position articulated in his skeleton argument that the 5000 claims received to date were not sufficiently related to warrant the making of a GLO. He did make some criticism of the formulation of the GLO issues however I suspect that the real focus of his ire was the lack of information provided by the individual Claimants coupled with the proposal for a phased trial dealing with abstract legal issues.

28. By closing submissions Mr Taylor KC focused on the exercise of the court's discretion to make a GLO.

29. As to failure of the individual claimants to properly particularise their claims by the provision of information Mr Taylor KC referred to the observations of Hildyard J in ***Manning & Napier v Tesco plc*** [2017] EWHC 3296 (Ch):

> "Joinder of claimants to Group actions, whether or not subject to a GLO, should not be a matter of subscription but of orderly and careful assessment in respect of each claimant that the statutory requirements to establish liability are appreciated and satisfied. I would note parenthetically, without in any way suggesting that this applies in the particular case, that there is a danger in the

> case of group actions that people do subscribe to the action in the expectation, or at least hope, of settlement, without at that stage giving sufficient focus to the need for its case to be tested with the same degree of particularity as would be the case if they were fewer in number."

Given the previous concerns expressed by Master Fontaine about the provision of information relating to the personal circumstances of each claimant Mr Taylor KC pointed to the recent attempts by the Claimants to obtain information needed to formulate their industrial action claims described in Mr Sladdin's third witness statement at [63] to [70] and submitted that the Claimants were still unable to properly particularise their claims arising from industrial action.

30. Mr Taylor KC was critical of the level of abstraction of some of the GLO issues which he said masked the real issues raised by the Claimants' claims and ignore the fact that each claim in the case is fact sensitive on both issues of liability and quantum, and that each Claimant's claim is a separate claim in which individual liability and quantum need to be proved on their particular facts. He pointed to GLO issue three as an example. The issue was *"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 the 2017-18, 2019-20 and 2021-22 academic years*". He pointed out that this issue encompasses 43 different strike days across 3 different academic years, during which time there were 440 undergraduate and 675 graduate Programmes with a choice of over 6,000 Modules. Whether a student was or was not affected by strike action would depend on their Modules and timetable. As such he suggested that it was impossible to see how a judgment that an English lecture was cancelled on 22 February 2018 could in any way bind a physics student studying in 2020.

31. Mr Taylor KC submitted that the determination of the Claimants' claims will require fact sensitive investigations depending upon *inter alia* the student's year of enrolment, domicile, when the student was studying, and what Programme and Modules they studied. These variables are fundamental to the question of what contractual duties were owed by UCL to each individual student, and whether UCL acted in breach of those duties.

32. Mr Taylor KC then addressed the Claimants' reasons for making a GLO. Firstly, the suggestion in Mr Patching's first witness statement at [11] that a GLO would avoid different courts reaching inconsistent decisions. He pointed out that this concern was an academic one, particularly where there was no other court seized of such claims and no other firms of solicitors acting for potential claimants. He referred to the evidence of an extensive publicity campaign contained in Mr Sladdin's first witness statement at [134] to [151]and suggested that it is highly likely that any students who wish to pursue claims against UCL have already contacted the Claimants' solicitors.

33. Mr Taylor KC referred to the case of ***Abbott and others v Ministry of Defence*** [2023] EWHC 2839 (KB) in which Mr Justice Garnham and Master Davison accepted that findings of fact are usually case specific and CPR 19.23(1)(a) does not have the effect that a finding in a fact sensitive individual claim will be dispositive of the other claims. He gave the example of the High Court upholding a claim that one student had their teaching cancelled on one particular strike day in breach of contract, and pointed out

this will not be dispositive of whether other students on different Programmes, or taking different modules, had their contracts breached too. He was prepared to accept there were certain issues, such as the interpretation of the various contractual provisions which might apply to larger groups of Claimants, however he argued that the outcome of such issues would be binding on other Claimants as a result of all Claimants being parties to the two consolidated Claim Forms through the doctrine of precedent and res judicata.

34. Secondly, in relation to the access to justice arguments put forward by Ms Boase KC, Mr Taylor KC suggested that the evidence showed that the vast majority of UCL students affected by industrial action and Covid-19 have chosen not to join these proceedings and that it is highly likely that any student who wishes to pursue claims against UCL has already contacted the Claimants' solicitors. As for the c.1,500 students who are said to have instructed the Claimants' solicitors but are not named in either the First Claim Form or even the Second Claim Form, Mr Taylor KC maintained that no good reason for their failure to join the proceedings to date has been put forward. The Claimants' solicitor says only that there are "*various reasons*" for their failure to do so, including that some of them have "*not yet given us sufficient information to issue a claim on their behalf*", see Matthew Patching's first witness statement at [13(c)] and [18(e)(ii)]. Indeed, strikingly, buried in a footnote, the Claimants' solicitors acknowledge that 173 of those 1,500 students have instructed the Claimants' solicitors not to issue proceedings.

35. Mr Taylor KC made the point that UCL is a charity and it also has a right to access justice. It wants, and is entitled to, have the 5,000 odd claims brought against it to be resolved as soon as possible. In the unlikely event that further claims are brought against UCL at a later date, then the Court will be able to consider the proper case management of those claims if and when they materialise. However, he submitted that there is no good reason to believe that there will be any such claims and certainly no need for court sanctioned publicity in the form of the advertisement proposed by the Claimants' solicitors.

36. Lastly, Mr Taylor KC submitted that there was no need to go to the time and cost of establishing a Group Register, which the Claimants' solicitors estimate would cost £5,000 per year to maintain, and would presumably cost significantly more to set up. The other provisions of the proposed GLO, in particular costs sharing, could all be achieved by crafting an appropriate form of case management order.

Decision on the GLO application

37. GLOs may be made by the court under the provisions of CPR 19. CPR Part 19.21 provides that a GLO is:

> "an order made under rule 19.22 to provide for the case management of claims which give rise to common or related issues of fact or law ('the GLO issues')",

CPR 19.22 goes on to provide:

> "19.22 (1) The court may make a GLO where there are or are likely to be a number of claims giving rise to the GLO issues …"

> (2) A GLO must-
>
> (a) contain directions about the establishment of a register (the 'group register') on which the claims managed under the GLO will be entered;
>
> (b) specify the GLO issues which will identify the claims to be managed as a group under the GLO;"

38. As Mann J said in ***Tew v Bank of Scotland*** [2010] EWHC 203 (Ch) GLO issues define the actions which fall within a GLO and in deciding on the terms of a GLO it is important not to confuse the GLO issues with the formulations of the issues which will ultimately have to be determined in order to decide the litigation.

39. If a GLO is made the court's powers are set out at 19.22 (3) (the court's power to control where cases are brought and where they are pursued and 19.23 (1) (the extent to which orders bind litigants in other cases on the GLO register). Some of the costs consequences of a GLO order are set out in CPR 46.6 and they depend in part on whether something has been defined as a GLO issue.

40. The Court's general powers of case management are set out in CPR 3.1. Of particular relevance to the application before me are the following powers:

> "**3.1 The court's general powers of management**
> (1) The list of powers in this rule is in addition to any powers given to the court by any other rule or practice direction or by any other enactment or any powers it may otherwise have.
>
> (2) Except where these Rules provide otherwise, the court may
>
> …
>
> (f) stay the whole or part of any proceedings or judgment either generally or until a specified date or event;
>
> (g) consolidate proceedings;
>
> (h) try two or more claims on the same occasion;
>
> (i) direct a separate trial of any issue;
>
> (j) decide the order in which issues are to be tried;
>
> (k) exclude an issue from consideration;
>
> (l) dismiss or give judgment on a claim after a decision on a preliminary issue;
>
> (ll) order any party to file and exchange a costs budget;
>
> (m) take any other step or make any other order for the purpose of managing the case and furthering the overriding objective,

> including hearing an Early Neutral Evaluation with the aim of helping the parties settle the case."

41. PD 19B para 2.3 provides that:

> " In considering whether to apply for a GLO, the applicant should consider whether any other order would be more appropriate, and in particular whether, in the circumstances of the case, it would be more appropriate for –
>
> (1) the claims to be consolidated; or
>
> (2) the rules in Section II of Part 19 (representative parties) to be used."

42. It will be noted that the court's conventional powers of case management under CPR 3.1 are very wide indeed and conclude with the power to "*take any other step or make any other order for the purpose of managing the case and furthering the overriding objective*".

43. In his Final Report "Access to Justice", Lord Woolf described the GLO procedure as a step forward in "*manging the unmanageable".* He pointed out that in appropriate cases a GLO can lead to considerable savings in time and cost in disposing 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 judgment. However this may not always be the case, hence the requirement to consider alternative forms of case management. Ultimately the decision is one of case management and will be case and fact specific. With cooperation and creativity the court's standard case management powers can be used to replicate almost any feature of a GLO.

44. It should also be noted that world is a now very different place to that which existed at the time of Lord Woolf's report. In particular technological and computing developments have revolutionised the way in which lawyers and judges work and manage cases.

45. I have come to the conclusion that it would not be appropriate to make a GLO in this case and that the litigation would be best resolved by the creative use of the court's existing case management powers for the following reasons.

46. I accept that there are a large number of claims, in excess of 5000. There are currently two claim forms. At present it is difficult to form any clear view of the likely value of the claims as the Claimants' solicitors have not given any indication of the range of likely monetary values in accordance with the formula suggested for ascertaining the performance interest damages claimed.

47. On the basis of the evidence I have considered, I do not find there are likely to be a substantial number of further similar claims. Although there are two firms of solicitors representing the Claimants they are acting jointly and pooling their resources. It was

accepted by Ms Boase KC that there can only be one set of Claimants' costs. On the basis of the evidence I have considered I find that it is unlikely that other groups of claimants represented by other solicitors will materialise.

48. While I accept that some of the criticisms made by Mr Taylor KC as to the specific drafting of the proposed GLO issues had traction, I am satisfied that these claims give rise to common issues of fact or law. The Claimants are all students of UCL who allege their studies were impacted by industrial action and Covid 19. All Claimants contracted on UCL's standard contractual terms and all claims will involve the interpretation of those terms. They are issues which in my opinion would sufficiently define the Group, not necessarily the issues that will ultimately be determined to decide the litigation.

49. It follows that I accept the threshold requirements for making a GLO have been made out.

50. However, after consideration of the application of the overriding objective I am not satisfied that my discretion should be exercised in favour of making a GLO. I do not consider a GLO will help to promote fairness, save costs or allow the claims to be dealt with in a timely and efficient manner. In particular, I take into account the fact that there was, by the close of the hearing, very little difference in substance between the parties' case management provisions and that the parties were agreed there should be a trial of test cases covering issues of liability and quantum.

51. In these circumstances it seems to me that Mr Taylor KC was right to submit that decisions in the test cases on common contractual terms will bind other claimants in the consolidated actions by way of precedent and res judicata. Claimant specific issues relating to individual damages claims could never have been resolved by the trial of generic GLO issues. If and in so far as there may be joint issues which are not likely to be binding by precedent or res judicata, then like Mr Justice Trower in ***Edward Moon & Ors v Link Fund Solutions & Ors*** at [81], I would conclude that the binding effect of decisions on those who are party to the consolidated claims can be achieved by way of bespoke case management directions. Given that I have found there will be few, if any, additional claims commenced, the object of certainty and consistency of judicial decisions will be more than adequately met by application of the ordinary principles of case management.

52. Mr Taylor KC's concession that a case management order could contain a costs sharing provision is an important factor. I am satisfied the effect of CPR 46.6 can be imported into the case management order. In the circumstances there is both fairness with respect to the liability for costs and the Claimants' access to justice would not be adversely affected.

53. Given my view on the likely number of additional Claimants and the fact the majority of Claimants are already named on the two claim forms, I see little advantage in establishing a Group Register. It may be that as a matter of administrative convenience a spread sheet could be devised to keep track of the individual Claimants however looking forwards, it is likely that a number of cases will be selected as test cases and the remaining claims will be stayed.

54. Master Fontaine was concerned at the level of costs incurred when the case was last before her. At paragraph [61] of her judgment she observed:

> "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."

55. The overall costs of this litigation will be substantial. The parties are agreed that the test cases will be subject to costs management by the court.

56. What is imperative is that these claims are now progressed. In my judgment the making of a GLO would delay that process and add unnecessary cost and expense. Once the test cases are decided, either the defences will be made out and the claims will come to an end, or the basis of liability will be established and the principles for setting the level damages will have been identified and permit settlement or mediation of the remaining claims.

Case management issues

57. I will now resolve the outstanding issues between the parties relating to the provisions of the case management order. I will work from the draft order provided by Mr Taylor KC.

58. It was agreed that there should be one address for the service of documents given the fact that the Claimant firms are working in cooperation.

59. Amendments to paragraph 22(7) of the Defence and paragraph 5 of the Rejoinder were sought by Mr Taylor KC. I make no order in relation to those. Ms Boase KC required time to consider them as they had only been produced at the hearing. She is entitled to that time. If the Claimants are unable to agree these amendments an application will have to be made in the usual way.

60. It was agreed that the Claimants would answer UCL's Request for Further Information [**RFI]**. The Claimants agreed to do so by 1st September 2024. UCL required responses by 19 July 2024. In my judgment the RFI should be answered by 1st September 2024. This in my judgment is an achievable date for providing information required relating to the quantum of the claims.

61. It was further agreed that the Claimants would provide schedules of information as set out in paragraphs 10 and 11 of the draft order subject to one issue. The Claimants did not agree to provide the information at request 11(5)(b), "*and the type and length of teaching missed*". UCL agreed that, if this information was ordered to be provided, the wording would need to be tightened and proposed, "*and the type (lecture, practical, seminar, field work or other) and length of that teaching missed*". In my judgment UCL's proposed wording should be included in the schedules of information. Lastly, for the avoidance of doubt, the wording proposed by UCL at paragraph 11 (4) (a) is appropriate. For any Claimant who was an international or EU student they must supply their country of residence between March 2020 and 18 March 2022. These are highly relevant facts which can only be provided by the individual Claimants.

62. I will direct that the Schedules of information will be provided in rolling monthly batches of 2,000 Claimants from 1 October 2024. On the basis of present numbers, all schedules of information should be delivered by January 2025.

63. I decline to include any sanction for failure to provide the required information at this point. Although if there is further delay following this order it is likely that an unless order will be made.

64. The costs sharing provisions at paragraph 24 of the draft emerged relatively late in the day. I suspect that the parties will be able to agree them as they will probably follow the standard wording used in the Claimants' proposed GLO which will be adapted to fit the case management order.

65. The provision relating to future claims at paragraph 26 and 27 of the draft order is in my judgment adequate, however the definition of the claims requires some tightening. I would propose:

> "26. Any future claims by students or former students of UCL seeking performance interest damages arising out of (i) industrial action in any of the academic years 2017-18, 2019-20 or 2021-22 and/or (ii) Covid-19 in any of the academic years 2019-20, 2020-21 and/or 2021-22 are to be issued in the Central Office of the King's Bench Division and be subject to an immediate stay until judgment is handed down in the test cases.

> 27 In any pre-action correspondence UCL shall notify any prospective Claimant of this order. Any person affected by this order may apply to lift the stay."

66. This provision will catch any further claims that may arise without delaying the resolution of the test cases. The test cases will be identified by the parties at the next case management hearing, which it is agreed will be in November of this year. If the test cases are not identified the court will expect that a process will have been agreed between the parties so that the court can identify them.

67. Following receipt of the draft judgment I was informed by the parties that they have agreed a form of order to give effect to this judgment save for costs and some other consequential matters. All costs and consequential matters will be adjourned to 19 July 2024.