Student Mental Health
What is a University's Duty?

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29 February 2024

Outline

- Discussion of the High Court decision in *Abrahart v University of Bristol [2024] EWHC 299*
- Outline of the case – what happened
- The appeal to the Hight Court
- Statutory tort under the Equality Act 2010
- Reasonable adjustments in disability discrimination claims
- Civil liability and relevance of common law tort
- Inquests and potential impact
- This is a reflection and interactive discussion we hope you will join either in real time or later – so please grab a cup of tea, or something stronger, draw up your chair and let's begin!

Reflection

- Case relates to the tragic death of Natasha Abrahart
- Young woman of 20 took her life on 30 April 2018 the day she was due to make a presentation to students and teachers as part of her university course
- It is assumed the prospect was so overwhelming for her that she took her life
- Regardless of the important issues in this case from a legal viewpoint one cannot do other than grieve at the loss of life and feel only compassion for her and acknowledge the devastation her death has brought to her family and all who knew her.

Outline of the case

- Natasha Abrahart died by suicide. At the time, she was 20 years of age and a student at Bristol University ("the University") in the second year of the MSci degree programme in Physics. She had diagnoses of depression and social anxiety disorder, which amounted to a "disability" for the purposes of the Equality Act 2010.
- Her ability to participate in oral assessments and, in particular, interviews and a laboratory conference about experiments were impacted by her disability. One mandatory module called "Practical Physics 203" ("the Module") had such a conference. She died on the day of the laboratory conference.

Natasha

- No cause for concern as a child, did well in GCSEs and A-Levels and had a part time job at a supermarket. First academic year passed without incident. She lived with flatmates and, whilst they were aware that she suffered social anxiety, there was no evidence before the County Court of any significant stressors during this year. Her average marks at the end of the first year, in July 2017, were at the level of a 2:1.
- Second year, moved into a flat with people from her course including her lab partner. Lab partner became romantically interested in her which caused tension (and an altercation with Natasha's boyfriend).

Second Year

- Natasha spoke about self harm. And, an issue arose with the marking of an interview assessment (conducted in a large lecture theatre). She didn't speak.
- Academic staff began to exchange emails with concerns about Natasha and attempted to contact her to discuss this. Discussions began, including Natasha and university disability services, as to how she would complete her work that year including the interview. There was evidence of a degree of inflexibility from one of the academics. The University were also made aware that Natasha was self-harming. The University identified that the end of year interview would be a significant pressure for her.

Escalation

- Things had been escalating in respect of Natasha's presentation. There had been two significant attempts at self-harm which included asphyxiation by suspension. The University were not aware of the specific attempts (there is some ambiguity as to whether particular conversations took place and the contents of them).
- Whilst the University appeared to be aware of the relationship between stress from the presentation aspects of the examination and Natasha's mental health, she was not offered an alternative examination and would be unlikely to pass the year without marks from the lab conference.
- Ms Abrahart did not attend the laboratory conference on 30 April 2018. At around 2.30pm, shortly after it had started, she was found dead in her bedroom.

The inquest

- The inquest concluded on 16 May 2019 with a conclusion of "suicide contributed to by neglect." At the time of Natasha's death she had been under the care of the local Trust's mental health team but they had failed to provide, "a detailed and timely management plan" in respect of her mental health.
- Natasha had been prescribed sertraline but the NICE guideline had not been followed in respect of follow ups by the mental health team or the GP.
- Prevention of future death report made in respect of the Trust – civil claim against them settled at pre-action.

Statutory tort under the Equality Act 2010

- Linden J focused on duty to make reasonable adjustments, see [140]:

  > 'the duty to make reasonable adjustments is likely to be the beginning and end of many disability discrimination claims and the present case is in this category.'

- Duty is imposed on universities by s 91(9) and sch 13
- Relevant requirement that in section 20(3) –

  where a 'PCP' puts a disabled person at a substantial disadvantage in comparison with non disabled persons, to take reasonable steps to avoid the disadvantage

Statutory tort under the Equality Act 2010

- Summary at [153]:

  ‘Under section 20(3), a sequence of questions requires to be answered:

  i) What is the provision, criterion or practice (“PCP”) complained of?

  ii) Does it put a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled and, if so, what is the nature and extent of that disadvantage?
  iii) What are the steps which it is reasonable for A to have to take to avoid that disadvantage?’

Statutory tort under the Equality Act 2010

- Important guidance at [154]:

  ‘[the questions do] not mean that a defendant need not take any steps if they would not avoid the disadvantage altogether: see *Noor v Foreign and Commonwealth Office [2011] ICR 695* at [33]. In principle, it could be reasonable to take steps which would merely reduce the disadvantage, or where there was “at least a real prospect” that the adjustment will make a difference: *First Group plc v Paulley [2017] UKSC 4, [2017] 1 WLR 423 at [60].’*

Statutory tort under the Equality Act 2010

- To whom is the duty to make RA owed?
- Under schedule 13, references to 'a disabled person' who is placed at a substantial disadvantage under sections 20(3)-(5) are to disabled persons or students generally.
- Linden J at [157]:

> 'The effect of this is that the duty to make reasonable adjustments in relation to these matters – admissions decisions, provision of education, and access to benefits, facilities or services – may be owed to people who were not known to the educational institution before the issue arose in relation to them.'

Statutory tort under the Equality Act 2010

- An 'anticipatory' duty – see *Keith Roads v Central Trains Ltd* [2004] EWCA Civ 1541 (Sedley LJ)

  'required to think about and provide for…features which may impede persons with particular kinds of disability — impaired vision, impaired mobility and so on.'

- Linden J at [160]:

  'Whether failure to anticipate a particular disadvantage resulting from a PCP…does or does not result in a breach of the duty will depend on the circumstances of the case which inform…the reasonableness question…'

Statutory tort under the Equality Act 2010

- Linden J at [162]: ‘no specific requirement…that the responsible body knew or ought to have known of the claimant’s disability or its effects.’
- ‘However…what the further or higher education institution knew or ought to have known about the student or prospective student will be relevant to the question whether it was reasonable to take a given step or steps.’
- Linden J at [163]: No requirement ‘for the claimant to have identified, at the relevant time, the adjustments which ought to have been made’ – but again relevant to whether steps were reasonable for D to take

Statutory tort under the Equality Act 2010

- However (per Linden J at [164]):

  'by the time of the hearing of the claim the claimant must have set out their case as to the adjustments which they say ought to have made. There must also be at least some evidence of an apparently reasonable adjustment from which the court could conclude that the duty was breached. If there is, however, applying the burden of proof provisions under section 136 of the 2010 Act, the burden shifts to the defendant to prove that the duty was not breached i.e. that any reasonable steps were taken and/or that the steps proposed by the claimant were not reasonable…'

Statutory tort under the Equality Act 2010

- Competence standards – schedule 13 provides at para 4:

  '(2) A provision, criterion or practice does not include the application of a competence standard.

  (3) A competence standard is an academic, medical or other standard applied for the purpose of determining whether or not a person has a particular level of competence or ability.' (emphasis added)

- Applies solely to the duty to make RAs – a competence standard can still be indirectly discriminatory (per Linden J at [173]

Statutory tort under the Equality Act 2010

- Effect of competence standard exclusion, per Linden J at [174]:

  > 'A standard which is being applied to measure whether a person has a particular level of competence or ability cannot be required to be adjusted in an individual case, even if the disabled person cannot meet the standard because of their disability. On the other hand, methods of assessment of standards of competence are in principle subject to the duty to make reasonable adjustments which might facilitate the person's ability to demonstrate that they have met the standard'

Statutory tort under the Equality Act 2010

- Useful example in para 7.35 of the EHRC Technical Guidance (cited by Linden J at [178]):

  > 'A requirement that a person completes a test in a certain time period is not a competence standard unless the competence being tested is the ability to do something within a limited time period.' (emph added)

- Linden J at [183] – 'what may not be required to be adjusted is the *standard* by which the person's level of competence is measured.'
- BUT the 'method of assessing whether the examinee has the required level of competence' is not excluded

Statutory tort under the Equality Act 2010

- Linden J at [186] for the relevant questions on the competency standard exclusion:

  ‘i) what competence or ability is being measured?

  ii) what are the standards which are being applied to determine whether a person has met the relevant level of competence?

  iii) what aspect of the process are methods of assessment of whether those standards have been met?’

Statutory tort under the Equality Act 2010

- Application to facts from [187] in judgment
- PCP was ‘requirement to be assessed orally by way of the laboratory interviews and the laboratory conference presentation including the format, structure and venue for the assessments’, [187]
- Judge found that ‘the fundamental purpose of the oral assessments was to elicit answers to questions put to the student and that such a process does not automatically require face to face oral interaction’, [200]

Statutory tort under the Equality Act 2010

- 'It followed from the Judge's findings of fact that the laboratory interviews and the conference were not a method of testing proficiency in oral communication / presentation. Nor were they a competence standard for oral communication in themselves and nor, therefore, was this a case in which the competence standard and the method of assessment were inextricably linked.' [200]
- 'Judge's findings as to what was being tested [knowledge not oral communication] were an important part of the context [for] whether…it would be reasonable to remove the requirement for a face to face interview…' [203]

Statutory tort under the Equality Act 2010

- '…common ground that there was the PCP alleged by Dr Abrahart and that it put Ms Abrahart at a substantial disadvantage in comparison with persons who are not disabled. The duty to make reasonable adjustments therefore arose.' [205]
- 'University did not, and does not, submit that the adjustments proposed by Dr Abrahart, including dispensing with the interview and the presentation, were out of the question or inherently unreasonable…central argument was that…due process required to be observed and there had to be sufficient evidence available to the University to justify making them.' [206]

Statutory tort under the Equality Act 2010

- ‘The University argued, and argues, that it was therefore reasonable to require proper expert advice in the form of a DSS and/or medical evidence before taking steps that had the effect of reducing the rigour of the academic assessment. It was necessary to identify the source of Ms Abrahart’s difficulties and to receive recommendations as to the changes which should be made. This was said to be a matter of fairness to other students and necessary in order to maintain the academic integrity of the course…’ [207]

Statutory tort under the Equality Act 2010

- ‘was implicit in the University’s case that it did not have sufficient knowledge, in the sense of expertise or expert evidence, to be required to do more. It was therefore for the Judge to assess whether, taking into account the University’s level of knowledge, and the lack of medical evidence, its failure to make the proposed adjustments was reasonable’ [212]
- ‘the Judge was obviously aware of the fact that the University did not have a definitive diagnosis and that the cause of the mental health issues was not fully known…

Statutory tort under the Equality Act 2010

- ‘But there was never a suggestion by the University that Ms Abrahart did not genuinely have issues with her mental health or was anything other than genuinely unable to cope with the oral assessments. Moreover, the duty to make reasonable adjustments is concerned with the effect of the PCP on the disabled person of which, the Judge found, the University was aware. A precise diagnosis would no doubt have been of interest, as would an explanation of what had caused the mental health issues, but these considerations were not of decisive importance under section 20 of the 2010 Act once it was apparent that there was a genuine issue with Ms Abrahart’s mental health which was affecting her ability to meet the requirements of the Module.’ [212ii]

Statutory tort under the Equality Act 2010

- ‘the University’s due process arguments were not cogent reasons for its failure to make adjustments. The problem with the University’s reliance on its own Regulations and policies…was that they are not the law. They were subject to the law, including the requirements of the Equality Act 2010. It therefore did not follow that, for the purposes of section 20 of the 2010 Act, it would necessarily be reasonable for the University to insist that its processes were followed if any adjustments were to be made. As the Judge pointed out…an argument that the University followed its procedures begged the question whether those procedures ought reasonably to have been adjusted in the circumstances of this case.’ [220]

Statutory tort under the Equality Act 2010

- 'I agree that the Judge could, for example, have dealt with each of the proposed adjustments in turn and considered the likelihood that it would be effective. But the most extreme step advocated by Mr Burton was abandoning the requirement for oral assessments and assessing Ms Abrahart by written work…. There was no dispute that this would have avoided the disadvantage which Ms Abrahart was experiencing. The only question was whether the University had satisfied the County Court that, for the reasons which it had put forward, this was not a reasonable step to take. The judgment of the Court on the facts of this particular case was that the University had not done so.' [223]

Duty of Care : Civil Law

- Claim made at first instance *Abrahart v University of Bristol* – Judgment 200522 Claim G10YX983 – HHJ Ralton
- Duty of care in tort defined as:

  "duty to take reasonable care for the wellbeing, health and safety of its students. In particular, the Defendant was under a duty of care to take reasonable steps to avoid and not to cause injury, including psychiatric injury, and harm"

- No controversy in a potential injury including psychiatric harm
- Common law duty with no precedent
- HHJ Ralton describe as novel claim

Was there a duty of care?

- Abrahart rely on University provision of learning and welfare support to show existence of duty of care
- Assumed a responsibility for health, wellbeing and safety of students
- In effect, where A provides B with a service to address any issue then A would be assuming duty of care to protect B from that issue in the first place

Breach by Omission

- Claim that university not change need to give presentation
  - Penalise Natasha in marks
  - Fail sufficiently to address her mental health
  - Ms Perks not inform Dr Barnes of worrying suicidal thoughts/ actions (informed by 20 Feb 2018 email)
- Overall a failure to take action/ be proactive
- Per Lord Reed in *Robinson v Chief Constable of the West Yorkshire Police [2018] UKSC 4*

  > *"liability is generally imposed for causing harm rather than for failing to prevent harm caused by other people or by natural causes"*

When is there a duty?

- Can be liable for omissions where
  - Voluntary assumption of responsibility to prevent harm (akin to contract)
  - Assume a status that carries a responsibility to prevent harm
    - Being a parent
    - Standing in loco parentis
  - Omission arises where D has acted so as to create or increase risk of harm

Was there an increased risk of harm?

- Nothing inherently unsafe in teaching of course
- Essentially argue duty to protect Natasha from herself
- Natasha not in care or control of University as if
  - At school
  - Prisoner of the state
- Most case law arises where there is a particular relationship
- Stress at work cases follow line of duty of care within employment relationship

High Court

- Cross appeal in High Court not required because uphold Equality Act findings
- Strictly therefore comments are obiter [268 on]
  - C argue that no duty of care in *Abrahart* runs contrary to *Feder & McCamish v Royal Welsh College of Music and Drama* – this was sexual assault
  - Universities UK Guidance 2016 “duty of care” when dealing with allegations of misconduct
- – G67YJ147 & G67YJ153
- Linden J no response
- Possibly frame as adoption of responsibility to investigate?

Further arguments?

- Linden J recognised issue of contention
- Would need re-trial: not convinced causation properly argued/ conceded
- Not simply import duty breached for same reason as statutory breach
- Perhaps further complicated by Supreme Court decision in *HXA v Surrey CC; YXA v Wolverhampton CC* [2023] UKSC 52 – uphold no duty by omission in "failure to remove" cases
  - No assumption of responsibility
- Abrahart succeed because of disability – more general duty of care absent

Safeguarding Duties at University

- The concept of safeguarding in Universities has evolved following the 2016 Changing The Culture report (primarily focused on sexual harassment and hate crime) and the creation of the Office for Students.
- The vast majority of Universities now operate their own standalone safeguarding policies (sometimes which include PREVENT duties). These are of various quality and scope, majority of Universities now have designated safeguarding leads.
- Few (if any) Universities have explicit policies in respect of making safeguarding referrals to the local authority if there is a concern.

University Safeguarding Difficult Points

- There remain myths in respect of data protection as to what can be shared between schools and universities as to a student and the concept of safeguarding remains focused on abuse and not towards self-harm/self-neglect. Sharing information with parents of adults is also not understood and there is a perennial problem with primary care records being accessible when students are at university/during vacations.
- Ordinary residence for young people with eligible needs under the Care Act is not straightforward, situations can occur when a young person's care needs are met by one local authority and the statutory safeguarding duty falls on another where the University is based.
- The local authority will not routinely communicate needs or risks to Universities unless there is a significant transition process from children's services to adult.

Inquests and potential impact

- Information sharing? One of the core issues in Natasha's case was triangulating the information and risk between different bodies.
- Last month, Coroner's court made a PFD in respect of death of Matthew Wickes, third year university student who was neurodiverse. Died by suicide on day of exam results following academic issues in third year. Coroner had concerns, "*about the level of awareness, understanding and curiosity of academic staff around the mental health of students.*"

Inquest scope?

- Causation is a broad concept in an inquest, see Dove [2023] EWCA Civ 289.
- Coroners may record facts which contributed to circumstances that may or may not have led to death because there is a *"wide discretion conferred on coroners to establish the background facts, and then determine whether those facts were or were not causative of death";*
- There is no distinction between physical causes and psychiatric causes which might have exacerbated mental illness;
- Where suicide is a possible conclusion, the Coroner needs to investigate the deceased's intentions, so that they can properly consider the appropriate conclusion. This may require an investigation into why there was a mental health deterioration.

Inquests and neglect findings?

- In Natasha's case, neglect finding was made but that has to been seen in the context of the medical failings.
- Neglect is narrower in meaning than the duty of care in the law of negligence. It is not to be equated with negligence or gross negligence. Applying *Jamieson* there has to be identification of the deceased being in a, "dependent" position and a gross failure to provide basic care. This remains a high bar.
- There must be a clear and direct causal connection between the conduct described as neglect and the cause of death. The conduct must have caused the death in the sense that it 'more than minimally, negligibly or trivially contributed to the death'.

Thank You!

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29 February 2024

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