

What can be learned from the Abrahart case?

Reviewing the court judgement in a case involving student suicide and disability discrimination

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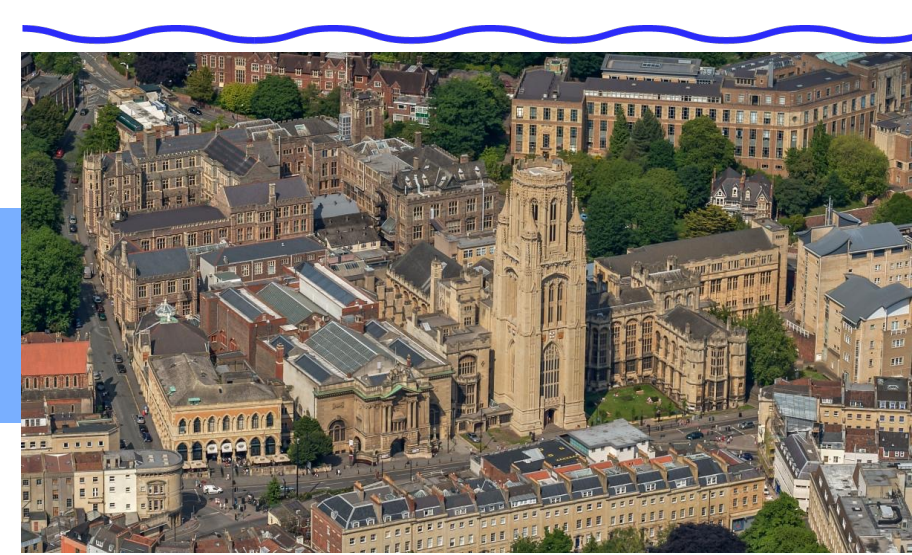
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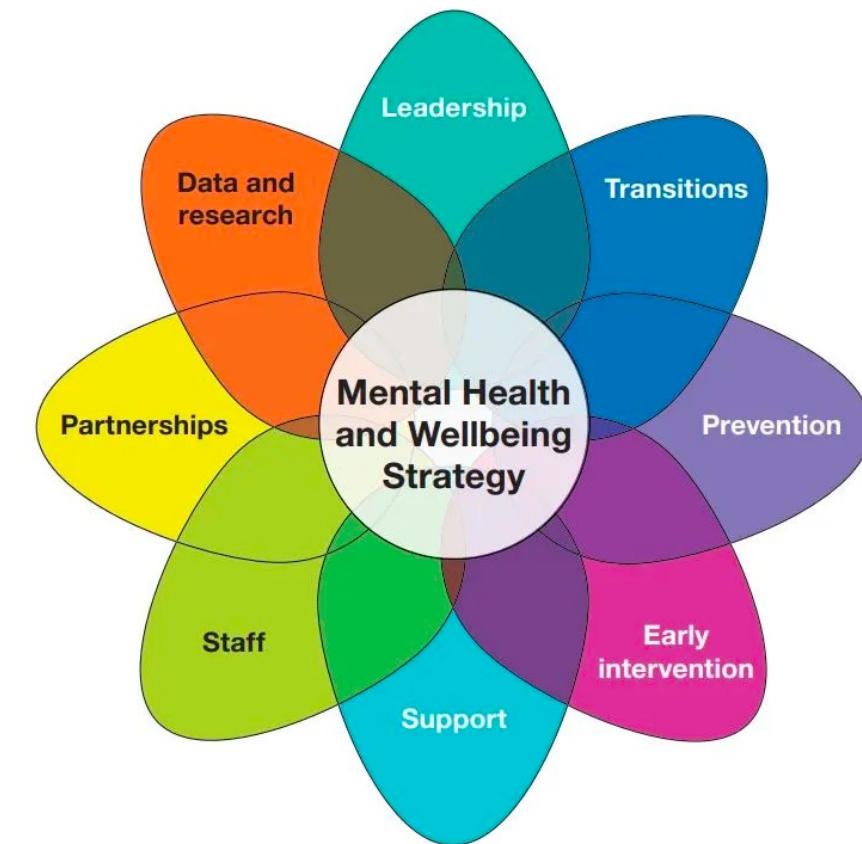
TW: Suicide, depression

- 16 students died by suicide at Bristol over 16 months
- Between the 12 months ending July 2013 and the 12 months ending July 2016, higher education students in England and Wales had a significantly lower suicide rate compared with the general population of similar ages.
- Male higher education students had a significantly higher rate of suicide compared with female students.
- Student deaths by suicide notoriously difficult to learn from – inquests typically and routinely exclude university support components from investigation
- Plus universities keen to avoid liability that could be exacerbated by quasi public investigation



Upshots

- Some other high-profile cases – in one example father campaigning on “opt in” for parents/guardians being informed if student in difficulty (see briefing)
- Changes to how mental health support organized
- Significant work around wellbeing and happiness



Upshots



Natasha Abrahamart

- Physics student, enrolled in 2016
- Quiet in first year
- Failing and then not attending "interviews" assessments in early 2017/18
- Eventually diagnosed with depression and social anxiety disorder
- On day of suicide had been due to give a presentation in a lecture theatre at a "conference"





NATASHA ABRAHART

Inquest

- Anxiety and panic attacks in October 2017
- Missed/failed oral assessments all term
- University GP referred to mental health trust in February 2018
- Found “an unacceptable delay” in her having a specialist assessment following referral to the Trust and that Natasha’s “risk of self-harm was not adequately assessed.”
- Found that a “failure to provide a timely and detailed management plan for Miss Abraham represents a causal connection with her subsequent death.”



Inquest

- Substantial undisclosed damages - suicide contributed to by neglect
- BUT "the scope of the inquest does not include the adequacy of support provided to Natasha by the university."
 - The ruling "prevented any proper scrutiny of the facts"
 - that matters her parents believed were important "were not addressed"
 - that "key questions were not allowed and therefore left unanswered"
 - leaving them "angry, resentful and cheated".
- So they separately took the university to court over duty of care and disability discrimination, and on the latter the judge has found in their favour.



Duty of care?

- As in other cases, on negligence the judge found no statute or precedent which establishes the existence of a “duty of care” owed by a university to a student.
 - “the student was not in the care or control of the university beyond its rules in contrast to, for example, a schoolchild in the care of a school or a prisoner in the care of the state.”
- In stark contrast to the messaging often put out by ministers, sector bodies and individual universities
- Press framing and parental expectation of in loco parentis
- Related duty to carry out services with reasonable care and skill – ie M/H and T&L services



Disability discrimination



- Failure to adjust assessments discrimination under the Equality Act?
- A key question in the case was extent to which the assessment method represented a means to displaying understanding knowledge (that could therefore be reasonably adjusted) or in and of itself a competence standard (ie making presentations and participating in oral interviews a key skill)

Disability discrimination



- Academic and admin staff could refer students to specialist services
- “Disability support summary” acts as guidance to school staff but can take time to be developed
- Assessment: broad guidance and final say rests with school
- Some concerns re confidentiality across university re disclosure of suicide attempts

Natasha Abrahamart



- Generally shy. 2:1 marks in first year, very quiet. Some personal issues in first year with housing/relationships.
- Oct 17 interview assessment – shutdown and marked down
- Backwards and forwards with personal tutor
- Various discussions/attempts – note of “panic and anxiety issues” re interview assessments – referral to counselling to diagnose and obtain DSS

When is a student disabled?



- Judge notes that Abrahart suffering from social anxiety disorder and depression in Oct 2017
- Did (when did) the university have “actual or constructive notice” of Natasha’s disability?
- As of October 2017 he says it manifested itself – in other words, it was there to be seen – “in contrast, perhaps, to disabilities which can be hidden or only be discerned with expert technical skill.”

When is a student disabled?



- He argues that there was not “sufficient manifestation” of any disability in her first year to put the university on notice of anything
- But by October 2017 the university’s staff “could see for themselves” that Natasha had a mental impairment which had a “substantial and long-term adverse effect on her ability to carry out an otherwise normal task within her course”.
- **Where are we now as a sector on “processes to prove” and noticing SAD and depression that could impact?**

disability, following the social model, begins at the point when there is a possibility of exclusion or discrimination.

Evidence therefore is useful to inform our inclusion plans, but not essential.

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Reasonable adjustments

- The Equality Act 2010 imposes on universities a statutory duty of making “reasonable adjustments” to avoid a disadvantage caused by a provision, criterion or practice to disabled student which puts that student at a substantial disadvantage compared with those students who do not share that disability.
- (PCP) does not include the application of a competence standard – defined in paragraph 4(3) as: “... 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”.



Competence?

- Competence standards must be objectively justifiable, i.e. they must be a proportionate means to a legitimate aim, and genuinely relevant to the course. The EHRC technical guidance on the Equality Act describes proportionate as ‘appropriate and necessary’
- Competence standards must be explicit, written down, clearly published and made available to applicants and students at the earliest opportunity in order that they may make informed choices around programmes of study.
- They cannot be applied after the fact and cannot cover pedagogic 'preferences' or 'norms' of practice unless there is an objectively justifiable reason for including these competencies.
- HEIs are not required to make adjustments to competence standards but are required to make adjustments to the ways in which competence standards are assessed, in order to ensure disabled students are not disadvantaged in demonstrating competency by the chosen assessment.
- “The core issue running through all this is still one of trust: we don't trust students to demonstrate their knowledge if they don't demonstrate it the way we prescribe. Even if the way we prescribe is outmoded, outdated and frequently ineffective.”



Competence?

- Will universities rush to ensure assessment methods are clarified as competences?
- Imagine you can write a skill used in assessment into the competence standards for the course – you could argue it's appropriate and necessary maybe in pursuit of employability skills.
- Doing so significantly restricts your ability to make adjustments for students that become disabled and restricts your ability to attract disabled students
- **Where universities respond on a university-wide policy basis to this issue should be considered by the SU**



Abrahart case specifically

- In the hearing, the university argued that the oral assessments could not be modified as “an ability to explain and justify experimental work orally is a core competency of a professional scientist”.
- But that defence was rejected by the judge, who found:

“It is obvious to me that the fundamental purpose of the assessments was to elicit from Natasha answers to questions put to her following the experiments and it is a statement of the obvious that such a process does not automatically require face to face oral interaction and there are other ways of achieving the same.”

Abraham case specifically

- For the laboratory interviews, they argued that the university should have removed the need for oral assessment altogether, and / or provided written questions in advance. A
- And for the presentation, they argued for both of those steps plus assessing Natasha in the absence of her peers, using a smaller venue – in the hearing they also suggested that communication via a text or remote type service could have been deployed.

Universities must not disregard poor spelling and grammar – OfS

Universities and colleges should consider students’ spelling, punctuation and grammar when marking exams and assessments, the Office for Students (OfS) argues in a report published today.



The report – [Assessment practices in English higher education providers: Spelling, punctuation and grammar](#) – considers approaches to assessment at a small number of universities. Some of these universities have policies which mean that proficiency in written English is often not assessed.

Other EA2010 failings

- Failure to make reasonable adjustments
- Also indirect discrimination by application to Natasha of a discriminatory provision, criterion or practice
- Direct discrimination in the form of unfavourable treatment

Other EA2010 failings

- Indirect discrimination by application to Natasha of a discriminatory provision, criterion or practice – the interviews
- University argued that put her on same level as others with someone who has similarly poor skills of oral presentation – judge dismissed that

Other EA2010 failings

- Direct discrimination in the form of unfavourable treatment
- Marking down
- University tried to argue extenuating circumstances
- Judge argued that even that would result in a period of unfavourable treatment
- “There can be no doubt that there was direct discrimination especially once the University knew or should have known that a mental health disability of some sort was preventing Natasha from performing (and causation is not in issue)”

Where next?

- University may appeal given wider sector implications (will universities wait?)
- Noticing (and proving/judging) disability (depression and social anxiety)
- Referrals and relationships between support services, academics, personal tutors
- How judgements are made about reasonable adjustments, who made by, on what basis in particular on assessment
- Review of existing practice?

Not like this

I agree with those above who argue that this student was evidently not in a fit state to be enrolled on an advanced course of learning such as an undergraduate degree. Universities across the sector need to get to grips with when it's appropriate to suspend students when it is clear that they're not fit to study, especially in matters of mental health. From experience universities are often loathe to do this, in part because there is insufficient understanding about whether doing this itself is against equality duties, also perhaps because of the financial and resource impact of doing so.

If this poor young woman was suffering to this extent in a compulsory educational setting, you'd hope that the school would put her on a special course of study. But this is HE, it's not compulsory and it's better for some people not to go, even if they are academically capable. It feels like we forget this and the lack of options other than HE for bright young people who may or may not have a disability don't make taking the alternative option easy at all.

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Questions?

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