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THE LEGAL RELATIONSHIP BETWEEN UNIVERSITIES AND THEIR STUDENTS – HOW ACCOUNTABLE AND TO WHAT EXTENT IN LAW ARE UNIVERSITIES LIABLE FOR STUDENT SUICIDES?

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ABSTRACT

This article addresses how the relationship in law of universities and their students is to be characterised. Its main purpose is to establish where legal liability lies in the case of a student committing suicide, whilst undergoing an educational qualification.[1] Characterisation of the relationship between universities and their students has been included within a number of models which are set out and assessed, the aim being to show the range of characterisation and at the same time point out the defect(s) in each characterisation. This analysis is undertaken in searching for a more meaningful and coherent model of the legal relationship between the university and the student. A legal framework of accountability is essential. Exploration of more conventional ways of addressing this, and alternatives, is required. The article therefore includes for consideration a less fashionable potential classification of a fiduciary relationship between universities and their students. It explores, too, the possibility in public law of founding a breach of a substantive legitimate expectation challenge where promises of safeguarding have been made to the now deceased student. This phenomenon goes beyond the United Kingdom, so reference is made to case law in other jurisdictions, such as Canada and USA.

Keywords: student suicide, university liability, pastoral care, fiduciary relationship, legitimate expectation, duty of care, higher education, safeguarding

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[1] This work is not limited to universities, but for sake of brevity the term 'university' will be deemed to include any institution of higher education and will not be limited to those offering degree studies, but include part-time as well as full time students including vocational, non-vocational and diploma awards.

INTRODUCTION

Assistant Professor Elana Premack Sandler states: "A suicide is like a pebble in a pond. The waves ripple outward."[2] She correctly identifies that those closest are the most dramatically affected, such as family, friends, co-workers, classmates, but as the ripple creates second waves, others are affected. In the university setting, this will include the wider community, such as the institution the student attended, university staff, and particularly those lecturers involved in some way with the academic teaching of that student or others where the student was part of a university sports or other club activity. Sandler further provides statistical evidence, confirming that a 2016 study "estimated that 115 people are exposed to a single suicide, with one in five reporting that this experience had a devastating impact."

In November 2023 the Minister for Higher Education Robert Halfon said: "In 2022, twenty-three % more students declared mental health conditions when they applied through UCAS."[3] This statistic graphically illustrates the importance of student mental health and related suicide or attempted suicide.

Recently, an increasing number of suicides by university students has led to a call for the relationship to embody a statutory duty of care on the part of universities towards their students. This has been the subject of consideration by Parliament[4] and involved a discussion of a petition by 128,292 signatories, lead petitioner being Lee Fryatt whose university student son Daniel took his own life.[5]

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[2] Elana Premack Sandler, 'The Ripple Effect of Suicide' (National Alliance on Mental Health Blog, 10 September 2018) https://www.nami.org/Blogs/NAMI-Blog/September-2018/The-Ripple-Effect-of-Suicide accessed 3 April 2024.

[3] The Rt Hon Robert Halfon MP, 'Speech' (UUK Mental Health Conference, London, 21 November 2023) https://www.gov.uk/government/speeches/robert-halfon-uuk-mental-health-conference-speech accessed 3 April 2024.

[4] HC Deb | 5 June 2023 | Volume 733 | Column 216WH. Note particularly Nick Fletcher Conservative MP for Don Valley on general data protection legislation (GDPR) as justification for failure to share information with parents: 'In my experience, safeguarding always overrides GDPR, so … that's definitely something that we really need to be looking at.'

[5] Lee Fryatt, 'Personal Appeal From Lee Fryatt, Father of Daniel And Duty of Care Petition Author'. The Learn Network, Mar 14, 2023 https://www.thelearnnetwork.org.uk/post/personal-appeal-from-lee-fryatt-father-of-daniel-and-duty-of-care-petition-author accessed 3 April 2024. A former Higher Education minister, Michelle Donelan, wrote to all Vice Chancellors specifically on the subject in July 2021 and again in December 2021. In October 2021 on behalf of the Department of Education Donelan said: 'Higher education (HE) providers…have a duty of care to students when delivering services,

Government via the Department of Education has concluded, in considering the matter, "that further legislation to create a statutory duty of care, where such a duty already exists, would be a disproportionate response." Thus, Government is relying upon the fact that higher education providers have a general duty of care under common law to deliver educational and pastoral services to the standard of an ordinary competent institution and in carrying out those services, they are expected to protect the health, safety and welfare of their students. Government does not consider that a statutory duty of care would be the best approach to improve student outcomes.[6]

Statutory law in the UK is not unfamiliar with the notion of "a duty of care" and often enacts that a person or body has a wider duty of care than provided under common law. For example, occupiers liability legislation, under which a property owner (freehold or leasehold) has a statutory duty to their visitors, does precisely that.[7] The owner cannot choose whether or not to protect their visitor from harm, but has a statutory duty to do so and to take reasonable care to ensure visitor safety. The petitioners referred to above want a statutory duty placed on universities, as universities do not currently have the same defined legal duty as schools for safeguarding their students. Universities bear a somewhat limited duty of care to ensure that students have a safe environment in which they can live, work and study. A deceased student's parents/grandparents could make a claim for beach of statutory duty against the university concerned, which would be a far easier litigation process than the alternative action of instituting a claim in tort, based on negligence, especially in an area of provision of pastoral services in the mental health field. Such a negligence claim has the threefold hurdles of proving firstly, that a duty of care exists between the university and the student, secondly, that a breach of that duty has occurred and, thirdly, foreseeability of harm ensuing from that breach.

Soft law mechanisms of guidance literature and stated policies have their place, but statutory duties have greater capacity for capturing attention and of course unlike "soft law" instruments have the force of being statutory instruments with parliamentary force.[8] Quick presents an argument in favour of professional

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including the provision of pastoral support, and taking steps to protect the health, safety and wellbeing of students.'

[6] This is addressed later – see Section 3 JUDICIAL STATEMENTS.

[7] Occupiers Liability Act 1957 governs the duty of care owed to lawful visitors and the Occupiers Liability Act 1984 governs the duty of care owed to 'trespassers'.

[8] Oliver Quick, 'Duties of Candour in Healthcare: The Truth the Whole Truth, and Nothing but the Truth' (2022) Medical Law Review, Spring, Vol 30(2) 324–343. Quick argues that candour should be respected as a cardinal principle governing not only the

and statutory duties of candour formalised for clinicians and healthcare organisations to be honest with patients and families when treatment has gone wrong. Perhaps, a similar approach could be encouraged in the university student relationship. A statutory duty on the part of universities could easily be coupled with a duty of candour.

LIABILITY MODELS

a. **Constitutional**
b. **Contract**
c. **Unitary**
d. **In Loco Parentis**
e. **Tortious Liability**
f. **Statutory Liability**
g. **Trust Theory**
h. **Consumer**
i. **Fiduciary**
j. **A Facilitator Model**

(a) Constitutional Model

The status of universities in law is that all are not constituted in the same manner or under the same terms. This affects the extent of their liability. A small group of universities are classed as statutory corporations, for example the Universities of Oxford and Cambridge (as opposed to the individual colleges which are chartered corporations).[9] As statutory corporations, these universities can do only that which is expressly, or by necessary implication, authorised by their founding statute. Thus, any act not so authorised is ultra vires the powers conferred upon them and thereby will be void in law.

In the UK another species of university exists, namely those universities traditionally incorporated by Royal Charter issued by virtue of the Royal Prerogative. Universities formed in this way have all the powers of a natural person

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conduct of those providing care, but also those who investigate such incidents. Harmed patients and their families deserve to know the whole truth. This approach could be applied equally to investigations into a student's suicide at a university.

[9] Committee on Higher Education. Report of the Committee appointed by the Prime Minister under the Chairmanship of Lord Robbins (Cmnd. 2154, 1963). For a broad sketch of the structure of UK universities, see App 1V paras 10 and 11.

and are not confined to those actions affirmatively by that Royal Charter.[10] More recently, debate has centred on whether the relationship is a purely contractual one or whether the student enjoys a status whereby he/she, by virtue of the public nature of a university, can be protected by public law, as opposed to being limited to private law remedies. As Lewis states:

> "This issue is necessarily intertwined with the question of the legal nature of the university and the peculiar dichotomy of its public-private character."[11]

A student or their family members may therefore not be limited to a breach of contract action against a university, say for the loss of their son or daughter, but be able to claim constitutional rights.

Lewis refers to the work of Professor G H L Fridman,[12] noting that he "best captures the curious public-private nature of university activities". Lewis goes on to observe that Fridman points out that universities "are legal corporations capable of entering into contractual relationships with faculty and students":

> "As such, it might be possible to confine disputes arising from such relationships to the law of contract, modified to suit the particular climate of the university. Conversely, instead of viewing the universities as purely private institutions, one can regard them as performing a public function, having been instituted by the state, either through legislative act or prerogative charter. As such, they are essentially public bodies."[13]

This approach would permit a judicial review application by members of the deceased student family, if there have been procedural irregularities or one may dare to suggest the availability of the prerogative writs in claims against the university. A supporter of this view is Professor Gardner who considers that universities are sufficiently public for certiorari to lie in principle. He states:

> "A university can legitimately be viewed as a public body created by legislative or executive act to provide higher education. At the present time education is primarily a responsibility of the state, as demonstrated by the degree of public

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[10] Clive B Lewis, 'The Legal Nature of a University and the Student-University Relationship' (1983) Ottawa L Rev, vol 15, 249–273.

[11] Lewis (n5), 249.

[12] 'Judicial Intervention into University Affairs' (1973) Chitty's Law Journal, vol 21(6), 181–188.

[13] 'Judicial Intervention' (n12).

> funding that it receives. There is no reason why they cannot be regarded as akin to government departments or agencies as far as certain activities are concerned. To equate them with such bodies for the purpose of judicial supervision is unlikely to threaten their autonomy. In practice, universities 'legislate' codes of behaviour and procedure for students; it is not done on a contractual basis." [14]

The possibility of equating universities with public bodies acting as an arm or agent of the government is to take the argument too far, as government departments are part of the executive, whereas universities have a role outside governmental action. Universities' autonomy should be protected, albeit their decision-making processes continuing to be subject to the vigorous scrutiny of administrative law.

(b) Contract Model

The relationship between the student and their university of choice has been categorised as purely contractual. For a contractual analysis reference can be made to works by Francine Rochford[15] and Seo Yun Yang Lex.[16]

The 19th century saw the courts reject the contractual view. For example, in *Thompson v University of London*[17] Mr. Thomas was in dispute over the interpretation of regulations relating to LLD examinations. He argued that the original interpretation formed part of a contract between himself and the University which he could enforce by injunction. Kindersley VC rejected the contention on two grounds, firstly, the issue was an internal matter within the jurisdiction of the University Visitor, an officer of the University with exclusive jurisdiction over its

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[14] Michael P Gardner, 'In Loco Parentis: Does it Mean Anything Today?' in H N Janisch (ed), *1975 The University and the Law – Proceedings of a conference held at the Faculty of Law, Dalhousie University, February 28-March 1, 1975* (Dalhousie University Law School, 1975. See further Australian case Bayley Jones v University of Newcastle (1990) NSWLR 424 which concerned termination of a PhD student by a university which considered the authorities and Allen J concluded 'that there was no difficulty in construing that it was possible there was a contract which incorporated the terms arising from the rules of the university.'

[15] Francine Rochford, 'The Relationship Between the Student and the University' (1988) Australian and NZ Journal of Law and Education vol 3(1–2), 28–48. Referencing English jurisprudence, Rochford states: 'Universities in the United Kingdom appear to be resigned to the treatment of the relationship as a contractual one, although there still appears to be doubt as to the point at which the contract comes into existence.'

[16] Seo Yun Yang, 'University v Student: Challenging the Contractual Understanding of Higher Education in Canada' (2010) Lex Electricia, vol 14(3) 3.

[17] *Thompson v University of London* (1864) 33 LJ Ch 625.

internal affairs. Secondly, that the relationship was not a legal contract and that to describe it as such was a misnomer.

Change occurred in 20th century case law, where the courts accepted the idea that there is a contract between the student and the university. The courts have viewed the relationship between the parties as one of mutual rights and obligations. In *Sammy v Birkbeck College*[18] a disappointed student claimed damages for breach of contract after he had failed his exams. The court held that there was no contract between student and College by which the College was bound to provide proper tuition. By an implied term, the College also warranted that it had adequate professional staff and facilities for this purpose. The court found no evidence that these obligations had been broken. The same finding of a contract between a student and university occurred in *D'Mello v Loughborough College of Technology*,[19] where O'Connor J held that a College prospectus outlining the syllabus for a course formed part of the contract. Therefore, if the course failed to correspond to the syllabus there might be an actionable breach of contract.

As to the role of university visitor, a factor in *Thompson v University of London*, William Ricquier in his work entitled "The University Visitor"[20] stated:

> "… the courts have only recently extended the scope of judicial review from such traditional and obvious areas of administrative power as government departments, local authorities and licensing tribunals, into the less clearly 'public' field of trade unions, clubs and universities."[21]

Ricquier examines the origins of the power of the visitor, concluding that the courts have historically been reluctant to intervene in the internal matters of a university, especially where provision has been made for the existence of a visitor.

Professor HWR Wade states:

> "The legal relationship of a University with its members as such is much more suitably governed by the ordinary law of contract and by ordinary contractual remedies."[22]

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[18] *Sammy v Birkbeck College* [1964] 1 WLUK 710.

[19] *Thomson v University of London* (1864) 33 LJ CH 625. Both cases were concerned with breaches of contract arising from alleged failures to teach adequately, not to mark or grade properly.

[20] William Ricquier. 'The University Visitor' (1977–1978) Dalhousie Law Journal, vol 4 (3), Art 3 647.

[21] Ricquier (n20).

[22] HWR Wade, 'Judicial Control of Universities' (1969) LQR vol 85, 468, 471.

Under this approach it is easy to fix the creation of the contractual relationship by the invitation to treat from the university bodies by the advertisement of their various courses, fees, subject matter, and for the student to make an offer to attend. The prospective student will apply to a university which after assessment may issue an offer of a place and it is for the student to accept or reject. At the stage of acceptance by a student a formal contract is created.

Jonathan Flagg Buchter, dealing with the evolution of the student-university contract doctrine, states:

> "The relationship between universities and their students has been analysed by the courts under many different legal doctrines. The most enduring and pervasive of these has been the theory that there exists an implied contract between the student and the institution."[23]

The archetypical contract represents a commercial exchange by two or more parties of some tangible or intangible property for another to further their respective interests. This bilateral model highlights the neoclassical assumption that private ordering schemes allow people to freely and rationally choose how they interact with one another to maximise utility and value. This philosophical underpinning of the private law of contract, however, does not truly represent the university and student relationship. Whilst there is a two-way exchange of obligations and rights, for example, in exchange for a course fee paid by the student the university will provide tuition, learning, and grant a degree/diploma in the student's chosen discipline, subject and conditional upon the student complying with all rules and regulations set by the university and fulfilling necessary academic requirements to merit accreditation. This is the consideration aspect of the contract. Knowledge capital is evidenced by the piece of paper issued by the university to a successful student which can be translated into tangible assets and advantages, referable as monetary capital.

However, this is not an individually negotiated contract, but one imposed by the university only. The student has no say on terms and conditions and a "take it or leave it" approach applies. Thus, in the case of higher education the student relies on the university disproportionately more than the university does the student for reasons that are naturally characteristic of this relationship.[24]

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[23] Jonathan Flagg Buchter, 'Contract Law and the Student University Relationship' (1973) Indiana Law Journal, vol 48(2), Art 5, 1 p.253.

[24] It may be however, that in the current climate Brexit has put universities into a position of greater competition so that students may be in a better place in terms of contractual power? That is, with the UK having left the European Union (EU) post the 2016

Universities are entering into multiple contracts with a large number of separate students at any given time, as well as with different stakeholders, and are therefore highly familiar with contractual terms used and their effect, whereas the individual student by contrast is often faced for the first time with a detailed legal contract, many terms of which are unfamiliar. In addition, terms and expressions may remain vague (lack of specificity) for reasons of flexibility on the part of the university. For example, a reservation clause relating to fee increases with the universities right to review them at set stages of a course, or a "warning" that optional subjects or modules may not be available always. Universities are therefore in a dominant position as regards what the contract contains. Neo classical contract theory assumes that parties enter into arrangements with full and relevant information, which does not reflect the reality of the university-student relationship.

The contract formation can include statements made in the admission application, registration form, the prospectus, university rules and regulations in the students handbook. That booklet will contain many of the terms and conditions of the contract, including those relating to student welfare, pastoral and well-being provisions, as they are of immense practical value. Obligations on both sides must be clear and concise, leaving little for avoidance of doubt.

Apart from the wide freedom of contract enjoyed by universities, under UK law the student contract is subject to consumer law and regulated by the Competition and Markets Authority (CMA). The CMA has issued a restatement of its guidance (first promulgated in 2015) to universities which calls for any terms to be in an accessible form and to be clear and transparent in relation to the parties' respective rights and obligations. The CMA has restated its view that a term "may be open to challenge if it could be used to cause consumer detriment even if it is not at present being used so as to produce that outcome in practice."

(c) Unitary Model

This theory focuses on the distinct characteristics of each given academic community. It is discussed in detail by Stamatakos[25] who refers to the various other

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referendum, universities are less able to rely on students enrolling from the EU. This in turn means that universities may be more beholden to the students who do enrol, as university finances ultimately are dependent upon student enrolments: Brexit leads to huge drop in EU enrolment at British universities | Evening Standard accessed 2 June 2024.

[25] Theodore C Stamatakos, 'The Doctrine of in Loco Parentis, Tort Liability and the Student-College Relationship' (1990) Indiana Law Journal, 65 (2) Art 10, 471–490.

replacements models, observing that after the "broad and unambiguous renunciation of in loco parentis", courts as well as scholars "have made several detailed attempts to recast the student-college relationship-constitutional, contract, fiduciary and "unitary" theories."

Stamatakos[26] goes on to say that Gregor E. Michael's proposed "Unitary theory"[27] describes "the legal relationship between college and student as a relationship that is both dynamic and unique" and, further, "Michael's theory is 'an effort to maintain substantial justice' between the school and its student by focusing on the distinct characteristics of each given academic community." Stamatakos goes on to observe that Michael "argues that because academic communities are "distinct from other societal groups" and possess [their] own "unique conditions" and characteristics, legal principles must develop that are applicable to the dynamics of the particular institution." Furthermore, in Stamatakos' assessment:

> "Michael's view is that a court reviewing institutional behaviour implicating the legal relationship between college and student should focus its enquiry on the particular goals of both the institution and its students. He mentions as a primary goal of the institution as educative and to provide the necessary facilities and atmosphere that leads to a stable academic community for the effective transmission of knowledge. The students' goal is to receive an adequate educational experience."[28]

Stamatakos' conclusion is that this theory does not provide any meaningful guidance either to universities or courts and therefore appears to have been ignored. He rejects the theory on three grounds. Firstly, a goal orientated analysis is not effective for resolving student personal injury claims; secondly it fails to facilitate tort law's deterrent function and finally it is not viable.

(d) In Loco Parentis Model

What is meant by the term "in loco parentis"? Literally it means "in the place of a parent", and was formally recognised in an educational context as early as the late eighteenth century in England.[29] It derives from common law rather

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[26] Stamatakos (n25), 479 where the unitary model is specifically addressed.

[27] Gregor E. Michael, 'The Unitary Theory: A Proposal for a Stable Student-School Legal Relationship' (1972) The Journal of Law and Education, 1(3) Art 6, 411. He refers to the varied relationship theories. See pp.412–422

[28] Michael (n27), 425

[29] Bl Comm 441.

than statute and in most circumstances is easy to apply. It involves delegation of rights to another, for example, the head of children's social services in a local authority being placed in loco parentis in respect of a child taken into care, or parental rights given over to the school authorities whereby educators assume parental authority to protect a student's welfare. As a legal concept it is always considered to have been very imprecise.[30] As long ago as 1924 in an American case *Stetson University v Hurt*[31] it was said: "College authorities stand in loco parentis concerning the physical, moral and mental training of the pupils." Gardner[32] states: "Whatever its fate at school level, it is unlikely to provide an adequate definition of present-day university student relations." Stamatakos agrees and, referring to the position in the US (which is applicable to at least most Western countries) states: "The doctrine of loco parentis is not legally tenable today [bearing in mind] a lowered age of majority in most states."[33] On the first of January 1969 the age of majority in the UKs reduced from twenty one to eighteen years.[34] Prior to this legislation anyone under the age of twenty one was still a child in the eyes of the law, and so for many decades prior to the 1970's universities were generally deemed to be acting in loco parentis in respect of the significant proportion of those students not yet legal adults.

Perry A Zirkel and Henry F Reichner[35] reviewed the evolution of the loco parentis doctrine, observing it is solely in "the college context [that] the in loco parentis theory has undergone a clear rise and complete demise in our courts".

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[30] Nick Hillman, 'Are Universities in Loco Parentis? The good old days or the bad old days?' (2018), Are universities in loco parentis? The good old days or the bad old days? - HEPI accessed 4 April 2024.

[31] *Stetson University v Hurt* 88 Fla, 510, 102 SO 657 (1924).

[32] 'In Loco Parentis: Does it Mean Anything Today' in H Janisch (ed), *The University and the Law*, 43 (n31); H Street, *Law of Torts* (Lexis Law, 1988).

[33] Stamatakos (n25), 479. Where the unitary model is specifically dealt with.

[34] See Family Law Reform Act 1969 for England and Wales, ukpga_19690046_en.pdf (legislation.gov.uk) accessed 1 October 2024; Family Law Reform and Age of Majority (Scotland) Act 1969, Age Of Majority (Scotland) Bill Hl - Hansard - UK Parliament accessed 1 October 2024; and Family Law Reform and Age of Majority (NI) Act 1969 for Northern Ireland, The Law Relating to The Age of Majority. The Age for Marriage and Some Connected Subjects (lawreform.ie), at para 2.8, accessed 1 October 2024.

[35] Perry A Zirkel, Henry F Reichner, 'Is the Loco Parentis Doctrine Dead?' (1986) Journal of Law and Education, vol 15 (3) 271.

(e) Tortious Liability Model

All the torts known to English law apply to a university. The main avenue for redress would of course be a negligence action by the personal representatives of the deceased student. As Theodor C Stamatakos states:

> "The claim in tort will be an assertion by the plaintiffs that the defendant college owes its students a duty of care to take reasonable measures to protect them from all forms of potential harm caused by the college and/or others. Accordingly, a coherent model of this relationship is of critical importance for the adjudication of these claims."[36]

Although not involving a student suicide, relating to allegations of sexual misconduct by a fellow student, the 2023 case of *S Feder and A McCamish v The Royal Welsh College of Music and Drama*[37] is relevant here, for County Court Recorder Halford commented significantly on duty of care by universities to provide a safe place for learning.

(f) Statutory Liability Model

The legal and regulatory framework within which universities work and make decisions is subject not only to common law principles, but also to statutory law. Most of the universities registered with the Office for Students (OFS)[38] are "public bodies" for the purposes of the Human Rights Act 1998. It is unlawful for those higher education providers, as public bodies, to act incompatibly with the European Convention on Human Rights (ECHR). There is also legislation on freedom of speech in the specific context of higher education: section 43 of the Education (No 2) Act 1986 requires universities to "take such steps as are reasonably practicable" to ensure that freedom of speech within the law is secured for their members, students, employees and visiting speakers. Universities are also under a duty to set up a free speech code of practice.

Universities must comply with legislation affecting areas covered by the Equality Act 2010. Universities receiving public grant funding from the OFS are

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[36] Stamatakos (n25), 479.

[37] *S Feder and A McCamish v The Royal Welsh College of Music and Drama* [2023] Case Nos: G67YJ147 and G67YJ153.

[38] The OfS (Office for Students) is an independent regulator of higher education. It regulates universities and colleges to ensure 'positive outcomes' are achieved for past, present and future students Home - Office for Students accessed 4 April 2024.

public organisations for these purposes and must comply with the public sector equality duty (PSED). This is a duty "to have due regard to the need to achieve the aims set out".[39] Universities should be clear about the precise equality implications of their decisions, policies, and practices. The Natasha Abrahart case[40] provides substantial guidance as to the potential application of that Act[41] which addresses the prohibition of two types of discrimination, direct and indirect.

Students with Disabilities-Statutory Definitions

Universities have a legal duty to endeavour to remove barriers a student faces because of disability, which may be physical or mental or in some cases a combination of both. Section 91(3) applies specifically to disabled people and requires that Higher Educational Institutions (HEI's) do not discriminate in the way they confer qualifications. For the purposes of the Equality Act 2010 a disability is defined as "a physical or mental impairment [which has] a substantial and long-term adverse effect on (the) ability to carry out normal day to day activities." This can include social anxiety from which Ms Abrahart suffered.[42] Disabilities are not, however, always visible and can be hidden, such as autism or ADHD (attention deficit hyperactivity disorder). Recognised calculations set at 8% the future level of UK students suffering from an "unseen disability".[43]

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[39] Sections 149, 150 Equality Act 2010, Equality Act 2010 (legislation.gov.uk) accessed 27 September 2024, and see Public Sector Equality Duty: guidance for public authorities - GOV.UK (www.gov.uk) accessed 27 September 2024.

[40] *University of Bristol v Abrahart* [2024] EWHC 299 (KB); *Abrahart v University of Bristol*, 20 May 2922 (Claim N: G10YX983), Abrahart v University of Bristol (judiciary.uk) accessed 15 May 2024. See also Press Release by Irwin Mitchell, Solicitors dated 16th May 2019 entitled 'Coroner Finds Neglect Contributed to Suicide of University of Bristol Student Natasha Abrahart', providing full background information of the case**:** Legal News | Media Information (irwinmitchell.com) accessed 15 May 2024.

[41] See further Section 3 JUDICIAL STATEMENTS below.

[42] *University of Bristol v Abrahart* [2024] EWHC 299 (KB). In 20th May 2022 Judge Ralton found that Bristol University had breached its duty to make reasonable adjustments in relation to academic assessments of student Natasha Abrahart, had indirectly discriminated against her and treated her unfavourably due to the consequences of her disability. Natasha suffered from depression and Social Anxiety Disorder, which qualified as a "disability" for the purposes of the Equality Act 2010. See further Section 3.

[43] Harriet Cameron, Byan Coleman, Tamara Hevey, Sabrina Rahman and Philip Rostant, 'Equality law obligations in higher education: reasonable adjustments under the Equality Act 2010: an assessment of students with unseen disabilities' (2019) Legal Studies, vol 39 (Issue 2), Equality law obligations in higher education: reasonable adjustments under the

Devising and Making Adjustments

This is the area that causes most difficulty and failure. Universities need to take a pro-active approach where adjustments are required to meet a disabled student's needs, and it is not sufficient to rely on requests from the disabled student. This was emphasised in the Abrahart case where reasonable adjustments were suggested, including:[44]

i. Replacing oral assessments with written assessments;
ii. Providing Ms Abrahart with written questions in advance;
iii Moving the assessment to a smaller and thus less intimidating venue.

Context is all important and should be the driving motive of any contemplated changes. Adjustments must be "tailor made" to individual student circumstances and not be addressed by blanket policies. Thus a "tick box" approach is not acceptable.

The duty of care in the case of a student with declared or diagnosed mental health issues may mean the duties are enhanced under equality legislation, particularly the Equality Act 2010. If a university fails to meet its duty to students (with a disability and/or generally) it could lead to a claim in negligence, or breach of contract by a public body: as Sedley LJ said in the Court of Appeal case *Clark v University of Lincolnshire and Humberside*[45] "the relationship of a university to a fee paying student was contractual and courts would adjudicate upon them".[46] In the same case Lord Woolf Mr. reiterated that a university "is a public body": *Clark v University of Lincolnshire and Humberside*,[47] as well as the availability of

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Equality Act 2010 in assessment of students with unseen disabilities | Legal Studies | Cambridge Core, accessed 5 May 2024. The statutory definition is, however, wide enough to embrace a whole range of disabilities.

[44] *Abrahart* (n40). See further ME Voisin, Senior Coroner for Area of Avon, 'REGULATION REPORT TO PREVENT FUTURE DEATHS' dated 16th May 2019, Ref: 10686.

[45] *Clark v University of Lincolnshire and Humberside* [2000] EWCA Civ 129.

[46] *Clark v University of Lincolnshire and Humberside* (n45) para 12. Lord Justice Sedley stated: 'The arrangement between a fee paying student and the ULH is such a contract.' See also *Herring v Templeman* (1973) 3 All ER 569, 584–85.

[47] *Clark v University of Lincolnshire and Humberside* (n45) para 2,9 per Lord Justice Woolf MR, *Clark v University of Lincolnshire and Humberside* EWCA Civ JO419 (Appeal) from Halifax County Court (His Honour Judge Walker). The issue was about justiciability. The University of Lincolnshire and Humberside was one of the new universities brought about by the Education Reform Act 1988. Unlike the majority of older

challenge by an internal complaint and referral to the sector ombudsman, the Office of the Independent Adjudicator for Higher Education (OIA). There are of course time limits involved in bringing any proceedings.[48]

(g) A Trustee Model

This characterisation of the university and their students is based on trust theory. It emphasises elements of the trust, reliance, and expectation between the parties. The basic premise is that because of the reciprocal trust element of both parties, the student will diligently attend to their studies whilst conforming to all the universities rules and regulation, in return for which they will be awarded their degree or diploma at the end of their allotted subject time span. A university is therefore seen as a form of a trustee on behalf of the student whose education and learning is in the trustee's sole charge. The student is the beneficiary. This does not, however fit the archetypal trustee beneficiary arrangement, but is put forward as a model of the university and student relationship, because elements of the trust mechanism and its features are illustrated in the relations between the parties. There are, however, none of the legal and equitable interests that are the feature of normal trust arrangements. For example, as where the trustee holds the legal estate in the trust property on

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English and Welsh universities it has no charter or provision for a visitor. The court held that while issues of academic or pastoral judgement are best left to the university, allegations of breach of contract rules are capable of domestic resolution and can be adjudicated by the courts. In 1998 the student appellant was reading for a first degree in humanities and had to submit a paper by the 14 April 1995. She chose to do a presentation and academic write up on 'A Streetcar Named Desire'. She worked on her father's computer but failed to make a backup copy. On the last day before deadline date all her stored data was lost from her hard disc. The appellant was only able to submit some notes from a Methuen commentary. She failed her exam on grounds of plagiarism. The Board of Examiners marked it 0. Eventually it was amended to a 3rd class degree. The University had not properly marked the paper as they were obliged to do under the contract with the student. The court said the availability of judicial review did not prevent an action in contract. Sedley LJ with whom Ward LJ and Lord Woolf agreed that academic judgments were not justiciable, but the amended pleadings did not fall within that category and involved contractual issues which the courts were capable of adjudicating.

[48] Equality Act 2010 S 118(2), 140AA. This section stipulates that the time limit for bringing a claim to the County Court is extended from six to nine months if a within six months of the act that is the subject of the complaint. Time can also be extended to eight weeks after the conclusion of alternative dispute resolution (ADR) proceedings.

behalf of the beneficiary whose interest(s) are protected behind "the curtain" in the form of beneficial interests.

An exponent of this trust theory was Professor Alvin L Goldman[49] who deals expressly with aspects of freedom of expression and association in the context of universities and the exercise of their disciplinary powers. He refers to legal characterisations of the relationship between a university and its students, including the trust theory, citing two US cases which apparently stand alone and represent the student-university affiliation as one of trust. One of these, *The People ex rel Tinkoff v North Western University*,[50] involved the refusal of the Illinois Supreme Court to grant mandamus to a petitioner seeking entrance to a university. The Court said that once enrolled the student would stand as the beneficiary of the trustee university. Similarly, the trial court in *Anthony v Syracuse University*[51] characterised the disciplined student as the beneficiary of a trust.[52]

(h) A Consumer Model

The emergence of the "student consumer" in English higher education discourse is connected with what has been described as the "marketisation" of higher education. Much of the commentary on students as consumers is framed by critics of these changes. They object to marketisation, specifically its perceived threat to pedagogy and that it demotes the core role and mission of higher education institutions. Such critics are concerned that the characterisation of students as consumers "obscures and underplays the collaborative nature of their relationship with their university or college and their learning."[53]A market approach is referred to by David E Leveille who states: [54]

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[49] Alvin L Goldman, 'The University and the Liberty of its Students' (1966) Kentucky Law Journal, vol 54 (4), Art 4.

[50] *The People ex rel Tinkoff v North Western University* 111 App 224, 77 NE 2D 345, cert denied, 335 US 829 (1947).

[51] *Anthony v Syracuse University* 224 App Div.487 (NY App Div 1928).

[52] Goldman (n36) 651.

[53] 'Protecting students as consumers' (Office for Students (OFS), Insight Brief, 15 June 2023) https://www.officeforstudents.org.uk/publications/protecting-students-as-consumers/ accessed 8 April 2024.

[54] David E Leveille, *Accountability in Higher Education: A Public Agenda for Trust and a Cultural Change* (University of California, Centre for Studies in Higher Education, 2006), 6.

> "Along with the focus on accountability comes pressure to adopt 'the business model' with its greater emphasis on the 'bottom line'. Such an emphasis reflects a market driven approach to Higher Education rather than the historic roles and mission of institutions of Higher Education."
>
> Philip Plowden accepts that students "are to some extent consumers with consumer rights that can be enforced by the courts."[55] This parallels R A Alani and others who state that individuals "are very much more than a merely productive factor in management plans. They are consumers of goods and services and, thus, they vitally influence demand."[56]

(i) A Fiduciary Model

There is nothing new in university administrators thinking about their relationships with their students, including parents and the responsibilities and obligations involved, but historically those duties were not thought of in overly legal terms, however some commentators have suggested that the relationship between a university and its students is fiduciary.[57]

A detailed analyses of the viability of applying this equitable obligation to the relationship between universities and their students and the hurdles involved, particularly issues of loyalty to a large cohort, requires expansion beyond the scope of this article. Nonetheless, for the sake of completeness a brief outline on this characterisation is provided here and considers whether this obligation is a viable option for imposing liability on universities or is it simply an obligation in the shadows with no practical use. That there is a considerable power imbalance in the relationship does not mean that this vulnerability aspect determines the

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[55] Philip Plowden, 'Greater clarity given on student's rights to judicial review', WONKE, 22 February 2017. https://wonkhe.com/blogs/analysis-clarity-given-students-rights-judicial-review/ accessed 8 April 2024.

[56] Ramoni Ayobami Alani, Phillips Olaide Okunola, Sikiru Omotayo Subair, 'Situation Analysis of Student's welfare services in universities in South-Western Nigeria: Implications for Student's personal management practice' (2010) US-China Education Review, vol 7 (10) (Serial No: 71) ISSN 1548–6613, USA.

[57] Brett G Scharffs, John W Welch, 'An Analytical Framework For Understanding And Evaluating The Fiduciary Duty of Educators' Brigham Young University Education and Law Journal (2005) vol 2, Art 5.

relationship as fiduciary.[58] A. L. Goldman spends a considerable amount of time espousing a fiduciary theory of the student university relationship.[59] Focussing entirely upon the reciprocal trust between the parties, is however, a limitation that arguably requires reconsideration. Whilst it is acknowledged that trust and fidelity are central to fiduciary theory, the core element of a fiduciary relationship involves trust that in turn centres upon loyalty, albeit sole loyalty of the fiduciary towards the beneficiary. There must be no deviation from that exclusive loyalty to the interests of the beneficiary. To do otherwise may mean that outside interests cause a conflict of interest or potential thereof to that of the fiduciary concentrating fully and exclusively on the beneficiary.

Kent Weeks and Rich Haglund also takes a fiduciary stance, stating that in the student-university relationship "All of the elements of a fiduciary relationship are present …"[60] Whilst most of the elements of a fiduciary relationship appear to be present in the relationship between a university and their student, such as power imbalance between the parties meaning over reliance by the student, undertakings (express or implied) by the university, reciprocal trust, a vital fiduciary element is missing, namely the exclusive loyalty that must be shown by the university to a student. Weeks and Haglund further state:

> "This reposing of confidence is that which is placed in a fiduciary. It is very similar to that reposed in a doctor, a lawyer, a clergyman or a corporate director."[61]

Certainly the element of confidence is evident in fiduciary relations, but to quote, as Weeks does the group of archetypical fiduciary relationships reinforces my view that loyalty as well as reciprocal trust is a main player in any finding of a fiduciary relationship. The patient reposes trust in his/her doctor and expects his/her interests to be the sole focus of his/her loyal exclusive attention. The same

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[58] See Sarah Worthington, 'Fiduciaries Then and Now' (2021) Cambridge Law Journal, vol 80 (Supp S1) (1921–2021 Centenary Issue). FIDUCIARIES THEN AND NOW | The Cambridge Law Journal | Cambridge Core accessed 5 May 2024. In the USA, case law places a fiduciary obligation on universities where there has been sexual harassment by university officers on students based on the power differential. This approach is different conceptually from Canadian jurisprudence as illustrated by *Alexander v University of Lethbridge* [2022] ABCA 228.

[59] Goldman (n36).

[60] Kent Weeks and Rich Haglund, 'Fiduciary Duties of College and University Faculty Administrators' (2002) Journal of College and University Law, vol 29, 153–187.

[61] Weeks and Haglund (n47).

applies in the other classes of fiduciary relationships mentioned. True it is that both the doctor and lawyer have other professional loyalties, for example, the doctor to the BMA, the solicitor to the court as an officer of the court and its professional body the Law Society, but this does not destroy the sole loyalty element.

Kent Weeks and Rich Haglund[62] propose that faculty and administrators should be viewed as fiduciaries charged with acting in the best interests of their students. They review recent cases involving breach of fiduciary duty against schools and discuss whether imposing fiduciary duties would hinder academic freedom. They further suggest that the doctrine of good faith and fair dealing offers inadequate protection for the trust students' repose in colleges. Yet phrases such as "best interests" are inappropriate in a fiduciary context because "best interests" may not be exclusive interests, the element required by applications of strict loyalty by the fiduciary. "Best interests" can be seen as a "watered down" obligation.

It is informative to view how other jurisdictions have considered the applicability or not of fiduciary obligations in the education sector.

Canadian Jurisprudence

In 2022 the Alberta Court of Appeal in *Alexander*[63] addressed the situation vis-à-vis student athletes. The existence of a fiduciary duty on the part of an educational institution was expressly rejected. The Court held that the relationship between student and their institution may give rise to "an ordinary duty of care sounding in negligence, but did not rise to the level of a fiduciary relationship." The Court favoured a tortious, rather than a fiduciary approach.[64] It is worth examining the

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[62] Weeks and Hagland (n47).

[63] *Alexander v University of Lethbridge* [2022] ABCA 228. The plaintiffs were a group of hockey players enrolled at the University of Lethbridge who alleged emotional, psychological, physical and financial abuse by the University of Lethbridge director of athletics and hockey coach. As part of their claim the students asserted that the University owed them a fiduciary duty which the University had allegedly breached. The lower court struck this claim (amongst others) out and the students appealed to the Alberta Court of Appeal. See also comments by Maria Starko, Michael Larsen, 'An ideal or an obligation' (Clark Wilson, 9 August 2022) https://www.cwilson.com/an-ideal-or-an-obligation-alberta-court-of-appeal-confirms-there-is-no-fiduciary-duty-between-a-post-secondary-institution-and-its-students/ accessed 8 April 2024.

[64] *Young v Bella* [2006] 1 SCR 108, 2006 SCC 3. The Supreme Court of Canada held that the relationship between professors and their students had a contractual foundation giving rise to duties in tort and in contract.

precise reasons the Court gave for concluding that no fiduciary relationship existed between the University and student.

The Lower Court's Reasoning

The lower court found that no evidence had been produced which pointed to any particular facts or aspects of the relationship that would give rise to or trigger an expectation that the University would put the student hockey players' interests above all the other interests of the University.

The Alberta Court of Appeal's Reasoning

The Court noted that the plaintiff students did not point to any contractual term between them and the University, nor any other fact that imposed a duty on them to put the interests of those students above those of all other student athletes, students generally, University staff faculty members, or their outside business interests. This was a recognition by the Court that modern day universities not only promote student well-being, but also academic and research success, and in reality do not operate in a vacuum. Rather, they must balance the interests of the broader university community, which not only includes its student population but its faculties, staff, all levels of government, funding agencies and industry. These competing interests must all be balanced against the institution's own interests in maintaining academic standards and ensuring its own financial stability. Thus a university is not in a position to be a fiduciary in most instances because a fiduciary must relinquish all self-interest.

The Court on a practical level observed that universities do have liability for breaches under other legal principles, such as contract and tort, and workplace safety laws – with the addition of discrimination legislation which the Court did not reference.

US Jurisprudence

In *Squeri v Mount Ida College*[65] concerning a college closure the First Circuit Court of Appeals upheld a ruling by the Massachusetts District Court that a higher educational institution and its officers and trustees do not owe a fiduciary duty to

[65] *Squeri v Mount Ida College* No. 19–1624 (1st Cir 2020). Compare the Supreme Court of New Hampshire in Schneider v. Plymouth State College 144 NH 458, 464 (1999) where it was held that the College did owe a fiduciary duty to a student that had been breached by sexual harassment by a professor: emphasis was placed on the power differential between

its students. This is an essential clarification and emphasises that such officers and trustees owe a fiduciary duty to the university itself, not to the students.

Bearing in mind the various positions set down here regarding fiduciary duty, it remains to be seen whether in future cases a fact pattern may arise in which an educational institution is found to have assumed the duties of a fiduciary in relation to its students or a sub-set of those students. Practical advice would propose that universities must avoid contractual terms that suggest the institution will protect the student's interests above those of other institutional stakeholders, thus ensuring that universities do not unintentionally assume the onerous duty of a fiduciary in relation to those students.

My view is that in most cases (not all) a fiduciary model would not be viable, since as Professor Munch put it some 56 years ago:

> "It shifts to the university the burden of justifying in detail in a legally orientated and artificial formal structure, the actions of the university in every case in which they might be challenged, no matter how informal or capricious the challenge." [66]

Broken Promises: Are legitimate expectation challenges feasible in the context of a student's suicide?

Universities are public bodies and therefore, as such accountable and subject to the full rigours of public law, as well as private law principles.[67] In recent years there has been considerable work around holding public bodies, including governments, subject to the doctrine of legitimate expectation. This doctrine can apply both in a procedural and substantive sense. Not all promises in this context are actionable.[68]

University and student, and aspects of vulnerability, thus placing a duty on the College to create a safe learning environment.

[66] Christopher H Munch, 'Comment' (1968) Denver LJ, vol 53, 535.

[67] This history of accountability of public bodies in the local government area can be traced back to some judicial statements in the *Poplar Borough Council case* where a London local authority was held liable for unlawful misuse of public funds and received a hefty surcharge. The issue of the nature of public trusts raised its head. See https://archives.blog.parliament.uk/2021/08/16/parliament-and-the-1921-poplar-rates-rebellion/ accessed 4 May 2024; https://archives.blog.parliament.uk/2021/08/16/parliament-and-the-1921-poplar-rates-rebellion/ accessed 4 May 2024.

[68] David Sykes, See specifically chapter seven 'Fairness in Public Law: An Analysis of the Concept of Substantive Legitimate Expectation', PhD Thesis, 'Equity's Roving Commission in Administrative Law' University of Essex, 2017 (University of Essex Research Repository), Chapter Seven.

It might be useful to briefly analyse whether a claim for beach of legitimate expectation could be mounted against a university which has failed to keep a promise to its students suffering from mental health issues. What would this entail? Firstly, what are the requirements for a successful breach of legitimate expectations and, secondly, what of relevant authorities, one case from Ireland and the other a seminal case from English jurisprudence.

Fennelly J in *Glencar Exploration v Mayo County Council*[69] cited the three requirements as:

(i) The public body must have made a statement or adopted a position, amounting to a promise or representation, express or implied, as to how it will act in respect of an identifiable area of its activity;
(ii) The representation must be addressed or conveyed either directly or indirectly to an identifiable person or group of persons, in such a way that it forms part of a transaction definitively formed and the person or group has acted on the faith of that representation;
(iii) It must be such as to create an expectation, reasonably entered into by the person or group that the public body will abide by the representation to the extent that it would be unjust to permit that body to resile from it.

Power v The Minister for Social and Family Affairs[70] may also be helpful here.

Turning to English jurisprudence and *R v North and East Devon Health Authority, ex p Coughlan*[71] which involved a direct promise to a small group of disabled persons. Prior to this judgment there was much uncertainty whether there was a free-standing principle of substantive legitimate expectation, as well as in what circumstances it might arise and the standard of review that ought to be

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[69] *Glencar Exploration v Mayo County Council* (2002) IR 120.

[70] *Power v The Minister for Social and Family Affairs* (2007) IEHC 170. This case involved a mature student who was able to enrol for a full-time course at college in Ireland with the assistance of the 'Back to Education allowance' without losing their entitlement to social welfare payments. Details of the scheme were included in a booklet entitled 'Back to Education Programme SW70' contained the following clause: 'The allowance is payable for the duration of the course, including all holiday periods. It is not means tested so you may also work without affecting your payment…' This constituted an express promise which was actionable.

[71] *R v North and East Devon Health Authority, ex p Coughlan* [2000] 3 All ER 850; 2 WLR 622. Abuse of power is much relied on in this case 'a distinct application of the concept of power'.

applied. In 1998, Mrs. Coughlan and a group of other long-term patients of Newport hospital had been promised 'a home for life' when transferred to Mardon House, a facility for the chronically injured and disabled. In October 1998, the Health Authority on consultation paper recommendations decided to close Mardon House because it represented a drain on resources. Some consideration was given to the promise that had previously been made, but notwithstanding this, the decision to move the patients elsewhere was confirmed. As Niall F Buckley SC and James McDermott state:

> "The Court of Appeal reviewed the circumstances in which an expectation might arise from a promise made by a public body as to how it would exercise its statutory function in the future and posited three possible outcomes."[72]

Substantive expectation must yield substantive outcomes. The Court conceived its role in a legitimate expectation claim to be as a guardian against abuse of power by a public body. An intrinsic rationality test was not sufficient.[73]

In *R v Department of Education and Employment ex parte Begbie*[74] Laws LJ questioned the neat distinctions in *Coughlan*. He said:

> "As it seems to me, the first and third categories explained in the Coughlan case…are not hermetically sealed. The facts of the case viewed always in their statutory context will steer the court to a more or less intrusive quality of review."

Laws LJ advocated a sliding scale of review, saying "the more the decision challenged lies in what may inelegantly be called the macro-political field, the less intrusive will be the court's supervision." He went on to refer to an overriding precedence of the 'public interest' for where it applies in the context of a legitimate expectation case it can justify the departure from an assurance. It is a question for the court to answer, rather than simply deferring to the public bodies view – "the court is the arbiter of fairness in this context."[75] The court decided that

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[72] Niall F Buckley SC and James McDermott, 'Managing Expectations' Irish Jurist (2007) vol 42, 29–62. http://www.jstor.org/stable/44027154 accessed 8 April 2024.

[73] Buckley and McDermott (n72): 'a bare rationality test would constitute the public authority judge in its own cause, for a decision to prioritise a policy change over legitimate expectations will almost always be rational from where the authority stands, even if objectively it is arbitrary or unfair'.

[74] *R v Department of Education and Employment ex parte Begbie* [1999] EWCA Civ J0820-10.

[75] *Re Finucane (Northern Ireland)* (2019) UKSC 7.

Mrs. Coughlan's expectation had been unfairly thwarted and that there was no overriding public interest.

These judgments spawned a considerable amount of academic commentary, and still do today. In her article Alison L Young rightly identifies that the doctrine of legitimate expectation stands in a dilemma situation:

> "Should it adopt a rules based approach and narrow legal expectation, or a principled approach that embraces a broader conception? … English law needs both for legitimate expectation effectively to balance legal certainty and substantive equality." [76]

It is clear, however that the doctrine of legitimate expectation, particularly regards a substantive claim rather than a procedural claim, remains remarkably undeveloped. Keane CJ in *Keogh v CAB*[77] said:

> "…the legal perimeters of the doctrine of legitimate expectation cannot be regarded has having been definitely established as yet."

This judicial statement is borne out by statistical evidence, as according to a UK study only 18% of cases claiming a breach of legitimate expectation succeed, with one Irish case alone succeeding in the last 20 years - *Power v Minister for Social Welfare*.[78] There is no doubt that the development of the doctrine has been stunted by the overpowering factor of the "public interest", as Iseult O'Callaghan notes:

> "One of the predominant reasons posited is that legitimate expectation are qualified by considerations of the 'public interest' or where justifications lies in the macro-political sphere." [79]

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[76] Alison L Young, 'Stuck at A Crossroad? Substantive Legitimate Expectations In English Law' (2021) Cambridge Law Journal, vol 80, no S1, S179–207, https://doi.org/10.1017/S000819732100057X accessed 4 April 2024. In her conclusion she states: 'Substantive Legitimate Expectation are a fairly recent development in the common law. Consequently, it is no surprise that we can point to examples of a lack of clarity in the law, or how it applies to particular situations ...'.

[77] *Keogh v Criminal Assets Bureau* [2004] IESC 32, 35.

[78] *Power* (n70). See also Johanna Bell, An Anatomy of Administrative Law (Oxford: Hart Publishing 2017)

[79] Iseult O'Callaghan, 'Vindicating Individual Rights by Reformulating the Test of Legitimate Expectation' (2003) Kings Student Law Review, 5 April https://blogs.kcl.ac.uk/kslr/2023/04/05/vindicating-individual-rights-by-reformulating-the-test-on-legitimate-expectations/ accessed 8 April 2024.

(j) A Facilitator Model

This model emphasises the balance to be achieved between granting freedom to a student body, but at the same time not to be so heavy in authority as to disempower the university or the student. It focuses on "establishing balance in college and university law and regulations."[80]

JUDICIAL STATEMENTS

In recent Coroners' cases involving student suicide, important remarks have been made by the Coroner requiring assessment in the context of this exploration of university liability for students' deaths. Whilst it is accepted that those remarks are not binding on other judicial forums, nonetheless they provide valuable illumination, acting as prompters and direction for a better way forward. Here, two English cases and one Australian case, as well as a UK County Court judgment, are helpful. In England and Wales, a coroner is under a legal duty to issues a Prevention for Future Deaths Report (PFD) Notice to any person or organisation which in the opinion of the coroner action should be taken to prevent future deaths.[81]

(A) Two UK Coroners

Case of Harry Armstrong Evans

One such case was that of the death of a student at Exeter University, Harry Armstrong Evans who was a third year student in physics and astrophysics who killed himself in June 2017 after a disastrous set of exam results.

His inquest was held at Cornwall Coroner's Court and conducted by Assistant Coroner for Cornwall Guy Davies who pointed out that the University had a "safeguarding obligation" to its students and said it was "best placed for first response to a mental health crisis." But recording his finding, importantly, said

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[80] Further developed (n99), exploring the work of Bickel and Lake.

[81] Emma Wallace, Lauren Revie, Emma Sharland and David Mais, Prevention for Future Death Report for Suicide submitted to Coroners in England and Wales from January 2021 to October 2022, Office for National Statistics, 29 March 2023, https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/mentalhealth/articles/preventionoffuturedeathreportsforsuicidesubmittedtocoronersinenglandandwales/january2021tooctober2022 accessed 8 April 2024. This report was the first of its kind by the Office for National Statistics (ONS).

that obligation was different when compared with that of a patient and their doctor. That relationship is of course a stalwart example of a true fiduciary relationship and endorses my view that fiduciary duties will rarely have a place in the university/student relationship.

Mr. Davies said there had been a "total absence of personal engagement from the University to Mr. Armstrong Evans." He also took aim at a "catalogue of missed opportunities" which allowed the student to slip through the cracks without receiving support. Evidence produced at the hearing showed that less than a month before he died, Harry had e-mailed his tutor and the wellbeing service at Exeter University and explained how isolation brought about during lockdown had affected his mental health, claiming that this had led to a downturn in his exam performance. Mr. Davies described this e-mail as a "cry for help", but said it did not lead to any direct contact between the University and Mr. Armstrong Evans or his parents.

Mr. Davies said: "My central finding will be that the welfare service did not proactively respond to those concerns and did not provide the necessary support for Harry." The Coroner mentioned that there was no engagement with Harry's family. Indeed, his parents only found out about the extent of his exam failure after his death.

The inquest also questioned whether the University's well-being team's case management system was "fit for purpose", after it was found that two phone call logs made by Harry's mother raising concerns about her son's welfare had been accidentally deleted. Mr. Mike Shore-Nye Registrar of Exeter University said: "We constantly review and improve the well-being support we provide based on evidence and hearings, including from tragic cases such as Harry's." The University also said: "Student health and wellbeing is always the University of Exeter's top priority."

Case of Natasha Abrahart

The second case is the death of Ms Natasha Abrahart.[82]

The Senior Coroner for Avon, Maria Voisin conducted the inquest and instructed Dr. Laurence Myners-Wallis, a senior consultant psychiatrist, to review the treatment Natasha had received from the Avon and Wiltshire Partnership. Evidence showed that the University's GP services had referred her to Avon and

[82] Details are recorded more fully below under County Court Judgment, since after the Coroner's inquest the parents of Natasha instituted proceedings against Bristol University. See also (n39).

Wiltshire Mental Health Partnership NHS Trust in February 2018 following the first of her several suicide attempts. Dr. Myners-Wallis found there was unacceptable delay in her having specialist treatment following her referral to the Trust and that Natasha's risk of self-harm was not adequately assessed. Further, there was no timely and detailed management plan for Miss. Abrahart. Thus, a number of 'red flag' suicide risk factors were missed. Ms. Voisin said: " … the scope of the inquest does not include the adequacy of support provided to Natasha by the university."[83]

(B) Australian Coroner

Case of ANU Student

This case concerned a student aged eighteen years at the Australia National University (ANU) who took his life in his room at a residential hall between late July and mid-August.[84] Estranged from his family, he isolated himself on campus from other students. He had been depressed and hospitalised several weeks before his death because he had self-harmed. Taken to Canberra Hospital, he talked with mental health staff but made it clear that he did not want any information shared with his family. His case was closed before his death. This was a clear warning to the University authorities.

ACT Mental Health Services (ACTMHS) would not provide his parents with access to information about him, including that they had closed his case.

Whilst the Coroner Ken Archer stopped short of blaming the University or ACTMHS he did note a shortfall in coordination between them. He recommended that both agencies rethink their policies and set practical goals rather than aspirational goals, including on the transfer of care.

(C) County Court Judgment

Returning in more detail to the tragic suicide of Natasha Abrahart, aged twenty, a second-year physics Master of Science student at Bristol University, she was

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[83] Jim Dickinson, 'What should Higher Education learn from the Natasha Abrahart case?' (WONKHE, 20 May 2022) https://wonkhe.com/blogs/what-should-higher-education-learn-from-the-natasha-abrahart-case/ accessed 8 April 2024.

[84] Elizabeth Byrne, 'Calls for changes to mental-health practices after Australia National University student's suicide on campus' (ABC News Australia, 11 February 2023) https://www.abc.net.au/news/2023-02-11/coroner-calls-for-policy-changes-after-university-suicide/101961148 accessed 8 April 2024.

diagnosed with chronic social anxiety disorder before her death in April 2018. Her parents, Mr. and Mrs. Abrahart, said the University bore responsibility by not making alternative arrangements in light of her recognised disability. Action was commenced at Bristol County Court by Natasha's father Dr. Robert Abrahart as administrator of his deceased daughter's estate. Jamie Burton QC (now KC) representing the family said it was being brought against the University and was not targeted at any individual.

Mr. Burton said: "Natasha was a conscientious, bright and diligent young person who was hard working and high achieving at school. However, she suffered from social anxiety from a young age and was acutely self-conscious." He added: "She would shut down when made the centre of attention or when confronted by people in authority." She rarely spoke in class and suffered with a history of self-harm. Mr. Burton said she did make friends, but seldom socialised and "practised avoidance" and self-harm.

In the second year of her course Natasha was required to pass a module assessed in part by five post laboratory interviews, where she was required to explain her findings orally and answer questions from her assessor. The court heard she failed to attend all but the last interview and performed badly. As a result, she was then required to perform a group presentation known as a "laboratory conference" followed by questions in front of her assessors and peers. Mr. Burton said the instruction coincided with a "'very significant deterioration" in Natasha's mental health. On the very day of the conference Natasha took her own life.

Mr. Burton said the case was about the provision of education to Natasha as a disabled student. He said the University must take "reasonable steps" to help disabled students. He described it as a "breakdown of disability support" as the conference was the "only means" made available for her to complete her assessments. He continued: "… the reality was the University placed an assessment requirement she found too terrifying to face."

The claim was partially successful for the Court found that the University had not made reasonable adjustments for Natasha's known mental illness, in beach of the Equality Act 2010. However, the other claim based on breach of the tort of negligence was rejected on the basis that the Court found that no such duty of care was owed in the case. Importantly, the Court noted that Natasha was not in the care of the University, in contrast to a pupil in the care of a school.

In December 2023 the case was appealed. The High Court granted the Equality and Human Rights Commission permission to give guidance to the Court on how and when universities should make reasonable adjustments for their students. The High Court judgment of Mr. Justice Linden published February 2024 upheld the conclusion of County Court Judge Ralton that held the University

of Bristol had breached its duties under the Equality Act 2010 towards Natasha. Mr. Justice Linden did not accept the University's contention that it had not been under any duty to make reasonable adjustments regarding oral assessments for Natasha and found that it had not provided "cogent reasons for its failure to make adjustments."[85]

Mr. Justice Linden further held that it was not necessary for him to express a view one way or the other as to whether the University owed a duty of care to Natasha. He considered it "would not be wise" to do so, given that it is an issue "of potentially wide application and significance" and making a finding would risk prolonging the litigation between Natasha's family and the University.[86]

PRACTICAL STEPS OF GOVERNANCE

The primary aim is for universities to have a care structure worthy of its name to prevent a student suffering from mental illness from slipping through the care net. There is no substitute for "best practice". However, what is needed is a joint approach where best practice throughout all universities is agreed and adhered to. Thus agreement by all what constitutes "best practice" is essential. As the OfS (Office for Students) state:

> "Supporting the mental health of students requires an effective response across the higher education sector and beyond, so that students get the support they need in times of difficulty."

The fundamental question is what does "best practice" look like? It would at least include the following considerations:

a. Student Handbooks – use of clear and unambiguous language concerning pastoral support;

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[85] *University of Bristol v Abrahart* [2024] EWHC 299 (KB). This was an appeal by Bristol University against the County Court decision May 2022 of Judge Ralton, whereby the court found that the university had breached its obligations under the Equality Act regards disability adjustments towards Natasha.

[86] *University of Bristol v Abrahart* [2024] EWHC 299 (KB), para 270 i) and vi) per Justice Linden. See further Dan Webster, Anna Moore, 'Natasha Abrahart judgment: do universities owe a duty of care to their students?' (Leighday, 20 February 2024) https://www.leighday.co.uk/news/blog/2024-blogs/natasha-abrahart-judgment-do-universities-owe-a-duty-of-care-to-their-students/ accessed 8 April 2024.

b. Policies in place to deal with students suffering from mental illness, including systems of robust data collection (consider privacy/data protection legislation in revealing medical information to a third party, including parents and members of the wider family);
c. Regular review procedures, including case conferences;
d. Staff training;
e. Fostering a climate of co-operation and sharing between all the multi agencies involved in student welfare, including the police, social services, government and voluntary agencies;[87]
f. Cherry picking aspects of guidance is not an option.

THE STATUTORY DUTY OF CARE DEBATE

How is the ongoing question to be resolved, of whether a statutory duty of care should be imposed on universities? This highlights the tussle identified between control and boundaries. Some question the feasibility and proportionality of a statutory duty of care, and in this context query whether the unintended consequences might be unwanted increased control and monitoring of the student cohort, in an effort by the university to discharge such a duty of care. Yet for a member of the deceased student family to be able to point to a statutory duty of care would be an immense step forward and mean that lip service is not just being paid to words such as 'accountability' of a public service institution. This would enable a full hearing and openness about what was done or not done in connection with the care of the student, not just by the university itself, but by other parties, such as multi-agencies who were involved. Full fact disclosure and the rights of the bereaved persons to ask questions is imperative. Balanced

[87] The Universities UK Information Sharing Taskforce which was chaired by Professor Julia Buckingham CBE which was established to address how and when universities share information to support students in mental health crisis. See Joe Lewis, Paul Bolton, Student mental health in England: Statistics, policy and guidance, Research Briefing (No 8593), House of Commons Library, 30 May 2023, Student mental health in England: Statistics, policy, and guidance - House of Commons Library (parliament.uk); Universities UK, Suicide-safer universities, Suicide-safer universities (universitiesuk.ac.uk) accessed 8 April 2024 (updated regularly); Universities UK, Suicide-Safer Universities: Sharing information with Trusted Contacts, October 2022, Universities to involve trusted contacts when there are serious concerns about a student's safety or mental health (universitiesuk.ac.uk) accessed 8 April 2024. Clearly more should be done regards 'trusted contacts' approach and current privacy legislation.

control is indeed the spotlight area, which is emphasised by the note of Geraldine Swanton who states:

> "The answers, however, in particular to the question of preventing future deaths, are not to be found by imposing further legal duties on higher education because HEI's simply lack the required degree of control over their students' lives." [88]

Swanton further states:

> "We are in an era of mass higher education with 170 HEI's providing higher education to approx. two million adult undergraduates. There is therefore insufficient proximity between a HEI and a student such that a HEI would know with any degree of certainty or could reasonably be expected to know that there was a real and immediate risk of suicide." [89]

She mentions that the element of control for HEI's is not the same compared to soldiers engaged in military service, prisoners in custody[90] or patients in secure psychiatric hospitals over whom a very high level of control can be exercised. For Swanton the degree of control is therefore not present in the university-student relationship, thus making the foreseeability of harm element an impossible burden on staff who are primarily educators, not healthcare professionals.[91]

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[88] Geraldine Swanton, 'Student suicide - why new laws are not the answer' (Shakespeare Martineau, 22 November 2022) https://www.shma.co.uk/our-thoughts/student-suicide-why-new-laws-are-not-the-answer/ accessed 8 April 2024. This article is in two parts:
Part A explores the law specifically relating to preventing individuals from self-harm and the limits of its application to HEI's.
Part B offers a sector practitioners perspective by Dr. Lucy Foley, Director of Student Services, University of Kent and explores the unintended consequences of the changes to law and policy in respect of suicide that are being sought.

[89] Swanton (n72).

[90] Swanton (n72), referencing *Reeves v Commissioner of Police of the Metropolis* (2000) 1 AC 360 where a prisoner hanged himself. Note that Justice Linden in the Abrahart case referred to particular relationships, such as referred to by Ms Swanton,including a prisioner and the prison Authorities where a duty of care was triggered.

[91] Shailaja Nadarajah, 'Student Suicide On Campus: Tort Liability of Canadian Universities and Determining a Duty of Care' Appeal Review of Current Law and Law Reform (2021) vol 26. The author covers universities' duties to prevent suicide and current Canadian jurisprudence, and specifically refers to three relationships, a jailor-prisoner, hospital-patient and teacher-student.

My view on "control" especially in a statutory duty of care debate must be seen in context and the extent of foreseeability of harm is dictated by the degree of control, involving factors of proximity of the relationship with others. Valuable contribution here is made by the Learn Network, a group of 25 families bereaved by student suicide, arguing that a duty of care is a fundamental civil rights entitlement, alongside the right to vote and to a fair trial.[92]

There are of course policy considerations. For instance, how far is it practical to impose liability on university staff who are effectively non-clinicians for not taking steps to protect students at risk. They are not medical professionals who could easily diagnose clinical issues. The duty of care must take cognisance of this fact and impose realistic duties and responsibilities.

CONCLUSION – A WAY FORWARD

Universities are of immense societal value and importance as are their student population. It is paramount that the mental and physical health of the student cohort of all institutions of higher education be of prime concern to the administrators of those bodies. A 2021 survey from the Office for National Statistics (OFNS) revealed that 37% of first year students reported depression and anxiety symptoms in England compared to the average of sixteen- to nineteen-year-olds which is 25%. The pandemic recently experienced can only have added to the mental struggles of many students.

Universities encounter vast numbers of students from all backgrounds and addressing their welfare needs, whether physical or mental or combined are of fundamental importance. The relationship between a university and its students is a hybrid, involving elements of contract and trust. As a public body the university engages both elements of private law, statutory and public law principles. I echo the words of Clive B Lewis who in the conclusion of his article states:

"The university-student relationship is a complex hybrid one which, it seems is better regulated partly by contract and partly under the rubric of public law."[93]

Canvassing the various legal liability phases that the university-student relationship has experienced, including the heavy parental responsibility placed on

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[92] Dr Robert Abrahart, 'Rejection of legal duty of care marks a bad day for student's rights' (WONKHE, 12 June 2023) https://wonkhe.com/blogs/rejection-of-legal-duty-of-care-marks-a-bad-day-for-students-rights/ accessed 8 April 2024. See case of Sydney Feder and Alyse MCamish where a university was held to have had a duty of care but this was in the context of allegations of sexual assault.

[93] Lewis (n5).

university shoulders to the more contractual emphasis, this article confirms that the pendulum is swinging too far from the bystander era where universities were believed to have no involvement in students' lives outside of academic matters. Neither "no involvement" or over-stringent involvement is satisfactory. The former approach did not address properly the student-university relationship, whilst the latter approach is now recognised as impracticable to be replaced by a duty emphasis.

It is not adequate for universities to address the educational needs of a student only, without a much more holistic approach. Such an approach means investing funds and staff specifically for the welfare of students. The problem is how can universities balance the need to provide student welfare services whilst maintaining a safe distance, so as not to stifle the student in their experience of university life or breach their right to autonomy from parental control. This is a difficult terrain for universities to tread, since it involves facilitating a students' development, identity formation and academic success whilst at the same time ensuring a duty of care is upheld.

Present activity by private bodies and government in this sector

The impression must not be left that there is no ongoing work in this area. The following examples illustrate current concern and action.

In 2018 140 universities across the UK published with Papyrus, the UK's national charity on preventing young suicides, "Suicide Safer Guidance for Universities on Preventing Student Suicide."[94] In 2022 they published additional guidance on supporting students on placement, sharing information and responding to a suicide.[95]

Further, universities themselves try to address the issue by the University Mental Health Charter (UMHC).[96] This program is for universities wanting to join a community of institutions committed to embedding a whole-university approach to mental health and well-being. The Rt. Hon Robert Halfon, MP Minister for Skills, Apprenticeship and Higher Education, has taken a special

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[94] See Universities UK, Suicide-safer universities, Suicide-safer universities (universitiesuk.ac.uk) accessed 24 May 2024.

[95] 'Universities to involve trusted contacts when there are serious concerns about a student's safety or mental health': https://www.papyrus-uk.org/suicide-safer-universities/ accessed 24 May 2024.

[96] British Association for Counselling and Psychotherapy - Universities and Colleges Division, University Mental Health Advisers Network. "Information Sharing and Student Suicide" (UMHAN, 27 Apr 2022) https://www.umhan.com/pages/information-sharing-and-student-suicide-report accessed 8 April 2024. Although this report was not referred to in the UUK Guidance document, it was published four months earlier.

interest in the area of student suicides, writing to all universities urging them to sign up to the UMHC by September 2024. In a recent speech delivered at UUK mental health conference, but he mentioned that the present signed up number of universities was now ninety-six.[97] A further proactive approach is shown by Mr. Halfon's commissioning an independent national review of student suicides.

A new Higher Education Implementation Taskforce, chaired by Professor Edward Peck (the first ever student Support Champion (HESSC), was appointed and in a recent speech Minister Robert Halfon said the Taskforce will conclude its work in May 2024 and provide an interim report in early 2024.[98]

In Professor Peck's report he highlights the importance of data governance and refers to the fact that student analytics is categorised into two areas: engagement analytics and wellbeing analytics. He states:

> "My intention in this report is to help higher education providers (HEP's) begin a journey towards good data governance to support student services." [99]

There remains the important question of how far in a mental crisis the student's privacy should be respected above informing close relatives, such as parents and grandparents. Clearly data protection legislation should be observed, especially the retention of sensitive information on the medical record of a student. The Data

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[97] The Rt Hon Robert Halfon MP, 'Speech' (UUK Mental Health Conference, London, 21 November 2023) https://www.gov.uk/government/speeches/robert-halfon-uuk-mental-health-conference-speech accessed 3 April 2024.

[98] Edward Peck, 'HE Student Support Champion February 2024 Update' (Committee of University Chairs, 20 February 2024) https://www.universitychairs.ac.uk/2024/02/20/he-student-support-champion-february-2024-update/ accessed 8 April 2024. This report provided an update of the progress of Peck's Taskforce work. See further 'HE Mental Health Implementation Taskforce – first stage Report' (Department for Education, January 2024) https://assets.publishing.service.gov.uk/media/65ba1fb7ee7d490013984a12/HE_Mental_Health_Implementation_Taskforce_first_stage_report_Jan_2023.pdf accessed 8 April 2024.

[99] Edward Peck, 'Student analytics: A core specification for engagement and wellbeing analytics' (JISC, 06 March 2023) https://www.jisc.ac.uk/reports/student-analytics-a-core-specification-for-engagement-and-wellbeing-analytics accessed 8 April 2024. This report highlights the value and practical importance of data governance.

Protection Act 2018[100] is highly relevant in this area. Issues of whether it is ever right (morally and/or legally) to release sensitive personal information about a student's mental health, whether this be disclosure to the medical authorities or the student's family group, is an extremely delicate topic in the context of the university-student relationship. This is outside the scope of this article, warranting a detailed examination emphasising the need for government review of data protection legislation with the possibility of providing wider exemption for disclosure in student wellbeing matters.[101] My opinion is that such privacy legislation and the sharing of information should not be seen as a barrier where it is evidenced that such disclosure is in the true interests and wellbeing of a student identified as showing a serious and significant risk of harm or potential suicide.

Care for physical welfare is somewhat easier to achieve than that for students' mental illnesses. Buildings and facilities can be made accessible, as well as providing a safe environment, for example step free access for wheelchair bound students. Issues such as hearing and sight can be addressed through hearing loops, access to opticians, modifications to PowerPoint presentations and e-mail, and to online learning systems. Examinations can be modified to address conditions such as dyslexia. The issue is understandably more difficult where the student is suffering from depression or some form of other mental illness. The stress may come from a universities course structure, including their exam stipulations, which from time to time may need overhaul by every faculty introducing flexible teaching methods.

As Lewis put it some forty years ago:

> "While the legal status of a university is relatively certain, the legal nature of the student-university relationship is far less so. In particular, it is uncertain whether scrutiny of university affairs belongs in the realm of private law or public law."[102]

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[100] Data Protection Act 2018. This Act came into force on 25 May 2018 and updates data protection laws in the UK, supplementing the General Data Protection Regulation (EU) 2016/679 (GDPR). See further 'Consensus statement for information sharing and suicide prevention' (Department of Health and Social Care, 26 August 2021) https://www.gov.uk/government/publications/consensus-statement-for-information-sharing-and-suicide-prevention accessed 8 April 2024.

[101] See Papyrus UK, 'Guidance on Information Sharing' (Papyrus UK and Universities UK, 20 December 2022) https://www.papyrus-uk.org/guidance-on-information-sharing/ accessed 8 April 2024: Universities to involve trusted contacts when there are serious concerns about a student's safety or mental health.

[102] Lewis (n10).

That statement holds true today and is an area that needs addressing urgently. The relationship is sufficiently close and direct to impose a duty. A new model must be explored that is more relevant to today. In 1999 Bickel and Lake proposed what they called a "facilitator model",[103] positing:

> " … a wide grant of freedom or a heavy dose of authority will often disempower the college or the student. Instead, the facilitator model focuses on 'establishing balance in college and university law and responsibilities."[104]

The importance of human rights should not be forgotten, especially provisions of the Human Rights Act 1998 and the European Convention on Human Rights (ECtHR). Taking ECHR Article 2, the European Court of Human Rights (ECtHR) concluded that it may apply in certain defined circumstances and imposes a positive duty on states (which includes public bodies and thus public institutions of higher education when exercising their functions) to take preventative operational measures in particular circumstances to protect a person from inflicting self-harm. The ECtHR expressed the view that such measures would not affect issues of personal autonomy.

Where university efforts fail, access to law must be made less difficult. The lesser number of hurdles the bereaved family circle has to face in seeking redress for the death of their loved one can only benefit clearer outcomes which in the long term has societal benefit. Thus a statutory duty of care on the part of universities would be a valuable addition to the legal armoury already available. Enshrined in law it will provide added potency to influence 'soft law' instruments, such as guidance notes and policy statements and the content of other such regulatory material. The conceptualisation of the student as consumer, client, stakeholder or contractual party does not seem to adequately identify the student-university relationship, said by Goldman to be "informed by history and [having] unique juristic attributes".[105]

Imposing a statutory duty of care on universities will need careful drafting, but it can facilitate assessment of this duty on a case–by-case basis and include

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[103] RD Bickel and Peter F Lake, The rights and responsibilities of the modern university: who assumes the risk of college life? (Carolina Academic Press, 1999): 'With the new model the university facilitates students' development by providing rules for decision-making and consequences for breaches of these rules by students. The university also allows the students to make their own choices within individual and student organisational settings,' 80.

[104] Bickel and Lake (n88) and see 2(j).

[105] Goldman (n36).

such central factors as whether there was a sufficiently proximate relationship between student and their university and the university's knowledge about the student's suicide risk (foreseeability). Recognising a statutory duty of care is a major step forward in better protecting vulnerable students-an accountability mechanism triggering a preventative care approach. If, coupled with a duty of candour and informed by the analytical data governance approach emphasised by Professor Peck[106] significant strides will be made towards greater accountability by universities for student suicides.

Finally, in my opinion there is a middle course that can be chartered referenced by the approach of New Zealand jurisprudence, whereby they have introduced a pastoral code of practice in 2021 which sets out what educational providers must do to ensure the wellbeing and safety of their learners. Thus putting in place the best possible student support. Research could be undertaken to examine , how and the degree, to which, such a practical approach has been successful.[107]

[106] Professor Peck (n83).

[107] The Edmonton (Pastoral Code of Tertiary and International Learners) Code of Practice 2021.