



Higher Education Providers' Duty of Care to Students

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## Higher education providers' duty of care to students

In response to a [petition to create a statutory legal duty of care for students in higher education](#), the Government has said “Higher Education providers already have a general duty of care not to cause harm to their students through their own actions.”

You would like some information on this issue, including the background to the petition and Government response, the current legal duties placed on universities, and sector views on the issue.

### 1 Background

Natasha Abrahamart was studying physics at the University of Bristol when she was diagnosed with chronic social anxiety. She died by suicide in April 2018 on the day she was due to give an assessed oral presentation in a lecture hall to students and staff.

Natasha Abrahamart's parents took the university to court under the Equality Act 2010, arguing their daughter was a victim of disability discrimination, and also under the law of negligence, arguing the university had breached its duty of care to their daughter.

The judgment in the case of [Abrahamart v University of Bristol](#) (PDF) was delivered in May 2022. After the judge ruled no relevant common law duty of care existed in the case of *Abrahamart v University of Bristol*, 25 bereaved families, also known as the [LEARN network](#), petitioned Parliament [to create a statutory duty of care for students in higher education](#).

### 2 Court judgment

With regards to the claim of disability discrimination (which covered the university's duties to make reasonable adjustments to the way it assesses disabled students, to avoid indirect as well as direct discrimination, and to ensure that they do not treat students unfavourably because of the consequences of their disability), the judge

found against the university and awarded more than £50,000 in damages to Natasha Abraham's family.

On the duty of care argument, the judge said there is "no statute or precedent" concerning a duty of care for a university to take reasonable steps to avoid and not to cause injury, including psychiatric injury, and harm. [Paragraphs 143-44 and 149](#) of the judgment said:

143. Paragraph 12 of the Particulars of Claim pleads a general duty as follows: "... to take reasonable care for the wellbeing, health and safety of its students. In particular, the Defendant [the University of Bristol] was under a duty of care to take reasonable steps to avoid and not to cause injury, including psychiatric injury, and harm"

144. There is no statute or precedent which establishes the existence of such a duty of care owed by a university to a student therefore the Claimant's argument is novel.

[...]

149. In a sense it is the Claimant's case that the University owed a duty of care to Natasha to protect her from herself. However, Natasha was not in the care or control of the University beyond its Rules in contrast to, for example: (a) A schoolchild in the care of a school or (b) A prisoner in the care of the state.

### 3 Government response to petition

On 20 January 2023, the Government responded to the petition saying:

Higher Education providers do have a general duty of care to deliver educational and pastoral services to the standard of an ordinarily competent institution and, in carrying out these services, they are expected to act reasonably to protect the health, safety and welfare of their students. This can be summed up as providers owing a duty of care to not cause harm to their students through the university's own actions.

It appears this language has been taken from a report published in 2015 by [AMOSSHE The Student Services Organisation](#), which is an organisation that promotes good practice within higher education student services. The report, [Where's the line? How far should universities go in providing duty of care for their students?](#) (May 2015), states:

In essence, a university has a general duty of care at common law: to deliver its educational and pastoral services to the standard of the ordinarily competent institution, and, in carrying out its services and functions, to act reasonably to protect the health, safety and welfare of its students.

In March 2023, the Shadow Minister for Higher Education, Matt Western, [asked the Government what the legal basis was for a general duty of care](#) on higher education providers to deliver educational and pastoral services. The Government said:

There is already a general duty of care for higher education (HE) providers to deliver educational and pastoral services to the standard of an ordinarily competent institution and, in carrying out these services, HE providers are expected to act reasonably to protect the health, safety, and welfare of their students.

The law of negligence has been developed through case law over many years. Duty of care exists as one of the four key elements for liability in negligence to be found. The existence and application of a duty of care between HE providers and students has not been widely tested in the courts. However, it is understood across the HE sectors, and in legal circles, that the tort of negligence applies in the relationship between a provider and a student.

The department has made reference to the duty of care in relation to those with mental health issues in 'Prevent' guidance under 'When can a duty of care arise?'. This is available at: <https://www.gov.uk/government/publications/the-prevent-duty-of-care-and-the-wellbeing-of-staff-and-students-in-higher-education-he/the-prevent-duty-of-care-and-the-wellbeing-of-staff-and-students-in-higher-education-he-notes-for-trainers>(opens in a new tab).

Students with disabilities, including mental health impairments, are also well protected under the Equality Act 2010, which prohibits discrimination and imposes a duty on HE providers to make reasonable adjustments where disabled students are put at a substantial disadvantage.<sup>1</sup>

## 4 Relevant legal duties placed on universities

- The [Health and Safety at Work etc Act 1974 \(HSW Act\)](#) requires education employers to ensure the health and safety of their employees and non-employees, including students.
- Under the [Equality Act 2010](#), it is unlawful for universities to discriminate, harass, or victimise students on the grounds of a characteristic protected by the Act. Universities are obliged to anticipate and put in place reasonable adjustments to avoid students with protected characteristics being treated less favourably. As public bodies, universities are also subject to an additional [public sector equality duty](#) under the Act, which requires them to eliminate discrimination and foster equality of treatment when exercising their functions.
- The [Counter Terrorism and Security Act 2015](#) introduced a new statutory duty for universities to have "due regard to the need to prevent individuals from being drawn into terrorism".
- Universities also have duties relating to the protection of children and vulnerable adults, particularly under the [Safeguarding Vulnerable Groups Act 2006 \(as amended\)](#), which defines a "vulnerable adult" as someone receiving, among other

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<sup>1</sup> [PQ174398 \[Higher Education: Standards\] 31 March 2023.](#)

things, health care from a health care professional, social care, physical assistance relating to their age, illness, or disability.

## 5 Negligence – duty of care [REDACTED]

One of the necessary elements in any claim of negligence is that the prospective defendant owed a 'duty of care' to the claimant. The other elements are 'breach' – in that the defendant breached the duty in question, and 'causation' – in that the breach of the duty caused the damage or losses complained of. Evaluating whether a duty of care exists is, therefore, the first step in assessing a claim of negligence.

The existence or otherwise of a duty of care is assessed by reference to legal tests established at common law (ie, in case law). There is a large body of case law on this topic which would be impossible to summarise here, but the classic exposition of the approach taken by the courts is the judgment of Lord Atkin in *Donoghue v Stevenson*:

You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then, in law is my neighbour? The answer seems to be - persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question.<sup>2</sup>

Whilst still a useful case for demonstrating the concept of a duty of care, *Donoghue v Stevenson* was decided almost a century ago and the case law has evolved since. A more recent, and currently authoritative, expression of the concept was given by the Court of Appeal in *Caparo v Dickman*,<sup>3</sup> which identified the necessary ingredients of a duty of care as:

- That the damage was foreseeable as potentially arising from relevant actions or omissions
- A relationship of proximity between the parties (which essentially refers to the degree and type of connection between the parties)
- That the court considers it fair, just, and reasonable for the law to impose a duty of care of a given scope on a party.

There are various other legal tests that would be applied depending on the circumstances of any given case.

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<sup>2</sup> [1932] AC 562

<sup>3</sup> [1990] 2 AC 605

## 6 Sector reaction to calls for a statutory duty of care

Universities UK (UUK), which is the representative body for 140 universities, has said it does not believe a new legal duty is necessary:

UUK does not believe that a statutory duty of care is necessary, as universities are already subject to health and safety regulations and duties under the Equality Act. Universities go beyond their legal requirements to prioritise the mental health and wellbeing of their staff and students, to provide support services for those in difficulty, and to work closely with NHS services. If additional legal duties are to be placed on universities, above what is required in other adult work or education settings, it needs to be accompanied by better mental health care across the health service and additional funding.

AMOSSHE has also argued a statutory duty of care is not necessary:

Universities are already subject to health and safety regulations, duties under the Equality Act 2010 and section 75 of the Northern Ireland Act 1998, and duties around the protection of children and vulnerable adults. Therefore AMOSSHE does not believe that an additional statutory duty of care on universities is necessary. Given the need for professional NHS support for students presenting with diagnosed and emerging mental health conditions, it is our view that increased funding for student mental health services in the NHS is a greater priority than an additional duty of care on universities.

You will note that in highlighting current obligations placed on universities, the AMOSSHE statement makes no mention of the “general duty of care at common law” it asserted in its 2015 report.

