

Pastoral care, welfare and mental health in universities



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Topics to cover

- Duties owed by university to provide pastoral care /welfare
- Mental health problems – liabilities and issues arising

”What about us?”

- Students feel like the forgotten millions in this pandemic: approximately 2.3 million undergraduates and 600,000 postgraduates study in the UK. 900,000 of these students are 20 and under.
- Their dreams of fun, creativity and independence have lead to Pot Noodles in front of the TV with seven people they don't like very much.
- Those entering in 2020 also had to contend with the cancellation of examinations and then the uncertainty and U turns associated with the results.
- They are also a generation who have grown up with the financial crash, austerity, the invention and triumph of social media, Brexit, global warming and this pandemic. And this is before they step into the University environment.

Student mental health in universities

- Often their first time living away from home – although a sizeable minority do live at home.
- Approximately 485,000 students come from outside the UK (Non EU around 342,000: of which around 32% of first year non UK domiciled students come from China (in 2018/19) – so around 90,000. This is followed by Malaysia, other Asian countries and then the USA. EU students are lead by Italy, and then Germany and others but are by number smaller than Chinese and other Asian Countries.
- So there will or can be cultural shocks and linguistic and social barriers.

Day to day struggles

- Leaving aside the pandemic, the following are common issues which arise for those who live away from home:
 - (a) Struggling to maintain day to day routines
 - (b) Academic pressures
 - (c) Social and financial pressures
 - (d) The onset of serious mental health difficulties (75% of all mental health difficulties develop in individuals by their mid 20's).

FACTORS THAT MAY INCREASE MENTAL DISTRESS

- (NOTE : ALL PRESENT IN THIS PANDEMIC)
- Uncertainty on a national level
- Academic drivers – workload, curriculum design
- Finance – worrying about money
- Life transitions – new peer groups, moving home, new identities
- Social and cultural pressures – gender, relationships, family, sexual orientation, race, identity, appearance.
- Drugs, drink.
- Internet and social media.

Statistics

- OFS states that 3.5% of full time UK domiciled students had a recognisable mental health condition in 2017/18.
- The MHFA says that (pre pandemic) 34% of all students reported having psychological difficulties for which they needed professional help.
- In 2016/17 , 95 students took their own lives in England Wales. (but note that this figure is lower than the rate of those who are not students, and has been a significant reduction from the 1990's).
- 4.8% of 17-19 year olds met the diagnostic criteria for depression in 2016/17 and 13.1% of 17-19 year olds.
- 26.8% of young people aged 16-24 reported having suicidal thoughts in their lifetime, with 34.6% of females and 19.3% of males.
- 9% of 16-24 year olds have attempted suicide in their lifetime. In 2018, there were 6,154 suicides in England and Wales, with 10-25 times that number of attempted suicides.

What duties does a university owe?

- A university will owe a duty of care to students in the way that it delivers services. This will include the provision of pastoral support and taking reasonable steps required to protect the health and wellbeing of students.
- But the scope of this duty and when a breach would occur has not been tested in the courts very widely.
- Whilst the OFS published guidance on creating effective mental health support, this is not a “How to” guide, more of a set of markers of what can be done (Insight Brief 2019: Mental Health: Are all students being properly supported).
- The Universities minister wrote to all universities in 2018 to say that the wellbeing of students was a “non negotiable” priority.
- But there is no real clarity about how that works in practice.

Current programmes

- The focus upon student mental health has been the subject to discussion before the pandemic.
- Universities UK “step change” framework – seeks to promote a “whole university” approach so that the mental health of students and staff permeate every aspect of policies, culture, curriculum and practice.
- OIA has noted in its annual reports from 2015 – 2019 that mental health issues are a major concern.
- OFS requires that access and participation plan to analyze the position of students reporting as disabled to identify gaps in access, with targets and plans. It has funded programmes to develop more extensive support on campus
- Universities UK had a task force about information sharing with parents when students have mental health problems.

Current programmes

- Guidance to help university leaders prevent student suicide – published in September 2018 by Universities UK.
- Student Space: www.studentspace.org.uk : national web service providing resources and advice.
- Also provides phone support (3pm – 12am every day)
- Webchat (4pm – 11pm every day)
- Text and e-mails
- Also has search facility (but this is not complete)

Government guidance on coronavirus and mental health for universities

- March 2020: Michelle Donelan wrote to the OFS and HE sector to highlight the need to focus upon mental health and wellbeing.
- 7 January 2021 guidance emphasizes the need to provide pastoral support but says that it is for each HE provider to decide what is needed.
- Encourages HE providers to work with local NHS services.
- Ofs Student Premium funding has been available (£256 million 2020/21) for student hardship including mental health support.
- Agreement unions/HE : Universities UK principles and considerations arising from lockdown.

Health and safety duties

- Universities have duties under the Health and Safety at Work Act 1970 to take all steps which is reasonable practicable to ensure the health and safety of its staff and students.
- This will include their mental health and wellbeing.
- Breach of such duties gives rise to a potential civil claim for personal injury .
- Universities need to show that there are sufficient systems in place to manage and support students with mental health problems through focused policies and procedures such as counselling.
- HSE does not usually involve itself in cases concerning mental health (but may do so in the context of the pandemic/given higher profile of these issues).

The basics – assumption of responsibility

- In order to found a claim in negligence, there must be an “assumption of responsibility” by the university staff member (or contractor/agent), which creates a reasonably foreseeability of any injury and it is fair, just and reasonable to impose a duty of care.
- That individual must have acted in a way which falls below that of the ordinarily competent professional/staff member in a comparable position
- But , how much training do “ordinary” pastoral staff have? Have they had training in identifying mental health problems and knowing what to do? Is there anyone who fulfils that role?
- If you run (as every university does) a counselling/welfare service, then the individuals working in that service will be judged against other professionals doing that job?

Policies and procedures

- In order to discharge the duty, universities, given the figures I have identified above, would be expected to have policies and procedures WHICH ARE IMPLEMENTED
 - Accessible to all staff .
 - Clear processes about what to do if they find someone who has:
 - (a) Attempted self harm or self harmed.
 - (b) Attempted to take their life
 - (c) Are likely to cause a risk of harm to themselves or others.
 - (d) Are demonstrating signs and symptoms of mental health problems.
- The message should be – if in doubt, refer.

Particular issues where mental health problems are known

- If a student has a known mental health condition , then duties may lie with all those who know (or ought to know) about the person's condition – which may extend beyond pastoral staff to academic staff, and even other staff – those in libraries, cleaners, security staff, catering facilities, the bar.
- (a) Have the staff had appropriate training to spot concerning signs?
- (b) Do they know where to signpost the student and who to tell?
- © Do they know about alerting the police, mental health or social services (particularly if they are guardians/live on site)?
- (d) If they have known concerns, discussion with the student about signing consent forms (if they have capacity) to tell their parents/carers/siblings/others if they are becoming unwell?

Concerns specifically arising out of the pandemic?

- Not sufficient “eyes” on the student – e.g. usual early warning systems have not been in place.
- Withdrawal/isolation is what is required.
- Role of staff in communal areas /halls of residence becomes paramount.
- Proactive welfare support online – websites, q and a, helplines visibly posted.
- ”Keep in touch” for those with pastoral responsibilities – phone, and video calls – to see what the person looks like/how they are behaving.
- Peer referral becomes of importance – watching out for others, signs of concern posted up on the walls etc.
- Dealing with those at home who are displaying problems
- Managing the mental health of overseas students.

Contract

- University contracts are consumer contracts between student and institution and so have to comply with Consumer Rights Act 2015 : so must be clear, transparent , accessible and must deliver services exercising reasonable care and skill.
- The contract should cover pastoral support , alongside powers to deal with health issues that may impact upon a students progress :
 - Fitness to practice
 - Academic outcomes (whether exams, assessments or others)
 - Disciplinary processes caused by mental or physical health problems.
- Marketing materials, prospectuses may be incorporated into the contract or amount to representations which then induced the student to sign the contract so must be factually accurate and clear.

Terms of the contract in respect of pastoral support

- What services are to be provided, by whom.
- When services may not be available.
- Make sure that they are then provided

Issues arising during the pandemic

- Shortage of services – because of increase in referrals . Should be set out in the terms of the contract that this is a reasonable endeavour and cannot guarantee provision of the service.
- Inability to deliver the services because of the pandemic – because staff cannot meet face to face, or because of ill health /absence by staff members – likely to be met by any force majeure clause – which would suspend those terms whilst the pandemic is ongoing

Equality Act 2010 – disability

- Mental health impairments can be disabilities if they “have a substantial and long term adverse effect on someone’s ability to carry out normal , day to day activities” .
- Substantial means something which is more than minor or trivial (s212 EA 2010) .
- Long term means either that it has lasted for 12 months, is likely to last for 12 months or is “likely to recur” even if the effect of that may last less than 12 months. Something is likely to recur if it “could well happen” .
- Mental illness does not need to be clinically recognised to amount to a disability. A formal medical diagnosis is therefore not always required .

Responsibilities under EQA 2010

- Duty not to discriminate in the way that it provides education, and in the way it affords a student access to a benefit, facility or service. Most likely claim s15 of the EQA – discrimination arising in consequence of disability which cannot be justified.
- By subjecting the student to “any other detriment”.
- Must not discriminate in the arrangements it makes for conferring qualifications, or the terms of such conferment.
- Duty to make reasonable adjustments where the disabled person is put at a substantial disadvantage in respect of :
 - (a) Provisions, criterion or practices
 - (b) Auxiliary aids (also physical features but less likely to feature in mental health conditions).

What is a reasonable adjustment?

- Intensely context specific.
- Anticipatory in nature (i.e. for common conditions may expect services to already be in place).
- Code of Practice suggests that when examining the adjustments one can weigh in the balance:
 - (a) The cost of taking the step (and the resources generally available)
 - (b) The need to maintain competence standards
 - (c) Health and safety
 - (d) The interests of other students.

- Universities are also public bodies and so have responsibilities under s149 of the EQA 2010.
- This applies to "have due regard" to the need to eliminate discrimination, and advance equality of opportunities.
- The failure to have adequate mental health policies and practices may be a failure to discharge this duty if focus is not given to them.

EQA claims

- Must be brought within 6 months of the discriminatory act (but if it is a continuing course of conduct the last day the act takes place).
- County Court claims.

Data Protection

- Duties of privacy and confidentiality and data protection arise in respect of sensitive personal data – which would include all information about someone’s medical history.
- Such information can be disclosed but only where
 - (a) Consent has been given.
 - (b) There is a serious risk of harm to that person or others.
 - (c) There is a risk of a serious crime
 - (d) Someone lacks capacity to make their own decision

It is not the case that confidentiality can NEVER be breached.

Universities should have policies about when they may breach confidentiality in cases of serious mental ill health.

Coronial proceedings

- If someone does take their life, the coroner will become involved.
- Family members may seek to have an “Article 2 inquest” if they were in the care of the state (i.e. had been detained under the MHA 1983) or in analogous circumstances
- Increasing requests by families for Article 2 inquests where some form of intervention by the state (or should have been): current boundaries are being formulated. At present, only where the state has been heavily involved in providing care on a compulsory or near compulsory basis – e.g. released someone from detention when they should not have been so released.
- Coroners can make recommendations .

Work with the NHS

- Universities are not a substitute NHS.
- But some universities do have formal arrangements or projects with NHS staff
- Having NHS staff on campus and college committees
- Having partnerships with NHS services to provide specialist services
- Having a GP practice on site
- Drop-in sessions with nurses.

The future

- Comprehensive provision of on-site specialist facilities in all large campuses
- Partnerships with local mental health NHS Trusts and community services.
- Re-thinking the way that services are delivered.
- Larger governance and strategic focus (it should already be a strategic focus, but given the financial issues over the past year, it may have slipped down the agenda).
- Engaging with students to co-produce services.

Thank you for listening

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