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Private law claims against higher education providers

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Private law claims regarding educational provision: the 3 categories

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- Category 1: Claims asserting a breach of duty in exercise of academic judgment: not justiciable see eg Clark v University of Lincolnshire & Humberside [2000] 1 WLR 1988, CA)

- Category 2: Claims which allege negligent teaching methods, in devising courses or delivering those courses: actionable in principle.

- Category 3: Claims regarding operational negligence in making of educational provision

Claims regarding delivery of courses/negligent teaching

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- Such claims are actionable in principle: see eg Phelps v Hillingdon London Borough Council [2001] 2 AC 619:

  As to the first question, it is long and well-established, now elementary, that persons exercising a particular skill or profession may owe a duty of care in the performance to people who it can be foreseen will be injured if due skill and care are not exercised, and if injury or damage can be shown to have been caused by the lack of care. Such duty does not depend on the existence of any contractual relationship between the person causing and the person suffering the damage. A doctor, an accountant and an engineer are plainly such a person. So in my view is an educational psychologist or psychiatrist and a teacher including a teacher in in a specialised area, such as a teacher concerned with children having special educational needs.

- If the attack is on the competence of the defendant's performance in the exercise of skill and care in a profession , the merits of the claim must be assessed by reference to the *Bolam* test: Siddiqui v University of Oxford [2016] EWHC 3150 (QB) at [43]

- Requirement for expert evidence that the Bolam standard is not met: see eg *Abramova v Oxford Institute of Legal Practice* [2011] EWHC 613 (QB)

Claims based on “operational negligence”

- See Siddiqui [46]:

  “*The third category of claim could be described as one founded on simple operational negligence in the making of educational provision. Again, hypothetical examples would include administrative error leading to a student sitting the wrong examination paper, containing questions about which the student had received no tuition; or where classes are cancelled due to non-availability of teaching staff; or a case where a teacher was habitually drunk or asleep during classes*.”
- No need for expert evidence
- Causation and loss: clearly foreseeable: see Winstanley v University of Leeds [2013] EWHC 4792 (QB) at [71]. But injury usually to losses flowing from final degree result.

Siddiqui v University of Oxford [2016] EWHC 3150 (QB) (Strike Out judgment)

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- Allegation of poor teaching due to unavailability of sufficient teaching staff
- Degree result awarded in 2000. Claim filed in 2014. Internal correspondence that university aware of inadequate teaching provision in 2000 but C only became aware in 2013 after discussions with other students.
- HELD: Insufficiency of teaching capacity and alleged failure to remedy could be decided at trial.
- Limitation issues regarding (1) the knowledge requirement in s.14(1)(b) of the Limitation Act 198, (2) whether claim was in time via section 32 LA 1980 (deliberate concealment of any fact relevant to C's right of action, and (3) exercise of discretion to extend the 3 year limitation period.

How to assess what a reasonable standard of teaching is, and how to prove causation?

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- In Siddiqui v University of Oxford [2018] EWHC 184 (QB), Court referred to "what had had gone on before", albeit that "cautious approach" adopted to ensure no "counsel of perfection" imposed: see [73].
- Proof of under-performance not enough: see Siddiqui at [89].
- Impossible to demonstrate causal connection between breach of duty and poor exam result: [94].

Other contractual claims: payments for student accommodation

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- Claims to recover accommodation payments from University-owned accommodation/halls of residence likely to be defended on the grounds of force majeure/frustration.

- Licences: do they have force majeure clauses? If not common law doctrine of frustration likely to be relied on in defence to claims for payment.

- "*frustration occurs whenever the law recognizes that without default of either party a contractual obligation has become incapable of being performed because the circumstances in which performance is called for would render it a thing radically different from that which was undertaken by the contract. Non haec in foedera veni. It was not this that I promised to do*.": Davis Contractors v Fareham UDC [1956] AC 696

- "*A contract may be discharged where the subject-matter of the contract, though it is not destroyed, becomes unavailable for the purpose of performance by reason of its ceasing to be at the disposal of the parties*": Treitel, *Frustration and Force Majeure,* 3rd edition, 4-002. Also where mutually agreed purpose becomes impossible, so-called "frustration of purpose".

- English law recognises that doctrine of frustration applies to leases: National Carriers Ltd v Panalpina (Northern) Ltd [1981] AC 625. See also Treitel, *Frustration and Force Majeure*, 7-022 and the examples of restrictions on freedom of movement (p. 331).

- Complex issues re partial impossibility, what access/services still available on site if any, period of time in which access is not possible.

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Thank you for listening

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