

**Welcome to Landmark Chambers’
‘Universities and the pandemic: Current Issues’
webinar**

The recording may be accessed [here](#).

Your speakers today are...



Fiona Scolding QC (Chair)

Topic:
Pastoral care,
welfare and
mental health in
universities



Topic:
Private law claims
against higher
education
providers

James Neill



Topic:
The quality of
teaching and
online learning -
what legal issues
arise?

Yaaser Vanderman

Pastoral care, welfare and mental health in universities



Fiona Scolding QC

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.

The quality of teaching and online learning - what legal issues arise?



Yaaser Vanderman

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- Legal framework
- Office of the Independent Adjudicator
 - Making complaints
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 - Factors to consider
- Complaints to OIA - case studies
- Judicial review

Legal Framework

- Complex legal relationship between student and Higher Education Institution
 - Contract
 - Public law principles: *R (Zahid) v University of Manchester* [2017] EWHC 188 (Admin), para 6 (Hickinbottom J)
 - Statute

Legal Framework

- Statute
 - Higher Education Act 2004
 - Established complaints scheme run by Office of the Independent Adjudicator
 - “*Qualifying institutions*” (section 11)
 - “*Qualifying complaints*” (section 12(1))
 - “a complaint about an act or omission of a qualifying institution which is made by a person as a student or former student” but excludes academic judgment.

Legal Framework

- Generally speaking, will need to complain to OIA before bringing claim in High Court
 - *R (Zahid) v University of Manchester* [2017] EWHC 188 (Admin), para 68 (Hickinbottom J):
 - “...where there is such a complaints procedure as provided by the 2004 Act through the OIA, the court should be slow to become engaged with issues arising out of the same subject matter, unless and until that procedure has been given reasonable time and opportunity to run to a conclusion; and, where either a claimant or a defendant (or both) wish to progress court proceedings before then, they must provide the court with good reasons for doing so. In my view, both parties and the court should approach the issues raised in the applications such as those before me – and all issues that arise as a result of the relationship between a reference to the OIA and judicial review proceedings – with this uppermost in mind.”

Office of the Independent Adjudicator

- OIA Scheme Rules (April 2018)
 - Students can complain to the OIA about “*anything their higher education provider has done or failed to do*”: Rule 4.1.
 - **Free!**
 - OIA will not review complaint unless provider has considered matter first, usually through internal processes: Rule 7.1. BUT OIA will forego this requirement in “*exceptional circumstances*”: Rule 7.3.
 - Decision usually made on papers but hearing will be held if “*it is necessary to do so*”: Rule 11.2.
 - Timeframes: OIA will tell complainant and provider whether it can review complaint within 3 weeks of receiving complaint or further information requested: Rule 10.5. Final decision normally made within 90 days of receiving all relevant info from both sides: Rule 13.2. OIA can extend 90-day period if matter “*highly complex*”: Rule 13.2.

Office of the Independent Adjudicator

- OIA Briefing Note 2: Our approach to complaints arising from the effects of coronavirus (COVID-19)

“Consumer protection legislation has not been suspended for students. This means that providers still need to deliver learning and other services that are consistent with students’ reasonable expectations.”

What students can reasonably expect, and what providers can reasonably be expected to deliver, is likely to change and evolve as circumstances change and evolve, especially if restrictions are tightened again. But providers should be planning to deliver what was promised - or something at least broadly equivalent to it - and to ensure that learning outcomes can be met. It’s unlikely to be reasonable not to do that, especially now the initial crisis period has passed.

Where providers have not or decide they cannot deliver what was promised they will need to consider how to put that right. A blanket refusal to consider tuition fee refunds in any circumstances is not reasonable. There may be groups of students that are particularly affected, and providers should take steps to identify those groups and address their issues. But they also need to consider concerns raised by students about their individual circumstances.”

Office of the Independent Adjudicator

- OIA Briefing Note 2: Our approach to complaints arising from the effects of coronavirus (COVID-19)
 - On exclusion clauses:

“Clauses that attempt to exclude a provider’s liability for failing to deliver the educational service to the required standard, and those giving the provider a wide discretion to change significant aspects of the course of study, contrary to students’ expectations, are unlikely to stand up to scrutiny.

Even if a provider might have been able to rely on this type of clause during the initial crisis period, in our view it is unlikely to be reasonable to rely on it in relation to students who are starting or continuing with their studies in the autumn. Providers have now had time to prepare and plan for the longer-term effects of the pandemic, and so those effects are unlikely to be considered an extraordinary event outside of the control of providers that is preventing them from delivering the service they have promised.”

Office of the Independent Adjudicator

- OIA Briefing Note 2: Our approach to complaints arising from the effects of coronavirus (COVID-19)
 - On course delivery:

“In this context, we can consider (for example) a complaint that a provider did not cover subject areas that it said it would; that a student’s supervisor was unavailable; that a student didn’t benefit from teaching because they could not access it, or the delivery method did not work for them; that a provider did not support its students adequately; or that the provider did not follow a reasonable assessment process.

...

We will look at whether what the provider has done is reasonable in the circumstances – so reasonable delivery in the middle of lockdown is likely to look different to reasonable delivery in a more managed and planned environment.”

Office of the Independent Adjudicator

- Based on examples, OIA considers following factors:
 - Whether the provider acted reasonably and treated the student fairly.
 - What the provider did at the time to minimise disruption for students affected by the circumstances, to try to put things right.
 - What the provider promised, and what the student could reasonably expect in terms of contact hours and other learning opportunities.
 - What the provider did to ensure that students were not disadvantaged academically and could achieve their learning outcomes.
 - What the provider delivered, and whether that matched what was promised and what students reasonably expected, and was broadly equivalent to its usual arrangements.
 - Where there has been a shortfall of delivery, what were the consequences for the student, and whether the provider has considered those consequences.

Case studies

- 10 decisions in November 2020 relating to COVID:
 - 1 justified
 - 2 partially justified
 - 3 not justified
 - 3 not eligible
 - 1 settled

Justified

- Studies disrupted due to industrial action – missed 24 hours of teaching. Missed further lessons due to lessons going online following lockdown – delay, online sessions shorter and disruption not minimised.
 - “The provider told the student that it would not consider their complaint because it was not giving any tuition fee refunds. It said that it had no option but to move to online teaching and that it had put in place measures to minimise disruption. The provider did not consider the student’s individual concerns about the impact of the pandemic and the industrial action on them or explain how the measures it had taken addressed those concerns.

We think that it can be pragmatic for a provider to shorten or streamline its usual complaints processes, especially when there are a large number of similar cases to manage. But in this case, we concluded that the provider had not engaged with the student’s individual concerns at all and so it was not reasonable to reject their complaint. We recommended that the provider should consider the student’s complaint, looking at whether the student was able to meet their learning outcomes, whether the provider had delivered what it had promised, or something broadly equivalent to it, and whether the student had been able to access what had been offered.”

Partially justified

- International student paid £13,500 per year before university cancelled half of on-campus learning due to lockdown:
 - “The student was studying two modules and we looked at what the provider had done to mitigate the disruption in both modules. One module included a significant element of practical group work. In that module the module leader adjusted the group task, had encouraged students to contact other members of their group, and arranged online support and discussion sessions and regular feedback sessions. We were satisfied that the actions the module leader had taken mitigated the disruption to the student’s learning opportunities and ensured that the delivery of the module was broadly equivalent to usual arrangements.

For the second module four weeks of teaching were cancelled which meant that four topics (out of ten) were not covered. In addition a final project that was originally worth 60% of the module was cancelled which meant that the student lost the opportunity to develop their written work and research. The provider did not replace the project with another assessment with similar objectives, as described in the module guide. We concluded that the provider had not taken sufficient steps in relation to this module to mitigate the disruption to the students learning experience or to ensure that the delivery of the module was broadly equivalent to its usual arrangements.”

Partially justified

- **We recommended that the provider should pay the student compensation.** The starting point for our assessment was the notional cost of the teaching hours for the one module missed. We decided that it would also be reasonable to compensate the student for the loss of the project and we assessed that compensation at £500. We recognised that providers must also provide and maintain facilities, infrastructure, administration and other student services, and that although the student could not access facilities on campus they did have access to services remotely including pastoral and other support services and online library facilities. We reduced the amount we had assessed by 30% to take account of this, making a total of just over £1,000 in compensation.

Partially justified

- Health-related course disrupted by industrial action and lockdown
 - “But we concluded that it was not reasonable for the provider to refuse to consider the students complaint about disruption caused by the coronavirus lockdown. The provider had not explained what it had done to minimise disruption to the students’ studies or why it was satisfied that it had delivered teaching that was broadly equivalent to its usual arrangements. We recommended that the provider should consider the students’ complaint about the disruption caused by the lockdown.”

Not justified

- International student complained about move to online teaching following closure of campus:
 - “online delivery was very different from face-to-face interaction with teachers and students, and the experience of campus life”
 - Provider had given students detailed information about changes to courses including how lectures, seminars and other teaching sessions would take place online.
 - Teaching staff offered office hours that accommodated students in other time zones.
 - Group work facilitated online
 - Although some practical sessions had to be cancelled, the students affected were not disadvantaged academically.
 - Provider had communicated clearly and in timely way how it was continuing to deliver course, including opportunities to interact with staff and other students and support services
 - Had made reasonable efforts to ensure students could achieve expected learning outcomes and to continue to deliver learning in a way broadly equivalent to usual arrangements.

Not justified

- Student complained about disruption from industrial action and COVID-19 lockdown:
 - “missed learning, a reduction in quality teaching time, and a lack of access to facilities”
 - Provider had done enough:
 - Students not assessed on any material not taught
 - Introduced open book assessments
 - Extended and staggered assessment deadlines
 - “No detriment” policy to ensure students could progress with studies provided met learning outcomes
 - Made available recorded lectures from previous year
 - Facilitated remote discussion groups
 - Library and other service available online
 - Student support and well-being services continued to operate

Not eligible

- Student had not complained to the provider first
- Student's complaint to provider was at final stage of internal processes
- The course was a Level 2 course and not a higher education course

Judicial review

- High Court
- Costs implications
- Challenging OIA decision on public law grounds
- Deference to OIA

Partially justified

- We recommended that the provider should pay the student compensation. The starting point for our assessment was the notional cost of the teaching hours for the one module missed. We decided that it would also be reasonable to compensate the student for the loss of the project and we assessed that compensation at £500. We recognised that providers must also provide and maintain facilities, infrastructure, administration and other student services, and that although the student could not access facilities on campus they did have access to services remotely including pastoral and other support services and online library facilities. We reduced the amount we had assessed by 30% to take account of this, making a total of just over £1,000 in compensation.

Judicial review

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Private law claims against higher education providers



James Neill

Private law claims regarding educational provision: the 3 categories

- 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

- 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)

- 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?

- 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

- 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.

Q&A

We will now answer as many questions as possible.

Please feel free to continue sending any questions you may have via the Q&A section which can be found along the top or bottom of your screen.

Thank you for listening

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