



FINAL

Claim No.: G10YX983

IN THE COUNTY COURT AT BRISTOL

B E T W E E N :

DR ROBERT ABRAHART

(Administrator of the estate of Natasha Abraham decd)

Claimant

-and-

UNIVERSITY OF BRISTOL

Defendant

JUDGMENT

Representation:

Claimant Mr Burton QC and Ms Steinhardt instructed by:
 Irwin Mitchell LLP

Defendant Mr Stagg instructed by:
 DAC Beachcroft

INTRODUCTION

1. This is a tragic case.
2. Natasha Abraham, to whom I shall refer as 'Natasha', was an undergraduate MSci student reading physics at the University of Bristol, to which I shall refer as the 'University'. Natasha started her course in the autumn of 2016.
3. During her second year, as part of her course, Natasha was required to give interviews after conducting laboratory experiments. The interviews formed part of the University's assessment of Natasha and were marked. Natasha could not cope with the interviews and her mental health swiftly declined.
4. On 30th April 2018, as part of her course, Natasha would ordinarily have been expected to participate actively in a conference by way of presenting with fellow students; instead, aged only 20, Natasha took her own life.
5. Natasha's family believe that the University bears moral and legal responsibility for Natasha's psychological decline and suffering leading to her death because it continued to require Natasha to deliver oral post laboratory interviews for assessment purposes and to participate in the conference notwithstanding the knowledge they say the University acquired of Natasha's mental health problems and the harm caused to her by the oral assessments.
6. Dr Robert Abraham, the Claimant, is Natasha's father and he brings the claims under the Law Reform (Miscellaneous Provisions) Act 1934 on behalf of Natasha's estate for damages under the Equality Act 2010 and at common law in negligence and under the Fatal Accidents Act 1974 for the balance of Natasha's funeral expenses¹.

¹ A claim against the NHS resulted in (in effect) recovery of 71.6% of Natasha's funeral expenses.

7. The University has expressed clearly its sorrow and sympathy for the loss of Natasha but it denies that it is legally responsible in any way for her suffering and death.
8. This court likewise extends its condolences to Natasha's family.
9. The claim was issued on 22nd January 2020; it has been allocated to the multi-track and came on for trial from 1st to 8th March 2022 before myself sitting with Mrs Christine Price as lay assessor pursuant to section 114(7) of the Equality Act 2010 and section 63(1) of the County Courts Act 1984. In writing this judgment I have taken into account the observations of Mrs Price² and this judgment has been read by Mrs Price prior to sending it to the parties. I record my gratitude to Mrs Price for her assistance and I observe that we have not differed on our assessment of the case.
10. At trial the parties were represented by counsel as follows:
 - (a) Mr Burton QC and Ms Steinhardt appeared for the Claimant and
 - (b) Mr Stagg appeared for the University.

I am most grateful to all for their written and oral submissions.

11. Within this judgment I shall:
 - (1) Give general observations about the evidence;
 - (2) Describe the physics course taken by Natasha;
 - (3) Summarise the provision made for disability support;
 - (4) Mention confidentiality;
 - (5) Summarise the facts in the following chronological parts:
 - (a) 8th November 1997 to October 2016;
 - (b) October 2016 to October 2017;
 - (c) October 2017 to 30th April 2018;
 - (6) Mention Natasha's personal notes;
 - (7) Consider the Claimant's witness evidence;

² With respect to the Equality Act claims.

- (8) Consider the Defendant's witness evidence;
- (9) Consider the expert medical evidence;
- (10) Address the Equality Act claims;
- (11) Address the claim in negligence;
- (12) Address injury, loss and damages.

GENERAL OBSERVATIONS ABOUT THE EVIDENCE

12. Natasha's death was the subject of a formal inquest and a considerable amount of evidence was gathered comprising (amongst other things) witness statements, correspondence, literature and policies from the University and Natasha's personal notes. Further material has been obtained for this case. I suspect every last piece of written material has found its way into the trial bundles which contain well over 4000 pages.
13. However, anyone reading the amended³ defence alongside the particulars of claim will see that the facts are generally not in issue at all. At times the Claimant has been put to proof of matters outside of the University's knowledge but the only factually contentious area seems to relate to the extent of the University's actual or constructive knowledge and understanding of Natasha's problems.
14. This is not a case that turns on credibility and I am confident that the maker of every witness statement, whether they attended court or not, sought to assist the court.
15. I have attached to this judgment as Appendix 1 a list of the relevant people (adapted from the list given to me by the Claimant's legal team), whether they made a witness statement (to this court) and whether or not they gave oral evidence to me. Some relevant people gave evidence only to the inquest, notably Mr Matthew Wilkes and so I have their statement to the inquest only.

³ Permission given at start of the trial.

THE PHYSICS COURSE

16. The Defendant's programme specification for Natasha's course is found at page G(i)1 of the trial bundle. The programme course is 2PHYS003U. Programme outcomes are separated into the following sections:

- (1) Knowledge and understanding;
 - (2) Intellectual Skills and Attributes;
 - (3) Other Skills and attributes;
 - (4) Intellectual Development;
- and each section sets out:
- (1) Programme Intended Learning Outcome;
 - (2) Learning and Teaching Methods;
 - (3) Methods of Assessment.

17. The elements within the sections relevant to Natasha given the circumstances of this case are as follows:

(1) Knowledge and Understanding

(a) The learning method includes:

"Computational and Communications Skills form part of the programmes at all levels both through time-tabled classes and as part of the assessment of practical work"

(b) The method of assessment is:

"... through a combination of unseen written examinations, moderated course work, laboratory reports and project reports and dissertations, IT work, oral presentations and interviews."

(2) Intellectual Skills and Attributes

The programme intended learning outcome included:

"Plan, execute and report the results of an experiment or theoretical investigation"

(3) Other Skills and Attributes

(a) The programme intended learning outcome included:

“Accurately and clearly present complex issues to others at an appropriate level in written and verbal presentations”

(b) The learning and teaching methods included:

“Group working is developed as part of project/ dissertation assessment, involving as it does a written report and a viva.”

(c) The methods of assessment say as follows:

“The methods of assessment outlined above all contain components which assess these skills. In particular those associated at all levels with laboratory and project work have a component reflecting presentation and performance of the skills detailed here.”

18. The course included a mandatory unit called Practical Physics 203 which had the code PHYS29030. It is described as follows:

“Physics is a discipline which has observation and experimental validation at its heart. This unit consists of laboratory work, computer workshop and laboratory conference presentation. It continues the development of key experimental skills, the use of various standard pieces of apparatus and analysis of data. The experiments allow for student input into design and measurement. Transferable skills are included by having formal write-up of experiments, an assessment viva for each experiment, a group presentation within a class conference structure ...”

19. The intended learning outcome is:

“Able to use apparatus appropriately in order to allow meaningful results to be obtained. Understand some of the principles underlying the design of experiments. Understand the significance of a laboratory notebook, and the measurement and interpretation of data. Able to present the results of an experiment in a manner appropriate to a professional physicist. Able to collaborate with others in the presentation of experimental results in a conference setting. Able to use computational methods appropriately.”

20. To remain on the MSci course Natasha would have to attain an overall percentage of 60% at the end of the second year and she had to attain 40% in Practical Physics 203 in order to pass that module.
21. The main element of Practical Physics 203 comprised 5 separate experiments in the laboratory which carried 45% of the marks, laboratory report (20%) computing (25%) and conference (10%). The handbook sets out 8 objectives one of which is:

“explanation of your work to others”

and marking is explained at paragraph 9.1 as:

“In the fourth and last week of your experiment you will be assigned a time-slot for your marking in the following week. During the marking the demonstrators will usually quiz you rather deeply on many aspects of the experiment, and not only the technique: you will be expected to understand the physics you are supposed to have learned by carrying out the experiment. You should be prepared for such questioning, and be prepared to defend your ideas and your results. We want to know how well you have understood the experiment, how deeply you have thought about it, and how coherently you can talk about it. At the same time, if there are aspects of the experiment you do not understand this is a good opportunity to clear them up. This is especially important if you subsequently write up the experiment as a formal report.”

22. The interviews would last up to 25 minutes.
23. Students undertaking Practical Physics 203 were required to participate in the ‘Second Year Laboratory Conference’. The University would organise students into groups of 4 or 5 based on a laboratory experiment which the student had written up as a formal report and each group was required to give a PowerPoint presentation for 12 minutes followed by 3 minutes of questions. It was mandatory for all members to participate.

24. The University's template for mapping programme learning outcomes to mandatory units for MSci Physics is within its Level 5 handbook at page G(i) 454 of the trial bundle and at page 456 we see that knowledge and understanding of "P25 Accurately and clearly present complex issues to others at an appropriate level in written and verbal presentations" is not mapped through to PHYS29030⁴. Likewise the intended learning outcomes mapping does not link verbal presentation with PHYS29030.
25. Clearly, post laboratory interviews and the conference form important parts of the course for the purpose of the student displaying or evidencing knowledge. However, I have not found anything within the course literature to say that the interviews and or the presentation can **only** be carried out orally. There is nothing to suggest, for example, that an interview cannot be conducted by text or a presentation conducted remotely.

DISABILITY SUPPORT

26. The Academic Personal Tutor Handbook is written for the benefit of tutors. Amongst other things it instructs the tutor that:
- (1) A student with personal problems may first make contact with the Student Administration Manager but their role was to refer students to appropriate experts.
 - (2) The senior tutor had a responsibility to refer students with disability needs or health problems to relevant specialist services and to keep in touch with such students to check that progress is being made and keeping the student's academic personal tutor informed.
27. It may take time for a Disability Support Summary to be drawn up and the University's own Quick Guide to Disability Support Summary (rightly) points out

⁴ I am told that P25 was relevant only for a Master's.

that the duty to support the student arises at the point of disclosure and it gives as an example of interim support:

“Offering alternatives to group or presentation work where this is possible”

28. Within the trial bundle (volume F) are examples of the Defendant’s Disability Services’ disability support summaries for some other students who took the same or almost the same course as Natasha; these show the adjustments that were made for those students. For example (at page F1) the needs of a student with Asperger’s syndrome were considered and adjustments recommended to the School. With respect to group work the service recommended that where possible alternatives to group work and presentations were discussed with the student. A similar student received a similar recommendation (at page F8) and another (at page F74) where the recommendation was that where possible alternative forms of assessment or presentations with a reduced audience should be discussed.
29. The recommendations are generalised or “written in broad strokes” in the words of the University’s Disability Advisor Andrew Warrington given 19th October 2017.
30. It appears clear that the final say with respect to adjustments lies with the School; see for example page F128.
31. The University has produced regulations and a code of practice for student sickness and absence which would not appear to address the scenario where a student cannot face a piece of work.

CONFIDENTIALITY

32. I mention the matter of confidentiality because at times during Ms Perks’ evidence there seemed to be concern about sharing information provided by Natasha notably her suicide attempts.

33. The University's Student Services Confidentiality Policy makes provision for preserving confidentiality but paragraph 9 does say:
"If a member of Student Services staff takes the view that a student is at risk of harming themselves or others then they can make a decision to break confidentiality without consent"
34. This is consistent with paragraph 4 of Schedule 2 to the Data Protection Act 1998 (which applied until repealed and replaced in May 2018 by the Data Protection Act 2018).

8TH NOVEMBER 1997 TO OCTOBER 2016

35. Natasha was born on 8th November 1997; she was a much loved child of Dr Robert Abrahart and Mrs Margaret Abrahart and much loved sister to her younger brother Mr Duncan Abrahart.
36. Natasha's shyness manifested itself at primary school and she was noted to be unduly quiet and lacking in confidence but hardworking and intelligent. Natasha knew that she was shy and she wrote a letter to her future self saying that she wanted to overcome being shy.
37. Natasha had a circle of friends and there is no evidence that anyone considered Natasha to have special needs at primary or secondary school.
38. Natasha had success with her GCSE's and her A levels; she was able to undertake some part time work as a cashier at Asda but she continued to have some difficulty with social interactions. However, it seems that those persons around Natasha thought her confidence was improving.

39. Natasha carefully researched and analysed universities offering a degree in physics. She decided to enrol on the University's 4 year Master of Science physics course (rather than the more common 3 year bachelor degree).
40. Natasha's anxiety at leaving home and going to a university would be common to many pupils finishing 6th form and taking the same direction of travel. However, nothing happened in 2016 to cause anyone, particularly Natasha's parents, to be concerned that Natasha would not be able to cope with going to the University to undertake the MSci.

OCTOBER 2016 TO OCTOBER 2017

41. When Natasha enrolled at the University and commenced her MSci in about October 2016, the University had no reason to suspect that Natasha would be any different to any other young adult undergraduate of her age. No relevant disability or characteristic of Natasha was disclosed to the University and no member of staff would have considered Natasha to have a patent disability at this time or would have known that Natasha would have a future problem with oral assessments.
42. Natasha's first year seems to have progressed well academically. Natasha completed her first year with an average mark of 61.7% which would reflect upper second class.
43. Natasha lived with flatmates and there is no evidence of any significant stressors such as domestic or non-romantic relationship problems at this time.
44. Natasha had a boyfriend who started at Gloucester University in October 2016; he is Mr Arjun Gunawardane whom she had known from school. Their relationship was good.

45. Natasha's friends and boyfriend were aware that Natasha suffered social anxiety in that she found interaction with persons she did not know (such as retail staff) to be extremely difficult and she would avoid such interactions. For example, Mr Unger and Mr Gunawardane both speak of Natasha being unable to order food for herself by telephone from a takeaway and in a restaurant respectively.

OCTOBER 2017 TO APRIL 2018

46. In due course Natasha made arrangements to live in her second year in a new flat in Park Street, Bristol with two persons who were also on her physics course; they were Mr Rajan Palan and Mr Matthew Wilkes. They moved in together in September 2017.
47. There were some domestic stressors in Natasha's life in the second year such as problems with rodents and plumbing but these do not appear to carry any real significance in this case.
48. Natasha did suffer a significant emotional stressor. Natasha's laboratory partner was Mr Matthew Wilkes; he took a romantic interest in Natasha who did not reciprocate. This caused a tension between Mr Wilkes and Mr Gunawardane; Mr Palan believed the former to be jealous of the latter. It seems that Natasha continued to confide in Mr Wilkes and he told the Inquest that Natasha spoke in mid October 2017 of hanging herself and then she deliberately cut herself to self-harm. We also have copies of 'post it' notes passing between Natasha and Mr Wilkes by which the latter seems to continue putting emotional pressure on Natasha.
49. The tension in the flat spilled over into a fight between Mr Palan and Mr Wilkes and on 22nd November 2017 the latter suspended his studies and on 8th December 2017 he moved out of the student flat.
50. In the meantime the first laboratory experiment was 'Experiment L' which concerned a 'Latent Heat Calorimeter' and the first laboratory interview was to take place on 24th October 2017 with Witek Szeremeta. Natasha's work in all

respects other than the interview was satisfactory. Natasha attended the interview but she did not respond at all to any questions. Inevitably this resulted in Natasha being marked down and she scored 8 out of 20⁵. Natasha was advised in the feedback to contact Dr Bell (or any other relevant member of staff) to discuss any issues she was facing.

51. On 25th October 2017 Dr Bell e-mailed Natasha to enquire whether Natasha had any concerns etc and offered to rearrange the interview and he e-mailed Natasha's tutor Professor Phillips to inform him that:

"... we had a problem of being unable to get your tutee Natasha Abraham to say anything at all"

and on 26th October Professor Phillips replied to say that he had not seen Natasha who had ignored Professor Phillips' promptings to arrange a tutorial.

52. Likewise on 25th and 26th October Ms Perks emailed Natasha asking her to get in touch. Also on 26th October Professor Phillips was reporting Natasha as missing certain classes and Ms Perks received information that Natasha was 'very quiet' in her first year.
53. Natasha did respond by email to Ms Perks late on 26th October simply asking to reschedule the interview. On 30th October Ms Perks emailed Natasha to rearrange the interview with Mr Kessell and repeated a request to meet with Natasha.
54. It seems that Natasha did attend the re-arranged interview on 31st October 2017; oddly the University have little information in circumstances where one would have thought that Natasha's ability to engage in this interview would have been carefully scrutinised. Ms Perks was told that Natasha did not do well in interview on 31st October 2017 and Ms Perks e-mailed Natasha with some links to counselling. Natasha had made contact and she was offered an initial assessment with the University's Student Counselling Service but she replied

⁵ The only prospect of obtaining a beneficial revision of this mark would have been by way of Natasha making a successful 'extenuating circumstances' application.

saying she no longer needed an appointment. It must follow that from about this point in time Ms Perks knew that Natasha was suffering some injury to her mental health connected to the interviews.

55. Natasha attended the laboratory on 28th November 2017 and the second interview should have taken place that afternoon but Natasha did not attend at all resulting in a mark of zero. Mr Kessell, Teaching Laboratories Technician, relayed Natasha's non-attendance to Ms Perks, Dr Bell and Dr Barnes. She was marked 0 out of 100.
56. Ms Perks made an appointment for Natasha to meet with Dr Barnes on 1st December which she did not attend but she did attend on 5th December. Dr Barnes noted in his summary:

"However, she does have a problem what looks like panic and anxiety issues with the interview assessment format. ACB has asked her to see her GP and/or Student Counselling Services to see whether they can diagnose a particular issue and then to see if we can get a Disability Support Summary (if necessary)."

It must follow that from about this point in time Dr Barnes knew that Natasha was suffering some injury to her mental health connected to the interviews.

57. On 12th December 2017 Dr Barnes recorded Natasha as still unwilling to do the laboratory interview and that he agreed with Mr Kessell that they needed to address this with urgency after Natasha completed her January exams.
58. On 23rd January 2018 Dr Bell emailed Dr Barnes to find out if Natasha had completed any paperwork and asking that, if she had not, should be pushed to complete the same

"Otherwise I worry that things will just continue badly for the other interviews this year – I don't want to adapt the procedure without any "official reason"."

In evidence Dr Barnes said this would be a matter of extenuating circumstances.

59. On 30th January 2018 Natasha did not attend her third laboratory interview and this information was shared. She was marked 0 out of 100.

60. On 1st February 2018 Dr Barnes e-mailed Natasha asking her to arrange a meeting to see whether she had been to her GP or Student Counselling Services and whether she had taken any action in getting a support plan in place.

61. On 13th February 2018 Dr Barnes met with Natasha and Dr Bell and discovered that Natasha was still avoiding interviews and had not sought help or support. On this occasion Dr Barnes took the lead in contacting Disability Services that day by email on behalf of Natasha. He recorded in his note that he thought this was a 'genuine case of some form of social anxiety'.

62. On 13th February Dr Barnes wrote a supplemental email to Disability Services to say:

"... We are willing to help her and to consider modified or alternative forms of assessment but without any recommendations it is difficult to see what reasonable adjustments we can make.

I asked her today whether she had tried to contact you and she nervously said no. We discussed this a little bit and I suspect the thought of visiting you in person may be equally difficult for her. I am hoping that following my email she will at least be able to engage in written correspondence in the first instance.

As I explained earlier, Natasha is doing well on the course and has coped with exams etc. However these assessments are an important part of the laboratory

unit and I do not wish to see her failing the unit because she is unable to get any support in place”

63. On 14th February Disability Services emailed Natasha asking her for further information and to make an appointment; Natasha did not respond.

64. On 16th February Ms Hervey received a telephone call from Ms Perks who informed her that Mr Palan had seen Ms Perks because of Natasha's self harming. Natasha was aware of this meeting and she emailed Ms Perks with permission to talk about her with Mr Palan. Mr Palan is reported as having uppermost in his mind ongoing pressure on Natasha from Mr Wilkes. Later that day Ms Perks emailed Natasha to say that Ms Perks had sought advice from the Student Wellbeing Service.

65. On 19th February 2018 Natasha wrote a note detailing plans to end her life and went as far as tying a ligature to the shower rail. She then sought help from Mr Palan.

66. On 20th February Mr Palan wrote and sent an email to Ms Perks in Natasha's name as follows:

“I wanted to tell you that the past few days have been really hard, I've been having suicidal thoughts and to a certain degree attempted it.

I want help to go to the student health clinic or wherever you think is a good place to go to help me through this, and I would like someone to go with me as I will find it very hard to talk to people about these issues”

Ms Perks replied offering to meet with Natasha and to go with her to the clinic. No other action seems to have been taken by Ms Perks with respect to the e-mail.

67. On 20th February 2018 Natasha went with Mr Palan and Ms Perks to the Student Health Service. Natasha and Mr Palan (who did most of the talking) saw a General Practitioner with respect to her mental health and the events of the previous day. Natasha's problem was recorded as "mixed anxiety and depressive disorder chronic social anxiety with suicidal ideation"; a referral was made to the Crisis Team at Bristol Mental Health. Further to that referral Natasha was seen by Dr Annear of Avon and Wiltshire Mental Health Partnership NHS Trust on 23rd February 2018 with a follow up appointment arranged for 5th March 2018.

68. Ms Perks emailed Natasha on 20th February to find out how the appointment went and Natasha replied two days later saying:

"Sorry for the late reply. My appointment with the doctor went ok and I am having an assessment on Friday with the mental health team. Thank you so much for your support"

69. On 21st February Ms Perks emailed to say that Natasha was off her danger list and back to her worry list.

70. On 26th February 2018 Mr Gunawardane telephoned the Trust to inform them that Natasha had had a panic attack and had attempted to asphyxiate herself.

71. On 27th February 2018 Natasha did not attend her fourth laboratory interview and was marked 0 out of 100.

72. On 5th March 2018 Natasha saw Dr Annear who recorded her impression of Natasha's condition as "generalised anxiety with emotional difficulties and low mood"; she prescribed the antidepressant medication sertraline for 7 days and advised her to contact her GP for a further prescription.

73. On 6th March 2018 Natasha spoke with Ms Perks and the latter suggested alternative strategies to oral assessment such as a scripted discussion.

74. On 12th March 2018 Ms Perks emailed Natasha to follow up discussions about practical ways to help Natasha in presentations and lab interviews.

75. On 20th March 2018 Ms Perks emailed Natasha with an extenuating circumstances form for Natasha to complete and she suggested that a doctor's letter would be needed (which Natasha would have to arrange). Ms Perks informed Natasha that the form and evidence would enable Dr Barnes to facilitate alternative arrangements.

76. On 20th March Natasha did not attend her laboratory session. On that day Mr Palan discovered Natasha with a belt tied around her neck, placed over the top of her bedroom door and tied to the handle on the other side with her feet just touching the ground. Mr Palan rescued Natasha and took her to the Student Health Service the next day.

77. On 21st March 2018 Natasha, accompanied by Mr Palan who did most of the talking, saw her General Practitioner with respect to her mental health and the events of the previous day. The mental health team visited Natasha at home the next day and mention was made by Mr Gunawardane that there was a module which was assessed in interview format which Natasha found very difficult.
78. Natasha went home for the Easter break on 24th March and returned to the University on 15th April 2018.
79. On 17th April Natasha's cohort were emailed their groups for the forthcoming presentation to be given on 30th April 2018 and they were given information which emphasised the need to participate in the presentation the obvious inference being that would involve public speaking.
80. On 26th April 2018 Natasha did attend her fifth laboratory interview but scored only 8 out of 20 for the interview; her poor performance would likely have been down to being unable to orally answer questions. On the same day Natasha was communicating with her student colleagues about the presentation within an electronic messaging system.
81. On 27th April Ms Perks was emailing Dr Bell asking that if Natasha was quiet at the forthcoming conference that they take extenuating circumstances into account. It is apparent from Dr Bell's email of 30th April 2018 that by this time Natasha might scrape through Practical Physics 203 "but it's going to be tight" and Dr Barnes replied to wait and see what happened at the conference. Ms Perks spoke with Natasha and told her that she did not have to speak at the conference if she did not wish to do so provided her contribution was clear. Natasha said she would participate in delivery of the presentation.

82. Natasha did not attend the conference on 30th April 2018. Mr Palan discovered a belt had been placed over the bedroom door as before. He cut it and called the emergency services; they attended and found Natasha dead at the scene. The cause of death was hanging.

NATASHA'S NOTES

83. I have mentioned the difficulty in the relationship between Natasha and Mr Wilkes.

84. In evidence reference was made to other notes made by Natasha or communications that she had with others by, e.g., some form of social media.

85. I do not think that any relevant person saw any of these notes before Natasha's death. She was an ambitious young woman but troubled by sadness and insecurities which she listed with the heart wrenching summary:

"I am terrified of everything"

and there is an equally wretched repeated note:

"I am a freak I deserve death"

86. Other material has been found showing that Natasha was anxious with respect to matters such as weight and clothing but in evidence it was accepted by the

medical experts that the primary stressor and cause of Natasha's depressive illness was oral assessment.

THE CLAIMANT'S WITNESSES

87. Nothing arose in the cross examination of Mrs Abrahart and Mr Palan to cause me any concern with respect to their evidence. Mrs Abrahart remained composed notwithstanding her grief and was measured and straightforward. Mr Palan was likewise measured and straightforward; he was obviously a good friend to Natasha and his attempts to help and indeed save Natasha should not go unmentioned.

THE DEFENDANT'S WITNESSES

MS BARABARA PERKS

88. At all relevant times Ms Perks was the Student Administration Manager for the School of Physics.
89. Natasha's behaviour in the form of:
- (a) Not engaging with her tutor;
 - (b) Not speaking at the first interview;
 - (c) Performing poorly at the rearranged first interview;
 - (d) Not attending the second interview;

was objectively bizarre given she was otherwise a diligent student and, in my judgment, would have informed anyone considering Natasha that there was something seriously amiss with her. However, in cross examination Ms Perks

told me that she felt she had done her job by referring the problem to Dr Barnes and that she had no conversation with Natasha about how she felt regarding the laboratory interviews.

90. Natasha's email (written by Mr Palan) of 20th February would reveal to anyone reading the same a worrying emergency situation as Natasha was now known to be having (at least) suicidal thoughts. Ms Perks was unable to explain why she did not mention the suicide attempt to others notably Dr Barnes, Ms Harvey-Lyndon (Student Well-being Manager to whom Ms Perks had turned for advice when she was informed of Natasha's self-harming) or Natasha's tutor.
91. Further, whilst I am certain Ms Perks wanted to do the best she could for Natasha, the strategy of referring a student known to be unable to talk to strangers to strangers seems most questionable and illogical.

MS KAREN HARVEY-LYNDON

92. Ms Harvey-Lyndon was the Student Wellbeing Manager at the relevant time. Nothing arose in cross examination and her involvement remained largely peripheral.

MS KAREN HOCKING

93. Ms Hocking is the University's Disability Services manager; her evidence is limited to the way in which the service provides advice and support; Ms Hocking had no dealings with Natasha and we know that Natasha did not engage with the service and no Disability Support Summary was ever prepared.
94. In cross examination Ms Hocking was not prepared for the scenario of a student communicating with the service via a third party (which might be the only way a disabled student can communicate because of the nature of their disability as in Natasha's case) but she told me that in those circumstances the service would "reluctantly" provide reasonable adjustments.

95. Ms Hocking did say it was regrettable that in Natasha's case the service did not send her a second email to try to persuade Natasha to make contact. More strikingly Ms Hocking told me that *if* the service had been told of the student being at risk of suicide or self-harm they would have told the responsible academic member of staff that the referral had not been taken up.
96. Accordingly it seems that much more would have been done to engage with Natasha, her disability and the adjustments she needed if the service (and the academics) had been told of Natasha's suicide attempts and self-harm.

DR ADRIAN BARNES

97. Dr Barnes was the Senior Tutor in the School of Physics at the relevant time and he dealt with academic issues. Dr Barnes told me the School had a disability support coordinator who would inform him of a support plan (assuming that stage had been reached). Dr Barnes was also a member of the 'extenuating circumstances' committee.
98. In cross examination Dr Barnes was taken to the steps the University took (and did not take) with respect to Natasha. It became clear to me that Dr Barnes was not prepared to take significant action until he received a Disability Support Summary from Disability Services. Dr Barnes accepted that he told Natasha to do the laboratory work and not the interviews but this did not amount to an adjustment because Natasha was marked on the basis that the interviews were required. Dr Barnes said he discussed the 'extenuating circumstances' paperwork with Natasha in December 2017 but I cannot see that this process would have been appropriate to Natasha in any event.
99. Dr Barnes did accept that Natasha would know of the adverse marks she received for not attending interviews and that "with hindsight" this would have had an adverse impact on her.

100. Dr Barnes did accept there should have been a much earlier conversation with Natasha about reasonable adjustments i.e. before Ms Perks' conversation with Natasha on 12th March 2018.

DR CHRIS BELL

101. Dr Bell was the Unit Director for Practical Physics 203 at the relevant time. In similar vein to Dr Barnes it seems that Dr Bell decided to await a Disability Support Summary before taking effective action albeit he told me that he could have agreed some adjustments for Natasha with Dr Barnes. In his second statement to the Inquest Dr Bell said at paragraph 6:

“No changes were made to the form of assessment as there had been no request to do so either by Ms Abraham or under a Disability Support Summary. Where the form of assessment is part of the learning outcomes the Disability Support Summary is necessary to give us guidance on how to structure the assessment in the appropriate way while allowing the student the benefit of meeting the learning outcomes. Where appropriate to the specific student based on the Disability Support Summary, changes to the mode of assessment can be made which will allow the student to meet the learning outcomes for the unit, such as presenting to a smaller group or having the post presentation questions provided in advance.”

102. Witek Szeremeta asked Dr Bell what to do given that Natasha did not talk during the first laboratory interview and Dr Bell instructed him to mark Natasha objectively whilst Dr Bell would send an e-mail to Natasha. This strategy seems to have continued through to the April interview as described in Harry Moys' statement to the Inquest:

“For the post-laboratory interview with Ms Abraham for experiment W, I found that she responded reasonably well to being asked more focussed questions and was not responsive when asked questions that required a broader response. This lack of response possibly hindered Ms Abraham in explaining her understanding of the laboratory work. The marks I gave her on her feedback sheet reflected the

level of understanding she demonstrated both in her laboratory notebook and in the post laboratory interview”

103. On the different matter of the course itself and the competencies engaged, Dr Bell told me (and I accept) that it was a core competence for a Practical Physics 203 student to speak critically of their own work and this required communication but not necessarily in an oral way.

MEDICAL EVIDENCE

104. With the permission of the court the parties relied on written and oral expert medical evidence from:

- (1) Dr Sally Braithwaite for the Claimant and
- (2) Professor Tom Burns for the Defendant.

105. Inevitably the reports are retrospective in nature in that the experts have to rely on records and statements.

106. By the start of trial it was common ground between the experts (and the parties) that from about October 2017 Natasha had a disability within the meaning of section 6(1) of the Equality Act 2010 by way of a mental impairment defined as:

“severe depression with prominent anxiety features”.

107. Dr Braithwaite also diagnosed a separate social anxiety disorder, ‘S.A.D.’, starting in about October 2016 and becoming clinically significant in October 2017. Professor Burns disagreed with the diagnosis of S.A.D.

108. Professor Burns and Dr Braithwaite agree that the depression had a substantial adverse effect on Natasha's day to day activities and would likely have lasted for over 12 months with or without treatment. Helpfully and appropriately Mr Stagg has accepted on behalf of the University that Natasha had a disability within the meaning of section 1 of the Equality Act 2010⁶.
109. Professor Burns and Dr Braithwaite agree that Natasha's non-attendance at interviews was due to her depressive disorder (Dr Braithwaite considers that SAD was a contributing feature) and they agree the depression was responsible for the severe deterioration in Natasha's mental health and her death.
110. Prior to their giving oral evidence there appeared to be a significant difference between the experts on the question of the extent to which the Defendant's oral assessment methods contributed to Natasha's illness. In her report Dr Braithwaite put the oral assessment methods as a material contribution being more than 50% by October 2017 and between 60 to 70% in the early months of 2018. However, in his report, Professor Burns did not address the question of material cause beyond opining that he could not identify any simple obvious cause for Natasha's severe depression.
111. In their joint statement the experts continued to disagree on material contribution. Professor Burns' position was that Natasha's depressive illness caused her pronounced anxieties about the oral assessments rather than vice versa.
112. In oral evidence, under cross examination, Professor Burns' position changed somewhat. Professor Burns initially held to his view that he did not know what caused Natasha's depression but he then accepted that one could easily argue

⁶ Mr Stagg's skeleton argument paragraph 49.

that fear of challenging situations made Natasha depressed; he accepted that there had been an exacerbation and he agreed that fear played into Natasha's suicide.

113. In those circumstances, appropriately, Mr Stagg conceded the 'material contribution' point.

114. That left in place the dispute between the experts whether Natasha did or did not have S.A.D. In my judgment nothing really turns now on this issue but for completeness I prefer the opinion of Dr Braithwaite because:

- (1) Her written report, contribution to the joint statement and oral evidence remained consistent whereas Professor Burns' opinions shifted markedly as set out above;
- (2) Dr Braithwaite's position seemed entirely consistent with medical literature in the form of the World Health Organisation's ICD-10 Classification of Mental and Behavioural Disorders;
- (3) In oral evidence Professor Burns told us that he took the evidence of others about Natasha's extreme shyness "with a pinch of salt";
- (4) In oral evidence Professor Burns said he saw S.A.D. as a "controversial diagnosis" and he disagreed with the National Institute for Health and Care Excellence's guidance. Professor Burns told me he had not diagnosed S.A.D. in a patient for "at least 10 years";
- (5) I was left with the clear impression that Professor Burns' views on S.A.D. generally differ with those of other practitioners and it is he who is somewhat of an outlier.

THE EQUALITY ACT 2010 CLAIMS

(a) **FACT OF DISABILITY**

115. I have already recorded that it is common ground that as of October 2017 Natasha had a disability within the meaning of section 6 of the Act by reason of depression and after hearing the medical evidence I have decided that she also had a disability in October 2017 by way of clinically significant Social Anxiety Disorder; I do not think that this factual decision of mine has any legal consequence in this case.

(b) **KNOWLEDGE OF DISABILITY**

116. The Claimant must prove that the University had actual or constructive notice of Natasha's disability. The simple point is that from October 2017 it manifested itself – it was there to be seen – in contrast, perhaps, to disabilities which can be hidden or only be discerned with expert technical skill. To put this another way, following Gallop v Newport City Council [2013] EWCA Civ 1583, the University's staff could see for themselves that Natasha had a mental impairment which had a substantial and long-term adverse effect on her ability to carry out an otherwise normal task within her course from October 2017. However, I do not think that there was sufficient manifestation of any disability in year 1 to put the University on notice of anything.

(c) **CURRICULUM DEFENCE**

117. Chapter 2 of Part 6 of the Act addresses the application of the Act to further and higher education. It is common ground that under section 91(2)(a) of the Act the University must not discriminate against Natasha in the way in which it provided

education to her or, under subsection (4), by subjecting her to any other detriment.

118. Section 94(2) expressly excludes from Chapter 2 of Part 6:

“anything done in connection with the content of the curriculum”

119. At the start of the trial Mr Stagg argued that Natasha’s oral assessments fell within section 94(2) and he sought to rely on Birmingham City Council v Afsar [2019] EWHC 3217 which concerned Chapter 1 of Part 6 and the possible conflict between the prohibition of discrimination by a school in the way that it provides education to a pupil under section 85(2)(a) and the disapplication of the chapter to anything done in connection with the curriculum. In his closing submissions Mr Stagg accepted that the judgment of Warby J is binding on me in the County Court and that the ratio of paragraph 51 of the judgment prevents him from arguing in this case that the University’s method of teaching could fall into the curriculum exception. However, Mr Stagg wished to record that he did not agree with Warby J’s decision and he would challenge the point if the case I am deciding finds its way to a higher authority.

(d) **THE CLAIMS**

120. Three discrete albeit overlapping claims are brought under the Act for disability discrimination; they are :

- (1) Failure to make reasonable adjustments (section 20).
- (2) Indirect discrimination by application to Natasha of a discriminatory provision, criterion or practice (section 19)
- (3) Direct discrimination in the form of unfavourable treatment (section 15);

(e) **REASONABLE ADJUSTMENTS, COMPETENCY STANDARD & NATASHA'S ENGAGEMENT (SECTIONS 20 & 91(9))**

121. In the particulars of claim the following reasonable adjustments are pleaded:

- (1) With respect to the laboratory interviews:
 - (a) Removing the need for oral assessment altogether and or;
 - (b) Providing written questions in advance.
- (2) With respect to the conference:
 - (a) removing the need for oral assessment;
 - (b) Providing written questions in advance;
 - (c) Assessing Natasha in the absence of her peers;
 - (d) Using a smaller venue.

and in the hearing communication via a text or remote type service was also identified. Objectively, and on the available evidence, I assess those adjustments as reasonable. I consider justification a little later in this judgment.

122. For the avoidance of doubt it was not necessary for Natasha to identify reasonable adjustments at the time; if there was a duty to make reasonable adjustments in the first place then it was for the University to apply its mind to the adjustments that could be made; see Cosgrove v Caesar & Howie[2001] IRLR 653 Lindsay P at 654-7.

123. Insofar as the University argues that it made any adjustments (and as covered earlier in this judgment I find that the University did not get that far) we know that Natasha's substantial disadvantage (the same having been conceded by Mr Stagg) compared to a non-disabled person remained so the duty to make

reasonable adjustments could not be said to have been complied with per Archibald v Fife Council [2004] ICR 954.

124. Section 91(9) of the Act imposes on the University the statutory duty in section 20 of the Act of making reasonable adjustments to avoid the disadvantage caused by a provision, criterion or practice, 'PCP' to a disabled student which puts that student at a substantial disadvantage compared with those students who do not share that disability. However, in the case of a student, paragraph 4(2) of Schedule 13 of the Act states that a PCP does not include the application of a competence standard which is defined in paragraph 4(3) as:

"... an academic, medical or other standard applied for the purpose of determining whether or not a person has a particular level of competence or ability".

125. Mr Stagg accepted that the requirement to attend oral assessments put Natasha at a substantial disadvantage and this was plain from the evidence before me.

126. The Claimant's pleaded case with respect to substantial disadvantage is at paragraph 71 of the Particulars of Claim which reads:

"The PCP put Natasha at a substantial disadvantage in relation to the provision of education in comparison with students not having her disability. The PCP caused her profound anxiety and stress, affecting her ability to attend, speak and communicate. In turn, such matters caused her to avoid the post-laboratory interviews and laboratory conference altogether and to perform extremely poorly on the occasions that she did attend, resulting in low attainment/performance and an increased prospect of non-progression on her course."

127. Notwithstanding the University's general concession with respect to substantial disadvantage, Mr Burton invites me to make findings in accordance with the pleaded case. Having heard the evidence I have no hesitation in so doing.
128. Mr Stagg argues that the oral assessments comprise the application of a competence standard and thus are not a PCP. Helpfully and rightly he concedes that if the oral assessments do not comprise the application of a competency standard within the meaning of paragraph 4, the requirement for such assessments does amount to a PCP. Furthermore in closing Mr Stagg accepted that Natasha's inability to cope with speaking amounted to a substantial disadvantage for the purpose of section 20.
129. Therefore if the University can show that the oral assessments comprise application of a competence standard, the claim for failure to make reasonable adjustments must fail. The first and fundamental difficulty the University faces here is the evidence I was given that Natasha had a chance of scraping through Practical Physics 203 without undertaking the laboratory interviews at all.
130. I suspect that the question whether a PCP comprises the application of a competency standard will be obvious most of the time and very case specific. For example, requiring the completion of work within a time limited period would amount to a competency standard in a course involving a job where time was critical such as emergency medical treatment or bomb disposal. In Burke v College of Law and another UKEAT/0301/10/SM, decided in March 2011, the EAT decided that the requirement to complete a legal examination within a set time was a competency standard (the case went to appeal but the Court of Appeal declined to deal with the competency argument [2012] ELR 195).

131. It is obvious to me that the fundamental purpose of the oral assessments was to elicit from Natasha answers to questions put to her following the experiments and it is a statement of the obvious that such a process does not automatically require face to face oral interaction and there are other ways of achieving the same. This seems to have been accepted in any event by Dr Bell in cross examination.

132. Therefore I reject Mr Stagg's 'competency standard' argument.

133. It is not the disabled student who is under a duty to identify reasonable adjustments and it is common ground (I think) between counsel that the duty is anticipatory (and see the Technical Guidance paragraph 7.17 ff). There is no evidence that Natasha refused to engage with any reasonable adjustments because whilst a few ideas were floated none were implemented. The greatest criticism that could be made of Natasha is that she did not engage with Disability Services but that non-engagement resulted from the disability. Unfortunately in the absence of a Disability Support Summary the University seemed to simply stall in its consideration of reasonable adjustments. In those circumstances it cannot rely on lack of knowledge on its part to make reasonable adjustments (applying Tarbuck v Sainsbury's Supermarkets Ltd [2006] IRLR 664).

134. We will never know whether the reasonable adjustments suggested would have worked for certain but they are reasonable and appear to address Natasha's difficulties.

135. I conclude that this claim is made out.

(f) **INDIRECT DISCRIMINATION (SECTION 19)**

136. Natasha's disabilities – depression and SAD – were relevant protected characteristics and meant that she barely (if at all) participated in oral presentations. Mr Stagg argues that her comparator is someone who has similarly poor skills of oral presentation. I found that argument difficult to follow. As Mr Burton pointed out in his closing submissions Dr Barnes said in evidence that the University had lots of students who had difficulty with anxiety regarding presentations.

(g) DISABILITY DISCRIMINATION (SECTION 15)

137. The issue here is whether the University treated Natasha unfavourably because of something arising in consequence of her disability. The alleged unfavourable treatment is with respect to the marking down of her oral assessment work/ imposition of penalty marks (with which Natasha would be stuck unless somehow successful in pursuing a case of extenuating circumstances but would still result in a period of unfavourable treatment).

138. In my judgment there can be no doubt that there was direct discrimination especially once the University knew or should have known that a mental health disability of some sort was preventing Natasha from performing (and causation is not in issue).

(h) JUSTIFICATION

139. Essentially Mr Stagg argues that there must be a level playing field for students in that there is a limit to any adjustments that can be made. He points to the University's Regulations and Codes of Practice for Taught Programmes part B9 which deals with assessments and paragraph 9.38 which reads:

"If an oral examination is part of the assessment of a unit, it must apply to every student taking that unit"

But, inevitably, that argument means that paragraph 9.38 must be seen as another PCP. In any event:

- (1) Part B10 deals with disability stating that any student who discloses a disability should be signposted to disability services but that whether a student goes to such services or not, the school still has a responsibility to make anticipatory and reasonable adjustments;
- (2) Part B17 addresses extenuating circumstances and paragraph 17.38 deals expressly with disability and extenuating circumstances. In particular paragraph 17.41 notes that the making of a reasonable adjustment may require relaxation or setting aside the relevant provisions in the Regulations and Guidance;
- (3) In the event of doubt about how evidence of a disability should be treated and over the course of action to be taken paragraph 17.48 requires advice to be taken from the University's Equality and Diversity Manager.

140. I pause to observe that Annexe 5 of the same document and sections 4 and 5 seem to place some expectation of a disabled student to disclose a disability and to assume some personal responsibility to ensure that adjustments work. Again there is a danger that if the University relies on the expectation the same becomes a PCP.

141. I conclude that the University has not justified the lack of adjustments.

THE CLAIM IN NEGLIGENCE

142. No claim in contract is pleaded. This is not surprising given the absence of any relevant express or implied term in the contract between Natasha and the University. This is not a case about the quality of the teaching.

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 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.

145. The University was required to deliver teaching to Natasha in a learning environment. The Claimant primarily relies on the University's provision of ancillary services in the form of learning support and welfare support as showing the existence of a duty of care on the basis that the University has assumed responsibility for the health, wellbeing and safety of its students. Such an argument would mean that whenever A provides B with a service to address an issue, A is assuming a duty of care to protect B from that issue in the first place.

146. The existence of any duty of care is denied by the University as a matter of law. In particular it is pleaded that the provision of services by a university for the welfare of its students does not permit the conclusion that the university has assumed a legal responsibility. In the alternative, if there was any duty, it is generally denied that there was any breach.

147. The pleaded breaches can be summarised as the University not making any changes to the oral element of Natasha's course, penalising Natasha in marks and failing to sufficiently address her mental health with Ms Perks not informing Dr Barnes of Natasha's e-mail of 20th February 2018. Accordingly this is an 'omissions' case – the Claimant argues that the University failed to take action – rather than an infliction of injury case. At paragraph 69 (4) of his judgment in Robinson v Chief Constable of the West Yorkshire Police⁷ [2018] UKSC 4 Lord Reed (giving the majority judgment) said:

“The central point is that the law of negligence generally imposes duties not to cause harm to other people or their property: it does not generally impose duties to provide them with benefits (including the prevention of harm caused by other agencies). Duties to provide benefits are, in general, voluntarily undertaken rather than being imposed by the common law, and are typically within the domain of contract, promises and trusts rather than tort. It follows from that basic characteristic of the law of negligence that liability is generally imposed for causing harm rather than for failing to prevent harm caused by other people or by natural causes. It is also consistent with that characteristic that the exceptions to the general non-imposition of liability for omissions include situations where there has been a voluntary assumption of responsibility to prevent harm (situations which have sometimes been described as being close or akin to contract), situations where a person has assumed a status which carries with it a responsibility to prevent harm, such as being a parent or standing in loco parentis, and situations where the omission arises in the context of the defendant's having acted so as to create or increase a risk of harm.”

148. The Claimant has not suggested that there was anything inherently unsafe in the manner in which the University taught Practical Physics 203. The Claimant is really arguing that the University was under common law duties to Natasha to protect her from harm by:

⁷ The case of the innocent bystander who was hurt whilst police were effecting the arrest of another.

- (1) Not delivering to her the course in the manner which she had chosen (and was entitled to);
- (2) Not assessing Natasha in the way she expected and was entitled to;
- (3) Not marking Natasha in the way she expected;
- (4) Continuing to give Natasha the opportunity to attend interviews and the conference in accordance with her expressed wishes.

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.

150. The pleaded breach of duty in the form of not sending Natasha's email to Ms Perks on to Dr Barnes introduces the concept of a common law duty on non-medical staff to tend to Natasha's mental health which is not something which has been pleaded and would be exceedingly novel.

151. Mr Burton has referred to a raft of cases which he submits should persuade me that a relevant duty of care exists. I am not so persuaded. First, and perhaps foremost, it is not fair, just and reasonable to impose a duty of care to Natasha because, as a disabled student (and it was the disability which led to or fed the harm) she is afforded protection by the Equality Act 2010.

152. A number of the cases cited by Mr Burton involve a particular relationship or assumption of responsibility.

153. In Barrett v Ministry of Defence [1995] 1 WLR 1217 the issue in the Court of Appeal was whether the judge was correct in holding that the MoD was liable for the death of a serviceman who had died asphyxiated by his vomit after excessive

drinking when drinking was in breach of the Queen's Regulations. Beldam LJ held at 1224E:

*"The plaintiff argued .for the extension of a duty to take care for the safety of the deceased from analogous categories of relationship in which an obligation to use reasonable care already existed. For example, employer and employee, pupil and schoolmaster, and occupier and visitor. It was said that the defendant's control over the environment in which the deceased was serving and the provision of duty-free liquor, coupled with the failure to enforce disciplinary rules and orders, were sufficient factors to render it fair, just and reasonable to extend the duty to take reasonable care found in the analogous circumstances. **The characteristic which distinguishes those relationships is reliance expressed or implied in the relationship which the party to whom the duty is owed is entitled to place on the other party to make provision for his safety.** I can see no reason why it should not be fair, just and reasonable for the law to leave a responsible adult to assume responsibility for his own actions in consuming alcoholic drink. No one is better placed to judge the amount that he can safely consume or to exercise control in his own interest as well as in the interest of others. To dilute self-responsibility and to blame one adult for another's lack of self-control is neither just nor reasonable and in the development of the law of negligence an increment too far".* (emphasis added).

154. In Butchart v Home Office [2006] 1WLR 1155 the relationship was one of prisoner on remand/prison; the claimant's claim for psychiatric injury survived a strike out application in the lower court and the Court of Appeal.

155. The 'stress at work' cases all stem from a relationship of employer and employee and were successful for the simple logical basis that an employer is under a recognised duty to provide his employee with a safe system of work and to protect him from foreseeable risk of injury; see Walker v Northumberland County Council [1995] ICR 702 Colman J at 711 A to C.

156. In McLoughlin v Jones [2002] QB 1312 the relationship was one of client/solicitor where the solicitors were retained to conduct the client's defence of criminal charges for which the client was convicted due to the negligence of the solicitor. In that case the Court of Appeal considered it arguable that the solicitors owed a duty to exercise reasonable care and skill in preparing their client's case for trial in such a way as to minimise the risks of wrongful conviction and of the client suffering psychiatric illness if wrongly convicted.

157. In Natasha's case the relationship is one of Academic/Student Administration Manager and Student. In X (Minors) v Bedfordshire County Council [1995] 2 AC 633 Lord Browne Wilkinson said at paragraph 766 that a head teacher:

"owes a duty of care to exercise the reasonable skills of a headmaster in relation to such [a child's] educational needs"

and, perhaps uncontroversially, that a special advisory teacher owes a duty to the child to exercise the skill and care of a reasonable advisory teacher.

158. In conclusion, on the facts of this case, I am not satisfied that a duty of care as alleged:

- (1) Arose when Natasha became a student at the University in October 2016 or
- (2) Arose because of any assumption of such a duty to Natasha during the period whilst she was a student
- (3) Arose for any other reason.

159. However, if I am wrong on the matter of the existence of a relevant duty of care, the question of breach of that duty arises. I refer to my findings of fact and judgment on the Equality Act claims and apply the same to breach of duty. There

can be no doubt that the University would have been in breach; the main breach would be continuing to require Natasha to give interviews and attend the conference and marking her down if she did not participate when it knew that Natasha was unable to participate for mental health reasons beyond her control.

INJURY & DAMAGES

160. I have addressed foreseeability of injury in the facts at paragraphs 54 and 56 of this judgment. The Claimant needs only to prove that some psychiatric injury was foreseeable, not the exact injury and it was not necessary to prove foreseeability of suicide.

161. There are two heads of general damage:

- (1) Pain, suffering and loss of amenity;
- (2) Injury to feelings;

but there will be considerable overlap between the 2 heads of damage and double compensation must be avoided.

162. I must have regard to the period of Natasha's suffering and I am forced to say that the period is fairly short and amounts to about 6 months but the suffering was serious and, from what I have seen in the evidence, continuous.

163. The Vento bands are those applicable when the claim was issued (January 2020); they are:

- (1) Less serious cases £900 to £8,800;
- (2) Middle band £8,800 to £26,300;
- (3) Upper band £26,300 to £44,000⁸.

⁸ This is not an upper limit – an exceptional case might attract a higher award.

163. The 15th⁹ edition of the Judicial College's Guidelines for General Damages addresses psychiatric and psychological damage in Chapter 4. The top bracket for severe psychiatric damage is £51,460 to £108,620.
- 164 Mr Burton argues for £60,000 PSLA and 50% of the top Vento band for ITF, i.e. £22,000. That would be a total of £82,000. Mr Burton referred to a quantum report – CL- where £67,715.81 was awarded for a period of suffering of 4 years ended by suicide. Mr Stagg suggested a figure of £25,000 in total.
165. I do understand that, emotionally, no sum of money can ever replace Natasha's life. However, I do consider Mr Burton's figures to be too high. In my judgment an appropriate sum for PSLA and ITF is £50,000 and I am not going to attempt to apportion between the two.
166. At the end of the trial counsel informed me that they would try to reach agreement on a figure for the (notional balance of) the funeral expenses. I see no difficulty in principle with the claim and the modest sum of £3,380.37 is sought. I am content to award this or such alternative figure that is agreed by counsel.
167. For the purposes of Rule 52.12 of the Civil Procedure Rules 1998 the time for filing any appellant's notice is 21 days from the date on which a final minute of order is issued by the court.

HHJ RALTON

20th May 2022

⁹ The 16th edition was published after the trial but before handing down of judgment but the relevant figures are adjusted for inflation only.

APPENDIX 1: LIST OF RELEVANT PEOPLE

Natasha's family

NAME	ROLE	STATEMENT	ORAL EV
Margaret Abrahamart	Natasha's mother	Yes	Yes
Dr Robert Abrahamart	Natasha's father		No
Duncan Abrahamart	Natasha's brother		

University of Bristol staff

School of Physics

Dr Adrian Barnes	Senior Tutor for the School of Physics	Yes	Yes
Dr Chris Bell	Senior lecturer and Unit Director for Practical Physics 203	Yes	Yes
Laura Fox	Laboratory demonstrator (first year)		
Harry Gordon-Moys	Laboratory demonstrator (second year)		
Peter Kessell	Teaching laboratories technician		
Dr Terrence McMaster	Academic lead for the conference element of Practical Physics 203		
Barbara Perks	Student Administration Manager	Yes	Yes
Prof Steven Phillipps	Natasha's personal tutor in the School of Physics		
Witek Szeremeta	Laboratory demonstrator (second year)		

Matt Wilson	Undergraduate Student Administrator		
Dr Gemma Winter	Laboratory manager		

Other staff

Mark Ames	Director of Student Services		
Keith Feeney	Senior University Lawyer		
Karen Harvey-Lindon	Student Wellbeing Manager	Yes	Yes
Karen Hocking	Disability Services Manager (current)	Yes	Yes
Louise Miller	Disability Services Manager in 2018		
Prof David Smith	Undergraduate Dean, Faculty of Science		
Sarah Quinn	Disability Services receptionist		

Natasha's friends, etc

Imogen Allen	Friend	Yes	No
Arjun Gunawardane	Boyfriend	Yes	No
Rajan Palan	Friend and second year flatmate	Yes	Yes
Haley Scanlin	Friend (online)	Yes	No
Luke Unger	Friend and first year flatmate	Yes	No
Hope White	Friend and first year flatmate	Yes	No
Matthew Wilkes	Friend, laboratory partner, and second year flat mate		

Clinical practitioners

Dr Delia Annear			Trainee psychiatrist, N Bristol Assessment & Recovery Service
Stephen Bray			Senior Practitioner, N Bristol Assessment & Recovery Service
Toby Gray	Specialist Practitioner, N Bristol Crisis Service		
Kathryn Gulliford	RMHN, Triage team, Callington Road Hospital		
Dr Daniel Hodgson	Consultant psychiatrist, N Bristol Assessment & Recovery Service		
Massimo Loiacono	Youth transitions worker, N Bristol Assessment & Recovery Service		
Dr Joanne Mobbs	GP, Students' Health Service		
Charlotte Sanders	Support worker, N Bristol Crisis Service		
Victoria Smith	Specialist Recovery Practitioner, N Bristol Recovery Team		
Dr Caroline St John Wright	GP, Students' Health Service		
Dr Gemma Webb	GP, Students' Health Service		