Legal Studies (2025), 1–6
doi:10.1017/lst.2024.48

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The Society of Legal Scholars

CURRENT DEVELOPMENTS: CASE COMMENT

Reasonable accommodation for disabled university students:* *University of Bristol v Dr Robert Abrahart* [2024] EWHC 299 (KB)

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(Accepted 06 November 2024)

Introduction

Natasha Abrahart was a physics student at the University of Bristol. She was suffering from depression and social anxiety disorder, which seriously impacted her ability to partake in oral assessments. Eventually, Natasha sadly took her own life. Her father, Dr Robert Abrahart, as personal representative and estate administrator, sued the University of Bristol for negligence and breach of sections 15, 19 and 20 of the Equality Act 2010, read with section 91(2)(a) and/or (f) of the same Act.[1] Under such provisions, universities have a duty to provide reasonable adjustments and support, in educational provision and assessments, to disabled students, defined by section 6(1) of the Equality Act 2010 as 'a physical or mental impairment' which has 'a substantial and long-term adverse effect' on the ability to 'carry out normal day-to-day activities'. However, Schedule 13, para 4(2), to the Equality Act 2010 exempts those assessments which constitute a competency standard, defined 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'.[2]

The Bristol County Court identified several failures on the part of the university, delineating exacting obligations for higher education institutions and sparking concern among university managers.[3] However, the appeal ruling by the High Court, while confirming the first instance judgment, seems to have partly delimited its implications.[4] In this case comment, we reflect on such key rulings, aiming to provide further clarification in relation to the main points at the centre of debate. We focus on the Court's conclusions regarding the question of when a university is expected to know about a student's disability, and to what extent it is expected to go beyond its internal processes to support its students. In addition, we discuss the High Court rulings on when an assessment can be considered a competency standard.

*Here we use disability first language (eg 'disabled persons') as it matches with statutory language and the social model of disability. However, Abigail V Pearson, as a disabled person herself, wishes to point out that this does not mean that this terminology is always preferable. Person first language (eg 'persons with disabilities') might often be preferable, as it puts the person before the disability.

[1] *Abrahart v University of Bristol* [2022] 5 WLUK 260, [2022] PIQR 17 (CC).

[2] Equality Act 2010, Sch 13, para 4(3).

[3] University of Bristol, 'Statement: decision to seek leave to appeal the Abrahart judgement' *University of Bristol* (6 October 2022) https://www.bristol.ac.uk/news/2022/october/appeal-statement.html (last accessed 18 January 2025); NADP UK, 'Sector implications of the Bristol case: a legal perspective' (NADP UK, 2024).

[4] *University of Bristol v Dr Robert Abrahart* [2024] EWHC 299 (KB).

1. The decision

Natasha Abrahart's first year at university had passed without incident. However, in her second year, she began *Practical Physics 203* against a background of a toxic environment in her flat-share, and mental health issues. The final mark of this module would be composed of the weighted sum of the partial marks for laboratory experiments, assessed through the student's laboratory notes and five 25-minute laboratory interviews (45% in total), the laboratory formal report (20%), computing (25%) and a conference presentation (10%). The total pass mark for the module was 40%.[5] Natasha failed the first two laboratory interviews as she did not respond to questions and stormed off unexpectedly. Consequently, the unit director Dr Bell and Ms Perks, the Physics Student Administrator, contacted her several times signposting her to relevant support options. On 5 December, Natasha then met with her School Senior Tutor, Dr Barnes, who, in his notes recorded that 'she does have a problem what [sic] looks like panic and anxiety issues'[6] and asked her to see her GP and/or Student Counselling to get a Disability Support Summary and put in place disability adjustments.

Natasha failed the remaining three interviews. Dr Barnes emailed her on 1 February, asking her again to apply for disability adjustments and arranged another in-person meeting, which took place on 13 February. Natasha had still not applied for adjustments, so he directly emailed the university Disability Services, which in turn asked Natasha, in vain, to make an appointment. In the following days, one of Natasha's flatmates reached out to Ms Perks, highlighting how Natasha was significantly depressed and had tried to harm herself. On 20 February Ms Perks accompanied Natasha and her flatmate to Student Support Services. From that point, Natasha experienced multiple panic attacks and self-harm attempts. On 20 March 2018, Ms Perks emailed Natasha an extenuating circumstances form, encouraging her to apply for disability-based reasonable adjustments. On 30 April Natasha sadly took her life.

In the County Court case against the University of Bristol, Natasha's father alleged that the university was or ought to have been aware of his daughter's difficulties, which amounted to a disability under section 6 of the Equality Act 2010, and had failed to remove or adjust the oral assessments requirements for *Practical Physics 203* as a reasonable adjustment. Additionally, he claimed that the university had breached its duty of care to Natasha and should be liable in negligence.[7] The Bristol County Court accepted the former claim[8] and rejected the latter, as no relevant relationship existed to find a breach of a duty of care between the university and Natasha.[9] In appealing against the decision, the University of Bristol argued that there was no breach of the duty to make reasonable adjustments in failing to alter oral assessments as these constituted a competency standard per Schedule 13. Secondly, the university submitted that no application for adjustments was received in line with university procedures, meaning they did not have formal knowledge of Natasha's disability and could not have been expected to act. In his cross-appeal Dr Abrahart maintained that oral assessments could not amount to a competency standard in the context of a practical physics course and reiterated that the university knew or ought to have known about his daughter's disability. Finally, he insisted on his previously dismissed negligence claim.[10]

In his High Court judgment, Linden J stressed how higher education institutions have an anticipatory duty to proactively put in place, in drafting their policies and structuring their activities, all those adjustments which may be reasonably required to prevent even discrimination issues not yet arisen.[11] Therefore, knowledge of disability was not required for the existence of such duty, though the level of knowledge would be relevant in judging whether it was reasonable to expect that the university would have implemented a particular adjustment.[12] In addition, there would be no need for a formalised

[5]Ibid, at [23]–[25].
[6]Ibid, at [42].
[7]Ibid, at [2]–[6].
[8]*Abrahart v University of Bristol* (CC), above n 2, at [120]–[141].
[9]Ibid, at [142]–[159].
[10]*University of Bristol v Dr Robert Abrahart* (KB), above n 5, at [6]–[12].
[11]Ibid, at [157]–[158]. See also *Keith Roads v Central Trains Ltd* [2004] EWCA Civ 1541 at [11] and Technical Guidance to the Equality Act 2010, para [7.20].
[12]*University of Bristol v Dr Robert Abrahart* (KB), above n 5, at [162].

https://doi.org/10.1017/lst.2024.48 Published online by Cambridge University Press

diagnosis, sufficing a general lay perception of some issues plausibly caused by a long-term condition.[13] In the case of Natasha, her disability and her disadvantage were apparent in the repeated observations by tutors of her inability to speak during oral assessments, and in the recognition that her behaviour was 'objectively bizarre'.[14]

Linden J accepted the reasoning of the County Court, according to which the fact that the student had not engaged with relevant university procedures was not necessarily a valid excuse for the institution's inaction. Indeed, as further remarked in the High Court judgment, university policies are not law and are themselves subject to the requirements of the Equality Act 2010, being susceptible to being declared discriminatory.[15] In the case of Natasha, the university insisted on linking the implementation of disability adjustments to her engaging with university procedures. However, due to her mental health issues, she was clearly unable to navigate these.[16] The Court thus confirmed that the University of Bristol could be found to have knowledge of Natasha's disability. Therefore, the University was required to implement reasonable adjustments in her favour.

On the question of the competency standard, Linden J qualified it as a factual issue, and concluded that, considering the available evidence, it was open to the County Court to conclude that, in the present case, the oral assessment did not constitute a competency standard.[17]

Conversely, the High Court refused to rule on the claim in negligence for several reasons. First, Linden J pointed out that the claim was not fully and properly argued by Dr Abrahart's lawyers during the trial.[18] Secondly, he found that the provision of support services to students did not fall into any of the special categories of relationships between the parties which would give rise to a duty of care.[19] Additionally, the judge found that, in this context, the claimant did not have the ability to satisfy the burden of proof in relation to his claim of negligence. Therefore, the matter would require a separate re-trial.[20]

2. Reflections

(a) Knowledge of disability

While substantially confirming the conclusions of the County Court, the High Court decision seems to partly limit their reach. In the first instance judgment, Ralton HHJ had placed the moment in which the University of Bristol could be deemed to have knowledge of Natasha's disability in October 2017,[21] that is at the (early) moment in which the first members of staff had the first signs that she might be experiencing some kind of difficulty. This conclusion seemed to place a heavy burden on universities and their academic and administrative personnel, apparently requiring them to recognise, report and act upon any even minimal hint of a possible disability, as at that point their entire institution would have been presumed to know.

Obiter, the High Court moved the time at which the university was found to have knowledge of Natasha's disability to 1–13 February 2018, that is when the Physics senior tutor repeated to the student his request that she apply for reasonable adjustments and then directly alerted Disability Services.[22] In light of this, the approach adopted here appears closer to the way in which universities, including Bristol, already operate. Indeed, Linden J concluded that the duty to implement reasonable adjustments arose at a moment in which all key roles in charge of disability support had been alerted. The problem was rather

[13]Ibid, at [212].
[14]Ibid, at [41].
[15]Ibid, at [220].
[16]Ibid, at [212].
[17]Ibid, at [201]–[202].
[18]Ibid, at [270(ii)].
[19]Ibid, at [5].
[20]Ibid, at [270(iv)].
[21]*Abrahart v University of Bristol* (CC), above n 2, at [116].
[22]*University of Bristol v Dr Robert Abrahart* (KB), above n 5, at [239].

https://doi.org/10.1017/lst.2024.48 Published online by Cambridge University Press

that, even when, in February, they had extensive knowledge of Natasha's disability issues, the competent university roles failed to act, due to the fact that the student had not completed the relevant internal procedures.

In this regard, another doubt posed by the County Court decision was to what extent universities could continue to rely on internal processes counting on students taking responsibility for applying for their own adjustments. On the one hand, in the High Court judgment, Linden J stated that it 'did not follow that, for the purposes of section 20 of the 2010 Act, it would necessarily be reasonable for the University to insist that its processes were followed'.[23] On the other hand, he was careful to stress that 'the lesson of this part of the case is not that due process and evidence are unimportant where the question of reasonable adjustments arises in this context. They *are* important' and 'a degree of procedural formality will also generally be appropriate'.[24] Only, the enforcement of such formalities needs to consider the specific context. Citing again Linden J: 'There will no doubt be many cases where it is reasonable to verify what the disabled person says and/or to require expert evidence', nonetheless 'what a disabled person says and/or does is evidence' and 'there may be circumstances, such as urgency and/or the severity of their condition, in which a court will be prepared to conclude that it is sufficient evidence for an educational institution to be required to take action'.[25]

In light of this, it is likely that in most cases universities will still be able to rely on their internal processes. Natasha Abrahart's was an exceptional case, in which there were particularly clear signs that the student was experiencing a serious disability rendering her unable to seek her own support. Besides, the ruling of the High Court did not necessarily exclude that the university was per se entitled to seek medical evidence and a formal decision on which to base the reasonable adjustments.

The problem seemed rather that, while waiting for these formalities, the institution appeared completely paralysed and lecturers kept penalising the student in terms of marking, despite strong elements suggesting that was possibly unfair. Instead, several interim solutions would have been open to them, such as suspending the marking, offering the possibility for the student to defer the oral assessment, or provisionally recording on paper her considerations on experiments for an eventual future submission in lieu of the oral discussion. In this regard, we do not completely agree with Bury and Atrey, who maintain that here the High Court has significantly lowered the bar for being found in breach of reasonable adjustment obligations.[26] The Court simply reaffirmed that universities have a duty to act whenever there are reasonably clear signs that a certain student struggles due to a disability, and cannot hide behind their internal bureaucracy. In this sense, Cameron at al stress how it is important that universities adopt procedures that secure individual, personalised decisions, going beyond the simple application of blanket policies and approaches.[27]

(b) Competency standard and the role of higher education

In concluding that, in this case, the oral assessment did not amount to a competency standard, the County Court had used a rather formalistic approach, based on the fact that, in the Physics programme handbook, the learning outcome referring to oral presentation skills (P25) was not clearly mapped to the module in question[28] and that, due to the limited weight attributed to that component in the overall mark 'Natasha had a chance of scraping through Practical Physics 203 without undertaking the laboratory interviews at all'.[29] Reflecting on these conclusions, some commentators have raised the concern that, in

[23]Ibid, at [220].

[24]Ibid, at [266].

[25]Ibid.

[26]AK Burin and S Atrey 'Unleashing the anticipatory reasonable adjustment duty: University of Bristol v Abrahart (EHRC intervening) [2024] EWHC 299 (KB)' (2024) 24(1) International Journal of Discrimination and the Law 1.

[27]H Cameron et al 'Equality law obligations in higher education: reasonable adjustments under the Equality Act 2010 in assessment of students with unseen disabilities' (2019) 39(2) Legal Studies 204.

[28]*Abrahart v University of Bristol* (CC), above n 2, at [24]–[25].

[29]Ibid, at [129].

https://doi.org/10.1017/lst.2024.48 Published online by Cambridge University Press

order to prevent these kinds of challenges, university lecturers might be pushed towards window dressing exercises in their syllabuses, or be de facto limited in the possibility of administering low-weight or unconventional forms of assessment.[30] These practices are increasingly recommended by pedagogical literature and can be instrumental in positively challenging students and providing them with opportunities to develop and test important skills which might be outside of their comfort zone without putting excessive pressure on them.[31]

The High Court did not really address this concern. On the one hand, Linden J seemed to disagree with the formalistic approach adopted by the County Court, pointing out that 'the fact that Ms Abrahart could have passed the Module without undertaking laboratory interviews at all did not, of itself, mean that the oral assessments were not the application of a competence standard'.[32] However, he then added that anyway 'this fact did tend to undermine the University's argument that a core competency of a professional scientist is the ability to present results orally: if so, one might think, it ought to have been necessary to complete the oral assessments in order to pass Practical Physics 203',[33] thus confirming the County Court reasoning.

Burin and Atrey raise the concern that this decision might limit higher education institutions' reliance on oral assessments. This can be problematic in a moment in which the rise of generative AI seems to undermine the reliability of traditional coursework.[34] However, in many cases it is still possible to find alternatives to oral assessments which safeguard the integrity of the evaluation, such as supervised written exams. Moreover, should oral assessments really be the only way to guarantee the integrity of the marking, it would always be possible to make this aspect count within the judgment on the reasonableness of the proposed adjustment. Anyway, in disciplines with a more obvious connection between oral presentation skills and success in professional roles, it might be easier to present vivas as a competency standard.

The central point, though, is that these discussions need to happen in light of meaningful pedagogical criteria rather than formalistic considerations. In this regard, Cameron et al note that what can be defined as a competency standard depends on the specific course and educational context. Therefore, universities need to carefully '… consider, at programme level, *what* the "competencies" or "qualities of graduates" of that particular university programme are, and *how* the form of assessments associated with particular degree programmes are necessary to demonstrate those competences or qualities'.[35] The authors argue that this should be done 'uniformly' across institutions, in order to minimise the risk of doubts and discrepancies among students enrolled at different universities.[36]

The aspect probably most worthy of reflection is that none of the actors involved in the *Abrahart* case seemed to contemplate arrangements that might have helped the student to still participate in her vivas by overcoming her difficulties. One of the many options could have been, for example, providing a mental health and personal skills coach. If we consider that the main purpose of universities is not only to award degrees, but to make students progress through high quality education, enabling some to avoid a certain assessment could be seen as taking away a valuable learning opportunity. This might risk creating disadvantages to disabled students when facing the job market. For example, being effective in oral communication may be increasingly important also for physicists, especially to ascend to leadership roles. Besides, many physics graduates go into careers in areas like teaching, finance, telecommunications or compliance, which require good interpersonal skills.[37] Not being helped to exercise these skills might reduce a student's career opportunities.

[30]A Tyler '*Abrahart v University of Bristol*: oral assessments led to suicide' *Stammeringlaw* (21 March 2024) https://www.stammeringlaw.org.uk/abrahart-v-university-of-bristol/ (last accessed 18 January 2025).

[31]E Pitt and KM Quinlan 'Impacts of higher education assessment and feedback policy and practice on students: a review of the literature 2016–2021' (Advance HE, 2022).

[32]*University of Bristol v Dr Robert Abrahart* (KB), above n 5, at [201].

[33]Ibid.

[34]Burin and Atrey, above n 27, at 8.

[35]Cameron et al, above n 28, at 218.

[36]Ibid.

[37]SA Holgate 'Physicists wanted: the demand for physics skills in the UK workplace' *Physics World* (12 September 2023) https://physicsworld.com/a/physicists-wanted-the-demand-for-physics-skills-in-the-uk-workplace/#:~:text=By%20combining%20market%20research%2C%20analysis,decade%20between%202010%20and%202020 (last accessed 18 January 2025).

https://doi.org/10.1017/lst.2024.48 Published online by Cambridge University Press

Conclusion

The High Court decision in the *Abrahart* case, while substantially confirming that of the County Court, partly delimits some of its more controversial implications. The judgment provides clarity as to the point at which universities are required to put in place reasonable adjustments for disabled students and to what extent they can rely on internal procedures to evaluate entitlement to such adjustments. However, it still leaves open doubts with regard to the criteria to establish when an assessment constitutes a competency standard. Legal engagement with such a question has so far been limited, creating a lack of clarity for both students and staff at universities as to their rights, responsibilities and expectations. Whilst the attention brought to competency standards and their relationship to reasonable adjustments is a positive development, the *Abrahart* judgment is unlikely to really improve this uncertain situation, as it fails to provide articulate and coherent practical clarifications on this crucial point. Until the mentioned gap in both guidance and understanding is closed, all parties involved in the higher education of disabled students will remain vulnerable to confusion, and unfair and even potentially tragic outcomes.

Cite this article: K De Sabbata & AV Pearson 'Reasonable accommodation for disabled university students: *University of Bristol v Dr Robert Abrahart* [2024] EWHC 299 (KB).' (2025) *Legal Studies* 1–6. https://doi.org/10.1017/lst.2024.48