# The University of Bristol v Dr Robert Abrahart: The High Court Appeal and its implications

# Executive Summary

The High Court, on the 14th February 2024, upheld a previous judgment against the University of Bristol, ruling that the university had breached its statutory duty under the Equality Act 2010 to make reasonable adjustments to its assessment process for second year physics student Natasha Abrahart. Natasha died by suicide in April 2018. Natasha had been experiencing depression and social anxiety, her disability substantially impacted her ability to participate in oral assessments, which she was informed she had to complete as part of a mandatory module.

Dr Abrahart, Natasha’s father, issued proceedings claiming that the university should have removed or adjusted the requirements. He also alleged that the university failed in a duty to take reasonable steps to avoid and not cause her injury. In May 2022, Senior County Court Judge Alex Ralton found that the university had breached its statutory duties to make reasonable adjustments under the Equality Act 2010 but did not make a ruling on the duty of care. The University of Bristol appealed this decision and the Abrahart’s cross-appealed the duty of care decision.

The University of Bristol appealed the decision on the assertion that there was no duty to adjust the requirement of the module as oral assessments were a ‘competence standard’. This was rejected by the High Court and the appeal dismissed. The High Court did not make a ruling on the duty of care.

This case and the High Court ruling highlight the importance of universities ensuring appropriate support and adjustments are put in place in a timely manner for disabled students and the legal implications of failing to do so. The ruling also provides clear guidance and clarification in relation to evidential requirements in determining disability and, consequently, the duty to make reasonable adjustments. It also raised important points concerning processes related to disability disclosure, and on the often, erroneous, conflation of modes of assessment and academic competence standards.

# Background

Natasha was diagnosed with chronic Social Anxiety Disorder in February 2018 (but from October 2017 members of academic staff became aware that she was experiencing severe difficulties). She faced severe challenges with oral assessments and experienced anxiety and panic attacks directly related to them. Despite raising explicit concerns about her mental health directly with academic staff, and it being obvious from her communications with staff and her engagement and marks, that oral assessments caused Natasha extreme anxiety, no action was taken to adjust her mode of assessment. The University subsequently argued that the oral assessment constituted a competence standard. Natasha died by suicide on the day she was due to give a presentation, which was part of her formal assessment, in a large lecture theatre.

# Key points from the Appeal ruling

## Evidential requirements to determine disability

The ruling clarifies a common misunderstanding concerning what evidence is required in order to determine whether a student meets the legal definition of disability. Whilst it is legitimate for universities to ask disabled students to provide evidence of disability in order to determine appropriate reasonable adjustments, it is not an absolute requirement. In circumstances where there is constructive knowledge of a disability, action (including the implementation of reasonable adjustments) should be taken without the need for documentary diagnostic evidence (or, necessarily, input from the university’s disability team). Constructive knowledge is where a Higher Education Provider (HEP) ought, reasonably, to have known.

The judge was very clear in his ruling

For the avoidance of doubt, 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. There will no doubt be many cases where it is reasonable to verify what the disabled person says and/or to require expert evidence or recommendations so as to make well informed decisions. A degree of procedural formality will also generally be appropriate for the reasons which the University advanced. **But what a disabled person says and/or does is evidence. 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.** (part, 267)

He also stated:

the problem with the University’s reliance on its own Regulations and policies… was that they are not the law. They were subject to the law, including the requirements of the Equality Act 2010. (para, 220)

This ruling re-emphasises long-standing guidance which has existed in this regard. The Equality and Human Rights Commission (2014) guidance states in Appendix 3; point 7 that:

There is no need for a person to establish a medically diagnosed cause for their impairment. What it is important to consider is the effect of the impairment not the cause.

The judge also pointed out that students are ‘not obliged to contact or use Disability Services’ but that in such circumstances institutions still have ‘a responsibility to make anticipatory and reasonable adjustments’(para, 222).

### Discussion Points

* Do HEPs understand the anticipatory duty?
* Are all staff aware of what constitutes a disability (the legal definition) and what reasonable adjustments might be appropriate, including adjustment to examinations and assessments?
* Are staff aware of the Disabled Student Commitment, and specifically its call for HEPs to develop processes which ensure students are only asked to share information on their disability once?
* How does this ruling apply to HEPs internal processes, including evidence requirements for extenuating circumstances or additional consideration processes?
* Do current evidence processes need to be reviewed (for example, the acceptance of JCQ8 forms to support examination access arrangements; or, when considering requests for alternative modes of assessment)?
* Are institutions over-reliant on explicit recommendations contained in documentation produced by disability services, and does this lead to unnecessary and timely delays in adjustments being put in place?
* Where a student’s disability is apparent to the extent that the HEP should reasonably have known, do processes and thresholds need amending?
* How will this ruling be interpreted in relation to Disabled Students Allowances (DSAs), a government initiative involving public funds, where formal diagnostic evidence is currently an eligibility requirement?

### Possible action or activity

* Awareness raising action related to:
  + What constitutes a disability
  + The implications of the ruling in terms of internal process and evidential requirements
  + Competence standards
* Consideration of reviews of:
  + Existing evidence thresholds for disabled students and HEP processes
  + Training provision for all staff
* Use the Disabled Student Commitment framework to map each HEPs current position in relation to each of the 6 elements of the commitment to develop a strategic plan to improve the educational experiences of disabled students.

## Disclosure, disability discrimination and active or constructive knowledge

The University of Bristol argued that it did not have actual or constructive knowledge of Natasha's disability and therefore was not under a duty to make adjustments. The High Court found the University was aware of Natasha's mental ill health from around October 2017, and that by mid-February 2018, the University should have known of the likely long-term nature of the student’s impairment.

The High Court ruling makes it clear that all HEP staff have a responsibility to seek advice and/or disseminate information when clear evidence (whether documented or apparent) of disability and its impact is either disclosed or observed. Once the HEP has ‘actual or constructive knowledge’ of the disability (and this can be one member of staff being aware) the duty to make reasonable adjustments applies. In other words, institutions are legally bound to act when they become aware of a student’s disability. The judge was clear that 'awareness' includes what the student says and does.

### Discussion points

* Are all staff aware of what process to follow if they become aware of a student’s disability?
* Are staff aware that the duty to make reasonable adjustments still applies in circumstances where a disabled student decides not to engage with disability services?
* Do staff know what questions to ask?
* Are HEPs aware of the legal principles of ‘actual or constructive knowledge’?

### Possible action or activity

* Training and awareness raising action in relation to:
  + A HEPs role in the identification and sharing of disability information
  + Awareness of the internal processes and procedures required when a student shares a disability
  + Understanding of the duty to make reasonable adjustments and how to assess what is reasonable
* Consideration of reviews of:
  + Current institutional policies and procedures related to the sharing of disability information

## Competence standards and modes of assessment

The Equality Act (Paragraph 4 of Sch 13 to EqA 2010) defines a competence standard as:

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

Part 7.34 of the Technical Guidance on the Equality Act states:

Education providers are likely to impose various requirements and conditions in respect of courses. However, any such requirement or condition only amounts to a competence standard if its purpose is to demonstrate a particular level of a relevant competence or ability such as a requirement that a person has a particular level of relevant knowledge of a subject.

The University of Bristol argued that oral communication skills were a core competence standard for scientists and intrinsic to a physicist's professional skills. As evidence, they presented curriculum documents and common practices in physics education to support the argument that ‘an ability to explain and justify experimental work orally is a core competency of a professional scientist”. However, the judge ruled that the specific oral assessments Natasha faced were not inherent academic competence standards, and that the oral assessment was purely one method which could be used to evaluate students' knowledge and ability to engage with experimental work, i.e. there were other ways of assessing that knowledge. The judge also noted that the module's documentation did not highlight oral communication as a key learning outcome and that the marking scheme also did not specifically evaluate oral presentation skills. Therefore, the judge rejected the University's argument that the oral assessments were competency standards that could not be adjusted.

The Judge’s ruling on competence standards clearly stresses the distinction between a mode of assessment that can be adjusted and a competence standard. The judge also made some very clear points about time[[1]](#footnote-2) (i.e. time in an exam) only being a competence standard if what is being measured is the ability to perform a task in a particular time frame (e.g. a medical student may have to be able to perform a procedure in a specific time frame in order to demonstrate competence as a clinician, but this argument cannot successfully be made for a historian writing three essays in three hours in demonstrating their competence as a historian) and therefore in most cases the mode of assessment can be adjusted.

### Discussion points

* Are relevant staff aware of the legal definition of a competence standard and the differences between competence standards and learning outcomes and that in most cases that the mode of assessment is not a competence standard[[2]](#footnote-3)?
* Are competence standards clearly justified and outlined in course documentation?
* Should such reasonable adjustments be automatically available, could they be built into an inclusively designed assessment?
* The ruling adds emphasis to the benefits of having more universally designed assessment processes (i.e. all students having choice in mode of assessment) which would lead to a dramatic reduction in the need for reasonable adjustments and a concomitant reduction in financial cost and time cost for staff.

### Possible action or activity

* Awareness raising action in relation to:
  + Competence standards and modes of assessment
  + Support for staff in developing competence standards
* Consideration of reviews of:
  + Current learning outcomes
  + Action on the creation of more inclusively designed assessment practices, based on the principles of Universal Design for Learning
* Working with PSRBs and the QAA on guidance on competence standards and modes of assessment

## Negligence/Duty of Care.

The High Court judge decided not to consider the matter of duty of care due to a lack of ‘detailed evidence analysis’ in the original case, concluding this issue would require a retrial.

# References:

* Original 2022 NADP guidance document: [Sector-implications-of-the-Bristol-case-Final-Version-1.docx (live.com)](https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fnadp-uk.org%2Fwp-content%2Fuploads%2F2022%2F09%2FSector-implications-of-the-Bristol-case-Final-Version-1.docx&wdOrigin=BROWSELINK)
* County Court judgement 2022: [Abrahart v-v University of Bristol (judiciary.uk)](https://www.judiciary.uk/wp-content/uploads/2022/05/Abrahart-v-Uni-Bristol-judgment-200522.pdf)
* WONKHE articles

[The University of Bristol loses its appeal over the Abrahart case | Wonkhe](https://wonkhe.com/blogs/the-university-of-bristol-loses-its-appeal-over-the-abrahart-case/?utm_medium=email&utm_campaign=Wonkhe%20Monday%20Briefing%20-%2019%20February&utm_content=Wonkhe%20Monday%20Briefing%20-%2019%20February+CID_5a9e9340e30ebccd1470a42eedbd7016&utm_source=Email%20marketing%20software&utm_term=Jim%20Dickinson%20and%20Sunday%20Blake%20explain)

[It's time to get certain around competence | Wonkhe](https://wonkhe.com/blogs/its-time-to-get-certain-around-competence/?utm_medium=email&utm_campaign=Wonkhe%20Monday%20Briefing%20-%2019%20February&utm_content=Wonkhe%20Monday%20Briefing%20-%2019%20February+CID_5a9e9340e30ebccd1470a42eedbd7016&utm_source=Email%20marketing%20software&utm_term=the%20Abrahart%20judgement%20raises%20questions%20about%20academic%20and%20professional%20competences%20in%20the%20curriculum%20that%20could%20have%20far-reaching%20implications)

* Ruling press release 2024: [High Court Dismisses University of Bristol's Appeal in Natasha Abrahart Case - DPG Law](https://dpglaw.co.uk/high-court-dismisses-university-of-bristols-appeal-in-natasha-abrahart-case/)
* Full ruling High Court 2024: [The University of Bristol -v- Dr Robert Abrahart (judiciary.uk)](https://www.judiciary.uk/wp-content/uploads/2024/02/The-University-of-Bristol-v-Dr-Robert-Abrahart.pdf)
* The Disabled Student Commitment: [The Disabled Student Commitment | Advance HE (advance-he.ac.uk)](https://www.advance-he.ac.uk/equality-diversity-inclusion/disability-equality-higher-education/disabled-students-commission/disabled-student-commitment)
* EHRC Technical Guidance on the Equality Act: [Technical guidance on further and higher education | EHRC (equalityhumanrights.com)](https://www.equalityhumanrights.com/equality/equality-act-2010/technical-guidance-further-and-higher-education)
* The Equality Act (2010): [Equality Act 2010 (legislation.gov.uk)](https://www.legislation.gov.uk/ukpga/2010/15/contents)

1. The High Court judge cited *Burke v College of Law* UKEAT/0301/10/SM in relation to time in exams and competence standards [↑](#footnote-ref-2)
2. The University of Leeds is in the process of identifying and developing competence standards across 600 programmes as part of its ambitious 10-year Curriculum Redefined programme. Curriculum Redefined | University of Leeds [↑](#footnote-ref-3)