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Unleashing the anticipatory reasonable adjustment duty: *University of Bristol v Abrahart (EHRC intervening)* [2024] EWHC 299 (KB)

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Abstract

On 14 February 2024, the High Court upheld the decision of the Bristol County Court in *University of Bristol v Dr Robert Abrahart*. Ms Abrahart, a physics undergraduate, took her own life in April 2018, the morning before she was meant to deliver an oral presentation. The claim brought by Ms Abrahart's father was that in failing to remove or adjust the requirement for oral assessments, the University had discriminated against her on the basis of her disability. The High Court upheld the discrimination claims under the Equality Act 2010 while dismissing the claim in negligence on the basis that the University did not owe Ms Abrahart a common law duty of care. This note discusses the contrasting moves made by the High Court in, on the one hand, lowering the bar for finding a breach of the anticipatory reasonable adjustment duty, and on the other hand, raising the bar for finding an assessment method to be a 'competence standard' set by universities. Although arising in relation to the very specific facts of this case, the implications of the ruling in *Abrahart* are far reaching.

Keywords

Disability, mental health, negligence, reasonable adjustments, anticipatory duty, discrimination, higher education

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Introduction

Following the death by suicide of Natasha Abrahart, an undergraduate student studying physics at the University of Bristol ('the University'), her father brought a claim in negligence and under the Equality Act 2010 against the University.[1] Ms Abrahart suffered from social anxiety which impaired her ability to participate in oral assessments. She died before she was due to give a presentation at a laboratory conference, which formed part of her course requirements.

The claim against the University was brought both at common law and on the basis of direct disability discrimination (s.15), indirect discrimination (s.19) and a failure to make reasonable adjustments (s.20) under the Equality Act 2010. At first instance, Dr Abrahart succeeded on all three Equality Act 2010 grounds but negligence was not made out because no duty of care was established.[2]

The University appealed the ruling under the Equality Act 2010, while the claimant cross-appealed the dismissal of the negligence case.[3] The Equality and Human Rights Commission (EHRC) intervened by way of written submissions to the High Court.

Linden J in the High Court upheld the County Court's findings in the claimant's favour but declined to rule on the cross-appeal.

This note examines the most pertinent aspects of the High Court's judgment, and its implications. It argues that even though no common law duty of care was established in the case, the findings under the Equality Act 2010 have sweeping implications. This is especially so in the case of the anticipatory reasonable adjustment duty under the Equality Act 2010 which the High Court seems to have read to apply, not to specific disabilities or groups of disabled persons, but to an individual student who did not have a reported disability.

The approach taken by the High Court implies that once a university's actual or constructive knowledge reaches a certain threshold, the University comes under a duty to reasonably adjust the assessment in order to avoid a charge of disability discrimination. This duty arises notwithstanding (a) the lack of formal diagnosis or reporting of disability on the part of the student, and (b) the student's own rejection of adjusting measures proposed by the university. Although arising out of the very specific and tragic facts of this case, the implications of the ruling in *Abrahart* are far reaching.

The next section summarises the facts. The two sections following it delve into the judgment – first under the Equality Act, then under negligence. Finally, the note provides an analysis of the judgment's implications under both heads, and a conclusion.

Facts

The extent of the University's actual or constructive knowledge of Ms Abrahart's mental health was the main factual issue. The findings at first instance were not favourable to the University. On appeal, the University failed to discharge the high burden[4] for overturning factual findings.

To summarise the findings, during Ms Abrahart's first year there was no suggestion that she might develop a disability. In her second year, she had problems in her personal life

which involved a fellow student and she had self-harmed. It was after this that she began the module – Practical Physics 203 – which included the oral assessments: five individual interviews of up to 25 min and a 12-15 min group presentation.

The court found that the University's actual or constructive knowledge grew over the months that followed (between October 2017 and April 2018) before Ms Abrahart died.

On 24 October 2017, after Ms Abrahart unexpectedly left an assessed interview at which she did not speak, she was encouraged by the assessor and the Student Administration Manager to discuss any difficulties she might be facing. Following an email from Ms Abrahart's personal tutor, the Student Administration Manager contacted Ms Abrahart again and commenced a Student Welfare Service process.

Upon being invited to reschedule, Ms Abrahart resat the assessed interview on 31 October 2017. She 'did not do well' and was given 'some links to counselling.'[5] She was also offered an initial assessment with the University's counselling service, but turned it down. HHJ Ralton in the County Court found that, from about this time, the Student Administration Manager knew that Ms Abrahart 'was suffering some injury to her mental health connected to the interviews.'[6]

A second assessed interview was due to take place on 28 November 2017. Ms Abrahart did not attend, and scored zero. The assessor informed the Student Administration Manager and the senior lecturers.[7] HHJ Ralton found that Ms Abrahart's behaviour, at this point, 'was objectively bizarre given she was otherwise a diligent student and… would have informed anyone… that there was something seriously amiss with her.'[8]

The Student Administration Manager made an appointment for Ms Abrahart to meet with the Senior Tutor for the School of Physics. On 5 December 2017, the Senior Tutor asked Ms Abrahart to see her GP and/or Student Counselling Services so that a diagnosis could be made, with an academic disability support plan to formalise support for her. HHJ Ralton found that, around this point in time, the Senior Tutor knew that Ms Abrahart was suffering some injury to her mental health connected to the assessed interviews.[9] The Senior Tutor asked Ms Abrahart to make sure that she attended the rest of the experiments that term 'even if we don't do interviews'.[10] He expressed willingness to make arrangements for the future upon receipt of a diagnosis or disability support plan. He asked Ms Abrahart about her wellbeing and she said that she was 'OK'.[11] Later that day, he met with the senior lecturer in charge of the module. They gave evidence that they did not know, at that time, what the issue was or what adjustments might be required.

Ms Abrahart did not attend a third laboratory interview on 30 January 2018 and was once more given a mark of nil. The physics tutors believed she genuinely had social anxiety and, on 13 February 2018, they contacted the university's disability services with her permission. On appeal, it was held that by 13 February 2018 the University knew or should have known of Ms Abrahart's disability.[12]

Shortly afterwards, on 16 February, Ms Abrahart consented to her housemate disclosing information about her self-harming to the Student Administration Manager. On 20 February, she consented to her housemate disclosing her attempted suicide the previous day. Her housemate accompanied her to Students' Health Services. Ms Abrahart began receiving NHS treatment at this time, but the NHS did not share relevant information with the University, including subsequent suicide attempts. The Administration

Manager told Student Wellbeing Services on 21 February that Ms Abrahart had been working in the laboratory and was "off my danger list and back to my worry list."[13]

Ms Abrahart did not attend the fourth laboratory interview on 27 February, and scored zero.

On 6 March 2018, Ms Abrahart spoke with the Administration Manager who suggested alternative strategies to oral assessment, which she reiterated in two further emails. There was a further suggestion of using the 'extenuating circumstances' procedure, which could be applied to low marks by the Board of Examiners.

Ms Abrahart attended the fifth laboratory interview on 26 April, scoring 8/20 (the same score as on 24 October 2017, when she did not speak at all). The following day, the Student Administration Manager told Ms Abrahart that she need not speak at the laboratory conference provided her overall contribution was clear, but Ms Abrahart opted to participate in the conference.[14]

The conference was scheduled for 30 April 2018. In advance, the Student Administration Manager asked the assessors to 'please take [extenuating circumstances] into consideration when marking her group if that is permissible'.[15] They responded saying that they would be 'duly sensitive'.[16] However, although the Administration Manager offered to Ms Abrahart that she need not speak at the laboratory conference, no changes were made to the form of assessment or the marking criteria. The Inquest was told that this was because: 'there had been no request to do so either by Ms Abrahart or under a Disability Support Summary.'[17]

Ms Abrahart did not attend the laboratory conference on 30 April 2018 and, very sadly, died by suicide that day.

Judgment on the Equality Act

The central issue under the Equality Act 2010 was in relation to s.20 which includes a duty: 'where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.' The question was whether the University had a duty to adjust the oral assessment requirement of the Practical Physics 203 module owing to Ms Abrahart's social anxiety. To answer this question, according to s.20, the Court had to consider: (i) whether there was a provision, criterion or practice (PCP); (ii) that put a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, and (iii) whether there were reasonable steps to be taken to avoid the disadvantage. The bulk of the High Court's analysis was devoted to this three-step determination.

In relation to the first step, the University's contention was that the oral assessment requirement did not constitute a 'PCP' but instead constituted a 'competence standard' under schedule 13 of the Equality Act 2010. The High Court rejected this submission. It found that the oral examinations, contrary to the University's contention that they measured a student's ability to convey ideas, were actually a way of testing knowledge and comprehension. According to the High Court, the oral assessments were in fact a

method of assessment and not a competence *standard*. Further, the fact that the University had at one point suggested to Ms Abrahart that she need not speak at the laboratory conference, provided she contributed to the presentation in other ways, was considered fatal to the University's competence standard argument.

According to the High Court, given that the University knew that the oral assessments ('the PCP') posed particular difficulties for Ms Abrahart ('substantial disadvantage') as she often did not speak or failed to appear for them, the real issue lay at the third step of the analysis: whether the University had a duty to take reasonable steps to avoid the disadvantage.

The High Court found that, first, not only was there a duty to make reasonable adjustments but that, second, the duty was not discharged by the University in this case.

First, the existence of the duty was established under Schedule 13 of the Equality Act 2010, which obliges responsible bodies (including universities) to provide reasonable adjustments in relation to provision of education. According to Schedule 13, references to 'a disabled person' in section 20 are considered references to disabled persons generally. The High Court found that the effect of this was that the duty 'may be owed to people who were not known to the educational institution before the issue arose in relation to them'[18] and in that sense the duty was 'ex ante' or 'anticipatory' in nature.[19] While this duty does not require the universities to anticipate every need, it does require that the universities think about and provide for 'features which may impede persons with particular kinds of disability — impaired vision, impaired mobility and so on'.[20]

Second, the High Court found that since the University was aware of Ms Abrahart's social anxiety especially in respect of the oral presentations, the failure to waive that requirement (or to offer another adjustment such as to have her present her work in front of a smaller group), was a breach of its duty to take steps reasonably expected of the University in this case. Linden J was not convinced that the fact that there was no 'due process' determination of Ms Abrahart's disability, or a disability support plan approved by the Student Disability Services at the University, should have impeded the University's ability to offer reasonable adjustments. A breach of s.20 of the Equality Act 2010 was thus established.

The discussion in relation to s.15 and s.19 of the Equality Act was relatively brief in comparison.

In relation to s.15 ('discrimination arising from disability'), the High Court had to consider whether the University had actual or constructive knowledge about Ms Abarahart's disability for her treatment to constitute disability discrimination. The High Court found that the University did have actual knowledge of Ms Abrahart's condition about 2 months prior to her suicide when they were first alerted of her attempted suicide. The question then was whether the University had treated Ms Abrahart unfavourably on the basis of her known disability from that point on. The High Court declined to interfere with the County Court's decision in favour of Dr Abrahart on this point. It held that the County Court's assessment was based on the correct application of law, even though the Court below had not used the language of proportionality which is central to s.15 in that the University could justify the alleged treatment as 'a proportionate means of achieving a legitimate aim.'

Finally, in relation to s. 19 ('indirect discrimination'), the High Court again declined to interfere with the County Court's conclusion, finding no error in law in the way the County Court had made its assessment.

Judgment on negligence

According to HHJ Ralton in the County Court, the claim in negligence was novel, being an alleged duty 'to take reasonable care for the wellbeing, health and safety of…students…to take reasonable steps to avoid and not to cause injury, including psychiatric injury, and harm.'[21] He reasoned that this was essentially a claim for failure to prevent harm from third parties or natural causes, for which the law generally recognises no duty according to the Supreme Court in *Robinson v West Yorkshire Police*.[22]

While there are exceptions to this general principle, HHJ Ralton did not consider that Ms Abrahart's case fell within them. The exceptions usually involve a particular type of relationship or an assumption of responsibility.[23] This case was unlike those: Ms Abrahart did not have the kind of relationship with the University analogous to a schoolchild or prisoner under its care/control, and thus the University had no duty to 'protect her from herself'.[24] Likewise, the University's provision of ancillary welfare support services did not amount to an assumption of a duty of care.

Furthermore, HHJ Ralton did not think it was fair, just or reasonable to impose a duty when the Equality Act 2010 provided a remedy. In the event that he was wrong on the question of existence of a duty of care, he considered that the breach of that duty was made out for the same reasons as breach of the Equality Act 2010 duties: 'the main breach would be continuing to require [Ms Abrahart] to give interviews and attend the conference and marking her down if she did not participate when [the university] knew that [she] was unable to participate for mental health reasons beyond her control.'[25]

In the High Court, Dr Abrahart challenged HHJ Raltonn's categorising the case as one of 'pure omission'.[26] Even if this was an omissions case, he argued, it nevertheless fell within the assumption of responsibility exception. Furthermore, he argued, it was fair, just and reasonable to have a duty in negligence.

Linden J recognised that the duty issue was very significant.[27] Given the fact that the first instance judgment had focused on the Equality Act 2010 and thus did not extensively discuss negligence, together with the fact that any conclusions on the cross-appeal would not affect the level of damages, he declined to determine the cross-appeal.

Analysis

Anticipatory reasonable adjustments duty

The main implication of the High Court's ruling under the Equality Act 2010 is the reinforcement of the anticipatory nature of the reasonable adjustment duty under s.20. The High Court found that the duty applies even in the case of an individual student as opposed to groups of students (e.g. who are blind, deaf or are wheelchair users) or types of

disabilities.[28] This is a big leap as, until now, the duty may have been read to apply mainly in cases where duty bearers were meant to anticipate and provide for groups of disabled people or certain types of disabilities generally rather than the needs of a specific individual without a reported disability.[29] For example, in the EHRC Technical Guidance on Further and Higher Education, the anticipatory reasonable adjustment duty appears to be met by a lecturer who includes film clips in their material, if they provide those clips with subtitles or a transcript.[30] As stated in the Technical Guidance: 'The duty to make reasonable adjustments is an anticipatory one owed to disabled people and disabled students *generally*. It is *not* solely a duty that is measured in relation to each individual disabled person who wants to access further or higher education.'[31] This indicates the need of 'some element of group disadvantage [as] an essential element of anticipatory reasonable adjustment claims.'[32]

Yet the University was found to have breached this duty in relation to an individual student *without* a reported disability; but whose difficulties with oral assessment, the County Court and the High Court thought were apparent *as disability* to the University. According to the High Court, in the case of an individual student, the duty arises from the point when the University knows, or should know, about the disability of that student. Most importantly, this actual or constructive knowledge does not depend on a formal or official diagnosis of disability such as by a medical or health professional or by the disability support services at the University. The student who is considered disabled is not obligated to demand or discuss types of adjustments that may be needed. Indeed, the duty applies even if the student declines the adjustment like Ms Abrahart did when she was offered not to speak at the conference.[33] This stands in contrast with the understanding that reasonable adjustments in the case of particular individuals should be raised by and discussed with the person concerned especially since the duty is meant to be *reacting* to a particular individual's needs.[34] The approach may thus be seen as paternalistic and contrary to the disability rights movement's motto 'nothing about us without us'.

With this approach, the High Court seems to have unleashed the *reactive* – as opposed to the *proactive* – nature of the anticipatory reasonable adjustment duty.[35] Needless to say, unless overturned in another case in the future, the High Court has set the bar for being found in breach of the anticipatory reasonable adjustment duty rather low.

Competence standard

In contrast, the High Court's bar for when a University can claim a particular assessment method to be a 'competence standard' under schedule 13 of the Equality Act 2010 is high. The High Court looked for an inextricable link between the means of assessment and what is being tested. The fact that the University tried to justify oral assessment as necessary for a well-rounded Physics education – where effective communication matters – seems to have been dismissed without much consideration. According to the High Court, this was because the 'Intended Learning Outcome' which the University argued was to 'accurately and clearly present complex issues to others at an appropriate level in written and verbal presentations' was stated in the course documentation for physics generally, but not for Practical Physics 203 specifically.[36] This appears to imply that *unless* the intended

learning outcomes of a teaching module explicitly include establishing a particular level of competence or ability linked to the assessment method itself, the assessment method will not be considered a 'competence standard'. This is certainly a higher bar than was set in previous cases concerning competence standards in higher education.[37]

The implications of this are wide-ranging. Many higher education courses have compulsory oral assessments, such as professional training courses for lawyers and doctorates. More institutions might introduce oral assessments in an era when generative AI such as ChatGPT are undermining faith in traditional coursework-based assessment. Some courses will be able to demonstrate more easily than others that the method of assessment forms part of a competence standard.

To illustrate, it is not clear that doctoral vivas test anything other than knowledge, which is all that the High Court held the assessments in *Abrahart* did. Although oral communication skills are difficult to go without in the professional academy, this is not something that would hold much weight if the approach in *Abrahart* is followed in later cases which challenged the use of oral assessment for examining doctorates. Likewise, courses that adopt oral assessment because it makes the assessment less fallible to use of AI by students will struggle to show that orality is a competence standard, because it may just be a convenient method for reducing cheating. Similarly, courses which have hitherto justified oral assessment on the basis that they equip students with a standard package of graduate skills, including oral communication, may now have to review their justifications in light of *Abrahart*.

In sum, a whole range of courses may now not be able to use oral assessments as competence standards and would instead have weighty duties to offer anticipatory reasonable adjustments to individual students once they have sufficient actual or constructive knowledge of facts giving rise to a disability.

Negligence

Following the County Court judgment, Ms Abrahart's parents led a campaign to enact a statutory duty of care on universities.[38] The government responded to their petition saying that it was unnecessary, partly due to the existence of a 'general duty of care' at common law.[39] A written parliamentary question was raised about the legal basis of the purported duty, and the government confirmed that it was in negligence but this has 'not been widely tested in the courts.'[40] A duty of care cannot be brought into being solely by a statement that it exists,[41] not least because this would be constitutionally inappropriate as a breach of separation of powers. The question of any duty of care is still unresolved following the High Court decision.

However, the County Court's finding that no duty of care existed is vulnerable. This is because it relied on the Supreme Court's decision in *Robinson*, a claim brought against the police by a bystander accidentally injured during an arrest when the suspect tried to escape and knocked her over. A question which vexed the courts in the case was whether to cast the claimant's allegations as positive acts or, instead, as omissions. Was Ms Robinson alleging negligent acts (e.g. the positive decision of the police to carry out the arrest on a crowded street), or were the allegations instead omissions (i.e. the failure of police to

prevent the fleeing suspect from bowling over a pedestrian, the claimant)? This was a vexing question precisely because the distinction between acts and omissions, on which the Supreme Court in *Robinson* placed so much weight, is inherently unstable.[42] This much is evident from the fact that the Supreme Court in *Robinson* categorised the case as one of positive acts, whereas the court below categorised it as concerning omissions.[43] This disagreement is difficult enough to determine in a single case like *Robinson*, as the Court of Appeal recognised,[44] where the salient events took place over only a few minutes.

It is much harder to predict how a case with facts similar to *Abrahart*, which involves many actions and omissions over a long period of time, might be categorised. The Court of Appeal did not find the act/omission distinction useful, especially as so much turns on it.[45] Moreover, the distinction is ahistorical (the precedents cited in support not having been argued as turning on the act/omission distinction at the time), as Lord Mance himself observed in his separate concurring judgment in *Robinson*.[46] Further, Lord Mance correctly predicted, policy considerations will inevitably affect how a court categorises a novel case.[47]

Policy considerations clearly affected HHJ Ralton's decision in *Abrahart*, but a different court might see such matters another way. Duties of care have been found to exist in related, though not identical, contexts. For example, a duty of care arises in tort and contract to provide teaching and other educational services with care and skill.[48] A recent county court decision found that a duty of care existed due to the College's assumption of responsibility to carry out an investigation into allegations of sexual assault between students.[49] Developments of the duty of care jurisprudence in this area, especially at appellate level, are likely to come in the near future.

Conclusion

The High Court's decision in *Abrahart*, which confirmed the County Court judgment, has sweeping implications. First, in relation to the anticipatory reasonable adjustment duty, the Court has reinforced the *reactive* nature of the duty in respect of an individual student (as opposed to groups of disabled people with certain types of disabilities) who may be considered disabled by the University–(i) who does not have a formal diagnosis of disability made by a competent medical or other professional; and (ii) who has declined the adjustment offered. Second, the High Court has set a high bar for universities to show that a particular method of assessment is indeed assessing the competence of *that* method. Thus, assessments such as writing a timed exam or defending a doctoral thesis orally would only qualify as competence standards if what is being tested is competence in writing an exam in the prescribed time and oral communication of ideas respectively, as opposed to simply testing knowledge in a convenient or preferred way. On the other hand, although the court did not find a common law duty of care to exist in this case, the matter is bound to arise in future cases which have factual similarities to *Abrahart*.

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Notes

1. *Abrahart v University of Bristol*, Bristol County Court, judgment of HHJ Ralton and Mrs Christine Price (assessor), 20 May 2022, hereafter 'Abrahart (CC)'.
2. ibid., [151].
3. *University of Bristol v Abrahart (EHRC intervening)* [2024] EWHC 299 (KB), hereafter '*Abrahart* (HC)'.
4. See *Fage v Chobani* [2014] EWCA Civ 5, [114]; *Haringey LBC v Ahmed* [2017] EWCA Civ 1861, [29]-[31]; *Prescott v Sprintroom Limited* [2019] EWCA Civ 932, [76]-[78(vi)]; *Harris v CDMR* [2009] EWCA Civ 1645, [21] amongst others.
5. *Abrahart* (HC) (n 3), [37].
6. ibid.
7. ibid., [40].
8. ibid., [41].
9. ibid., [42].
10. ibid., [45].
11. ibid., [45].
12. ibid., [246]; see also [212], [245].
13. ibid., [67].
14. ibid., [85].
15. ibid., [88].
16. ibid.
17. ibid., [89].
18. ibid., [157].
19. ibid., [158].
20. *Keith Roads v Central Trains Ltd* [2004] EWCA Civ 1541, [11].
21. *Abrahart* (CC) (n 1), [143].
22. [2018] UKSC 4; [2018] AC 736, [4] (hereafter '*Robinson* (SC)').
23. *Abrahart* (CC) (n 1), [152]. For examples of particular relationships, see *Walker v Northumberland County Council* [1995] ICR 702, 711 (employer-employee); *X (Minors) v Bedfordshire County Council* [1995] 2 AC 633, 766 (headteacher-pupil) and *McLoughlin v Jones* [2002] QB 1312 (solicitor-client). Examples of successful allegations that an assumption of

responsibility exists are fewer, but see *Barrett v Enfield London Borough Council* [1999] 3 WLR 79 (as explained in *Gorringe v Calderdale Metropolitan Borough Council* [2004] UKHL 15; [2004] 1 WLR 1057, [39]).

24. *Abrahart* (CC) (n 1), [149].
25. ibid., [159].
26. *Abrahart* (CC) (n 1), [147]-[149].
27. *Abrahart* (HC) (n 3), [270(i)].
28. In contrast with, for example, *Finnigan v Chief Constable of Northumbria Police* [2013] EWCA Civ 119, [31].
29. For example, the anticipatory reasonable adjustment duty seems to have been powerfully utilised during the pandemic to challenge the lack of sign language interpretation for government briefings (*R (Rowley) v Minister for the Cabinet Office* [2021] EWHC 2108 (Admin)) and in a range of other class action claims for specific groups of disabled people (which were eventually settled). See Anna Lawson and Lisa Waddington, 'Disability in Times of Emergency: Exponential Inequality and the Role of Reasonable Accommodation Duties' in Shreya Atrey and Sandra Fredman (eds), *Exponential Inequalities: Equality Law in Times of Crisis* (OUP 2023).
30. EHRC Technical Guidance on Further and Higher Education, p 92, <https://www.equalityhumanrights.com/equality/equality-act-2010/technical-guidance-further-and-higher-education> accessed 29 February 2024.
31. EHRC Technical Guidance on Further and Higher Education, ibid., para 7.17 (emphasis added).
32. Anna Lawson and Maria Orchard, 'The Anticipatory Reasonable Adjustment Duty: Removing the Blockages?' (2021) 80 Cambridge Law Journal 308, 312; Bob Hepple, *Equality:The Legal Framework* (2nd edn, Hart 2014) 96–97.
33. *Abrahart* (HC) (n 3), [85]. ('The Judge found that, on 27th April 2018: "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.*")' (emphasis in italics added).
34. Convention on the Rights of Persons with Disabilities (2006) 2515 UNTS 3, art 2; Committee on the Rights of Persons with Disabilities, General Comment No. 2 on Article 9: Accessibility (CRPD/C/GC/2, 2014), [26].
35. Lawson and Orchard (n 32) 325 ('The fact that the enforcement of the anticipatory duty is so firmly placed in the hands of particular individuals, who must themselves have been disadvantaged by the failure of a duty-bearer to make reasonable adjustments, suggests that the duty might include obligations to take steps to respond to the particular circumstances of the individual in question even though it may not have been possible for the duty-bearer to anticipate those circumstances. The EqA does not address this issue explicitly, however, and it is from this that the uncertainty about the extent to which the anticipatory duty includes obligations to make reactive or responsive adjustments springs.') Compare with, Lawson and Orchard (n 32) 313

('Paragraphs (3)–(5) of section 20, which require duty-bearers to take reasonable steps to tackle relevant types of disadvantage, refer to a disabled person in the singular being placed at a substantial disadvantage. This emphasis on a particular disabled person is a key feature of the reactive reasonable adjustment duty but inconsistent with an anticipatory approach. Schedule 2 of the EqA provides that, in services and public functions cases, the term "disabled person" in section 20(3)–(5) should be read instead as "disabled persons generally". It is through this conversion of phrases in section 20(3)–(5), from the singular to the plural, that the EqA unleashes the anticipatory dimension of its reasonable adjustment duties in contexts of services and public functions.')

36. *Abrahart* (HC) (n 3), [191].
37. *Burke v College of Law* [2012] EWCA Civ 37; *Islam v Bar Standards Board* [2012] All ER (D) 05 (Aug); *Koci v University College London* [2014] All ER (D) 232 (Jan).
38. The petition can be accessed at <https://petition.parliament.uk/petitions/622847> accessed 26 February 2024. There was associated media coverage, see for example Sally Weale, 'Parents "horrified" by response to petition after student suicide', *The Guardian*, 5 February 2023, <https://www.theguardian.com/education/2023/feb/05/parents-horrified-by-response-to-petition-after-suicide-of-bristol-student> accessed 26 February 2024.
39. See 'Government Responded' at <https://petition.parliament.uk/petitions/622847> accessed 26 February 2024.
40. Written Question UIN 174398 for the Department of Education, tabled on 27 March 2023 by Matt Western (Lab.), answered on 30 March 2023 by Robert Halfon (Con.), <https://questions-statements.parliament.uk/written-questions/detail/2023-03-27/174398> accessed 26 February 2024.
41. *O'Rourke v Camden London Borough Council* [1998] AC 188, 196. For confirmation of the more general proposition that statements of ministers are not law, see *R (Dolan) v Secretary of State for Education* [2020] EWCA Civ 1605, [27] and [113].
42. This is recognised by the separate concurring judgments of Lord Mance and Lord Hughes, *Robinson* (SC) (n 22), [82] and [123].
43. *Robinson* [2014] EWCA Civ 15, [53] (hereafter '*Robinson* (CA)').
44. *Robinson* (CA), ibid., [45].
45. *Robinson* (CA), (n 43), [45].
46. *Robinson* (SC) (n 22), [88].
47. *Robinson* (SC) (n 22), [84].
48. See, for example, *Siddiqui v University of Oxford* [2016] EWHC 3150 (QB) and *Winstanley v University of Leeds* [2013] EWHC 4792 (QB).
49. *Feder & McCamish v Royal Welsh College of Music and Drama* (Central London County Court, 5 October 2023), [573] per Recorder Halford.