

June 2025

Advice on legal risks of harm reduction and zero tolerance drugs policies in universities

Introduction

Background

SafeCourse, founded by Hilton Mervis following the tragic drug-related death of his son Daniel, advocates for a different conversation about drug use in universities. The charity aims to empower students to lead the way to reduce the demand for drugs, tackle stigma and minimize drug-related harms. Most immediately, it asks universities to end the sanctions and silence which have put student lives at risk and to align their policies with the best practice set out in the Universities UK report (2024).

Overview

Victoria Wakefield KC of Brick Court Chambers was instructed by SafeCourse to provide an opinion on the legal risks of zero tolerance and harm reduction drugs policies in universities. There may have been a perception amongst some universities that a zero tolerance approach would not only protect reputation but might also reduce risks of a civil claim from students. This opinion makes clear that zero tolerance will in fact make them more vulnerable to such a claim. It also points towards the adoption of best practice as their best route to reduce legal risk.

The below sets out SafeCourse's summary of the advice which should of course be read in full.

Legal risks

1. **Negligence claims:** A recent County Court case (*Feder v Royal Welsh College of Music and Drama*, 2023) established that universities may owe a duty of care to protect students in circumstances where they have assumed responsibility for doing so. Whether or not they have assumed responsibility to prevent harm will be determined, in part, in light of their published policies.
2. **Contractual claims:** Where universities have undertaken in their written contracts to provide a safe environment and to promote wellbeing, harm reduction policies better align with that commitment.
3. **Coronial notices:** At least one coroner has ruled that zero-tolerance policies may discourage students from seeking help, leading to preventable deaths and reputational damage (Daniel Mervis inquest).
4. **Policy incoherence:** Where universities both undertake to promote student safety and to adopt zero tolerance policies, there is a risk of policy incoherence, creating increased legal exposure.
5. **Best practice:** Implementing UUK's harm reduction guidance helps demonstrate compliance with sector best practices, reducing breach-of-duty risks.

Conclusion

Universities should take their own legal advice, but the opinion offers a helpful starting point when considering the risks attaching to maintaining a zero-tolerance policy or not fully implementing a commitment to harm reduction.

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ADVICE ON LEGAL RISKS OF HARM REDUCTION AND ZERO TOLERANCE
DRUGS POLICIES IN UNIVERSITIES

A. INTRODUCTION AND SUMMARY

1. We are asked to advise SafeCourse (on a pro bono basis) on the comparative risks to universities of two different approaches to the use of illicit drugs: (a) a ‘zero-tolerance’ approach; and (b) a ‘harm reduction’ approach. This advice is confined to considering the *legal* risks posed by different policy approaches to illicit drugs (as opposed to reputational or other risks).
2. This advice is not and does not pretend to be a comprehensive account of all legal risk that may arise in the context of university drug policies. Where we do not expressly address a potential source of liability below, we have formed no view on it. Furthermore, it is not and should not be understood as advice to any party other than SafeCourse, and should not be relied on by third parties (who should take their own advice on the matters addressed below).
3. In 2024 Universities UK published a report which recommends that universities should adopt harm reduction policies in preference to zero-tolerance approaches, because zero-tolerance approaches “*do not affect the prevalence of drug use, but instead deter students from coming forward for support*”.¹ (the “**UUK Report**”). That guidance is not binding on universities. However, we treat it as setting out best practice in the sector.²
4. In summary, for the reasons set out more fully below:
 - 4.1. The primary form of potential liability that a university might face is in negligence. There is now one authority - at County Court level – which found that the university owed a duty of care to take reasonable steps to prevent harm to students in a different

¹ UUK Report 8.

² We are advised that this is how UUK Guidance is ordinarily treated by universities.

(albeit analogous) scenario: *Feder and McCamish v Royal Welsh College of Music and Drama* (unreported, 5 October 2023).

- 4.2. Whatever policy a university adopts, the prospects of a successful claim in negligence are relatively low: a claimant – whether a drug user or a non-user victim - would face challenges in relation to establishing a duty of care, as well as causation and (as a drug taker) in relation to the illegality defence.
- 4.3. The published policies, and the actual practice, of a university will be relevant to whether it owes a duty of care to students. If all of a university’s policies and practice disclaimed any responsibility towards the students, then this may well assist a university in avoiding a duty of care. However, as soon as some of the university policies and practices undertake to provide assistance and support to students (whether those policies and practices are specific to drugs or not), it becomes more likely that a duty of care will be found to exist.
- 4.4. Once a duty of care is found to exist, our view is that following the UUK Guidance (and adopting a harm reduction policy) would be helpful to a university seeking to demonstrate that there had been no breach of that duty. This is for three reasons:
 - 4.4.1. Firstly, it will be treated as evidence of best practice in the sector.³ Adopting best practice is plainly a sensible approach.
 - 4.4.2. Secondly, it is likely that the UUK Guidance sits compatibly with other pastoral and welfare policies that encourage students to share concerns with the university and undertake to provide a safe and sympathetic environment. In contrast, a zero-tolerance policy is likely to lead to policy incoherence, increasing legal risk for the universities.
 - 4.4.3. Thirdly, we are instructed that there is evidence to support the view that pastoral and academic staff may struggle to follow a zero-tolerance policy, in particular if they are reluctant (in general or in any individual case) to follow a hard-line approach and to treat all disclosures in relation to drug use as a

³ We understand that this is the case and we also note that it was relied on in this manner in *Feder*.

disciplinary/criminal matter. A failure to follow policy in this way will again increase legal risk for universities.

B. “HARM REDUCTION” AND “ZERO-TOLERANCE”: DEFINITIONS AND EFFECTIVENESS

Definition

5. We are advising on the law and are not experts in the science or sociology of drug use, prevention or harm reduction. We set out in this section the premises on which our advice is given.
6. We understand there to be a range of definitions of ‘zero-tolerance’ and ‘harm reduction’, and the boundary between them is not always well-defined. For the purposes of this advice, we adopt the approach and definitions used in the UUK report:⁴
 - 6.1. Both approaches share the common starting point that a wide range of harms may be experienced in relation to the supply and use of illicit drugs and that the best way to reduce harms from drugs is not to use them.
 - 6.2. A **zero-tolerance approach is characterised by a focus on enforcement action rather than on education and support.** In the university context, this means that students caught or reported to be using or possessing drugs will as a matter of policy be subject to disciplinary action, such as the imposition of fines or expulsion from their accommodation or course of study. Zero-tolerance policies also frequently include provisions indicating that persons who are discovered by the university to be using or supplying drugs will be reported to the police. Some zero-tolerance policies may also set out measures supporting student health and wellbeing. However, these are supplementary and subordinate to the primary enforcement position. They do not limit or qualify the core zero-tolerance approach.
 - 6.3. A **harm reduction approach prioritises the health, safety and well-being of students who use drugs, students who do not and others (such as members of staff and local communities).** Harm reduction does not condone or normalise the use of drugs but aims to minimise the harms which may result from drug use and supply.

⁴ UUK Report 8.

Universities adopting a harm reduction approach work in partnership with the health system, other support services and local police forces. Their approach may involve efforts to inform about the risk of drug use, practical interventions to improve safety, campaigns to reduce stigma and better access to support. A harm reduction approach does not necessarily exclude the possibility of disciplinary action being taken against students (particularly where there is supply or where use causes harm to others). However, disciplinary action is not the primary response or the primary feature of harm reduction policies.

Examples and current relative prevalence of harm reduction and zero-tolerance

7. A number of universities have in recent years adopted harm reduction policies. For example, the King's College London Drugs and Alcohol policy, adopted in 2023, describes itself as a harm reduction policy. It states that its primary focus *"is on the safety and wellbeing of the person and those around them rather than on their use of drugs and alcohol"*.⁵
8. Other universities maintain zero-tolerance policies (which we understand to have been the prevailing approach for some time). The policy in place at the London School of Economics, for example, states:
 - 5.1 As such, the School prohibits, and will not condone the use or supply of illegal drugs on any of its premises and/or Halls of Residence. Any such use or supply of illegal drugs is a major misconduct offence in its own right.
 - 5.2 For the avoidance of doubt, the types of drug or alcohol misuse related conduct most likely to breach Conditions of Registration and be considered under the Disciplinary Procedure for Students (the list is not exhaustive) can be found at Appendix C of that Procedure. Students will be signposted to support available for them whilst they may be subject to a disciplinary matter.
 - 5.3 Those found in breach will be subject to disciplinary actions either under the Disciplinary Procedure for Students [disProStu.pdf](#) ([lse.ac.uk](#)) or Fitness to study Policy [fitStuPol.pdf](#) ([lse.ac.uk](#)) or the Student Accommodation Disciplinary Code [StuAccomDiscCo.pdf](#) ([lse.ac.uk](#)) or a combination of each, as appropriate, and may also be referred to the Police.⁶

⁵ Clause 1.2, <<https://www.kcl.ac.uk/assets/policyzone/students/drugs-policy.pdf>>.

⁶ <<https://info.lse.ac.uk/staff/services/Policies-and-procedures/Assets/Documents/stuDruAlcPol.pdf>>.

9. We are instructed that there are two particular forms of inconsistencies which may arise within institutions that adopt a zero-tolerance policy:

9.1. Policy incoherence. We are instructed that all, or almost all, universities adopt welfare policies that undertake to create a safe environment for students and encourage students to communicate concerns to the university (including to specialised welfare staff). There is an inherent tension between a policy that encourages discussion and openness and a zero-tolerance policy that proceeds on the basis that all disclosures in relation to drug use will be treated as a disciplinary/criminal matter. In practical terms, students will be disinclined to discuss matters with university employees (including pastoral staff) out of a concern that they will trigger disciplinary and criminal action against themselves and their friends.

9.2. Incoherence in practice. We are advised that there is some evidence that those universities that adopt a zero-tolerance policy often pursue a harm reduction approach (or at least a non-disciplinary and criminal approach) in practice. Equally there may be inconsistent approaches as between different parts of an institution: some elements promote zero-tolerance whilst others prioritise harm reduction.⁷

Assumptions about effectiveness

10. The UUK Report as published in mid-2024. It included a literature review that “*indicated that expert opinion suggests it is important to move away from zero-tolerance to harm reduction*”.⁸ We have not conducted our own review and we are instructed to advise on the following assumptions:

10.1. **Effects on drug harms:** harm reduction approaches are generally more successful than zero-tolerance approaches in reducing the harm to students who use drugs, in particular as regards the risk of serious health harms and death in the context of high-risk drug taking behaviours.

⁷ See Arda Ozcubukcu and Graham Towl, ‘Illicit drug use in universities: zero-tolerance or harm reduction? HEPI Debate Paper 29’ (March 2022) 34.

⁸ UUK Report 8.

10.2. **Effects on drug use:** the adoption of harm reduction approaches reduces drug-taking among students more generally, or at least does not increase drug taking, as compared to zero-tolerance approaches.

10.3. **Best practice:** guidance or advice produced by UUK is ordinarily adopted by universities and regarded as best practice in the sector.

C. LEGAL RISK

11. In this section we consider the implications of adopting a harm reduction, as opposed to zero-tolerance policy, by reference to various forms of legal risk. Where a specific risk is not addressed below, we have formed no view in relation to it.

Civil law

12. By way of starting point, we are not aware of any instance in this jurisdiction where a university has been found to be negligent in relation to harm suffered by a student or other individual as a consequence of drug use. The likelihood of such a claim appears to be relatively low. However, we do not exclude the possibility that such a claim could be brought and we note that they have been brought in other jurisdictions.⁹ It is considerably more likely that the existence, content and application of a drug policy would form one part of the court's analysis, when assessing the various elements of the cause of action, than as a freestanding basis for a claim in its own right.

13. A potential claimant would fall into one of two broad categories:

13.1. Students who die or suffer injury as a result of drug use¹⁰ ("**Drug User Claimants**"); and

⁹ There are media reports of civil claims in US jurisdictions – see a claim against Stanford University in by the family of a student who died of an accidental fentanyl overdose <<https://www.paloaltoonline.com/news/2022/01/21/family-sues-stanford-university-fraternity-over-sons-fentanyl-death/>>; a claim against UC Berkeley over a student's drug-induced brain damage <<https://www.cbsnews.com/sanfrancisco/news/mom-sues-over-sons-overdose-at-uc-berkeley-co-op/>>.

¹⁰ Drug User Claimants include claims by the family of any deceased student. Claims by family members would include a claim by the deceased claimant's estate under s 1 of the Law Reform (Miscellaneous Provisions) Act 1934 which represents the claim the deceased would have had if they had not died. Dependants may also bring a claim under s 1 of the Fatal Accidents Act 1976 for damages for death (or by a narrower category of dependants under s 1A Fatal Accidents Act 1976 for a fixed sum for bereavement).

- 13.2. Students and staff who do not use drugs but sustain damage as a result of the drug use of other students, for example by suffering psychiatric injury or physical harm as a result of the drug use of a flatmate in university halls. That may be as a result of intimidation, exploitation and violence on campus as a consequence of drug dealing and drug use (“**Third Party Claimants**”).

Negligence

14. Both Drug User Claimants and Third Party Claimants could potentially bring claims against a university in common law negligence arising out of the adoption of a drug use policy. We consider each stage of the tort of negligence below.

Duty of care

15. The starting point for any claim in negligence will be to establish that a university owed students a duty of care. A duty of care may take two forms:
- 15.1. A duty not to carry out a positive act, that causes harm; or
- 15.2. A duty not to cause harm by omission.¹¹
16. The more likely formulation of a duty of care, in this scenario, is a duty not to cause harm by omission, in circumstances where the university has assumed responsibility for taking reasonable steps to prevent that harm.¹² The courts are slow to impose a duty on public authorities not to cause harm by omission. It is relatively “*rare*” for a public authority to be found to have assumed responsibility to a claimant to protect them from harm caused by a third party.¹³ The courts will generally only do so where they find the defendant to have

Pursuant to s 1(1) of the Fatal Accidents Act 1976 a claim may only be brought if the deceased would have been able to sue had they not died. This means that, for example, if the deceased’s actions broke the chain of causation or the defendant can raise a defence of illegality this will preclude a claim by dependants (see *Clerk and Lindsell on Torts* (24th edn, Sweet & Maxwell 2024) [26-89]ff). Therefore, the legal risk of a successful claim by family members of the deceased will be broadly the same as the legal risk of a successful claim by students who suffer injury.

¹¹ *Clerk and Lindsell* [7.58ff]. English law does not ordinarily impose a duty of care in a ‘pure omission’ case, but there are a number of exceptions to that principle, in particular where the tortfeasor has assumed responsibility to the victim to prevent certain kinds of foreseeable harm.

¹² In respect of Drug User Claimants, that would be a duty to take reasonable steps to ensure that they do not suffer harm from drug use. In respect of Third Party Claimants, the duty would instead be to take reasonable steps to ensure that they do not suffer harm as a result of the drug use of their fellow students.

¹³ *Clerk and Lindsell* [7.61].

assumed responsibility for preventing a specific harm or created the risk of harm occurring, on the facts of that particular case.

17. Nonetheless, we consider that there is a real possibility that a court will find that universities have assumed at least some responsibility to prevent harm to students. This is for the following reasons:

17.1. It is established that schools have assumed some responsibilities to prevent harm, by assuming responsibility for their pupils *in loco parentis*.¹⁴

17.2. However, the same has not been established in respect of university students. In several cases the courts have declined to find that universities are subject to a general duty to protect students from harm caused by others or themselves simply by virtue of their role as universities providing education.¹⁵

17.3. However, in at least one case the courts have been willing to find that a university had assumed responsibility to prevent specific harms from being suffered, by reference to the particular facts and policies of that case: *Feder and McCamish v Royal Welsh College of Music and Drama* (unreported, 5 October 2023).

18. In *Feder* Recorder Halford found (as far as we are aware for the first time) that a university owed a duty to “*take reasonable care by taking reasonable protective, supportive, investigatory and, when appropriate, disciplinary action steps and in associated communications, including by honouring confidentiality assurances*”.¹⁶ That duty was imposed in the context of sexual assault, and the university’s response to that assault. It is notable that the duty imposed extended beyond merely conducting an adequate investigation and incorporated a duty to take reasonable protective steps. The duty arose “*when [the university] committed to safeguarding and investigatory and disciplinary action, both generally and in relation to the Claimants’ reports*”.¹⁷ The Judge found that the university had assumed responsibility to prevent harm being suffered in light of the College’s Conduct Policy and the relevant UUK Guidance,¹⁸ as well as the fact that the

¹⁴ *Robinson v Chief Constable of West Yorkshire Police* [2018] UKSC 4 [69(4)].

¹⁵ That is the approach taken in the first instance decision in *Abrahart v University of Bristol* (unreported, 20 May 2022) and in *Sanchez v University of Bristol* (unreported, 21 April 2022). On appeal in *Abrahart* the question of whether there was a duty of care was left undecided: [2024] EWHC 299 (KB) [268]-[270].

¹⁶ *Feder and McCamish* [573].

¹⁷ *Feder and McCamish* [551].

¹⁸ *Ibid.*

College had promoted itself to prospective students (in oral statements and documents) on the basis of providing high-quality pastoral support.¹⁹

19. *Feder* is a first instance decision in the County Court, and so has limited precedential value. However, it offers a clear indication that universities may – by the publication and promulgation of policies – assume a duty to take reasonable steps to prevent harm that they have undertaken to prevent. How far this line of authority will develop – and how it will interface with the longstanding judicial reluctance to impose such duties – is hard to predict. Nonetheless, we consider it to be a significant new departure.
20. Applying the approach in *Feder*, a court will carefully examine the entirety of a university’s published and unpublished statements. It will pay particular attention to marketing statements, and promises in relation to pastoral care, as well as any published policies.
21. To the extent that it is possible to form a view on risk in the abstract, our view is:
 - 21.1. Universities that have adopted a harm reduction policy are more likely to have assumed responsibility for reducing harm. That is the essence of such policies. By way of example, a policy which states that the University prioritises creating a safe environment for students is more likely to give rise to a duty to achieve that outcome. By way of contrast, a zero-tolerance policy is less likely to involve the assumption of this responsibility.
 - 21.2. However, the position is not binary or straightforward:
 - 21.2.1. Universities that adopt a zero-tolerance policy may nonetheless have assumed responsibility for students via other routes. As set out above, the greatest risk to such universities is policy incoherence: they adopt a zero-tolerance position in relation to drugs whilst simultaneously undertaking to provide a safe environment and encouraging students to communicate about their concerns and difficulties. A university’s drugs policy is not the only place that a court will look

¹⁹ See reasoning at *Feder and McCamish* [553]. The policies and statements referred to included public statements which confirmed that the College had measures and mechanisms in place to prevent sexual harassment ([31]); statements at recruitment events that students would be “safe and looked after” ([72]); statements in the College’s ‘Student Charter’ that it would “provide a safe and healthy environment for students to work under” ([27]); and statements in the College’s Safeguarding Policy containing mandatory procedures that would be followed when children or young people and/or vulnerable adults reported abuse ([61]-[67]).

in order to examine whether a university has assumed a duty of care. To the extent that universities undertake to provide support (and a safe environment), this is likely to inform a court's assessment of the extent of duties they have undertaken to students.

21.2.2. Depending on its wording, a zero-tolerance policy may give rise to a duty of care as regards Third Party Claimants. If a zero-tolerance policy explains that the university prioritises the reduction or elimination of drug use on campus (for example), it may well give rise to a duty to take reasonable steps to achieve that outcome.

22. As set out above, a university might also be subject to a duty of care not to cause harm by way of a positive act. However, we consider that the adoption of a drug policy is not likely to engage this kind of duty. It is not clear how the adoption of one policy or another – which is an active step – could be causally connected to the suffering of harm.

Breach

23. If a duty of care is found, the next question is to ask whether the university breached that duty: did it fail to act as a reasonable higher education provider, that had assumed that responsibility, would do?²⁰ Whether or not there has been a breach will be highly fact-specific. The critical factors are likely to include:

23.1. Did the university behave in a manner consistent with best practice? We consider that a court will place weight on this factor, which in the present case means the UKK Guidance. A university which has adopted the UKK Guidance will be in a better position than a university which has not.

23.2. Were the university's policies and procedures coherent? Again, the court is likely to view a university which has a consistent set of policies more favourably than a university which has inconsistent policies and procedures.

23.3. Did the university follow its own policies? A court is likely to pay close attention to whether or not a university faithfully gave effect to its own policies:

²⁰ See *Feder and McCamish* [577].

23.3.1. As we say above, we are instructed – but do not know – that some staff at universities that adopt a zero-tolerance approach may in practice adopt a harm reduction/non-enforcement approach to students. In practical terms, they focus on supporting students, rather than treating disclosures in relation to drug use exclusively as a disciplinary/criminal matter. If that is the case, this presents a real risk to those universities.

23.3.2. Equally, those universities that adopt a harm reduction approach will be exposed to a greater degree of risk if they do not give effect to that policy in terms of educating and supporting staff and students, etc. Adopting a policy in name only, but failing to adopt the wider infrastructure and processes to support students (and so reduce harm), will expose universities to elevated levels of risk. We do not know whether this risk is one which in fact has eventuated in any of the universities which have adopted a harm reduction approach.

24. Finally, we recognise that Claimants might attempt to argue that a university breached its duty of care because it adopted a harm reduction policy and so normalised drug use, with the result that they caused the harm in question. The answer to this point is in three parts:

24.1. At a general level harm reduction policies neither condone nor increase drug use (see above).

24.2. This does not eliminate the possibility that in an individual case a claimant might establish – on their particular facts – that the drug taker considered that their actions were normalised or condoned by the university.

24.3. The strongest response to any such claim would be to point to the fact that the university had complied with the relevant UUK Guidance. This includes in particular ensuring that drug use is not normalised or condoned and that the use and supply of drugs is investigated. Put simply, harm reduction does not need to go hand-in-hand with drug normalisation. For example, the King's College London harm reduction policy directly addresses the potential for harm to third parties when it states that *“[w]here disciplinary action needs to be taken, the focus will be on the individual's behaviour and its actual or potential impact on others, rather than on their substance*

use”.²¹ As regards Drug Users, the premise of a harm reduction policy is that use of drugs is harmful. An appropriately worded policy should not normalise or legitimise drug consumption.

Causation

25. Potential claimants would also need to show that the harm they suffered was caused by a university’s breach of its duty of care. Whether a university adopts a harm reduction or zero-tolerance policy appears to us to be largely irrelevant to the issue of causation. We note, though, that claimants may well face significant challenges in establishing causation, so that even if a duty of care and breach are found the prospects of a successful negligence claim are low in practice.

25.1. First, all claimants are likely to face significant evidential difficulties in establishing what would have occurred ‘but for’ a university’s breach. For example, may be very difficult to show, if the identified breach is the failure to implement a harm reduction policy, that but for this breach a Drug User Claimant would have accessed support and would not have suffered an overdose causing serious injury.²² Similarly, a Third Party Claimant would find it difficult to establish that, had the university offered appropriate support to a drug user and/or implemented appropriate disciplinary measures, that drug user would have ceased using drugs and not caused harm to the Third Party Claimant.

25.2. Second, Drug User Claimants may have challenges in establishing legal causation, due to the doctrine of *novus actus interveniens*: a defendant will not be held liable for harm suffered where the intervening conduct of the claimant or a third party breaks the chain of causation. The doctrine of *novus actus* generally will not apply where the law imposes a duty of care to protect the claimant from a third party or themselves, since its application would essentially empty that duty of any content.²³ However,

²¹ Clause 1.4, <<https://www.kcl.ac.uk/assets/policyzone/students/drugs-policy.pdf>>.

²² A claimant who is unable to establish causation on the balance of probabilities may instead rely on the doctrine of loss of a chance, but whether that doctrine is applicable in the context of a lost chance to achieve a better medical outcome is uncertain: *Clerk and Lindsell* [2-84]-[2-87].

²³ There is a recognised exception to the doctrine of *novus actus* “in the case in which the law imposes a duty to guard against loss caused by the free, deliberate and informed act of a human being” since “[i]t would make nonsense of the existence of such a duty if the law were to hold that the occurrence of the very act which ought to have been prevented negated causal connection between the breach of duty and the loss”: *Reeves v Commissioner of Police for the Metropolis* [2000] 1 AC 360 (HL) 475, per Lord Hoffmann.

where harm to the claimant is caused by their own drug use, the courts have strong policy motivations for treating it as a *novus actus* that breaks the chain of causation.²⁴

Damage and loss

26. Applying the assumptions above:

26.1. The adoption and successful implementation of a harm reduction policy will lead to a decreased risk of damage being suffered by Drug User Claimants: harm reduction approaches reduce the incidence of serious harm as a result of drug use.

26.2. The adoption and implementation of a harm reduction policy will lead to reduced (or net neutral) drug taking, therefore reducing or at least not increasing the prospect that Drug User Claimants and Third Party Claimants will suffer damage.

27. Overall, therefore, we are of the view that actionable damage suffered would be the same or lower under a harm reduction approach, as opposed to a zero-tolerance approach.

Defences

28. Finally, a university would likely seek to rely on the illegality defence, when defending a claim from a Drug User Claimant.²⁵ If the illegality defence were to succeed, it would offer a complete defence to negligence (and may offer a further basis for reducing any damages awarded on the grounds of contributory negligence).²⁶ The applicability of those defences would in our view be unaffected by university's choice of drug use policy or its enforcement of those policies.

Contract

²⁴ See *Wilson v Coulson* [2002] PIQR P22 (QB) where the claimant could not claim for the effects of a heroin overdose because, even if the defendant's actions had been a but for cause of that overdose, "the use of heroin in these circumstances resulted from a voluntary and informed decision by him to take the illicit Class A drug" ([69]). Drug use is also a *novus actus* in criminal law: *R v Kennedy* [2007] UKHL 38. [2007] 3 WLR 612.

²⁵ *B v Chief Constable of X* [2015] EWHC 13 (QB), [2015] IRLR 284. Criminal offences have been held to be the "paradigm case" for the application of the illegality defence: *Les Laboratoires Servier v Apotex* [2014] UKSC 55; [2015] AC 430 at [25]. Albeit see the more flexible approach adopted in *Patel v Mirza* [2016] UKSC 42.

²⁶ Whether or not the illegality defence would be open to any particular university would be determined by the particular facts of the case.

29. There are a number of cases in which students have brought civil claims against universities and have included contract claims as alternatives to claims in negligence.²⁷ The prospects of success of any contractual claim will depend entirely on the contractual terms. As a consequence, we can only provide limited advice on this issue.

30. Our general assessment, however, is that harm reduction policies are likely to give rise to a neutral or lower risk than zero-tolerance policies with respect to contractual claims brought by Drug Using Claimants and Third Party Claimants. That is for the following reasons:

30.1. We understand that most contracts between universities and students contain a provision by which the university agrees to provide pastoral services to the student.²⁸ Universities are required to perform that service with reasonable care and skill under s 49 Consumer Rights Act 2015. What exactly is required with respect to pastoral services provision does not appear to have been explored in any reported case, and will also depend on the terms of the contractual provision. As with the law of negligence, the UUK Guidance will play a role in determining what constitutes a reasonable standard of pastoral care, in particular its recommendations as regards access to support for students who seek help for drug use. Given that the UUK Guidance positively advocates for the introduction of harm reduction policies, operating a harm reduction policy which closely follows the recommendations of that Guidance would be the most effective route for universities to ensure that they are providing pastoral services with reasonable care and skill. A zero-tolerance policy is not necessarily incompatible with the reasonably careful and skilled provision of pastoral services. However, there is greater scope for Drug Taking Claimants to argue that pastoral services in respect of drug use were in practice unavailable to them due to the threat of disciplinary action (which prevented them securing access to support).

30.2. Third Party Claimants could feasibly bring a contractual claim on the basis that the university either has inadequate disciplinary policies or has failed to enforce existing

²⁷ *Meagher v University of Cambridge* [2025] EWHC 30 (KB), *Sanchez v University of Bristol* (unreported, 21 April 2022).

²⁸ E.g. clause 1.1.5 of the University of Bristol's Student Agreement <<https://www.bristol.ac.uk/media-library/sites/secretary/documents/student-rules-and-regs/Student-Agreement.pdf>>; clause 7 of the Student-College Contract of St John's College, Cambridge <<https://www.joh.cam.ac.uk/sites/default/files/documents/Student-College%20Contract%20Example.pdf>>.

disciplinary policies (thus exposing them to harm). This may be in breach of the university's contractual obligation to maintain and/or enforce university policies or to maintain an appropriate learning environment. In a County Court case concerning harm suffered by a University of Bristol PhD student as a result of alleged misconduct by other students, the Court found that the contract between the claimant and the university "*requires a student to adhere to the Defendant's rules and regulations which the student is entitled to expect and require the Defendant to apply to all students*".²⁹ In order to reduce the risk of contractual claims by Third Party Claimants, universities should ensure they have in place appropriate disciplinary policies to deal with instances where drug use causes or may cause harm to others, and to enforce these where necessary. This is, however, not incompatible with the introduction of a harm reduction policy (as may be seen from the King's College London policy referred to above).

- 30.3. Further, a Third Party Claimant might seek to argue that a university had failed to act with reasonable care and skill where it purported to create a safe environment for students, while simultaneously discouraging disclosures and open discussion relating to the risks and difficulties associated with the sale and use of drugs on campus.

Coronial proceedings

31. Universities may also be criticised in a prevention of future death report written following an inquest into the death of a student who has died as a result of drug use. Following such a finding, universities are obliged to reply setting out action to be taken in response (or justifying why no action is to be taken).³⁰ Though reputational risk is not the focus of this advice, we also note that the media reporting following such adverse findings may inflict significant reputational harm.
32. Assuming that harm reduction policies and their effective implementation will reduce the number of deaths resulting from overdoses at universities, they will necessarily lower the

²⁹ *Sanchez v University of Bristol* (unreported, 21 April 2022) [20]. The court did not, however, identify the particular contractual provision giving rise to this obligation.

³⁰ Such a response must be provided within 56 days pursuant to regulation 29 of the Coroners (Investigations) Regulations 2013.

legal risk of adverse finding in coronial proceedings when compared to zero-tolerance policies.

33. Moreover, while coronial proceedings turn on their own facts and different coroners may make different recommendations, the findings made in the inquest of Daniel Mervis indicate that it is very undesirable for universities to retain a zero-tolerance policy but engage in harm reduction in practice. The coroner at that inquest, concerning a student who struggled with addiction while enrolled as a student at St John’s College, Oxford, was concerned that “*there is an apparent conflict between St John’s stated policy to deal with utmost severity with those students who misuse or supply drugs, and the apparent support those students who suffer with drug addiction are offered*”, since this might “*may discourage such students to seek help for their addiction out of fear of the consequences, either legal or disciplinary*”. The coroner concluded that “[a] policy of the College which is well publicised and stresses the confidential nature of support offered may mitigate this risk”.³¹

VICTORIAL WAKEFIELD KC

TIM JOHNSTON

BRICK COURT CHAMBERS

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³¹ Regulation 28 Report to Prevent Future Deaths, Daniel Brian Mervis, 3 February 2021 <<https://www.judiciary.uk/wp-content/uploads/2021/02/Daniel-Mervis-2021-0027-Redacted.pdf>>.

