

Perspectives

Legal updates for the world of higher education



October 2019

Dear Colleague

As we enter the new academic year, this month's edition of Perspectives focuses on the theme of wellbeing.

Unite Students and the Higher Education Policy Institute recently published a paper entitled "The New Realists". The paper identifies three themes that emerge strongly from the research undertaken. First, the value of future stability and the role an undergraduate degree plays in what can be considered a transition phase in someone's life. Second that the current generation of applicants and students is more diverse than ever, both in terms of demographics and individual identity. Finally, that student friendships are highly significant, both practically and emotionally. The report strongly challenges the characterisation of a "snowflake" generation with reference to evidence that students and applicants are showing "unrecognised strength in the face of challenges to their wellbeing".

Against that backdrop, this month's edition of Perspectives looks at wellbeing from different angles; Helen Tringham and Molly Sanghera consider the NHS Long Term Plan and student mental health services. Siân Jackson looks at the effective management of staff wellbeing in a higher education setting.

In terms of student immigration, the Government has stated an aim of growing the number of international students to 600,000 over the next 10 years. This clearly has a potential impact on the demand for support services provided to students, with many international students experiencing the challenge of adapting to life in a different country, alongside those of starting a new course of study. These services are supplied not just by universities themselves, but also by providers of healthcare, accommodation, transport and many others. The global challenge of maintaining wellbeing in a complex world has been recognised by the United Nations in its sustainable development goals, which include "good health and wellbeing", intended to ensure healthy lives and promoting wellbeing for all at all ages.

On a related note, Alex Russell looks at some of the recent announcements concerning immigration affecting EU nationals, which may help institutions to reassure staff and students in connection with some of the uncertainties associated with Brexit.



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The NHS Long Term Plan and Student Mental Health



Student mental health is already of great importance to universities and there is a lot being done in the sector to develop the support available to students. For example, the charity Student Minds has been working in partnership with a range of other charities and higher education bodies to develop a university mental health charter. In addition, the Office for Students has said that using its role as sector regulator to improve mental health and wellbeing among students is a priority for it.

Alongside this, the NHS has also been reviewing the mental health services it provides to children and young people. The NHS has said that “*As medicine advances, health needs change and society develops, so the NHS has to continually move forward so that in 10 years’ time we have a service fit for the future*”. The NHS has sought to address how it will ensure their services, including mental health services, are fit for the future in its [Long Term Plan](#) - published in January 2019.

Impact of the NHS Long Term Plan on mental health services

The NHS has confirmed that it will be increasing the funding for children and young people’s mental health services and it will also be changing the delivery of services to those aged 0-25. This is a change from the current commissioning of services which is for 0-18 year olds and will therefore have an impact on the mental health services provided to students aged up to 25. The aim is to provide greater integrated care and a co-ordinated service in addition to providing greater continuity of care for those in receipt of health services. This builds on the Government’s [Green Paper](#) published in 2017.

Following the responses, NHS England, supported by partners, has already begun to lead on two of the main commitments:-

- Establishing new Mental Health Support Teams (MHSTs), to enable early intervention for those with mild to moderate mental health and emotional wellbeing issues; and
- Trialling a four week waiting time for access to specialist NHS services for children and young people.

The NHS Long Term Plan also seeks to integrate and work more closely with the voluntary sector and social care sector to provide greater care and support. This will require the NHS to work closely with local authorities and the Department for Education to support schools, colleges and universities in providing mental health and wellbeing services for their students.

The voluntary (third) sector, which includes charities and not-for-profit organisations, plays a vital role in supporting those with health and social needs that are managed in the community. The voluntary sector services include community centres and groups, advocacy support, faith-based organisations and other charitable services. The aim of working more closely with the voluntary sector is to identify additional services that may well support children and young people outside of NHS commissioned services or education provision. The voluntary sector plays a pivotal role in supporting those in the community, to develop key life skills, maintain independence and develop their own voice.

Within schools, the Green Paper sets out the need to have mental health leads and provide greater training to staff. A trial will be running in 20-25% of the country where mental health support teams are going into schools to provide early access to services and help upskill schools too. This is being rolled out over the next 5 years to ensure all schools have the necessary training.

What impact will the NHS Long Term Plan have on universities and their students?

One of the outputs of the NHS Long Term Plan is that local health commissioners will be realigning services to ensure the continuity of care for 0-25 year olds, which will be relevant to a significant proportion of undergraduate students and cover the crucial period from when they begin their studies to the end of their exams. Universities should therefore proactively look to work with providers of care such as GPs, acute care and mental health services, both in the community and within hospitals, as well as the voluntary sector, to understand the services that they will be providing that will be available to university students.

Universities should also take steps to ensure that the services that are available through providers of care are flagged to students who may be unaware of the support available, particularly if they have left the familiarity of the health commissioner local to their home. The services available should also be raised with staff as

part of the training on mental health issues, so that they can refer students to the services available.

Mills & Reeve has in depth experience of supporting higher education institutions in connection with student mental health matters, from drafting and reviewing policies and procedures to providing a range of other advice, support and representation. Do get in touch if you require further information or assistance.



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Managing Staff Mental Wellbeing



The UUK Step Change Framework aspires to create “a learning environment and organisational culture that enhances health, wellbeing and sustainability”. It advocates a whole university approach which aligns student and staff mental health through strong and engaged leadership at all levels. The recently published Mentally Healthy Universities programme supports this framework.

This article considers the legal and practical role of managers in the effective management of employee mental wellbeing.

The Sector

A Guardian survey of 2,561 academics in 2014 found that 66% of academics say that their mental ill-health issues are directly related to work. This year, a HEPI report based on data from 59 universities found that referrals to counselling and occupational health services and occupational health had gone up significantly (400% at one institution). Research by MHFA England in 2017 as part of its Whole University Framework, highlighted the contextual considerations: isolation, lack of support, long hours, culture of overwork and increasing internal and external scrutiny with conflicting pressures from league tables.

Legal Obligations

As well as a common law duty, the Health and Safety at Work Act 1974 imposes a general duty on employers to ensure, so far as is reasonably practicable, the health, safety and welfare at work of employees. The HSE penalties are criminal and therefore an employee who considers that a university has breached these duties, as well as reporting to the HSE, may bring a claim for personal injury or disability discrimination.

Under the Equality Act 2010, a University should not treat an employee less favourably because of a disability, or unfavourably because of something arising in consequence of disability without objective justification. If a mental health condition is a disability within the meaning of the Act, a university is obliged to consider reasonable adjustments if a provision, criterion or practice, applied by the university puts the disabled person at a substantial disadvantage when compared to a non-disabled person. This obligation only applies where the university knew or could reasonably have been expected to know that the employee was disabled and that they were likely to be substantially disadvantaged.

Good Practice

This legislation was not intended to facilitate the required step change in the management of mental wellbeing. What is required is a change in practice. Wellbeing policies and strategies which expressly cover matters like menopause, depression and anxiety and are linked to diversity and inclusion agendas are more common. This is a great start but research has established managers as the causal link between the established people management practices which result in sustainable organisational performance, and its actual achievement. Some practical points are outlined below:

Empowerment at all levels of management to recognise that high performance depends on mental wellbeing

Evidence supports the link between employee wellbeing and organisational performance. It challenges the perception that an organisation’s success may come at the cost of individual mental wellbeing and that a manager has an impossible task of balancing these conflicting pressures. The manager’s role to deliver university strategy includes the effective management of their staff’s mental wellbeing upon which it is dependent.

Share and grow the wealth of knowledge, research and expertise

The management of mental wellbeing crosses several academic disciplines and professional services. Universities have this expertise but it is often not used to achieve more together. A research-led approach to mental wellbeing for staff and students could be as impactful as research-led teaching.

Academic autonomy can enhance not hinder the effective management of mental wellbeing

The discussion about workload allocation models (“WAMs”) is perhaps an unnecessary reminder that the autonomy of an academic to determine their own workload and work pattern is deeply valued. An excessive workload can, however, have a negative impact on mental wellbeing so it is crucial that managers monitor their team’s workload and set realistic deadlines. Research also indicates that managers continuing to allow a degree of control over work patterns is likely to have a positive effect on mental wellbeing.

Communication

A survey by Time to Change found that mental health is a workplace taboo. It will only be removed if there are opportunities to build a relationship of trust and have conversations about mental health. The number and location of direct reports may be a challenge but a line manager should regularly meet with staff to give them opportunities to be heard e.g. 121s. Now that change is the only constant in the sector, its impact on mental wellbeing must be considered. The charity Mind recognises that managers are well placed to listen to employees' concerns about any change and to mitigate its impact on their mental wellbeing.

Support and intervention

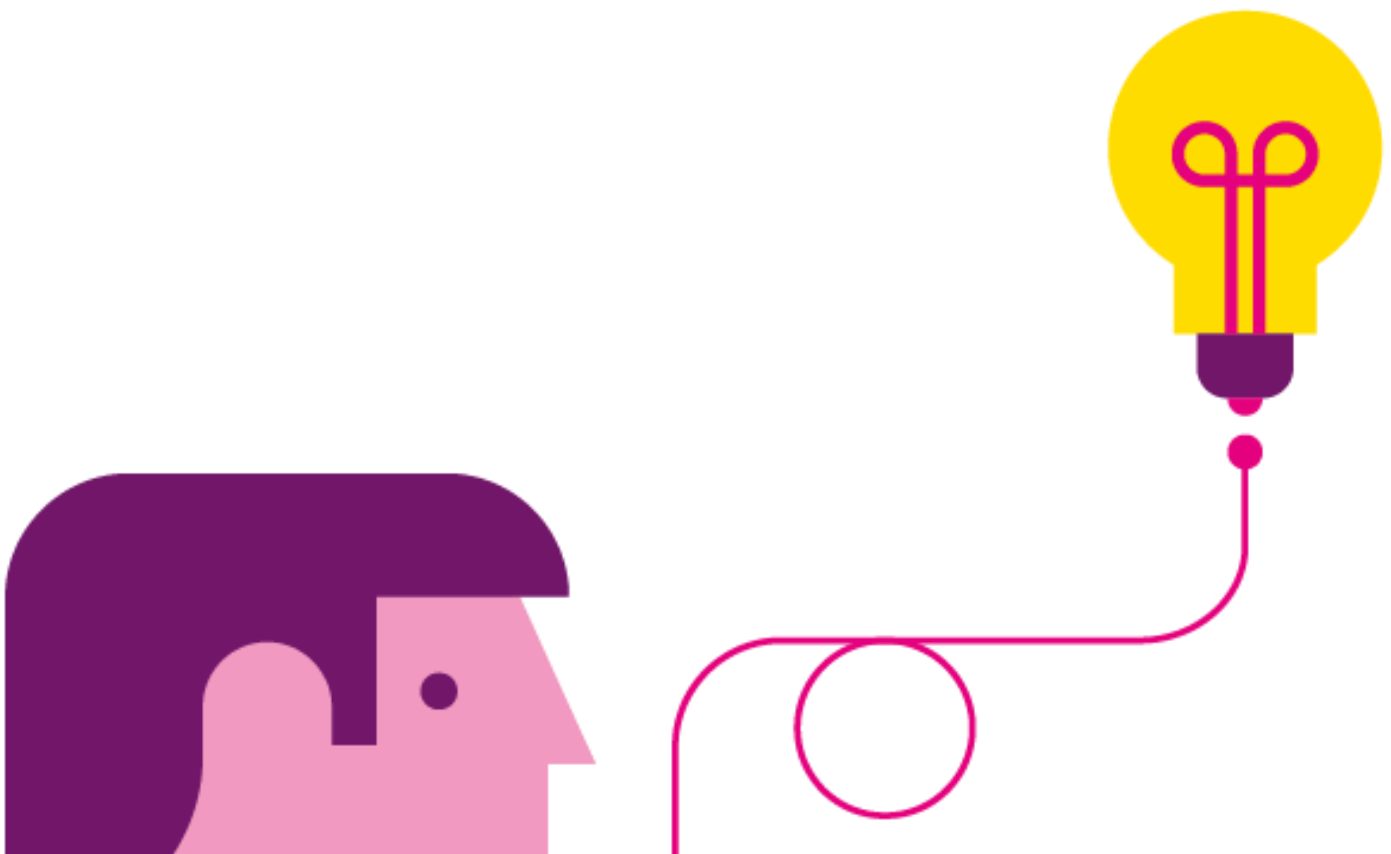
The university infrastructure lends itself to support offerings which are beyond occupational health for the benefit of students and staff; from counselling support, mental health first aiders, wellbeing champions, peer support networks, academic experts and online or telephone 24/7 helplines. Managers must be able to effectively signpost to these services and have the support, training and education to create an environment where their staff can thrive at work.

The peculiarities of the HE sector may, at first glance, appear to create barriers to the implementation of the practices which are recommended for the effective management of mental wellbeing. But these peculiarities are why it is best placed to pioneer it collectively in a way that other sectors may struggle. It is the effective management of people, which can engender a culture of mental wellbeing at work so that people are able to achieve sustainable performance of the University, at a time when it matters most.

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Immigration and Brexit - an update



The Government has recently published updated guidance on transitional arrangements for EU nationals that will apply in the event of a 'no-deal' exit from the EU, including a [No-Deal Readiness Report](#) that was published on 8 October 2019.

Key points for institutions and staff to be aware of are as follows:

- EU Settlement Scheme** – the UK will operate the EU Settlement Scheme for EU nationals and their family members who are resident in the UK by 11pm on 31 October 2019, whether there is a 'deal' or 'no-deal' Brexit. This means that for these individuals the right of residence and ability to access benefits and public services should be preserved, irrespective of the outcome of the Brexit negotiations. The deadline for applications under the Settlement Scheme will be 31 December 2020 (in a 'no-deal' scenario) or 30 June 2021 (in a 'deal' scenario).
- Euro TLR** - EU nationals who are not resident in the UK before 11pm on 31 October 2019 will continue to be able to enter the UK without needing a visa for the period 1 November 2019 until 31 December 2020. However, a person who moves to the UK after a 'no-deal' exit and wishes to remain resident beyond 31 December 2020 will need to apply under the new European Temporary Leave to Remain scheme (Euro TLR). It seems that the deadline for Euro TLR applications will be 31 December 2020, irrespective of the date when the person entered the UK. Euro TLR will grant the holder permission to remain in the UK for 36 months with the ability to study and work. At the end of this period, holders of Euro TLR will need to apply for further permission to remain in the UK under the new immigration system (expected to be implemented on a phased basis from January 2021). Details of the new immigration rules, including any switching requirements for holders of Euro TLR, are not expected to be published for several months. However, the Government has indicated that time spent in the UK with Euro TLR status will count towards residency requirements for future indefinite leave to remain / settlement applications.
- Frontier workers** – there have been developments in respect of EU nationals who live in another EU country, but regularly travel to the UK in order to work for a UK employer (often referred to as frontier workers). Many institutions have a number of staff in this category. There should be no change to their ability to enter the UK and work until 31 December 2020. From 1 January 2021, the Government will be implementing a new 'frontier worker permit' to enable these individuals to continue to enter the UK for work purposes, although very limited details have been published to date.

In a significant and welcome change to the Immigration Rules that apply to non-European nationals, with effect from 6 October 2019 PhD SOC Code roles (which include most academic and research roles) were removed from the Tier 2 (General) restricted category. This means that institutions should use an unrestricted certificate of sponsorship for PhD SOC Code roles, potentially reducing the timeline for sponsoring a person in the Tier 2 (General) category by up to around a month.

The Government has also signalled its intention to implement a new 'fast track' immigration route for leading scientists - both early career and eminent individuals. The proposal appears to be to expand the Tier 1 category to cover roles in the fields of science, technology, engineering and mathematics. It would be similar to arrangements in some other countries, notably Australia. We are awaiting further details and the changes may be implemented in late 2019 or early 2020. Depending on the detailed requirements, Tier 1 may become the preferred immigration category for many STEM roles at HEIs. It would avoid sponsor compliance obligations for institutions, provide individuals with more flexibility, and carry an accelerated route to settlement.

These developments come alongside the announcement covered [here](#) that eligible international students will be entitled to work (or look for work) for two years after completing their undergraduate studies in the UK.



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About Mills & Reeve



Mills & Reeve offers a deep knowledge of the higher education sector and the commercial strength of one of the UK's leading national law firms.

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