

Petitions Committee

Oral evidence: A statutory duty of care for higher education students, HC 1343

Tuesday 16 May 2023

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Members present: Catherine McKinnell (Chair); Tonia Antoniazzi; Marsha De Cordova; Nick Fletcher.

Education Committee Member present: Robin Walker.

Health and Social Care Committee Member present: Paul Blomfield.

Questions 1 - 9

Witnesses

Lee Fryatt, petition creator; Ben West; Hilary Grime; and Mark Shanahan.



Examination of witnesses

Witnesses: Lee Fryatt, Ben West, Hilary Grime and Mark Shanahan.

Q1 **Chair:** Good morning, and thank you very much for coming in today to talk to us about the statutory duty of care for higher education students. As you know, we are holding this evidence session ahead of a debate next month on a petition started by Lee Fryatt, which calls on the Government to introduce a statutory duty of care for higher education students. We are starting this session by hearing from Lee and a number of other people who have experienced personal loss.

In addition to hearing from the four of you here today, we have also had powerful written submissions from many other friends and relatives of people who have sadly taken their lives at university. We do understand that this is an issue that affects far too many people, not all of whom we can hear from today. However, we thought that it would be important for your initially if you could introduce yourselves and tell us a bit about your experience, if you are comfortable with that. Lee, as the petition creator, can we start with you?

Lee Fryatt: Good afternoon. Thank you to the Committee for giving us an opportunity to speak and to share our lived experience. It is also important to reflect that there are three of us here today, but behind us are far too many families who have shared a similar experience of loss of their children while they were at university, and also 128,000 people who supported our petition.

In 2018 my world and my family's world completely changed. My son went off to university full of expectation and hope. Like many other parents, I was under an assumption that our universities had some degree of responsibility for the support and care of our children, albeit that they are adults, which we accept. However, what I learnt following my son's death is that I was misinformed and that that is not the case. When my son died by suicide at university, there were certain things that I expected would have happened. The university was aware that he was struggling with his mental health. It was aware that he had expressed some suicidal thoughts.

As his family, we were the last to know that that was going on. We were never told. We were never given the opportunity to provide any support or intervention or to work with the university to stop that from happening. I strongly believe—and the rest of us believe—that had certain practical, simple steps been in place and been implemented throughout the sector, my son would still be alive and so would other children at university.

We have learnt a lot along the way with engagement with the sector, with Universities UK. What I identified is a sector that is far too protective of its autonomy. Effectively, you have 200-plus independent businesses with very little scrutiny at all about how they conduct their businesses,



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and they are hesitant and very slow to change and learn from these tragedies. That is my experience and that is what we have collectively been doing for the last four to five years, trying to bring this issue to the fore.

Chair: Thank you, Lee; we appreciate you sharing your experience. Who wants to go next? Hilary?

Hilary Grime: My name is Hilary Grime. I lost my daughter Phoebe in 2021. She was at Newcastle University.

I want to clear up a question. Some people might wonder why we are here, as our children have already died. However, we are here because we cannot bring back those we have lost, but we can make change so that others do not have to go through what we are going through now.

It has been the hardest of journeys for all of us to go over and over what happened in order to explain our point, but we have had to do that. I look forward to no longer having to share Phoebe's and my story to everybody to do this, but we are going to keep doing it.

We are here because students do not have the time or the know-how to fight this battle. An individual could not take on universities and Governments; it could not be done alone. You have to have something terrible happen to make you want to do this. This is a really hard thing to have to do. You have to be hard pushed to fight this battle, but we are not giving up. At last we have got together and we have a group of strong, focused, intelligent and driven people who will make change. We can make a difference to the students in the UK, current and future, and our children who have tragically died would have wanted us to do that. That is why we are here.

Ben West: My name is Ben. I am a mental health campaigner. I lost my brother to suicide in 2018 while we were both at secondary school. I did not lose him at university, but I have been working in the mental health space, non-clinically, for five years now. I went to university in 2018 in Liverpool. I was a mental health campaigner there. I was focusing on schools and teaching and student mental health in secondary school and primary school. I extended that to universities during the pandemic and had quite a vocal voice on social media, especially during the pandemic, around university mental health.

Through that, I got in touch with a lot of students who were desperately struggling. I met all of the families who are involved with this and heard all the stories. I am here to try to bring a recent student voice to this but also to bring all the stories I have heard from so many incredible people to life. I also went to school with Phoebe. Phoebe was the most caring person. It is quite prophetic that we are here talking about duty of care inspired by such a caring individual. That is my role here.



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In terms of what we are asking for, you have the evidence. There are many, many, many ridiculously simple, basic mistakes that have been made. Consistently as a student, as the general population, we are told that universities take this seriously, that it is a priority to them, that it is a commitment. You have it in front of you in black and white. There is paperwork not being filled in correctly. There are ambulances and police not being called to scenes that are obviously life-threatening. There are basic things that are not going right but, because the guidance at the moment is so optional and so voluntary, there is no accountability for when that goes wrong and there is no learning and no progress for getting it right again.

We have done a lot of great work in the voluntary aspect of this. It is absolutely essential that we have the conversation about creating a statutory requirement for universities to operate in a legally safe way that is standard across the sector.

Mark Shanahan: Thank you, Chair and thank you, panel, for inviting me here today. My name is Mark Shanahan. I am the father of Rory Shanahan, who took his life at Sheffield University back in 2018. I also work within the sector. As I was then and I am now, I am a politics lecturer working in the university. I have been a head of department and personal tutor for many years, and a senior personal tutor.

I have seen the university sector change considerably over the last 10 years. We are not here today to sort out the financial troubles that the sector faces, nor are we here to sort out the wider issues that connect into the NHS, but what I have seen is a growing number of students who are perhaps a little less resilient than generations past, who really do need our support throughout their whole student journey, from when they are first so excited to arrive in their first week, to the times when things are brilliant, the highs, but then the lows, when the relationships fail, when the work gets a little bit harder, when the weather is bad and they don't get out for a while.

Universities are communities. They are community of care, or so they should be. However, what we are finding is that, while there are many fantastic things that go on in a lot of universities for most of the time, there isn't a consistency of practice. Students do not get the parity of approach; they do not see consistency from us, between departments or between institutions or across the academic and professional teams within universities.

As an academic, I cannot, hand on heart, point to great clarity in what my role or my colleagues' role is in our pastoral part of our work, and when the handovers come to the professionals, who we are delighted to work with. We see a statutory duty of care as putting a stake in the ground. The culture of universities will move towards that. Things are not going to change overnight, but we need the law to get universities to act consistently and find their different ways to get to that duty of care. What



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we want are competent communities that care about their students. It is far too patchy. UUK has said that already.

Chair: Thank you. Nick is going to be leading the debate when we have it here in Parliament.

Q2 Nick Fletcher: Thank you all for coming in today, and I am sorry for your losses. They are tragic; every young death is. We need to try to make sure that this does not happen again. That is the whole point; I understand that. There will be some difficult questions that we have to ask because we obviously have to get a solution to this. It is not just a case of, "Yes, we'll do that". We need to know why. The Government have responded to your petitions, saying that there is already a general duty of care not to cause harm. That is their answer to it at this moment. I suppose your job is to convince them otherwise. Can you tell me why you do not think that that is good enough?

Lee Fryatt: We have read the Government's response. I would say it is a typical response. We have lost track of the number of Ministers who have been in charge of higher education since we started in 2018. What we have consistently heard as a response from the Government is, first, what they expect the sector to do, which is to provide a general duty of care, and they would say that this general duty of care already exists.

Our response is that the Government need to take account of some recent legal judgments around this. If you read any glossy university prospectus, it will tell you and reassure families that there is some form of moral and ethical care towards students, or this idea of a general duty of care. When that has been tested in court, two very, very distinct things have happened. A university has defended its claim of negligence by saying that it owes no duty of care to a student, despite saying, in its prospectuses and in all of its publications, "We accept we have a moral duty". A judge has ruled that there is no statutory duty of care, and it does not exist. There is no duty that exists to students required by universities.

We simply say that somebody somewhere has got confused, because we have a legal judgment now in the UK—the first time this notion of a general duty of care has been tested in the UK against our universities—and two very distinct things, have happened. First, one of the universities has said, "Actually, no, we don't have a duty of care. That's our defence to negligence. It doesn't exist". That is at odds with the Government's statement. Then we have had a legal ruling that has agreed and ruled in favour of that university. Therefore, we say that the Government are not taking into account the legal context here and that, at the moment, what a statutory duty of care will do is provide clarity to that point and answer that question properly, so that everybody is clear—the sector, students, parents and academics working within it—on our statutory requirement.

Q3 Nick Fletcher: The prospectus is saying that there is a duty of care, a moral duty of care. The Government are saying that there is a general



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duty of care, but when it was tested in the courts there is actually no duty of care. In all fairness, the universities ought to remove that from their prospectus. You say that the Government should put a duty of care in and then it should go back in the prospectus because, at this moment, they are all at odds with each other?

Lee Fryatt: They are a total contradiction. To me, it is almost a bit of a confidence trick going on in exercising PR here, in as much as when recruitment drives are on for universities, they open up their doors to young students who at that time are children at 17, with their parents, and they are openly, publicly saying that they have a moral duty or a general duty of care to take into consideration the welfare of students. That is not the case, so they are misleading.

Hilary Grime: That is the point; it is hugely misleading. For a layperson or a mother or someone who is not in that, if they read "general duty of care", they would assume that it means that there is a law. That is what they are telling people. It is not until you look into it that you see that there is no law.

When I had the inquest—like for all of us, it was pretty horrendous—it revealed all sorts of things that I thought were not right. The main thing that it revealed was that there was absolutely nothing to stop it happening to somebody else like Phoebe coming again to Newcastle. The same thing could happen. There is no prevention. There is no looking into it. They said that they thought that she wasn't a high risk, although they knew she was. They took my phone number and they said they would ring me—all sorts of things.

Then I thought that I would see what I could do to stop this happening again, because this cannot be right. I went to an eminent lawyer and I said, "This can't be right, what's happening? I need to take it further". He said to me, "You can't". I said, "What do you mean I can't? I can". He said, "You can't. There's no law. You can't do that". What is unbelievable is that there is a duty of care in employment law, so all of you and all the university staff are covered by employment law, but this is not so for students at universities. Who would know that? Who knows that?

Q4 **Nick Fletcher:** That is where the kickback is going to come, because they will say that these are not children. As a parent you can argue that they are sometimes, especially when they are just 18. However, they are an adult, so that is where the kickback is going to come. You have just said that if you were employed, your employer has a duty of care. Is it the relationship between the university and the student that is being tested here rather than anything else?

Hilary Grime: Yes. It is between the university and the student, yes.

Lee Fryatt: Coming in on that point, which is an interesting point, we have this rather binary argument about age. The point is that vulnerability can strike any of us at any time, at any age, whether you



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are 18 or 80. The issue is, for my employer—if you can imagine, I was a police officer for 30 years and I was still in the police when Daniel died. My world was completely shattered when my son died, but somehow I had to go back to work. As my employer, my work did not say, “Well, you’re an adult, sort this out for yourself”. They said, “Okay, we’ve got a duty of care here to respond to one of our members of staff who needs support at the moment in the workplace”. There was no way I could function at the same level that I was functioning at before my son’s death.

Morally that was the right thing to do. You can say that morally that is what a good employer does. However, what an employer recognises is that they have a legal obligation to respond in that way. This is exactly same for students. If those students are in FEs at 18 and 19, there is a duty. However, because they are in university, and suddenly they are 18, there is nothing. There is no responsibility on the universities at all, statutorily, to provide any sort of support in terms of how it conducts its business.

The other thing that we need to be mindful of in the debate on this is that this is not just at the crisis end around suicide. This is across all levels of what universities do in terms of their procedures and their practices and their businesses. What a statutory duty does is require all employers to look through the lens of their employees, in this case students, and say, “We need to make sure that we are not unwittingly causing foreseeable harm and that we are mitigating against that in all of our practices”.

We are saying that university students at the moment are an outlier. They are a complete outlier in terms of the statutory protection that they have. My students have more statutory protection when they go and do their part-time working job to fund their degree than when they are sat in front of me academically in the academic institution.

Q5 **Paul Blomfield:** I joined the recent Learning at Work event, which you organised in Parliament, and I listened to all of the deeply moving contributions and spoke separately to Mark about his experience in Sheffield. I have no doubt that you have shone a light, in your campaign, on failures across the system and inconsistency in practice between the universities. My question is whether the imposition of a duty of care is the right tool to achieve what you are looking for. I take the point about expectations and requirements that you made a moment ago. Could the OFS fulfil its regulatory role by making clear requirements on universities for how they should operate in this area?

Lee Fryatt: I will answer briefly and then I will hand over to Mark, because Mark has much more experience of the OFS than I have. You could go down that route, but what we need to acknowledge here is that the other side of this is that we have tried to influence and work with UUK for a number of years now to try to influence policy, practice and procedures to address some of these things. Sometimes we have thought that we have been successful. UUK has introduced guidance around



information sharing for trusted contacts and postvention responses. However, what then becomes very self-evident is that the sector can choose to completely ignore this best-practice advice and this guidance that goes out.

To your question about the OFS, the OFS also issued guidance to the sector on what universities' response should be to issues such as sexual harassment and sexual offending going on in higher education. It has realised that it now needs to make that a statutory requirement because so many universities were just ignoring the non-regulatory request to operate in this space and drive improvements. Therefore, in theory, the OFS could potentially make some improvements in this. However, I am not convinced that it has the necessary tools at the moment to properly drive change at pace through the whole sector. I would be interested in Mark's thoughts on that as well.

Mark Shanahan: I will pick up from Lee, who has covered most of what I would have said anyway. The OFS should have teeth. If it has teeth, they are very, very well hidden at the moment. In fact, I think it is suffering from very poor dentistry. What gets measured gets done. What gets backed by regulation and by legislation gets measured. At the moment, without the legislation there, the sector has too much wiggle room. We have seen five years of a glacial pace of change because of the voluntary environment that exists at the moment.

We have also seen massive inconsistency. There are over 200 degree-awarding institutions in the United Kingdom. You could probably look at their processes and come up with 300 different models within that. This is an area, too, where I would not say that the OFS has particular expertise. When complaints have been raised with it, it has got bogged down. It has become very bureaucratic, and it has not led to solutions.

What we would all like—wherever we are in this debate today—is for solutions to emerge from this. We believe that the statutory duty of care is the best way to kickstart change, to get away from this glacial, slow move where a policy might look wonderful when the vice-chancellor is shaking hands with the mayor as it is introduced, but it sits on a shelf or in a Teams drive. It certainly does not filter its way through the academic and professional communities. When something goes wrong there is still no accountability through law, that has to change.

Q6 Tonia Antoniazzi: That leads very well on to my next question. I will continue with you, Mark, because you have been talking about the new duty of care. Can you tell me what changes you would like to see to this duty of care?

Mark Shanahan: Yes, certainly. I join you from Swansea University this afternoon, where it is probably wholly appropriate that I am sitting in a little office beside Wellbeing. We do not see massive change within universities. This is not a revolution but probably it is a speedy evolution. We want to work within the system. We don't want to smash the system



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and break it. We have a very good university system that, when it works well, is fit for purpose and can deliver that reasonable protection from foreseeable harm for students. We don't want anything that is retributive, because universities are learning organisations. Strangely, when issues go horribly wrong and lead to suicides, universities don't seem to want to learn greatly.

However, what we would look for is all universities reviewing and risk-assessing all of their processes and making that a student-centred review. We want to create these competent communities and teams who really care. What that means within universities is consistent practice. It means policies that are student-centred. It means that they are delivered appropriately. This affects all staff; this is not just the senior personal tutor or the wellbeing team. It could be the gardener or the marketeer or the person from estates who sees a student in estate.

We would like the opportunity to work with universities. They are the experts in this. We are not going to impose and mandate solutions at all. We just want to get this law in place and then work with universities, with the likes of your third-sector groups that you are talking to later, to build the appropriate culture. At the moment, the culture tends to be far too defensive and also reactive. We want a culture that is built around prevention in the first place, so that the person with the blues can be identified as different from the person with suicidal thoughts. We want all staff trained so that they know when the interventions are required, where there is a real problem and how that is sorted out. If things go horribly wrong, what is the postvention, how do we learn from this and how do we stop it from happening again?

For many, many institutions it will not be major change. It is probably a more effective use of resource. It is based on best practice, and it is drawing on initiatives that already exist but far too few universities and other HE providers buy into them. Student Minds is a great charter. Five universities have that charter. That is nowhere near enough. Of the UUK's own suicide-prevention guidelines, probably fewer than a third of the sector bought into that. This why the voluntary approach simply does not work.

Q7 **Tonia Antoniazzi:** Do Lee or Hilary have anything to add to that? I want to go to Ben last.

Hilary Grime: Yes, I want to say something a bit more fundamental, being a mother and not being a lecturer or anything else. From what I see, what we want and need is a statutory duty of care for universities to protect our students from reasonably foreseeable harm caused either by direct injury or a failure to act. We want our students protected from reasonably foreseeable harm. For me, that is really easy to understand, and everybody should understand that we just want universities, the staff and everybody in them to do what is reasonable. If they did that, we are fairly sure that our children would be alive today and we would not be here. That is what we want.



We are not asking for them to be treated as children. We want them treated as adults. We want the same treatment as you would in employment law. As I said, you treat your staff with reason. You cannot have laws underneath that govern all the different parts, because every person and every situation is different, but overall just to act reasonably. That would stop the fear in universities that staff have, "Am I doing the right thing? Should I or shouldn't I? I don't know whether I should contact the parents. Should I tell somebody else? Should I tell the tutor, should I share this information?"

Then if you have an inquest and you stand up and the university says, "I believe I acted reasonably and everything I did was reasonable to do with this student", you would say, "Okay, that is fair". If that student took their life, then sobeit but they have to act reasonably. It is just common sense, logical, fair and right. It is what needs to happen and that is it. It is not complicated.

Q8 Tonia Antoniazzi: Ben, you have been a student and you lost your brother. What impact do you think that this would have on the student experience?

Ben West: That is a great question. To be honest, for the majority of students who do not interact with these support services, nothing should change. A lot is being made of a statutory duty of care. There is a lot of—whatever you want to call it—scaremongering or misunderstanding about student privacy being affected or student autonomy being affected. For the majority of students this is not going to have an impact on their student experience at all. However, we know, because they are in the room and we have the evidence of this and the data is there, that for 100 students a year it is going to be the last year of their life. It is a terrible situation to be in.

For me, the statutory duty of care is about intervening with those people who are desperate for that support. When you have a student email you saying that they are going to take their own life that evening, it is not good enough to get a reply saying, "We'll see you in three to five working days" or, "We'll get a proper response in three to five working days". When a member of staff goes into a student accommodation and finds a student in a life-threatening situation, it is not good enough to say, "We'll pick it up in the morning" and come back the next day to find them dead. You have to know to phone an ambulance and have those policies in place. These are emergency policies and these are support policies that most students will not come into contact with, but if they do need them, they are there, in exactly the same way as with employment. Most people don't need all these support policies, but when they need them they are there. If they don't get used, they are held accountable to that.

Accountability is really important. These families have not had any accountability when things have gone wrong. We can see that things have gone wrong because it is all in front of us. Therefore, it is important that we create accountability. We have seen through UUK guidance that



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in terms of the whole sector, 39%—perhaps fewer—are adopting voluntary guidance. I always think that if something is voluntary to adopt, it is also voluntary to not use. While we are giving people voluntary advice, it is up to them whether they use it or not. It is up to them whether they leave it on the desk and write the policies into their university or not, but it is also up to them to use those policies in the moment. If you get a suicidal student come to you right now in a university, whatever you feel like doing in that moment is absolutely fine and the law says nothing about what you should and should not be doing.

That leaves a lot of gaps. There are a lot of amazing people working in universities, and they do deserve credit because there are a lot of amazing people working. I had Denise, who was student support when I was there, a really, really lovely woman. There are amazing people working here but they don't know what they are expected to do. They are not given any learning from experiences that have happened. Accountability is so important because we have to learn lessons and people need to know what their roles are. What are laws and responsibilities if not pointing at someone and saying, "This is what you're required to do"? At the moment, people don't know what they are required to do.

I go back to my point: if it is voluntary to adopt, it is voluntary to not adopt. That is important to remember here, because we have seen so many universities not just ignore the guidance but take it on and not do anything with it. They have nothing to lose by doing that and, unfortunately, we see the result of that behind me and in the paperwork that you have.

Q9 Mr Robin Walker: A very quick question. I appreciate that you have made a very persuasive case and the passion with which you argued. Both Lee and Hilary mentioned not being contacted and not being reached out to on the issues affecting their children. This seems to be one of the key concerns in this. However, you have drawn the comparison with employment rights. I do not think that an employer has any responsibility to have a next of kin and be in touch of them in circumstances where they come across mental issues. Is there a separate issue that needs to be addressed there, on making sure that there is a named contact, a family contact or next of kin, for all students? Would that be covered by a duty of care?

Lee Fryatt: We worked with the sector and UUK to produce guidance around the use of trusted contacts. In spite of that, there is still too much confusion in the sector around GDPR. In 2018-19 a number of us started to engage with the Information Commissioner's Office to get clarity on this issue. The ICO is very clear on public record that, if a life is in imminent risk, you should share whatever information is necessary to protect somebody's life. It makes no distinction about the age of that person or the context in which that happens.



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However, the reality is that you have academics who are not being trained in this space. They are not completely aware of what the rules are. The sector itself gets confused between obtaining consent and sharing information. Despite the best practice, UUK has no means of knowing that its members have adopted that at all. It has no implementation strategy for this best practice that we have worked on. That is simply not good enough.

To your point about: would a statutory duty of care assist? The point about a statutory duty of care is to say, "Right, we've now got best practice". A statutory duty of care, if you do not implement best practice, means you have some accountability as an institution to explain why you have not followed that best-practice guidance. "Why have you not ensured that your staff have been trained in that best practice and why did you not implement it?" That is why we say that a statutory duty is the only level now that we can see that is going to get the sector to start implementing best practice. We say that best practice should not be voluntary in this space, and currently it is.

Ben West: Can I jump in as well? I find the phrase "best practice" is so confusing. We know—and you will hear from people after us who will repeat this—that the best practice that we have, and I am sure that everyone here will agree, is potentially lifesaving. Why on earth are we calling it best practice and not basic practice? We have lifesaving policies that we say are best practice. "Here they are, adopt them if you want." Why on earth are they best practice? Health and safety laws are laws and statutory, not voluntary for a reason, because they point at an employer or they point to the construction company and say, "You have to wear hard hats. If you don't wear hard hats, you're breaking the law". If it was voluntary they would not do it.

In terms of the emergency contacts, when we talk about students it is a weird shadow zone where they are not children but they are not adults. For a lot of people, the kneejerk reaction is that we have to treat them as adults because they are over 18. They absolutely need to be dealt with as adults. I would not have wanted loco parentis or anything of that nature while I was at university. However, in the same way—as Lee was saying within employment law—if you walk into an office and your member of staff or your team member is saying that they are going to take their own life that night and you don't do anything, are we going to say, "That is okay"? If you were to go to your tutor at university and say that you were going to take your life that night—we have evidence that nothing has happened and they are not accountable for that at all.

The emergency contacts thing is an interesting part of this. There is a lot to work out in terms of privacy around it, but the phrase that we are going with here—and the phrase that Hillary mentioned earlier—is "taking reasonable steps". What do we think is a reasonable step to save the life of a student or support a student? For a lot of them, it is getting into contact with a family member or someone like that. Reasonable steps is



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what is important, and they are different steps than would be reasonable in a workplace. Comparing university adults to workplace adults makes sense in some situations, but it is a different environment and we do have to deal with it differently.

Mark Shanahan: Universities work within frameworks very happily. We have the Research Excellence Framework and we have the Teaching Excellence Framework. Neither of those are voluntary. They get done; universities strive to do them incredibly well. Why don't we have a support excellence framework that brings all of these issues that we are talking about today for the whole student journey, from that first arrival to the brilliant graduation? That is what we want. We want 100% of students going through all of that process, not 100 dying every year at their own hands.

Chair: Thank you, Mark, and thank you, all of you, for answering our questions. It has been incredibly rich to hear from you, and I appreciate how challenging it is but how powerful your testimony is. Thank you.