

***Phelps...Clark...and now Rycotewood? Disappointment damages for breach of the contract to educate***

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**Introduction**

There are usually more cases hyped as ‘landmark’ than really are ground-breaking, leading cases: *Rycotewood* may yet become one of those, even if, at present, for higher education law it does indeed take us into new, and for the university/college potentially costly, territory. So, it could soon join *Phelps* and *Clark* as seminal cases for HE law; it may, however, yet drop out of sight...

*Phelps* (HL, *Phelps v Hillingdon London Borough Council* [2000] 4 All ER 504) concerns education in schools but extends to further education (FE) and higher education (HE) in terms of the further education institution (FEI) or higher education institution (HEI) - and/or the individual lecturer or even administrator as a ‘professional’ - theoretically now being held liable for professional negligence (‘educational malpractice’, ‘academic malpractice’), whether or not in reality the aggrieved student will encounter significant difficulty in showing causation and calculable damage. Not even the tort-loving US legal system has yet got this far! (See Palfreyman & Warner, *Higher Education Law*, Jordans, 2002, pp 109-112; the case can be read in the *HEL* on-line case-book at [oxcheps.new.ox.ac.uk](http://oxcheps.new.ox.ac.uk).)

*Clark* (CA, *Clark v University of Lincolnshire and Humberside* [2000] 3 All ER 752) leaves no doubt concerning the clear contractual nature of the student-HEI legal relationship (‘the contract to educate’), and also reinforces earlier cases asserting the exclusive jurisdiction of the Visitor, contract or no contract, in handling student-HEI disputes within the chartered HEIs. The newly-created HE Ombuds/Adjudicator *may*, however, eventually supplant the Visitor *if* there is the necessary legislation to kill off this 750 year old (as some see it) ‘medieval relic’, or *if* the Visitor yet falls foul of the Human Rights Act 1998 in the forthcoming ‘*Wilkinson v Aston University*’ case. (See *HEL*, Chapter 6, on the student contract and Chapters 8 & 30 on the Visitor, each as updated on-line at the OxCHEPS web-site; and see also the *HEL* on-line case-book.)

*Rycotewood* (re damages: 28/2/2003, Warwick Crown Court, His Honour Judge Charles Harris QC, OX004341/42, *Buckingham and others v Rycotewood College*) links the provision of FE/HE with the supply of holidays via the package tour industry in terms of applying consumer law principles to the student-institution contract, and especially in awarding damages for ‘disappointment’ with the educational experience on offer and thereby extending to the FE/HE ‘industry’ the hitherto *very* limited scope for gaining any compensation for ‘mental distress’ in a breach of contract case. (See *HEL*, Chapter 29; and also the OxCHEPS on-line *HEL* update to para. 29.38.)

## **The facts of *Rycotewood***

During 2002 six students split into two cases successfully sued Rycotewood College, an Oxfordshire FE college, for breach of the contract to educate in that, they asserted, their HND course on historical vehicle restoration/conservation failed to deliver what its recruitment literature and interviews had offered by way of an appropriate practical content. Quoting from specifically *Buckingham and another v Rycotewood College* (26/3/2002, Oxford County Court, His Honour Judge Charles Harris QC, OX004741/OX 004342): ‘the practical content, which they legitimately expected to be substantial and good, was low and often poorly taught’ (47); and ‘None of the teaching staff had any practical experience at all as professional old car restorers’ (50). The parties did not manage to settle on damages and hence the matter came back as the February 2003 case cited above: ‘This case involves ascertaining the measure of damages which is appropriate when an educational establishment fails to provide a course of the type or quality it contracted to provide’ (1A); and ‘The question now at issue is how the claimants are to be compensated’ (2A).

The students were claiming from £17K to £27K each; the College was thinking in terms of a flat-rate c£4K each; the Court awarded £10K each (£7500 ‘for loss of value of the course’ and £2500K for ‘mental distress’), with additional damages of up to £4750 where the student concerned had (unwisely, in retrospect) allowed his car to be dismantled and then discovered that (‘due to the shortcomings of the course’, 2G) it could not be put back together again! The Judge did not award anything for ‘loss of earnings’ (the students would have foregone earnings whether the course had been good or bad) and, by the same logic, ‘for living expenses’; nor for loss of ‘post-course earnings’ given that it is so hard to prove such a loss (11F&G). No damages were awarded for ‘the loss of opportunity to obtain another grant’ (on another State-funded/subsidised FE-HE course), given that the Judge felt it ‘very unlikely that any claimant will ever want one’ (11G&H); nor ‘for books and tools’ which the ex-students can still benefit from.

That left, firstly, the detailed calculation of the quantum for the loss of ‘the potential value of the course to the claimants’, where the Court rejected the assertion of the College that this loss was limited to the cost it incurred in providing the defective course or (in effect) to the price paid by the State in subsidy and by the student in fees (c£5500K in all); and, secondly, the students’ claim for ‘anxiety, depression, loss of satisfaction and annoyance’ (3E). In relation to the former the Judge commented that ‘three years of high-quality teaching and all ancillary stimulus and opportunity which might be available at a leading university will or should be of inestimable life-long utility and value, and could not sensibly be said to be limited to the sum the college or university received from the Government and/or the student as a fee’ (4B-D). Thus, interestingly this could mean an ‘elite’ university paying out much more in such ‘loss of value’ damages than it got in Funding Council teaching grant and student tuition fees, and, in theory, paying more than the successful student litigant would get at a lower-rated and less-sought-after institution also found in breach of contract.

In respect of what the Judge accepted was the students’ ‘acute annoyance, unhappiness and frustration’ (6A&B, citing one student’s description of the course as ‘fraught, not pleasant and productive; it was stressful and not enjoyable’), there was recognition by the Court of ‘mental distress’ damages as ‘an interesting, and probably

developing, area of the law' (6B). The judgement, citing the run of cases discussed in the next section, rehearsed the limitation on a contract-breaker not usually being liable for distress, displeasure, vexation, tension or aggravation; while noting the so-far established few exceptions concerning contracts specifically to provide pleasure, relaxation and peace-of-mind. It then brings 'a course for the provision of education' firmly within the exceptions 'as something which contains, or should contain, important elements of satisfaction, pleasure and tranquillity of mind'; the Judge indeed waxes lyrical: 'It can pellucidly be appreciated that, for example, the assimilation of literature, history, art or philosophy should, and generally will, provide pleasure and relaxation as well as employment opportunity. So, too, no doubt, will mathematics and science, where an appreciation of the harmonies of numbers and the secrets of creation ought to provide limitless intellectual pleasure and satisfaction. The enjoyment of these pleasures is part of the purpose of university and many other educational courses' (7A-D). Academics may quibble over the word 'relaxation', and the Judge's concept of university education may well owe rather more to Cardinal Newman than the Quality Assessment Agency (QAA) and its idea of 'the learning outcomes' of the modern modular degree programme!

The Court concluded that 'these claimants did not have the pleasant and agreeable time that they had hoped for and legitimately expected at Rycotewood, and that for much of their time they were annoyed, anxious, angry, frustrated and disappointed that the course was not providing what it should have provided' (7F-H). On the basis of *Ruxley* (see below for citation and discussion), where the House of Lords awarded £2500 to a man for disappointment in not getting the extra deep swimming-pool he had asked the builder to construct, the Judge said 'I see no reason why a man should not be compensated for his disappointment in not receiving the education he desired', especially given that 'the pool and the course were commercial purchases and in each case fell short of what was contracted for' (8A&B): indeed, 'it could be said that the shortfall was in fact far greater than in the case of the swimming-pool'. Note, for purposes of the discussion below, the use of the phrase 'commercial purchases', and earlier the idea that education can involve having a 'pleasant and agreeable time'.

Presumably conscious of breaking new legal ground, the Court felt obliged 'to look a little closer at the [*Ruxley*] case itself' (8G), and hence stressed the *Ruxley* emphasis on compensation for 'disappointed expectations'; while also the judgement argued that the present case falls within the test suggested in *Farley* (again, see below for citation) whereby such compensation may be appropriate if: 'i) the matter in respect of which the individual claimant seeks damages is of importance to him, ii) the individual claimant has made clear to the other party that the matter is of importance to him, and iii) the action to be taken in relation to the matter is made a specific term of the contract' (10D-F).

Finally, the Court noted the students' claim that damages should also be awarded for loss of earnings and for living expenses by interpreting the matter as misrepresentation (and not merely breach of contract) and then applying s2(1) of the Misrepresentation Act 1967, but re-emphasised that the 2002 *Rycotewood* judgement had not found convincing evidence of misrepresentation and anyway, the judgement carried on (citing *McGregor on Damages*, 1997, p810), for the students to be awarded damages 'for the loss of the value of the course as well as compensation for loss of

earnings would be to put them in a considerably better position than they would have been had they got what they bargained for' (15F).

The College, predictably, sought leave to appeal 'on the question of damages for disappointment and anxiety' on the basis that there is 'some scope for debate and argument' within 'a developing area of the law' (16B&C): permission was denied, it being noted that such permission may well be granted 'elsewhere' in the court hierarchy if a higher court can be persuaded 'it is a sufficiently interesting and significant case' (17D). The students' counsel commented that he ought 'technically' to seek leave to counter-appeal on the issue of misrepresentation ('because I may be caught were the defendant to succeed on disappointment, when plainly I might well succeed on misrepresentation...') (17A&B).

### **The special nature of 'mental distress' in contract**

Before discussing contracts generally, it needs to be noted that the concept of 'injury to feelings' in unlawful dismissal cases and in discrimination cases is, of course, different; the former is in the context of employment protection legislation as opposed to contract law governing the employment contract, while the latter relates to discrimination legislation (see *Vento v Chief Constable of West Yorkshire Police, CA*, [2002] EWCA Civ 1871, 20/12/2002, for guidance on the level of damages in discrimination cases – generally up to £5K, but up to £15K for serious instances of discrimination, and even £25K where there has been lengthy process of discriminatory harassment). In contract generally, it is not possible to get damages for hassle, anxiety, disappointment, stress, annoyance, irritation, etc., in a breach of contract case (see, for example, Treitel, *Law of Contract*, Sweet & Maxwell, 1999, pp 920-924; *McGregor on Damages*, Sweet & Maxwell, 1997, paras 98-106; and Capper (2000) 116 LQR 553). The House of Lords nearly a century ago affirmed that, in the context of wrongful dismissal as breach of the employment contract, there can be no additional damages for the unduly unpleasant manner of the dismissal giving rise to injured feelings: *Addis v Gramophone Company Ltd* [1909] AC 488, where any 'circumstances of harshness and oppression accompanying the dismissal' and the dismissal possibly involving 'an accompaniment of obloquy' were to be 'definitely declared' as 'irrelevant and inadmissible', as not 'actionable or relevant as an aggravation of a breach of contract'. In fact, *Addis* was taken, along with *Livingstone v Rawyards Coal Co* (1880) 5 AC 25 (HL), as meaning that also in breach of contract cases generally there could be no recovery for injury to feelings; compensation is only for the financial loss arising from the breach of contract, not for any non-pecuniary losses. This judicial stance was re-affirmed recently, again in relation to wrongful dismissal, in *Johnson v Unisys* [1999] 1 All ER 854 (HL); and, in general terms, in *Johnson v Gore Wood & Co* [2001] 1 All ER 481 (HL) and in *Farley v Skinner* [2001] 4 All ER 801 (HL): in the former it was observed that 'Contract-breaking is treated as an incident of commercial life which players in the game are expected to meet with mental fortitude' and hence here the upset property developer received no extra compensation because his solicitor's alleged negligence also was 'such as to injure his pride and dignity', while in the latter it was noted that 'disappointment merely at the fact that the contract has been breached is not a proper ground for an award...the loss of a bargain should not be the subject of compensation'. Damages relate to the breach, not to the manner in which the breach happens. That said, Lord

Goff in the 1999 case noted, with reference to the general bar against recovery for non-pecuniary loss in contract, a ‘softening of this principle in certain respects’...

In such opinions the Lords usually cite the handy summary of Lord Bingham in *Watts v Morrow* [1991] 4 All ER 937, CA: ‘A contract-breaker is not in general liable for any distress, frustration, anxiety, displeasure, vexation, tension or aggravation which his breach of contract may cause to the innocent party. This rule is not, I think, founded on the assumption that such reactions are not foreseeable, which they surely are or may be, but on considerations of policy. But the rule is not absolute...’ Lord Bingham went on to note the exceptions to the ‘mental distress’ rule: ‘Where the very object of a contract is to provide pleasure, relaxation, peace of mind or freedom from molestation, damages will be awarded if the fruit of the contract is not provided or if the contrary result is procured instead.’ As similarly was noted in *Farley*, first, this exceptional category of cases ‘is not the product of Victorian contract theory but the result of evolutionary developments in case law from the 1970s’, and, secondly, anyway that in practice ‘in the real life of our lower courts non-pecuniary damages are regularly awarded on the basis that the defendant’s breach of contract deprived the plaintiff of the very object of the contract, viz. pleasure, relaxation, and peace of mind.’ Indeed, it has been suggested that perhaps, once juries ceased to be involved in contract cases and hence there was no longer the chance for a jury to award punitive damages (as they still do in US tort cases), the policy that damages should not be awarded for disappointment could be relaxed a little and exceptions allowed.

The most well-known exceptions are the package tour cases where the expected pleasure and relaxation of the holiday are denied by the hotel being unfinished/dirty/chaotic/etc.: *Jarvis v Swan Tours Ltd* [1973] 1 All ER 71 (CA) and *Jackson v Horizon Holidays* [1975] 3 All ER 92 (CA). Similarly, where the wedding photographer failed to turn up on the big day: *Dieson v Samson* 1971 SLT (Sh Ct) 49; or when the new car bought specifically for a touring holiday kept breaking down in France: *Jackson v Chrysler Acceptances Ltd* [1978] RTR 474 (CA); or even where a cemetery was unable to provide the exclusive burial rights contracted for: *Reed v Madon* [1989] Ch 408. Thus, Treitel (p921) refers to contracts ‘in which at least one of the main objects of the contract was to provide enjoyment, security, comfort or sentimental benefits’. In the 2003 second edition of ‘The Law of Contract’ (Furmston (editor), Butterworths Common Law Series), however, it is again asserted, as in the 1999 first edition, that ‘damages for disappointment and mental distress are now definitively not confined to cases where the provision of enjoyment (or peace of mind) was the only object of the contract...that their [referring to the batch of cases noted in the above two paragraphs] overall effect is to heavily qualify the authority of *Addiss* and to provide authoritative endorsement for the wider availability of damages for non-pecuniary loss as a head of damages for breach of contract’ (para. 8.59).

### **‘The contract to educate’: another exception?**

So, is *Rycotewood* merely another of those ‘evolutionary developments’, a logical extension of the exceptions cases? Is FE/HE in effect now a leisure and pleasure industry; a course is recreational and should provide relaxation (‘the pleasant and agreeable time’ referred to by Judge Harris)? If the course does not in reality match up with the promises made in the prospectus and fails to meet the reasonable

expectations of the students, is their disappointment, upset, annoyance as non-pecuniary 'mental distress'/'injured feelings' loss also to be compensated along with the usual damages by way of tuition fee refunds? Would *Rycotewood* survive scrutiny by the Court of Appeal as such a new category of exception to the 'mental distress' rule? Would it fail to meet Lord Bingham's 'considerations of policy'?

Or is the student contract perhaps to be treated as exceptional because it is a consumer contract involving a vulnerable purchaser and a powerful supplier, rather than a commercial contract between tough-minded business equals: as Lord Cooke of Thorndon commented in *Johnson* (2001), 'The exceptional category is not confined, in my view, to contracts to provide pleasure and the like...' Yet, if the student-consumer when coping with a breach on the part of the business-minded university/college can't be expected to display the same 'mental fortitude' as tough business folk familiar with 'commercial life', is it fair that a mere employee is unable to recover damages for any 'harshness and oppression' in the manner of his/her wrongful dismissal by the business-like employer? Are students to be treated differently because they are probably younger and hence less mentally resilient than sacked employees? If so, do mature students suffer less, and deserve less compensation for 'mental distress', 'injured feelings' and 'disappointment' than twenty-year-olds?

And just how great does the 'disappointment' need to be in order to win compensation, and just how does the court assess the claim in terms of judging whether the course was weak: are we going to see a growth in 'class actions' by groups of distressed, vexed, anxious, frustrated, and displeased students? If so, where does that leave a judicial system which (in common with the courts in the USA, Canada, Australia and New Zealand) has hitherto deferred to, and not tried to, second-guess expert academic judgement (*Clark*)? Finally, if the disappointed student will now get compensation for 'mental distress', what about the customer trying to return a faulty new TV and frustrated by dealing with an incompetent on-line supplier of electrical goods, or the diner vexed by shoddy service in a restaurant, or the commuter aggravated by late-running trains, or the consumer displeased by ill-fitting double-glazing, or (as already mentioned) the employee sacked in a humiliating way? Certainly, the TV and restaurant visit are 'commercial purchases' largely, if not solely, aimed at obtaining pleasure and relaxation; while the double-glazing purchase is only partially so and the veteran season-ticket holder, of course, has no reasonable expectation of deriving from its renewal anything other than frustration, vexation and aggravation...

If, however, HE is not really about pleasure, leisure and relaxation, and hence if the rationale behind 'the contract to educate' being an exception in relation to 'mental distress' damages is after all not any simple analogy with holidays, perhaps the exception could be made on the basis that, while it is a consumer contract, it is a much more important consumer purchase than the above examples of the internet-shopper, the dinner-eater, the season-ticket-holder, and the home-improver. The 'purchase' of a degree is usually a one-off within a life-time, it is a degree-for-life, it is probably the next most expensive purchase after a house and perhaps a car that many will ever make, it involves far more time and effort than buying a TV or visiting a restaurant (although probably not as much of either compared with our weary commuter). But, if 'disappointment' should be a factor in a breach of the contract to educate, what about

when the independent school education is not up to snuff? Or, if the amount of money spent and the individual's input to the process by way of blood, sweat and tears are what matter, what about when expensive dentistry and costly cosmetic surgery fail to achieve the desired outcome?

Moreover, to treat the HE contract to educate as special, as an exception in terms of 'injured feelings' damages, on the basis that it is 'a big purchase' in consumer contract terms would also make it analogous to another set of cases involving major purchases and where such damages have been awarded for anxiety/upset/disappointment: these are, for example (and indeed as strongly referred to in *Rycotewood*), where a builder instructed to construct an extra deep swimming-pool negligently provided a standard version (*Ruxley Electronics and Construction Ltd v Forsyth* [1995] 3 All ER 268, HL), and where a surveyor specifically required to check on aircraft noise for a house-purchase survey failed to take fully into account the all-too-close 'stacking' zone for Gatwick airport (*Farley v Skinner* [2001] 4 All ER 801, HL). And if 'a big purchase' also implies substantial personal involvement/commitment linking to 'peace of mind', then *Rycotewood* could perhaps in addition be explained by reference to *Heywood v Wellers* [1976] QB 446: damages awarded for vexation, anxiety and distress where a solicitor messed up the obtaining of a court order to protect the client against molestation by her ex-boyfriend (cf no such 'mental distress' damages in other negligent solicitor cases not involving 'peace of mind', as in *Cook v Swinfen* [1967] 1 WLR 457, in *Hayes v James & Charles Dodd* [1990] 2 All ER 815, and indeed in *Johnson* (2001) cited above).

### **Reasons of policy, or simply 'the real life of our lower courts'?**

Surely, then, Lord Bingham in *Watts* was correct in identifying 'considerations of policy' as the essence of any decision generally to exclude the 'mental distress' of the customer/consumer/commuter/employee other than as holiday-maker/tourist/purchaser of specified pleasure and/or peace-of-mind benefits, lest the courts are overwhelmed with claims and ones which are difficult, time-consuming and excessively subjective to assess? So, now that UK HE is a 'mass' system involving some 35% (and with expansion ambitions to 50%) of the 18-30 age group, does it in policy terms belong with another well-known industry catering to the same age group? And, if it does, it has become, therefore, simply yet another consumer service-industry, involving presumably the delivery of at least one of Treitel's elements of 'enjoyment, security, comfort or sentimental benefits'.

Yet, when all is analysed and said, perhaps the Court in *Rycotewood* was really awarding 'mental distress' damages implicitly to signal its disapproval of the College's incompetence and we need not search for a more complex explanation: after all, the Law Commission (Report No. 247, para. 6.1(2), 1997) has proposed that mental distress damages should be generally available in contract cases in order to reflect the conduct of the defendant. Moreover, maybe beyond the neat theoretical classifications of the contract law text-books, out there 'in the real life of our lower courts' in practice such small amounts of compensation for 'mental distress' non-pecuniary loss are regularly awarded in all kinds of cases and not just where there is a pleasure/relaxation contract: as noted in *Furmston* (2003, para. 8.64), awards of damages for loss of amenity in breach of contract cases 'are likely to be routinely

made in proceedings brought in the county court and before Deputy Judges as arbitrators...the approach of the higher appellate courts appears to be at odds with the robust common sense practised by inferior courts'. But precisely because the amounts are small (a mere £2500 for a year or more of enduring the 'defective' HND course in this case) the unsuccessful defendant probably does not bother to appeal on the basis of the *Addis-Johnson-Farley* 'mental distress' rule: it remains to be seen whether Rycotewood College will appeal the 'disappointment' element of the award recently made against it (and, interestingly, whether the new HE Ombuds/Adjudicator will in due course award 'disappointment damages' in line with 'inferior courts')...

Perhaps, bearing in mind that, on the basis of the Judge's remarks on the 'inestimable life-long utility and value' of a degree course at 'a leading university', the loss of value and the disappointment damages in the instance of an 'elite' university similarly being found in breach of the contract to educate could be substantial, the UUK should pay-roll the College's legal costs for such an appeal! If the going-rate for a two-year HND at Rycotewood College is £10K, how much indeed for breach of contract on a four-year degree course at the University of Oxford where there is, arguably, even greater value in the latter's 'high quality teaching' and in its wealth of 'ancillary stimulus and opportunity' as well as, naturally, 'limitless intellectual pleasure and satisfaction' derived by, say, the undergraduate Chemist exploring 'the secrets of creation' (before becoming usually an accountant, management consultant, lawyer or investment banker)? And also how much when the cost of delivering the Oxford course greatly exceeds the combined taxpayers' subsidy at c£6K pa and the students' payment of tuition fees at £1125 for 2003/04? By analogy with *Rycotewood* the successful Oxford student litigant would be 'refunded' not £6K or £7K for each year of the degree course undertaken, but more like £12K pa (allowing for the additional subsidy in the form of endowment income spent on undergraduate education). On the other hand, as students pay higher tuition fees and thus contribute more towards the cost of HE, and as possessing a degree becomes increasingly important in the world of work, surely it is reasonable for the Law to apply robust common sense, as arguably did Judge Harris, and to recognise that the student not only has a contractual right not to be fobbed off with a poorly planned and delivered course, but also has a right to 'mental distress' damages where that happens in order to compensate him/her for the emotional energy and commitment involved in selecting a course and HEI, applying to it, pitching up at it, and meeting its academic requirements while on the course (and perhaps not least in the context of the hype to be found in the recruitment material for some courses, which do indeed seem to offer an incredibly full educational, cultural and social experience!).

The legal lessons of *Rycotewood* in applying the broad principles of consumer law as a sub-set of contract law (as indeed foreshadowed in Chapter 29 of *Higher Education Law*, 2002) neatly coincide with 'good practice' as dictated by the application of sound ethical principles to FE/HE management: a) take care to keep all institutional promotion literature under review and to promise in it only what you really can deliver at the chalk face by way of 'the educational experience', thereby avoiding the cost of an aggrieved student having his/her successful 'day in court' (or in front of the HE Ombuds/Adjudicator, or even indeed via the 'OxCHEPS Higher Education Mediation Service') or the embarrassment of the institution having to settle out of court (as recently did two universities where in each case mature students complained over poor teaching and inadequate resources in their first-year Law degree courses,



and where in one instance the specific modules which had attracted the student ceased to be offered once he arrived); b) carefully review the prospectus, course and module handbooks, and any other material which may induce the applicant/student to come to your 'excellent' university/college or once there take module X or Y, and ensure there are no hostages to fortune; and c) warn colleagues that things said by almost any member of staff at open days, recruitment interviews and fairs, and in telephone conversations at 'clearing' may become a binding and enforceable term of the student-F/HEI contract to educate if the judge finds the student claimant a more credible witness than academic A or administrator B (see Chapter 5 of *HEL* on the law of agency).

In short, it is a matter of legal risk management (Chapter 24) and of reputation risk management (*Managing Crisis*, Warner & Palfreyman, 2003, in the McGraw-Hill/Open University Press series *Managing Universities and Colleges*: see the 'Resources' page of the OxCHEPS web-site), and above all of good old-fashioned academic integrity and professionalism triumphing over the temptation hastily to cobble together and market exciting new courses which are under-resourced in terms of academic time and skills, library facilities, IT kit, secretarial and technician support, teaching space... If *Rycotewood* and its disappointment damages survive appeal (or re-examination in a similar case which moves beyond the County Court and up the court hierarchy), and as a result UK HE cleans up its act as a consumer service-industry by cutting out such weaknesses, His Honour Judge Charles Harris QC may well have done more to protect teaching quality by creating 'the empowered student consumer' than any amount of expensive QAA bureaucracy over the last decade as staff-student ratios have in some HEIs virtually doubled while across the system the annual funding per student has almost halved (and, apparently, all without, as the 'Quality Police' claim, standards being in any way adversely affected...).