

The Good Practice Framework: handling complaints and academic appeals

Supporting disabled students

DRAFT FOR CONSULTATION

The OIA is seeking comments on draft guidance on supporting disabled students.

The Good Practice Framework: handling student complaints and academic appeals was published in December 2014 and revised in December 2016. This section sets out some further good practice guidance on supporting disabled students.

The OIA has consulted with the Good Practice Framework Steering Group and the OIA's Disability Experts Panel in preparing this draft guidance. The final version will be published in summer 2017.

The OIA welcomes comments on the clarity of the draft.

You can respond online by filling in the [online questionnaire](#).

You may also respond by completing the questionnaire at the end of this document and returning it to consultation@oiahe.org.uk.

The deadline for responses is 31 May 2017

The Good Practice Framework – supporting disabled students

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Introduction

1. The **Good Practice Framework: handling student complaints and academic appeals** sets out core principles and operational good practice for higher education providers in England and Wales. Those principles are: accessibility; clarity; proportionality; timeliness; fairness; independence; confidentiality; and improving the student experience.

Where providers are seeking to support disabled students, the principles of accessibility, fairness, proportionality and confidentiality are particularly important. A good complaints and academic appeals process should be easy to navigate and give clear information about how to access advice and support. It is important for all complaints and academic appeals to be managed in a confidential and sensitive way. Providers should ensure that staff members making decisions affecting disabled students are properly trained and that clear reasons are given for decisions reached.

2. This section sets out some further good practice guidance for providers to consider when supporting disabled students, and handling complaints and academic appeals involving disabled students.
3. This section includes:
 - 3.1. An overview of what the law says about supporting disabled students;
 - 3.2. Guidance on how providers can remove obstacles to learning for disabled students;
 - 3.3. Information about complaints relating to the Disabled Students' Allowance;
 - 3.4. Guidance on supporting disabled students before induction, after induction and during their studies; and
 - 3.5. Guidance on what to do when things go wrong, including managing disability-related issues that arise in complaints and academic appeals handling.

What does the law say?

4. This section includes an overview of what the law says about supporting students with disabilities. Guidance on equality law can be found in the following Equality and Human Rights Commission (EHRC) publications:
 - **The Equality Act 2010 Technical Guidance on Further and Higher Education** (The Equality Act 2010 technical guidance)¹
 - **What equality law means for you as a student in further or higher education**
 - **What equality law means for you as an education provider – further and higher education**
5. The Equality Act 2010 defines the following as “protected characteristics”: Age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.
6. The Equality Act 2010 technical guidance states:

“A person has a disability if he has a physical or mental impairment, which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities.

“Anyone who has HIV, cancer or multiple sclerosis is automatically treated as disabled under the Act.

“Where a person has a progressive condition he will be covered by the Act from the moment the condition leads to an impairment which has some effect on ability to carry out normal day-to-day activities, even though not a substantial effect, if that impairment might well have a substantial adverse effect on such ability in the future.

“There is no need for a person to establish a medically diagnosed cause for their impairment. What it is important to consider is the effect of the impairment not the cause.

¹ <https://www.equalityhumanrights.com/sites/default/files/equalityact2010-technicalguidance-feandhe-2015.pdf>

“A substantial adverse effect is something which is more than a minor or trivial effect. The requirement that an effect must be substantial reflects the general understanding of disability as a limitation going beyond the normal differences in ability which might exist among people.”

7. The Equality Act 2010 prohibits discrimination, harassment and victimisation on the basis of any of the protected characteristics, including disability.

Discrimination includes:

7.1. direct discrimination – treating a disabled student less favourably than other students.

7.2. discrimination arising from disability – treating a disabled student unfavourably because of something arising in consequence of his or her disability, unless the treatment is a proportionate means of achieving a legitimate aim.

7.3. indirect discrimination - applying to a disabled student a “provision, criterion or practice” which puts that student at a particular disadvantage when compared with students who do not have the disability, and the provider cannot show it to be a proportionate means of achieving a legitimate aim.

7.4. failure to provide a reasonable adjustment:

- 1 Where a provision, criterion or practice is putting a student with a disability at a substantial disadvantage compared to other students, providers must take such steps as it is reasonable to have to take to avoid that disadvantage. Examples of a provision, criterion or practice are: “any formal or informal policies, rules, practices, arrangements, criteria, conditions, prerequisites, qualifications or provisions.”²
- 2 Where a physical feature is putting a student with a disability at a substantial disadvantage compared to other students, providers must take such steps as it is reasonable to have to take to avoid that disadvantage. Examples of a physical feature are:
 - “any feature arising from the design or construction of a building

² <https://www.equalityhumanrights.com/sites/default/files/equalityact2010-technicalguidance-feandhe-2015.pdf>

- any feature of any approach to, exit from, or access to a building
 - any fixtures, fittings, furnishings, furniture, equipment or other moveable property in or on premises, and
 - any other physical element or quality.”³
- 3 Where a disabled student would, but for the provision of an “auxiliary aid”, be put at a substantial disadvantage compared to other students, providers must take such steps as it is reasonable to have to take to provide the auxiliary aid. Examples of an auxiliary aid are:
- a piece of equipment
 - the provision of a sign language interpreter, lip-speaker or deafblind communicator
 - extra staff assistance for disabled students
 - an electronic or manual note-taking service
 - induction loop or infrared broadcast system
 - videophones
 - audio-visual fire alarms
 - readers for people with visual impairments, and
 - assistance with guiding.”⁴

8. The Equality Act 2010 does not require providers to make reasonable adjustments to a provision, criterion or practice that is defined as a competence standard. However, providers must consider whether or not a reasonable adjustment could be made to the way the standard is implemented or assessed. A provider will be committing unlawful discrimination if it does not make a reasonable adjustment to the implementation or assessment of a competence standard to enable a disabled student to show that he or she has attained the standard.

³ <https://www.equalityhumanrights.com/sites/default/files/equalityact2010-technicalguidance-feandhe-2015.pdf>

⁴ <https://www.equalityhumanrights.com/sites/default/files/equalityact2010-technicalguidance-feandhe-2015.pdf>

CASE STUDY: Discrimination

A provider refuses a disabled student a place on a ballet course because he failed the audition for a reason related to his disability.

- This does not amount to direct discrimination because anyone who failed the audition would be refused a place on the course.
- The decision may be “less favourable treatment for a reason related to the student’s disability”. However, the provider can justify it if the same criteria are applied to all applicants, and if they are a proportionate method of demonstrating a person’s ability to fulfil the course requirements. If the provider has not considered whether the criteria are proportionate to the course and it turns out that the criteria are more stringent than the course demands, it is unlikely that it would be able to justify the less favourable treatment.

If the provider has decided that it is a competence standard that students must be able to execute certain movements, and that they need to demonstrate their ability to do those movements before admission, then the provider would not be obliged to make any adjustments to that requirement.

9. The Public Sector Equality Duty applies to most higher education providers. This duty requires public authorities to have “due regard” to the need to: eliminate discrimination; promote equality; and foster good relations between groups defined by reference to a “protected characteristic”.

Removing obstacles to learning

Inclusive practice and anticipatory reasonable adjustments

10. The social model of disability⁵ emphasises the need to remove obstacles preventing disabled people from participating equally. Providers have an anticipatory duty to make reasonable adjustments for disabled students and in this manner remove barriers to learning. Student Finance England's DSA guidance for new DSA students 2016/17 states:

“Disabled students should arrive at university confident that any barriers to their learning have been identified, understood and appropriate steps taken to reduce their impact. The learning environment should be as inclusive as possible, so that the need for individual interventions is the exception, not the rule. Institutions should engage in a continual improvement cycle that develops inclusive practice, with the aim of reducing the number of individual interventions required.”⁶

A similar approach is taken by Student Finance Wales⁷.

11. The following are examples of simple changes which are likely to assist in creating a more inclusive learning environment:

- Improving the accessibility of learning materials and procedures⁸
- Making teaching materials accessible on the virtual learning environment
- Allowing or facilitating the recording of teaching
- Ensuring reading lists are focussed and up-to-date
- Use of plain English and clear presentation in lectures
- Using a range of assessment methods⁹

⁵ See, for example, <http://www.scope.org.uk/about-us/our-brand/social-model-of-disability>

⁶ <http://www.practitioners.slc.co.uk/policy-information/guidance-chapters.aspx>

⁷ <http://www.studentfinancewales.co.uk/practitioners/policy-information/guidance-chapters.aspx#.WE-iwHnctOx>

⁸ The UKAAF guidance on creating clear and large print documents: <https://help.rnib.org.uk/help/daily-living/technology/large-print-clear-print>

12. Reasonable adjustments may include having:

- Accessible buildings, rooms, and facilities
- Maps and signs for buildings located in prominent positions and in bold, clear print
- Pre-term orientation for students with visual impairments
- Procedures in an accessible format
- Mentoring and buddy programmes
- Hearing loops
- Accessible intranet
- Educational resources such as lecture presentations, notes and recordings available to all students within set timeframes, and in a modified format or a format which students can modify themselves
- Text recognition software for lecturers so that students can read in real time and have a transcript ready made.

CASE STUDY: Anticipatory duty to make reasonable adjustments

An academic member of staff designs a new module for an MBA programme to be approved for the upcoming academic year. The Programme Leader is asked to review the module to ensure that the teaching methods and assessment align with the module's learning outcomes. The Programme Leader is aware of the provider's responsibility to anticipate the needs of students with disabilities and therefore ensures the module has a range of alternative formative and summative methods for students to demonstrate they have achieved learning

⁹ Drawn from Disabled students sector leadership group report:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/58722/1/Inclusive_Teaching_and_Learning_in_Higher_Education_as_a_route_to-excellence.pdf

outcomes. This type of anticipatory decision-making, where inclusivity is included in the design of the programmes, reduces the need for individual case-by-case adjustments.

Student support services

13. Providers should ensure that their student support services provide adequate resources and that students are advised of the support that is available. Support staff, teaching staff and supervisors, should be given specialist training to help them to meet the reasonable needs of disabled students.

CASE STUDY: Appropriate training for staff

A provider arranges for department heads to attend a training course aimed at helping those working in higher education to understand, support, and communicate effectively with students who have an autism spectrum disorder. The training course helps staff to develop effective working strategies, provide feedback clearly, and create an inclusive learning environment.

CASE STUDY: Student support services

A provider contacts all students who declare on their application form that they have a disability inviting them to discuss their needs with a student support adviser before they enrol. The provider sends them a link to the student support service's website. The provider's students' union Facebook page also has a link to the service's website.

Student disclosure of a disability

14. Students should be encouraged to disclose disabilities at the earliest opportunity so that the provider can plan and give appropriate support. There is no legal obligation on students to disclose. An open, welcoming and supportive atmosphere and culture will help disabled students to feel safe to disclose information about their disability.¹⁰
15. Providers must make reasonable adjustments for a student when it knows, or could reasonably be expected to have known, that the student has a disability. Providers should ensure that staff are aware of what to do if a student discloses a disability to them. Once a student has told a member of staff about his or her disability the provider will not be able to claim that it did not know about the disability unless the student told the staff member in confidence, and asked the staff member not to share their disclosure with others. If the student asks for complete confidentiality, it is important for the staff member to explain that this may limit the amount of support that can be arranged, and advise the student to approach the provider's disability support services for confidential help and advice. All staff who have contact with students should be given sufficient training to enable them to recognise when a student is or might be disclosing a disability to them, and access to advice about what to do in those circumstances.

CASE STUDY: Disclosure of a disability

A first-year Fine Art student was diagnosed with a specific learning disability while completing sixth form. The student decides not to tell his provider about his disability during enrolment. After receiving poor feedback on written assignments the student realises he needs help. He talks to his personal tutor who suggests that he contact student support services. The student tells the tutor that he wants his disability to be kept confidential. The tutor explains that

¹⁰See, for example, http://www.gmc-uk.org/education/undergraduate/8_confidentiality_and_disclosure.asp

he will respect the student's decision but this might impact on the level of support that can be arranged. The student agrees to see student support services and the tutor helps him to make an appointment. Student support services offer him support and advice, and agree that only specific staff members will be informed of his disability.

Appropriate procedures

16. Providers should ensure that their complaints and academic appeals procedures meet the Expectation of chapter B9 of the **UK Quality Code for Higher Education: Academic appeals and student complaints**¹¹ and the principles of the Good Practice Framework: handling complaints and academic appeals.

17. In addition, it is good practice for providers to have in place:

17.1. Procedures which can be followed if a student is temporarily unable to engage with his or her studies and wishes to take time away. They should include a process for the student's planned return to study.

17.2. Support for study procedures which can be followed when there are concerns that a student's mental or physical health is significantly affecting his or her ability to participate fully and effectively in relation to their academic studies, and life generally at the provider. The procedures may also be followed if there is a concern about the impact of a student's behaviour on their own safety or the safety of others. They should include a process for the planned return to study.

17.3. Fitness to practise policies and procedures, where the student is studying a course with professional requirements.

17.4. Policies setting out students' rights to be treated with dignity and respect; the provider's expectations regarding standards of behaviour especially in relation to harassment, bullying and victimisation; and guidance for students about how to raise concerns about these matters.

¹¹ <http://www.qaa.ac.uk/publications/information-and-guidance/uk-quality-code-for-higher-education-chapter-b9-academic-appeals-and-student-complaints#.WiiWiVOLSUK>

18. Where a provider begins fitness to practise or study procedures, it should ensure that:

- 18.1. The student understands the process which is being followed, and that its purpose is supportive;
- 18.2. All students involved are appropriately supported through the process for example by a students' union adviser;¹²
- 18.3. Appropriate and proportionate evidence is obtained regarding the student's mental or physical health;
- 18.4. All the evidence obtained is treated with sensitivity and confidentiality, and is disclosed only to those who need to see it to reach a decision on the case;
- 18.5. The decisions reached are reasonable and proportionate, and are explained clearly to the student;
- 18.6. Students are given information about how to appeal.

19. It is good practice to consider and implement any subject or course-specific guidance from professional bodies. Examples are: the Law Society's guidance on the equality and diversity requirements in the Solicitors Regulation Authority's Code of Conduct ¹³, the National Union of Teachers' guidance on supporting disabled teachers ¹⁴ and the General Medical Council's guidance on making medical education more accessible: Gateways to the Profession. ¹⁵

Assessing competence standards

20. It is good practice for providers to identify what the competence standards are for each course and assessment, why they are competence standards, to record that

¹² "It is good practice to provide students with access to support and advice and, where it is not practicable to do so internally, providers should consider making arrangements for students to access support services at neighbouring institutions, partner providers or other local community services." **The Good Practice Framework: handling complaints and academic appeals.**

¹³ <http://www.lawsociety.org.uk/support-services/advice/practice-notes/equality-and-diversity-requirements--sra-handbook/>

¹⁴ <https://www.teachers.org.uk/equality/disabled-teachers>

¹⁵ http://www.gmc-uk.org/education/undergraduate/gateways_guidance.asp

information, and to share it with students. Section 7.34 of the Equality Act Technical Guidance on Further and Higher Education states that a

“...requirement or condition only amounts to a competence standard if its purpose is to demonstrate a particular level of a relevant competence or ability such as a requirement that a person has a particular level of relevant knowledge of a subject”. Requiring students to demonstrate a certain level of knowledge in a particular subject is a competence standard. However, **“a condition that a person can, for example, do something within a certain period of time will not be a competence standard if it does not determine a particular level of competence or ability”.**

21. Where a provider decides that a particular format of assessment (for example, a timed examination; an examination with unseen material; an oral presentation; a practical demonstration of a particular skill) is required to test a competence standard it should record its reasons.

CHECKLIST: Is it a competence standard?

Has the provider:

- Identified the specific purpose of the standard and considered how the standard achieves that purpose?
- Considered the possible impact of the standard on disabled people and, if the standard might have an adverse impact, asked whether the standard is necessary?
- Reviewed the purpose and effect of each competence standard in the light of changing circumstances, for example, technological developments?
- Examined whether the purpose of the standard might be achievable in another way which does not have an adverse impact on disabled students, and
- Documented its discussions and conclusions on the above issues?

The requirement is a genuine competence standard – has the provider:

- Considered the difference between the competence standard and the method of assessment?
- Designed the assessment inclusively?
- Anticipated appropriate reasonable adjustments to the assessment?

CASE STUDIES: Competence standard

1: A provider decides that a competence standard in relation to a course is the ability to reproduce and apply knowledge under timed conditions without access to reference materials. A student has a specific learning disability. The provider requires the student to sit a timed examination under controlled conditions, but

puts in place adjustments to the examination arrangements including: additional time; a separate room; examination papers on coloured paper; and use of a computer.

2: A student who uses a wheelchair is studying on a radiography course. Some wards are difficult to access because they are upstairs. However, being able to get up and down stairs is not one of the standards of proficiency for radiographers: it is not a competency. Being unable to use stairs would not prevent her from meeting the professional standards for entry into radiography. The provider makes reasonable adjustments to the study and work environment so that she can access patients.¹⁶

3: A visually impaired student has difficulty in accessing reference materials necessary for assessments. Students who do not reference a broad range of materials in their assessments are marked down: the ability to read, assimilate and apply research is a competence standard. To assist the student in completing their assessments, the provider:

- Gives the student reading lists in advance to give her time to order material in accessible format through the library service;
- Identifies an accessible on-line ordering catalogue;
- Puts in place library support to assist the student in finding and accessing books and articles;
- Asks lecturers to direct the student where appropriate to specific chapters of relevance and journal articles.¹⁷

¹⁶ Adapted from HCPC's guide, "Health, disability and becoming a health and care professional": <http://www.hcpc-uk.org/assets/documents/10004D79Healthdisabilityandbecomingahealthandcareprofessional.pdf>

¹⁷ This case study draws on the "Transitions to adulthood" study published by Birmingham University in 2015 <http://www.rnib.org.uk/who-we-are-knowledge-and-research-hub-research-reports-education-research/transitions-adulthood>

Short term conditions

22. Providers should treat fairly students with short term conditions which cause a substantial adverse effect on their day-to-day activities (for example, incapacitating injury or acute illness). Mitigating (extenuating) circumstances procedures should be well-signposted and clearly written. Providers should be alert to the fact that students who repeatedly submit mitigating (extenuating) circumstances claims in relation to the same illness may have an underlying long-term condition.

Disabled Students' Allowance (DSA)

23. Student Finance England (SFE)¹⁸ and Student Finance Wales (SFW)¹⁹ have issued guidance for students applying for DSA for the first time from 2016/17. The guidance explains that DSAs are available to disabled students to assist with the additional costs incurred while studying because of a disability. These additional costs must be essential to enable the student to undertake their course effectively. DSAs are not intended to assist with support which the student would require even if they were not studying. Providers should anticipate and respond to the needs of its disabled students where it is reasonable to do so.

24. SFE's guidance says

“Funding through DSAs should be the top of an apex of support, underpinned by an inclusive environment, and individual reasonable adjustments where required.”²⁰

25. DSA needs assessors consider the impact a student's disability has on their ability to study. The guidance from SFE and SFW states that it is the role of a DSA needs assessor to recommend support that should be funded through DSAs

¹⁸ <http://www.practitioners.slc.co.uk/policy-information/guidance-chapters.aspx>

¹⁹ <http://www.studentfinancewales.co.uk/practitioners/policy-information/guidance-chapters.aspx#.WE-iwHnctOx>.

²⁰ See, page 3 of SFE's 2016/17 guidance

and to identify support that falls outside DSAs funding.²¹ A provider should consider the way in which additional support may be provided to a disabled student. Once the maximum amount for DSA has been reached the provider may need to consider whether it would be reasonable to provide top-up funding so that support for a disabled student can remain in place.

Exceptional case process

26. If a provider and student do not agree about the support which the provider considers reasonable, the student can complain to the provider about the decision. The Exceptional Case Process may consider whether the additional support should be funded through a DSA. Interim DSAs may be available pending the outcome of the complaint and any consideration by the OIA.

CASE STUDY: Student unhappy with support provided by DSA and provider

A student with a disability is granted a DSA during the 2016/17 academic year. Her needs assessment identifies that some of the support she needs is outside of the scope of her DSA. The provider decides not to provide the support which the needs assessment said was the responsibility of the provider. The student appeals against the provider's decision. The dispute is referred to SFE's Exceptional Case Process. The Exceptional Case Team considers the matter and decides to provide interim support while the provider considers the student's appeal. The provider completes its review of the student's appeal and agrees to provide the support outlined in the needs assessment.

Before induction

27. Providers should do all they can reasonably be expected to do to find out if a student has a disability. When making enquiries about disability, providers should

²¹ See, page 7 of SFE's 2016/17 guidance and pages 22-23 of SFW's 2016/17 guidance

take care to respect the dignity of the student and treat their personal information confidentially, having regard to their obligations towards sensitive personal data.

28. Providers should make available clear information about course content and methods of teaching. This should include clear information about any placements, field trips, course visits etc. to enable the student to make an informed decision about the suitability of the course, and aspects of the course where they are likely to require adjustments.²²
29. Providers should respond to any information a student has given about a disability or his or her support needs. Providers should discuss these needs with the student and agree what is reasonable for the provider to do in the circumstances. A student should be referred to other sources of funding and support where appropriate. It is important to ensure that student has had an appropriate assessment of their needs.
30. It is good practice for providers to offer a guided tour of the campus and facilities before term starts. This will be particularly important in the case of students with mobility needs that affect their ability to independently orientate themselves around the campus, such as students with vision impairment

During induction

31. Providers should promptly put in place agreed adjustments. If an additional assessment is required then a provider should put in place provisional adjustments pending the assessment.
32. It is good practice to explain why any recommended adjustments are not being implemented, or are being provided by alternative means, and why this is considered reasonable. If a provider refuses a recommended adjustment because it relates to an identified competence standard, it should explain the rationale to the student.

²² Guidance for Higher Education Providers on their consumer law obligations in relation to course information is provided by the Competition and Markets Authority: <https://www.gov.uk/government/publications/higher-education-consumer-law-advice-for-providers>

33. If there is a delay in implementing agreed support arrangements, or in providing equipment for a student, then the provider should take whatever steps it to minimise any disadvantage to the student as a result of that delay. For example, the provider might loan the student equipment, or offer additional tutorial support. If the student requires an extension to a course deadline as a result of such a delay, consideration should be given to any knock-on effect of such an extension on the student's general workload.
34. Providers should ensure that early information is provided about:
- 34.1. What is expected of students – as members of the student body in general and in relation to their specific course, school, or department.
 - 34.2. Where to go for support and advice.
35. Providers should create a safe environment to encourage students who have not declared their disability to do so at any time.
36. It is important to ensure that personal tutors are alert to students whose mitigating (extenuating) circumstances may indicate an underlying and potentially undisclosed disability.

Providing support

Accessing support

37. It is good practice to publicise information directing students to the disability support service's website, but that might not be sufficient. It is good practice to follow up with students to ensure that he or she is accessing and benefiting from the support which is available.
38. Providers should support their students in developing self-advocacy skills so that they have the confidence to know when and how to ask for help, and are able to articulate their needs and concerns.
39. Information about a student's physical or mental health is "sensitive personal data" and must be stored and used in line with the requirements of the Data

Protection Act 1998²³. It is good practice to agree with the student what (if any) information about his or her disability should be shared and with whom.

Reasonable adjustments should be made in line with a student's request for confidentiality. If the student asks for disclosure of a disability to be kept confidential, for example from academic staff, it should be explained to the student that a likely consequence of this is that reasonable adjustments might have to be provided in an alternative way, that a less effective adjustment is provided, or that appropriate and tailored support cannot be put in place.

40. Providers may need to share information about a student's disability with a placement host in order to meet their responsibilities to provide a good quality learning experience through the placement, but they should not do so without the student's consent. It is good practice to agree with the student what information is to be shared with placement providers, and to put in place a support plan for placements. It is good practice for the provider to monitor the placement to ensure that the agreed support plan is in place so that the student is able to participate fully in the placement. In some cases, there may be health and safety or safeguarding concerns in relation to a placement opportunity which mean that it is necessary to ask the student to agree to disclose his or her disability before the placement can be undertaken.

Flexible policies and procedures

41. Providers should be flexible in applying policies and procedures and, when doing so, should ask themselves the following questions:
- 41.1. Is the student disabled?
 - 41.2. If so, what provisions (for example, policies and procedures) are we now applying to him or her?
 - 41.3. Do these provisions place him or her at a disadvantage?
 - 41.4. What could be done to prevent that disadvantage?
 - 41.5. Would it be reasonable for us to take those steps?

²³ See the Information Commissioner's guidance: <https://ico.org.uk/for-organisations/guide-to-data-protection/>

CASE STUDY: How to apply the disability questions

A student's Head of Department writes to a student to say that he is at risk of being withdrawn from his course as a result of poor attendance. The student tells the HoD that he has recently been diagnosed with depression, and provides medical evidence from his doctor. The HoD considers whether the provider's attendance requirements place the student at a disadvantage as a result of her disability. She decides that they are, having looked at the student's medical evidence. The HoD decides that it would be reasonable to adjust the normal requirements. She refers the student to student support services so that a support plan can be put in place for him.

Making reasonable adjustments

42. Providers should try to make the design and delivery of their teaching materials as inclusive as possible. If courses and programmes are designed and delivered with the needs of disabled students in mind, then providers will not need to make as many individual reasonable adjustments for those students.
43. Providers should keep an open mind about what adjustments can be made for a student, and should discuss possible adjustments with him or her. Reasonable adjustments should be made on a case by case basis. Providers should keep a record of any reasonable adjustments made, including whose opinion or advice was obtained, and the reasons for the decisions made.
44. It is good practice to keep adjustments under review and to encourage a student to report any problems or shortfall in support, or change in their condition, and to act on it. However, it is not good practice to insist that the student reapplies for the same adjustments every year unless his or her condition is likely to fluctuate.
45. Providers should agree with students how best to communicate the student's agreed support arrangements to the relevant teaching and support staff, to ensure that those arrangements are put in place.
46. If teaching methods change (for example, the course changes from modular assessments and examinations to a final year project), it is good practice to

discuss the change with students and for the provider to review the arrangements in place to ensure that they are still appropriate.

47. Reasonable efforts should be made to enable students to attend field trips and other course-related visits wherever possible.

48. Providers should be alert to any issues arising within the cohort – for example, problems with group work, allegations of bullying, and ensure that appropriate support is put in place for all students involved.

Mitigating (extenuating) circumstances procedures

49. Adjustments should ensure disabled students are assessed on a level playing field with their peers and so that they should not need to make a claim for mitigating (extenuating) circumstances. However, a student may need to make such a claim if:

49.1. He or she experiences an acute episode or worsening of his or her condition which means that the reasonable adjustments in place are no longer sufficient.

49.2. There was a shortcoming or failure in the support arrangements.

50. In some cases, a student may require additional time to complete assessed work and this will be part of his or her agreed adjustments. However, in many cases students with appropriate support in place ought not to require routine extensions to deadlines. Those students may still need an extension where there is evidence of a breakdown in support, or an acute episode or worsening of their condition which means that the adjustments in place were not sufficient. In those circumstances, consideration should be given to any knock-on effects such an extension might have on the student's general work load.

51. Providers should be alert to any fitness to study or fitness to practise concerns and should work with the student to try to overcome concerns. Formal fitness proceedings relating to a student's mental or physical health should be a last resort.

52. Providers should ensure that students are treated fairly²⁴ and consistently with students on other courses and in other departments unless there are sound (and explained) reasons for treating them differently.

Attendance concerns

53. It is good practice for providers to have in place an attendance policy setting out its expectations of students. Such a policy helps the provider to monitor a student's engagement, and to identify any concerns at an early stage. The policy should be sufficiently flexible to take account of students whose attendance is unavoidably affected by disability-related illness. Providers should consider whether a specified level of attendance is a competence standard. If a student has poor levels of attendance and support arrangements do not improve this, it may be appropriate to implement fitness to study procedures.

CASE STUDY: Application of fitness to study procedure where there are attendance concerns

The Programme Leader for a nursing programme notices that a student's attendance has fallen below the overall attendance rate of 75%. The Programme Leader contacts the student's personal tutor and requests that the tutor arrange a meeting with the student. The personal tutor meets with the student and discussed the student's poor attendance. The student explains that he has been unwell but is doing his best to attend important lectures. The tutor helps the student to make an appointment with the Student Support Service. The student does not attend the appointment the Support Service and does not respond to emails from the service. His attendance rapidly deteriorates. The Programme Leader asks the student to attend a formal meeting to discuss concerns about his fitness to study.

When things go wrong

Complaints and academic appeals

54. The general principles of the Good Practice Framework: handling complaints and academic appeals apply to all students whether or not they have a disability. This section draws out some issues which are of particular importance in this context.

Accessibility and clarity

55. Providers should write their regulations and procedures clearly and in straightforward language and make them accessible to students. This is especially important for students with specific learning difficulties.

56. Students should have access to support services to assist them in accessing and navigating processes. A disabled student may require some assistance completing the complaint or academic appeal form. Forms should be provided in hard copy formats which comply with clear print standards and in electronic formats which are compatible with commonly used assistive technologies such as screen readers²⁵.

57. Providers should ensure that any decisions taken are explained clearly and in accessible formats, having regard to any relevant recommendations in the student's needs assessment.

58. Procedures should allow for students to appoint a representative. A Students' Union adviser will normally be best placed to support the student because he or she will be familiar with the provider's processes.²⁶ However, some disabled students may require additional external support. Processes should have flexibility to allow this where there is a genuine need.

59. In some cases it may be reasonable to make adjustments to the provider's normal complaints or academic appeals processes to remove any disadvantage

²⁵ The UKAAF guidance on creating clear and large print documents:

<https://help.rnib.org.uk/help/daily-living/technology/large-print-clear-print>

²⁶ "It is good practice to provide students with access to support and advice and, where it is not practicable to do so internally, providers should consider making arrangements for students to access support services at neighbouring institutions, partner providers or other local community services." **The Good Practice Framework: handling complaints and academic appeals.**

to the student. For example, it may be reasonable to adjust deadlines. It is reasonable to expect students to take responsibility for their own learning experience and to access a provider's processes such as mitigating or extenuating circumstances, academic appeals and complaints procedures within the prescribed time frames. However, some disabilities, for example, some mental health conditions, may impair a student's ability to engage with processes or to meet deadlines. Providers should consider the likely impact a disability may have on a student, and any worsening of a condition, and to show some flexibility in its processes where there is evidence that the student's disability impaired their ability to properly engage with the provider's processes at the prescribed time. It is good practice to document cases where late submission is accepted.

CASE STUDY: Late submission

A student has mental health difficulties and receives support from the provider's Mental Health Advisor. She submits an appeal to the provider because she missed an examination because of her ongoing mental health difficulties. Her appeal is submitted late and she says that this is because she has difficulty in meeting deadlines because of her disability. This is supported by the Mental Health Advisor. The provider should consider whether its appeal procedures are placing the student at a disadvantage because of her disability, and whether it would be reasonable to adjust those procedures, for example by extending the deadline, to remove that disadvantage.

Proportionality, timeliness and fairness

60. The early resolution stage of a provider's complaints procedures gives the provider the opportunity to resolve straightforward concerns quickly, without apportioning blame. For example, a student who complains that his or her agreed support has not been put in place is likely to be more interested in getting the support implemented than in finding out whose fault it was that the support has been delayed.

61. Mediation may be helpful in resolving disputes between students, or between staff members and a student with a disability, for example, where the complaint

arises from a lack of understanding, or perceived lack of understanding, of the student's disability. The provider's disability support services can play an important role in this process.

62. There may be particular reasons for expediting the complaints or academic appeals procedure, for example, because the student has severe anxiety.
63. If a student with a known disability has not been properly supported a provider should consider how this may have affected the student's academic progress, even if the provider was not at fault. It may be reasonable to permit a further attempt to allow a student to demonstrate his or her academic ability.
64. Sometimes students obtain evidence of a disability after their assessment or examination. In those cases, it is good practice for the provider to consider whether or not to accept the student's new evidence. In reaching that decision, the provider should consider whether the student could reasonably have been expected to know about the disability at an earlier stage; and how soon the diagnosis was made after the affected assessments.

Independence and confidentiality

65. Students with complex health difficulties may come into contact with more members of staff than other students. It may be difficult to identify a staff member who is sufficiently removed from any earlier process to investigate a complaint or consider an academic appeal. It may be possible to ask a staff member from another part of the provider to investigate. Where this is not possible, the provider may be able to consult with the student in selecting an investigator in whom he or she would have confidence.
66. If a student complains about the support services the provider should direct the student to other sources of support for the student.
67. It is good practice to ensure that sensitive information is kept confidential as far as possible, and is shared only with those who need to see it.

Improving the student experience

68. It is good practice for providers to learn from complaints and academic appeals, and to ensure that it shares this learning with teaching, research and support staff. Providers should consider whether it is necessary to provide specific staff

training following a complaint, for example to ensure that staff have a sound understanding of the learning needs of a student with a particular disability.

Disciplinary procedures

69. A student may display inappropriate behaviour as a symptom of his or her disability and this may cause disruption or offence to other students or staff. Care should be taken to explain to the student why the behaviour is causing disruption or offence. A buddying or mentoring system may be helpful. In some cases it may help to use a form of mediation or conciliation between the student and those affected by the behaviour.

70. In extreme cases, if a student's behaviour is causing significant concern, a provider may consider whether to involve its fitness to study policy. This may be an alternative to disciplinary action if the student's behaviour is such that it is diminishing the learning experience of other students, or staff or students require protection.

71. A disabled student may breach the student code of conduct for reasons entirely unrelated to their disability. In such cases the provider may take disciplinary action in the same way as it would for any other student. However, the provider should consider whether reasonable adjustments need be made to its normal disciplinary procedures, and how best to support the student through the process.

CASE STUDY: Discipline procedures and disability

A first-year student (S) who is on the autistic spectrum, decides to move to London to begin a course in film production. In one of his lectures S meets a female student and they become friends. Later in the semester S starts to visit her at her work on placement when he has free time. She asks S to stop coming to her workplace because she feels uncomfortable. S continues to do so, but less frequently. The other student makes a complaint to her provider and states S is harassing her. The provider decides to handle the disciplinary issue informally. The provider asks S's mentor to meet with him. The mentor explains to S that his behaviour is making the other student feel uncomfortable. S agrees not to visit her workplace and explains that he did not realise how she felt.

Fitness to study

72. If a disabled student is unable to meet the requirements of the course, with reasonable adjustments in place, consideration should be given to permitting an intermission on health grounds (where health is likely to improve). If the student declines to intermit it may be necessary to suspend their studies.

Fitness to practise

73. Fitness to practise concerns may arise because of a student's mental or physical health, behaviour, or ability to meet the required competences. Those concerns may not be related to the student's disability. Any fitness to practise concerns should be carefully documented and discussed with the student. Formal fitness to practise processes should be commenced if all else fails.

74. If fitness to practise concerns stem from an incident or series of incidents, and there is a dispute about what occurred, the student should be given a fair opportunity to respond to the accusations (for example, at a disciplinary hearing). The provider needs to reach a fair conclusion about precisely what occurred before it considers fitness to practise matters.

Completion of procedures

75. Providers should follow the OIA's Completion of Procedures Letter guidance.²⁷

Useful resources

Birmingham University "Transitions to adulthood" study published in 2015 http://www.rnib.org.uk/who-we-are-knowledge-and-research-hub-research-reports-education-research/transitions-adulthood
Competition and Markets Authority Higher education consumer law advice for providers https://www.gov.uk/government/publications/higher-education-consumer-law-advice-for-providers
Equality and Human Rights Commission: Equality Act 2010 Technical Guidance on Further and Higher Education https://www.equalityhumanrights.com/sites/default/files/equalityact2010-technicalguidance-feandhe-2015.pdf

²⁷ <http://www.oiahe.org.uk/media/100365/oia-guidance-note-may-2016.pdf>

<p>General Medical Council: Guidance on health and disability in education and training: http://www.gmc-uk.org/education/12680.asp http://www.gmc-uk.org/education/undergraduate/8_confidentiality_and_disclosure.asp http://www.gmc-uk.org/education/undergraduate/gateways_guidance.asp</p>
<p>HCPC: "Health, disability and becoming a health and care professional": http://www.hcpc-uk.org/assets/documents/10004D79Healthdisabilityandbecomingahealthandcareprofessional.pdf</p>
<p>Inclusive Teaching and Learning in Higher Education as a route to Excellence: report by the Disabled Students Sector Leadership Group: https://www.gov.uk/government/publications/inclusive-teaching-and-learning-in-higher-education</p>
<p>Information Commissioner: https://ico.org.uk/for-organisations/guide-to-data-protection/</p>
<p>Law Society: Equality and diversity requirements handbook: http://www.lawsociety.org.uk/support-services/advice/practice-notes/equality-and-diversity-requirements--sra-handbook/</p>
<p>National Union of Teachers: disabled teachers: https://www.teachers.org.uk/equality/disabled-teachers</p>
<p>OIA guidance note on completion of procedures http://www.oiahe.org.uk/media/100365/oia-guidance-note-may-2016.pdf</p>
<p>OIA's Good Practice Framework: handling complaints and academic appeals: http://www.oiahe.org.uk/media/96361/oia-good-practice-framework.pdf</p>
<p>QAA Quality Code, Chapter B9, Academic appeals and student complaints: http://www.qaa.ac.uk/publications/information-and-guidance/uk-quality-code-for-higher-education-chapter-b9-academic-appeals-and-student-complaints#.WiiWiVOLSUK</p>
<p>Scope: Social model of disability http://www.scope.org.uk/about-us/our-brand/social-model-of-disability</p>
<p>Student Finance England Guidance on DSA: http://www.practitioners.slc.co.uk/policy-information/guidance-chapters.aspx</p>
<p>Student Finance Wales Guidance on DSA: http://www.studentfinancewales.co.uk/practitioners/policy-information/guidance-chapters.aspx#.WE-iwHnctOx</p>
<p>UKAAF guidance on clear and large print documents: https://help.rnib.org.uk/help/daily-living/technology/large-print-clear-print</p>



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Good practice framework - supporting disabled students

The Good Practice Framework: handling student complaints and academic appeals was published in December 2014 and revised in December 2016. This section sets out some further good practice guidance on supporting disabled students.

The OIA has consulted with the Good Practice Framework Steering Group and the OIA's Disability Experts Panel in preparing the guidance.

The final version will be published in summer 2017.

The OIA welcomes comments on the clarity of the draft. Please complete this short questionnaire and return to consultation@oiahe.org.uk.

If you would like assistance in completing this consultation please contact accessibility@oiahe.org.uk or call 0118 959 9813.

Please return your submission by 31 May 2017

About You

I am replying on behalf of:
(Please mark with an 'X')

<input type="checkbox"/>	A higher education provider
<input type="checkbox"/>	An awarding body
<input type="checkbox"/>	Representing a student organisation
<input type="checkbox"/>	Another organisation
<input type="checkbox"/>	As an individual

If you are happy to provide us with your contact details, please enter these here:

Name:

Name of Provider/
Other Organisation:

Contact Details:

**The OIA may wish to quote comments from the survey responses.
Please choose one option:**

(Please mark with an 'X')

<input type="checkbox"/>	Yes
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<input type="checkbox"/>	No
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The guidance has seven main sections. Please let us know if each section is clear and if you have any comments by completing the questions below.

The guidance is clear:

(Please mark with an 'X')

	Yes	No
What the law says	<input type="checkbox"/>	<input type="checkbox"/>
Removing obstacles to learning	<input type="checkbox"/>	<input type="checkbox"/>
Disabled Students Allowance	<input type="checkbox"/>	<input type="checkbox"/>
Before induction	<input type="checkbox"/>	<input type="checkbox"/>
During induction	<input type="checkbox"/>	<input type="checkbox"/>
Providing support	<input type="checkbox"/>	<input type="checkbox"/>
When things go wrong	<input type="checkbox"/>	<input type="checkbox"/>

Please list other issues you would like to see addressed in the following sections:

Removing obstacles to learning

Before and during induction

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Providing support

--

When things go wrong

--

Are the case studies are clear and helpful?

<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
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Please add any comments

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Are there other issues or specific case studies that you would like to see included in the draft guidance?

Please identify any other resources you would find useful

Thank you. Please return this questionnaire to consultation@oiahe.org.uk.