office of the independent adjudicator

'for students in higher education'

The good practice framework:

Supporting disabled students

ACADEMIC REGISTRARS COUNCIL

ASSOCIATION OF HEADS OF UNIVERSITY ADMINISTRATION

BROMLEY SCHOOLS' COLLEGIATE
Excellence Through Experience

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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**.

2 Where providers are supporting disabled students the principles of accessibility, fairness, proportionality and confidentiality are particularly important. A provider's procedures should be easy to navigate and give clear information about how to access advice and support. Information provided by disabled students should 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.

3 This section of the Good Practice Framework sets out some further good practice guidance for providers to consider when supporting disabled students. It 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 disabled students. Guidance on equality law can be found in the following Equality and Human Rights Commission publications:[1]

- The Equality Act 2010 Technical Guidance on Further and Higher Education (The Equality Act 2010 technical guidance)
- 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."

"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 their disability, unless the treatment is a proportionate means of achieving a legitimate aim.

1 Please see Useful Resources, below, for links to all of the documents referenced in this section of the Good Practice Framework.

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:

7.4.1 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]

7.4.2 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
- 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]

7.4.3 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

2 Equality Act 2010 technical guidance.

3 Equality Act 2010 technical guidance.

4 Equality Act 2010 technical guidance.

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 they have attained the standard.

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".

CASE STUDY 1: Is it discrimination?

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

- 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 the criteria 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.

Removing obstacles to learning

Inclusive practice and anticipatory reasonable adjustments

10 According to the social model of disability, people with impairments are 'disabled' by the barriers operating in society that exclude and discriminate against them; discrimination, exclusion and oppression are not the inevitable consequence of impairment. The social model of disability was developed by disabled people in direct opposition to the medical and charitable models of disability. The model "was developed as a direct challenge to the prevailing models of disability that viewed disability as an individual, medical problem that needed to be prevented, cured or contained; and/or as a charitable issue that viewed disabled people as unfortunates who needed to be pitied and catered for by segregated, charitable services." The social model is a useful tool for understanding disability and identifying "barriers that disable people with impairment and how these barriers can be removed, minimised or countered by other forms of support."[5]

11 Providers have an anticipatory duty to make reasonable adjustments for disabled students, and should work with disabled students and disabled people's organisations when considering how best to remove barriers to learning. Student Finance England's (SFE) 2017/18 DSA Guidance (New Students) 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."

A similar approach is taken by Student Finance Wales (SFW).[6]

12 The following are examples of some of the simple changes which are likely to assist in creating a more inclusive learning environment:

- Improving the accessibility of learning materials and procedures
- Making teaching materials accessible on the virtual learning environment
- Allowing or facilitating the recording of teaching
- Ensuring reading lists are focussed, up-to-date, and available in advance of modules starting
- Use of plain English and clear presentation in lectures
- Using a range of assessment methods.[7]

5 The Social Model of Disability Factsheet – Inclusion London.

6 Student Finance Wales Guidance on DSA.

7 Drawn from Inclusive Teaching and Learning in Higher Education as a route to Excellence report.

13 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 and course materials in an accessible format compatible with assistive technologies
- 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
- Speech recognition software for lecturers so that students can read in real time and have a transcript ready made.

14 It is important to note that these are examples rather than an exhaustive list. Providers will need to explore with the individual student the arrangements which will enable them to access their studies.

CASE STUDY 2: Inclusive teaching and learning

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 disabled students and therefore ensures the module has a range of alternative formative and summative methods for students to demonstrate they have achieved learning outcomes. The curriculum content itself remains the same. 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

15 Providers should ensure that their student support services are adequately resourced and that students are advised of the support that is available. Support staff, teaching staff and supervisors should be given appropriate training, depending on the learning needs of staff and students, to help them understand the needs of students.

CASE STUDY 3: Good practice – 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. Department Heads are then tasked with disseminating the knowledge gained within their department.

CASE STUDY 4: Good practice – student support services

A provider contacts all applicants who have been offered a place and who have declared on their application that they are disabled. The provider offers a meeting or phone call to discuss their needs with a student support adviser before they enrol. The provider explains to the student in advance what will be discussed and sends them a link to student support services' website. The provider's students' union Facebook page also has a link to the service's website.

Student disclosure

16 Students should be encouraged to disclose that they are disabled 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 disclosing information about the assistance they need.[8] Providers should also draw students' attention to the support available for disabled students and the benefit of seeking it at an early stage.

17 Providers must make reasonable adjustments for a student or a prospective student (in relation to the admissions arrangements) when they know, or could reasonably be expected to have known, that the student is disabled. Providers should ensure that staff are aware of what to do if a student discloses to them that they are disabled. Once a student has told a member of staff that they are disabled the provider will not be able to claim that it did not know about it 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. It would be good practice for the staff member to make a confidential record of that discussion with the student. 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 they are disabled, and access to advice about what to do in those circumstances.

8 See, for example, General Medical Council: Gateways guidance: 8. Confidentiality and disclosure.

CASE STUDY 5: Good practice – disclosure of a disability

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

Appropriate procedures

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

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

19.1 Procedures which can be followed if a student is temporarily unable to engage with their studies and wishes to take time away. These procedures should include guidance specific to international students and students on professional programmes, and a process for the student's planned return to study.

19.2 "Support for study" procedures which can be followed when there are concerns that a student's mental or physical health is significantly affecting their 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 student's planned return to study, including assessing their fitness to return.

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

19.4 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.

20 Where a provider begins fitness to practise or support for study procedures, it should ensure that:

20.1 The student understands the process which is being followed, and that its purpose is supportive;

20.2 The student, and any other students involved, can access appropriate support through the process for example by a disability adviser and/or students' union adviser;[9]

20.3 Appropriate and proportionate evidence is obtained regarding the student's mental or physical health;

20.4 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;

20.5 The decisions reached are reasonable and proportionate, and are explained clearly to the student;

20.6 The student is given information about how to appeal.

21 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 Handbook, the National Union of Teachers' guidance on supporting disabled teachers and the General Medical Council's guidance on making medical education more accessible: Gateways to the Profession.

Assessing competence standards

22 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. 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 information, and to share it with students. Information on competence standards, assessment and reasonable adjustments should be made available to students so they can make informed decisions when applying to courses.[10]

9 "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.

10 Equality Challenge Unit: Guidance on competence standards and reasonable adjustments.

23 Section 7.34 of the Equality Act 2010 technical guidance 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."[11]

24 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.

Short term conditions

25 Providers should treat fairly students with short term conditions such as 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.

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?

Where a 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?
- Ensured that information about these reasonable adjustments is known to staff and students so that they are incorporated into students' normal working practices?

11 Equality Act 2010 technical guidance.

CASE STUDY 6: Good practice – 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 (only to record his answers). This ensures that the assessment still tests the student's ability to reproduce and apply knowledge appropriately, but minimises the disadvantage to the student.

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.[12]

3: A student with a visual impairment studying a course that requires extensive background reading has difficulty in accessing necessary reference materials. 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 her 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.

With this support in place the student is able to access the necessary materials without compromising the competence standard.[13]

12 Adapted from Health and Care Professions Council guide: Health, disability and becoming a health and care professional.

13 This case study draws on the "Transition to adulthood" study published by the University of Birmingham.

Disabled Students' Allowances (DSAs)

26 SFE and SFW have issued guidance for students applying for DSAs. The guidance explains that DSAs are available to disabled students to assist with the additional costs they are obliged to incur while studying because they are disabled. 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, or to cover study costs that any student might have regardless of whether they are disabled. Providers should anticipate and respond to the needs of its disabled students where it is reasonable to do so.

27 SFE's 2017/18 DSA Guidance (New Students) says:

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

28 DSAs 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 DSAs needs assessor to consider the barriers that need to be addressed and set out the strategies that are necessary to overcome the barriers. The needs assessor identifies what type of support is essential to enable the student to undertake their chosen course and makes recommendations for DSAs funded support. The assessor also notes any need for support identified that falls outside the scope of DSAs funding. A provider should determine the support that is required, giving consideration to the needs assessment report, and how it should be delivered, taking into account the individual needs of the student.[14] Once the maximum amount for DSAs 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

29 If a provider and student do not agree about the support which the provider has made available, the student can complain to the provider about the decision. The provider may have a special procedure for handling such complaints, or it may direct the student to its student complaints procedures. It is important to ensure that such complaints are dealt with promptly so that the student is not disadvantaged by a delay in the implementation of their support. If the student is not satisfied with the outcome of the provider's complaints procedure they may bring a complaint to the OIA.

30 Where the student and the provider do not agree, the Exceptional Case Process may consider whether the additional support should be funded through DSAs. Interim DSAs may be available pending the outcome of the complaint and any consideration by the OIA if the student is eligible for DSAs.

14 See, page 10 of SFE's 2017/18 DSA Guidance (New Students) and page 23 of SFW's 2017/18 DSA guidance.

CASE STUDY 7: Student unhappy with support provided by DSAs and provider

A disabled student undergoes a needs assessment. The needs assessor identifies strategies which will work for the student to provide support which is essential for her to access her course. Some of the support is eligible for DSAs funding and SFE assessors agree to fund it. Additional support needs are not eligible for DSAs and the student asks the provider to meet her needs in those areas.

The provider decides not to provide the additional support. The student complains to the provider about its 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 complaint.[15] The provider completes its review of the student's complaint promptly and agrees to provide the additional support outlined in the needs assessment.

15 Please see SFE and SFW for further information about the types of DSA disputes that would be considered by the Exceptional Case Team.

Before induction

31 Providers should do all they can reasonably be expected to do to find out if a student is disabled. When making enquiries about disability, providers should take care to respect the dignity of the student and treat their personal information confidentially, having regard to their obligations towards sensitive personal data.

32 Providers should make available clear information about course content and methods of teaching and assessment. This should include clear information about competence standards, and any placements, field trips, course-related 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.[16] It is good practice to publish information about the sort of support the provider offers to students with different types of impairment.

33 Providers should respond to any information a student has given about a disability or their support needs. Providers should discuss these needs with the student, and where necessary academic staff with knowledge of the course, 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 the student has had an appropriate assessment of their needs.

34 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 may affect their ability to independently orientate themselves around the campus, such as students with visual impairment.

16 Guidance for Higher Education Providers on their consumer law obligations in relation to course information is provided by the Competition and Markets Authority.

During induction

35 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.

36 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.

37 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 can 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.

38 Providers should ensure that early information is provided about:

38.1 What is expected of students – as members of the student body in general and in relation to their specific course, school, or department.

38.2 Where to go for support and advice.

39 Providers should create a safe environment to encourage students who have not declared that they are disabled to disclose this at any time.

40 It is important to ensure that personal tutors, and other staff who are involved in mitigating (extenuating) circumstances procedures, are alert to students whose circumstances may indicate an underlying and potentially undisclosed disability.

Providing support

Accessing support

41 It is good practice to publicise information directing students to the student support services' website, but that might not be sufficient. It is good practice to follow up with individual students to ensure that they are accessing and benefiting from the support which is available.

42 Providers should also support their students in developing self-advocacy skills, for example by pointing them towards local services and disabled people's organisations, so that they have the confidence to know when and how to ask for help, and are able to articulate their needs and concerns.

43 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 Data Protection legislation.[17] It is good practice to agree with the student what (if any) information about their 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.

44 Providers may need to share information about a student's impairment 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. Providers should discuss practical arrangements for the placement with the student in advance so that potential obstacles can be identified and effective adjustments put in place. 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 that they are disabled before the placement can be undertaken.

Flexible policies and procedures

45 Providers should be flexible in applying policies and procedures and, when doing so, should ask themselves the following questions:

45.1 Is the student disabled?

45.2 If so, what provisions (for example, policies and procedures) are we now applying to him or her?

45.3 Do these provisions place him or her at a disadvantage?

17 See the Information Commissioner's guidance.

45.4 What could be done to prevent that disadvantage?

45.5 Would it be reasonable for us to take those steps?

CASE STUDY 8: Applying the disability questions

A student's Head of Department (HoD) 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 his mental health condition. She decides that they do, 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

46 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 in consultation with disabled students and disabled people's organisations, then providers may not need to make as many individual reasonable adjustments for those students.

47 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.

48 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 their condition is likely to fluctuate.

49 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.

50 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.

51 Providers should consider how to ensure that field trips and other course-related visits are inclusive of all students. Reasonable efforts should be made to enable students to attend wherever possible. Where this is not possible, the provider should consider alternative methods of achieving the learning outcomes. For example, the student may be able to undertake certain aspects of fieldwork in a virtual environment created with samples and photographs.

52 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

53 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 disabled student may need to make such a claim if, for example:

53.1 They experience an acute episode or worsening of their condition which means that the reasonable adjustments in place are no longer sufficient.

53.2 There was a shortcoming or failure in the support arrangements, or arrangements were not implemented in time.

54 Extra flexibility may be required where the student's condition fluctuates. For example, it may not be reasonable to expect the student to produce medical evidence each time they wish to make a claim for mitigating (extenuating) circumstances.

CASE STUDY 9: Good practice – fluctuating condition

A student has Rheumatoid Arthritis. She has regular flare-ups which are acutely painful and last two or three days. During the flare-ups she is unable to write or type. The provider agrees that she can have extensions to her course work deadlines when her ability to work is affected by a flare-up. It adjusts its usual mitigating circumstances processes so that she is not required to submit medical evidence of her condition each time she requires an extension.

55 In some cases, a student may require additional time to complete assessed work and this will be part of their 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.

56 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.

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

Attendance concerns

58 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. 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 support for study procedures.

CASE STUDY 10: Good practice – application of support for study procedure where there are attendance concerns

The Course Leader for a modern language course notices that a student's attendance has fallen below the overall attendance rate of 75%. The Course 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 discusses 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 student support services. The student does not attend the appointment with the support service and does not respond to emails from the service, or from the personal tutor. His attendance rapidly deteriorates.

The Programme Leader asks the student to attend an informal meeting under the support for study process to discuss concerns about his fitness to study. A member of the support service attends the meeting with the student and a plan is agreed to support the student to improve his attendance and catch up on the work he has missed. The student makes appointments with his GP and with the provider's counselling service. He has regular meetings with his personal tutor to review his progress.

When things go wrong

Complaints and academic appeals

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

Accessibility and clarity

60 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 and visual impairment.

61 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 readers.[18]

62 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.

63 Procedures should allow for students to appoint a representative. A students' union adviser will normally be best placed to support the student because they will be familiar with the provider's processes.[19] However, some disabled students may require additional external support. Processes should have flexibility to allow this where there is a genuine need. The representative should be permitted to speak on the student's behalf if the student might otherwise be at a disadvantage.

64 In some cases it may be reasonable to make adjustments to the provider's normal complaints or academic appeals processes to remove any disadvantage 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 (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 an impairment 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 ability to properly engage with

18 UK Association for Accessible Formats guidance on creating clear and large print documents.

19 "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.

the provider's processes at the prescribed time was impaired. It is good practice to document cases where late submission is accepted, and the reasons for rejecting late submission.

CASE STUDY 11: Good practice – late submission

A student has mental health difficulties and receives support from the provider's mental health adviser. She submits an appeal to the provider after missing 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 mental health. This is supported by the mental health adviser. The provider considers whether its appeal procedures are placing the student at a disadvantage because of her mental health, and whether it would be reasonable to adjust those procedures, for example by extending the deadline, to remove that disadvantage. The provider agrees to accept the appeal for consideration.

Proportionality, timeliness and fairness

65 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 their 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.

66 Mediation may be helpful in resolving disputes between students, or between staff members and a disabled student, for example, where the complaint arises from a lack of understanding, or perceived lack of understanding, of the student's concerns. The provider's student support services can play an important role in this process.

67 There may be particular reasons for expediting the complaints or academic appeals procedure, for example, because the student has severe anxiety.

68 If a disabled student has not been receiving the support they need, the provider should consider how this may have affected the student's academic progress, whether or not the provider was at fault. It may be reasonable to permit a further attempt to allow a student to demonstrate their academic ability.

69 Sometimes students do not tell the provider that they are disabled until after their assessment or examination. In those cases, the provider will need to consider what action to take. If the information comes to light during the student's appeal then the provider will need to consider whether its appeal procedures or progression regulations are putting the student at a substantial disadvantage as a result of their impairment. If they are, the provider will need to decide what it should reasonably do at that stage to remove that disadvantage.

70 If the information comes to light after the student has been withdrawn, the provider should nevertheless consider whether it would be reasonable to reconsider the student's case. In reaching that decision, the provider should consider whether the student could reasonably have been expected to know about their impairment at an earlier stage; and how soon after the affected assessments the student notified the provider.

CASE STUDY 12: Good practice – late notification

1. A student fails her end of year examinations and is withdrawn from her course following an unsuccessful appeal. Eight months later she sees an Educational Psychologist who tells her that she has mild dyslexia. She sends a copy of her Educational Psychologist's report to the provider nine months after the conclusion of her academic appeal.

The provider considers whether it should reopen the student's academic appeal. It notes that the student's personal tutor suggested to the student that she should go to student support services and ask for a dyslexia screening after he had marked one of her assessments. The student did not go.

The provider decides not to reopen the student's academic appeal and writes to her explaining that this is because she could reasonably have discovered her impairment at an earlier stage, and that the information came to light too long after the assessments.

2. A student fails two of his end of year examinations and his marks in other examinations are significantly lower than expected. He is withdrawn. He does not submit an appeal and the deadline for submitting one passes. His friends have been very worried about him for several weeks and insist that he goes to his GP. He sees his GP two weeks later and she diagnoses depression.

With the support of a students' union adviser, the student submits an academic appeal after the deadline and asks for his mental health condition to be taken into account. He submits a letter from his GP saying that the student's depression meant that he was not able to make rational judgements about his own health, and would not have been able to engage with the provider's appeal processes.

The provider agrees to consider the student's academic appeal because the medical evidence was produced soon after the examinations and says that he was not able to engage with the appeal procedures at the appropriate time. Having considered the student's appeal the provider grants the student resit opportunities for the two failed examinations. It offers to waive its regulation which prevents students from resitting examinations that they have passed so that the student can resit the examinations in which he has underperformed. The provider's student support services puts in place a support plan for the student.

Independence and confidentiality

71 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 take on this role. Where this is not possible, the provider may be able to consult with the student so that it can select someone in whom they would have confidence.

72 If a student complains about the support services the provider should direct the student to other sources of support for the student.

73 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

74 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 working collaboratively with students and representative student bodies to improve their processes. 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 impairment.

Disciplinary procedures

75 A student may display behaviour as a consequence of their impairment which causes 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 but the nature of support offered should be tailored to the individual and the particular circumstances. In some cases it may help to use a form of mediation or conciliation between the student and those affected by the behaviour.

76 In extreme cases, if a student's behaviour is causing significant concern, a provider may consider whether to involve its support for study process. 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.

77 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 13: Good practice – discipline procedures and disability

1. A first-year student (S) who is on the autism spectrum, begins 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 but he continues to do so and tries to walk home with her.

The female student is alarmed by S's behaviour and makes a complaint to her provider saying that 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. At the provider's suggestion, S writes to the female student apologising for alarming her, and explaining how autisim spectrum disorder affects the way he interacts with others.

2. A drama student was living with the effects of a traumatic brain injury which impaired her thinking skills and social behaviour, and her ability to manage her emotions. During drama workshops other students complained that the student often lost her temper and shouted at them, sometimes using offensive language, and sometimes using aggressive body language.

The course leader met with the student to discuss the concerns but she lacked insight into her difficulties and refused to acknowledge the other student's concerns. She refused to attend a meeting under the provider's support for study process or to attend an occupational health referral. The provider began disciplinary proceedings against the student and recommended that she go to the students' union for support and advice.

The students' union adviser persuaded the student to see her brain injury specialist. Following some specialist counselling the student gained a better understanding of her impairment. She attended a disciplinary meeting and explained the cause of her behaviour. She agreed to work with student support services, the course leader and her tutor to develop better coping strategies for managing her anger. Peer support was put in place to help her in social situations, and a system of prompts was developed so that others could alert the student when she was getting angry.

78 A disabled student may breach a provider's academic misconduct regulations for reasons which may be unrelated to their impairment. Where academic misconduct proceedings take place, it is important for the provider to make reasonable adjustments to the procedures. For example, the provider should consider whether to make adjustments to any oral assessment relating to the authorship of a piece of work, and to panel interviews. The provider should also consider how best to support the student through the process.

Intermissions

79 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. The provider should agree with the student the period of the intermission or notify the student of the period of suspension. In each case the provider should set out the process for returning to study, and any conditions which might apply (for example, an occupational health assessment).

80 Where the student is unable to return to their studies at the agreed time the provider should consider whether or not it would be reasonable to extend the period of intermission or suspension, and for how long. The provider should draw the student's attention to any time limits for completing the course, for example, limits set by professional bodies, and whether or not those time limits can be extended. If the student is not able to return the provider should write to them formally bringing their studies to an end.

Fitness to practise

81 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 impairment. 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.

82 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

83 At the conclusion of any academic appeal, complaint, fitness to practise or support for study, or disciplinary procedure, the provider should write to the student setting out its decision. If the outcome is unfavourable to the student, it should be communicated to the student in writing by issuing a Completion of Procedures letter as soon as possible and within 28 days. This should include a clear explanation and outline the reasons for the decision in straightforward language. This will help the student decide whether or not to pursue the matter further.

84 If the outcome is favourable to the student, the provider should write to the student explaining the outcome, and explaining how and when it will implement any remedy. It is good practice to issue a Completion of Procedures letter if requested by the student.[20]

20 Guidance Note regarding Completion of Procedures Letters.

Useful resources and footnote document references

University of Birmingham "Transition to adulthood" study published in 2015:
http://www.vision2020uk.org.uk/university-birmingham-transition-adulthood-final-summary-report-project-longitudinal-study-transitions-experiences-blind-partially-sighted-young-people-phase-2/

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 Challenge Unit: Guidance on competence standards and reasonable adjustments:
http://www.ecu.ac.uk/guidance-resources/student-recruitment-retention-attainment/student-retention/inclusive-learning-teaching/competence-standards-reasonable-adjustments/

Equality and Human Rights Commission:
Equality Act 2010 Technical Guidance on Further and Higher Education:
https://www.equalityhumanrights.com/en/publication-download/equality-act-2010-technical-guidance-further-and-higher-education

What equality law means for you as an education provider – further and higher education:
https://www.equalityhumanrights.com/en/publication-download/what-equality-law-means-you-education-provider-%E2%80%93-further-and-higher-education

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

HCPC: Health, disability and becoming a health and care professional:
http://www.hcpc-uk.org/assets/documents/10004D79Healthdisabilityandbecomingahealthandcareprofessional.pdf

Inclusive Teaching and Learning in Higher Education as a route to Excellence: report by the Disabled Student Sector Leadership Group: https://www.gov.uk/government/publications/inclusive-teaching-and-learning-in-higher-education

Inclusion London fact sheet:
https://www.inclusionlondon.org.uk/disability-in-london/social-model/the-social-model-of-disability-and-the-cultural-model-of-deafness/

Information Commissioner:
https://ico.org.uk/for-organisations/guide-to-data-protection/

Law Society: Equality and diversity requirements: SRA Handbook:
http://www.lawsociety.org.uk/support-services/advice/practice-notes/equality-and-diversity-requirements--sra-handbook/

National Union of Teachers: Disabled teachers:
https://www.teachers.org.uk/equality/disabled-teachers

OIA Guidance Note regarding Completion of Procedures Letters:
http://www.oiahe.org.uk/media/100365/oia-guidance-note-may-2016.pdf

OIA's Good Practice Framework: handling complaints and academic appeals:
http://www.oiahe.org.uk/providers-and-good-practice/good-practice-framework.aspx

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

Scope: Social model of disability
http://www.scope.org.uk/about-us/our-brand/social-model-of-disability

Student Finance England Guidance on DSA:
http://www.practitioners.slc.co.uk/policy/

Student Finance Wales Guidance on DSA:
http://www.studentfinancewales.co.uk/practitioners/policy-information/guidance-chapters.aspx#.WaAgNXn2ZA2

UK Association for Accessible Formats guidance on clear and large print documents:
https://www.ukaaf.org/large-print/

UKCISA International Students with Disabilities FAQs for International Officers:
https://institutions.ukcisa.org.uk/Info-for-universities-colleges--schools/Resources/Resources-for-staff/Students-with-disabilities-good-practice/International-Students-with-Disabilities-FAQs-for-International-Officers/

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