

Disability Legislation and ICT in Further and Higher Education - Essentials



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1. Disability Legislation and ICT in Further and Higher Education

Disability discrimination law applies to the services, including educational services, an institution provides to its staff, students, and third parties. The law is framed in general terms and is not intended to prevent or place barriers in the way of innovative use of technology. Reasonable adjustments should be made wherever possible and to prevent substantial disadvantage. The Disability Equality Duty reinforces the expectation and requirement that colleges and universities should be anticipatory and proactive in encouraging disabled persons to participate in tertiary education activities. Disability discrimination law applies to colleges and universities as service providers, employers and educational service providers.

2. The Legal Definition of Disability

The key legislation is the Disability Discrimination Act 1995 (DDA).

A disability exists if there is:

- a physical or mental impairment
- a substantial and long-term adverse effect
- an adverse effect on ability to carry out normal day-to-day activities.

Illnesses such as HIV, cancer and multiple sclerosis from the time they are diagnosed are included but some disabilities, such as substance addiction, are excluded.

3. Discrimination under the Law

Discrimination under the DDA can be divided into three areas:

(1) Discrimination in respect of employees

For example, in access to staff facilities and the working environment, or promotion opportunities in the workplace

(2) Discrimination in respect of goods and services excluding educational services

Examples of this could be where premises and computer facilities are hired out for conference purposes, or where the Catering School of a college has a public restaurant or the university public facing website

(3) Discrimination in respect of provision of educational services

It is unlawful to discriminate against a disabled person in the provision of educational services:

- In admissions arrangements
- In admission terms
- In refusal to accept an application

It is unlawful to discriminate against a disabled **student**

- In respect to student services provided or offered
- By exclusion from the educational establishment

Student services has a broad meaning but will include teaching, examination and access to learning resources including digital resources and facilities.

There are four types of discrimination in respect of educational services:

(a) Direct discrimination

Direct discrimination is where it is due to the fact that the person is disabled or has a disability. It includes where treatment received is based on stereotypical assumptions about the disability rather than the individual's abilities. There is no defence of justification for this discrimination.

(b) Failure to comply with the duty to make reasonable adjustments

FE and HE institutions have a duty to take reasonable steps in all the circumstances of the case to prevent placing disabled persons at a substantial disadvantage in comparison with persons who are not disabled.

Where does the duty arise?

The duty to take reasonable steps is a continuing duty and arises in

- Admissions arrangements
- Student services

- Determining the conferring of qualifications
- Physical features

What are 'reasonable' steps?

It depends on many factors including cost and effectiveness, the nature of the institution and its size and resources. This must be balanced against the rights of disabled people, thus it may prove difficult for an institution to use cost concerns in establishing reasonable steps

When is the duty to make reasonable adjustments breached?

The duty is breached if a disabled person suffers a 'substantial disadvantage'. This will be decided on the facts of a particular case but are not minor or trivial.

To comply with the duty, an institution will need to look at anticipating what disabled persons require in general, since in failing to anticipate what might be a reasonable adjustment for disabled persons in general, may result in an actual breach of the duty with regard to a particular person.

There are defences to this:

- If the institution made reasonable adjustments but did not know or could not be expected to know that the person had a disability. This places a corresponding duty to proactively encourage disclosure.
- If a request for confidentiality is made by the disabled student, this may also mean that no reasonable adjustment can be made, or the reasonable adjustment is less beneficial.

In conclusion this duty will be breached only if the adjustment is one which it is deemed reasonable to have been made in the first place.

Competency standards

There is no duty to make reasonable adjustments to a competence standard but the duty does apply to the process of showing that a person meets the standard. However, care will be needed to be taken in defining what is a competency standard in a college or university setting.

(c) Disability related discrimination

This occurs where a person is treated less favourably for a disability related reason than someone who did not have the disability related reason and it cannot be justified.

Less favourable treatment can be justified in two limited circumstances only:

- It must be material and substantial for example material health and safety reasons,
- when it is in the application of a defined competence standard

Before deciding on whether the less favourable treatment is justified for a material reason, the education provider must first have complied with the duty to make reasonable adjustments.

The treatment with regard to competency standards is only justified where it is applied equally and where applying it is proportionate to its aim.

(d) Victimisation and harassment

It is an offence for a responsible body to discriminate under the DDA by victimising a person whether disabled or not. Harassment for a reason which relates to a disability is also an offence.

4. Disability Equality Duty

The Disability Equality Duty (DED) applies to UK further and higher education establishments.

(1) General duty

A public authority must be proactive in looking at ways of making sure that disabled people are treated equally and have equal opportunity with non-disabled people with regard to all activities and functions including, for example, when introducing new courses or costing new equipment.

(2) Specific Duty

The main duty is to produce and publish a disability equality scheme.

The Disability Equality duty is an ongoing duty which requires regular review.

5. Disability Discrimination and Copyright

The Copyright (Visually Impaired Persons) Act 2002 permits limited copying (including digital copying), for those with a visual impairment in circumstances which might otherwise infringe copyright. The definition does not cover disabled persons as defined in the DDA, for example dyslexia and hearing impairments are not covered. The rights granted under this Act establish a basis for limited copying but are subject to various rules and limitations.

6. Conclusion

Disability discrimination law applies to the services including educational services an institution provides to its staff, students, and third parties. The law is framed in general terms and is not intended to prevent innovative use of technology. Reasonable adjustments should be sought wherever possible in order to prevent substantial disadvantage. The Disability Equality Duty reinforces the expectation and requirement that colleges and universities should be anticipatory and proactive in encouraging disabled persons to be involved in tertiary education activities.

7. Useful Sources

Equality and Human Rights Commission (incorporates the former Disability Rights Commission) website for the various codes of Practice including the Post 16 Education Code of Practice and the Disability Equality Duty and the PAS 78 guidance. - <http://www.equalityhumanrights.com/en/Pages/default.aspx>.

The RNIB website for information on the Copyright (Visually Impaired Persons) Act 2002 at <http://www.rnib.org.uk/>.

The W3C Web Accessibility Initiative <http://www.w3.org/WAI>.

JISC Legal overview paper on Disability Discrimination Law for links to the legislation and other relevant papers
<http://www.jisclegal.ac.uk/disability/accessibilityPub.htm>.

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