

ANNEX A: MAJOR ADJUSTMENTS TO EXAMINATIONS AND ASSESSMENT

Introduction

1. Equality legislation¹ requires that universities must not discriminate against disabled students. Discrimination includes treating a disabled student less favourably and failing to make 'reasonable adjustments'. Universities are also subject to the public sector equality duty², the effect of which is to require universities to promote and embed disability equality proactively across institutional policies, procedures and practice³. As a consequence, the University has procedures for approving 'reasonable adjustments' to ensure that disabled students (or prospective students) are not placed at a 'substantial disadvantage' in comparison with their non-disabled peers.
2. Institutions are not however required to make adjustments which would compromise the academic 'competence standards' of the courses in question (see Annex B: Competence standards for more information on competence standards).
3. Most reasonable adjustments in relation to examinations and assessment involve alternative arrangements for examinations which are approved by the Proctors (or by the Examinations and Assessments team under delegated authority from the Proctors), such as use of a computer or extra time for written examinations. These are dealt with in sections 8.3, 8.4 and 8.5 above of this *Policy and Guidance*.
4. This annex deals with **major adjustments to course and assessment requirements which require approval on behalf of Education Committee, and the normal procedures to be followed in considering applications for such adjustments.**

Some key definitions

5. A **disability** is defined as a condition which has a long-term (has lasted for 12 months or is likely to do so), substantial (not minor or trivial) and adverse impact on an individual's capacity to undertake normal day-to-day activities. Disability

¹ The Equality Act 2010 replaced the Disability Discrimination Act (DDA, 1995, amended 2001, 2005). In amending the DDA, the Special Educational Needs and Disability Act (SENDA, 2001) introduced the concept of 'reasonable adjustments' to the provision of higher education. The 2005 revision to the DDA placed a 'positive statutory duty' on public bodies (including the University) to have due regard to the need to promote equality of opportunity between disabled and other persons and to avoid disability-related discrimination (among other obligations). All these provisions were incorporated into the Equality Act, together with a broader public sector equality duty.

² The public sector equality duty requires public bodies to have due regard to the need to promote equality of opportunity, eliminate unlawful discrimination and foster good relations between people with a 'protected characteristic' and those without. 'Protected characteristics' are defined as age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership, and pregnancy and maternity.

³ The EHRC has published guidance for higher education providers which is available from <https://www.equalityhumanrights.com/en/advice-and-guidance/higher-education-providers-guidance>.

covers a wide variety of conditions, encompassing long-term illness (often from the point of diagnosis) as well as physical or psychological problems, e.g.

- Vision or hearing impairments;
- Physical impairments such as paraplegia, cerebral palsy, repetitive strain injury (RSI) and arthritis;
- Mental health difficulties such as depression, anxiety and eating disorders;
- Specific learning difficulties such as dyslexia, dyspraxia and Attention Deficit (Hyperactivity) Disorder. These conditions do not need to be shown to have a substantial adverse effect on 'normal day-to-day activities' as it is accepted that they will in all cases significantly affect students in higher education;
- Long-term health conditions such as HIV, diabetes, epilepsy, inflammatory bowel disease/Crohn's disease, Chronic Fatigue Syndrome/ME, multiple sclerosis and cancer. A person with such a condition continues to be regarded as disabled despite fluctuations in the severity of their condition or, in the case of cancer, after recovery.

Case law has indicated that undertaking examinations is considered to be a day-to-day – rather than specialised – activity⁴.

6. **Reasonable adjustments** are central to the concept of disability equality. Where a disabled student suffers – or would suffer – a substantial disadvantage, the University is under a duty to make reasonable adjustments to overcome that disadvantage. The intention is that the adjustments should 'level the playing field' for the disabled student. It is important that adjustments meet the needs of the individual disabled student rather than providing a generic response to a class or type of disability. Once implemented, adjustments do not provide automatic precedents for other students, but may be taken into account when considering what would be appropriate in a different case. The duty is anticipatory which means that the University should not wait until it is asked to consider what adjustments might be made, but should be ready – where feasible – with solutions to overcome disadvantages. The failure to make reasonable adjustments cannot be legally justified and if an adjustment is deemed to be reasonable then it must be made.
7. **Competence standards.** There is no obligation to make adjustments to competence standards. Competence standards can be defined as the 'academic, medical or other standard[s] applied for the purpose of determining whether or not a person has a particular level of competence or ability'⁵ in their course or as 'a particular level of competence or ability that a student must demonstrate to be accepted on to, progress within and successfully complete a course or

⁴Paterson v The Commissioner of Police of the Metropolis (2007) UKEAT 0635/06.

⁵ Equality Act 2010, Schedule 13, 4(3). Guidance from the Equality and Human Rights Commission for higher education providers is available at <https://www.equalityhumanrights.com/en/advice-and-guidance/higher-education-providers-guidance>.

programme of study'⁶. A competence standard must not itself be unlawfully discriminatory⁷, therefore it must not be applied only to a disabled student and must be:

- i. Genuinely relevant to the course;
- ii. Applied equally to all students, whether with or without a disability; and
- iii. A proportionate means of achieving a legitimate aim.

8. The *proportionate means* component requires that:

- i. There is a pressing need that supports the standard's purpose;
- ii. The application of the standard will achieve that aim; and
- iii. There is no other way of achieving the aim that is less detrimental to disabled people.

Further information on competence standards is provided in Annex B: Competence standards.

Procedures for evaluating the needs of disabled students

9. Advice on reasonable adjustments to assessment should be sought from the Disability Advisory Service⁸ – and if necessary from the Proctors – well in advance of the examination. The Disability Advisory Service will provide recommendations for support arrangements and adjustments to study conditions. Medical professionals or other specialists may also be asked to provide specific guidance. Candidates with eligible long-term health conditions continue to be regarded as disabled even when they have been deemed well enough to resume study or assessment, and the duty to make reasonable adjustments continues to apply.
10. There is a wide range of adjustments that may be made to provide disabled students with an opportunity to meet the competence standards required on their course. Most commonly these involve alternative arrangements for examinations which are approved by the Proctors/the Examinations and Assessment team, on which further information can be found in sections 8.3, 8.4 and 8.5. These may involve adjustments to the conditions under which timed examinations are taken, including the provision of extra time and/or rest breaks; taking examinations in college or in a separate room; the use of word processing and other assistive technology; ergonomic furniture; and permission to take food, drink or medication into the examination room. Additionally, disabled students undertaking practicals or clinical assessments can be provided with an adapted laboratory environment,

⁶ Guidance from the Equality Challenge Unit on the interaction between competence standards and reasonable adjustments is available at www.ecu.ac.uk/publications/understanding-the-interaction-of-competence-standards-and-reasonable-adjustments

⁷ Unlawful discrimination includes direct discrimination, which is never justifiable, and indirect discrimination or discrimination arising from a disability which cannot be justified in accordance with the numbered requirements set out in paragraph 5.

⁸ www.ox.ac.uk/students/welfare/disability

permitted the use of assistive technology, or allowed extra time to complete non-time critical elements of the task⁹.

11. When a candidate's disability-related needs cannot be met by such alternative arrangements, it is necessary to consider more significant adjustments that may require dispensation from the regulations, and which require Education Committee approval. Such adjustments include changes to the assessment itself, and to the length of time which a student spends on course.

Applications to Education Committee for major adjustments to course or assessment requirements

12. Reasonable adjustments which require major changes to University examinations and assessment are approved by or on behalf of Education Committee. The committee has delegated authority from Council to approve the necessary dispensations from the regulations required to put such changes into effect.

Examples of major adjustments which require approval on behalf of Education Committee

13. Examples of major adjustments to examinations and assessment which require approval on behalf of Education Committee include the following:
 - A student is allowed to extend the overall period of time within which a course is normally taken, e.g. to timetable assessment for a Final Honour School across three rather than two years.
 - A student is permitted to substitute an alternative method of assessment for one or more of the normal assessment items. This usually, though not universally, entails finding alternatives to unseen written examinations, e.g. extended essays, take-home papers, or an additional dissertation. Where this is not feasible, it may be possible to alter the timing or duration of the assessment, e.g. by splitting it over more than one session or allowing the candidate significantly longer to complete it.
 - A student is exceptionally permitted to omit one or more papers from the normal assessment requirement on the basis that the examiners are content that they will have sufficient material on which to reach a classified outcome.

Application process

14. Applications to Education Committee should be made as early as possible. Further guidance on how to apply for dispensations from Education Committee (via the Education Policy Support team) is available from www.admin.ox.ac.uk/edc/casemanagement/dispensations.
15. Applications are generally received from the student's college for undergraduate students and from the department/faculty for postgraduate students. The usual expectation is that the college and department/faculty will have liaised regarding

⁹The latest edition of the General Medical Council's guidance to medical schools 'Gateways to the Professions. Advising medical schools: encouraging disabled students' (GMC, 2014) contains a comprehensive Appendix with numerous examples of the reasonable adjustments made for medical students in UK medical schools. (www.gmc-uk.org/education/undergraduate/gateways_guidance.asp)

the application before it is sent to Education Committee. The application should set out in detail the adjustments which are being requested. In most cases, the college or department/faculty should also discuss the application with the Disability Advisory Service; the Service has substantial experience of providing appropriate support for students with disabilities and identifying appropriate adjustments.

16. An application must be supported by appropriate medical or other specialist evidence to confirm the nature of the disability and its likely impact on a student's capacity to undertake all or parts of a course. The evidence should provide sufficient detail to enable those concerned to take a view on the reasonableness, in particular the need for and effectiveness of the requested adjustments. The application should generally also include a statement from the Disability Advisory Service.
17. Education Policy Support officers will ask the relevant supervisory body/board of examiners to comment on the adjustments proposed. In giving its view, the supervisory body/board of examiners should refer explicitly to the material setting out the competence standards for the award, for example the course handbook.
18. The aim of the process is to secure a way forward which is acceptable all round, although the final decision rests with Education Committee. The decision is taken on behalf of Education Committee (normally the Pro Vice-Chancellor (Education) acting on its behalf) in the light of all the information provided, and all parties are informed. The college or department/faculty informs the student.
19. If a student is not content with the decision that is reached, they can appeal against it to two members of Education Committee (who have not previously been involved in the decision). Ultimately recourse would be to the Office of the Independent Adjudicator for Higher Education¹⁰.
20. The requirement when considering applications for major adjustments is to identify what would be fair and reasonable for the student concerned in their individual circumstances, while maintaining the academic standards of the course. Approval for a particular application should not therefore be taken as providing an automatic precedent for another student. Each case is considered on its merits.
21. Fairness to other candidates is ensured by taking very seriously the requirement not to compromise the competence standards of the course. The identification of a course's competence standards is therefore key to avoiding unlawful discrimination and enabling the University to meet its anticipatory duty to make reasonable adjustments (see Annex B: Competence standards for further guidance). Supervisory bodies are urged to clarify the competence standards of their courses in order to be better prepared for applications for major adjustments to the mode of assessment¹¹. This will make it easier to determine the most appropriate assessment for a disabled candidate.

¹⁰www.oiahe.org.uk

¹¹ The OIA has recommended that the University review its assessment criteria and processes with the aim of identifying appropriate competence standards for its courses.

Mitigating circumstances notices to examiners for candidates with major adjustments to examinations and assessment

22. Part 12 of the Regulations for the Conduct of University Examinations allows candidates both to apply for special examination arrangements, and to ask for their condition to be taken into account as a mitigating circumstance which may affect their performance in examinations (*Examination Regulations*, Regulations for the Conduct of University Examinations, Part 12.2, www.admin.ox.ac.uk/examregs/2018-19/rftcoue-p12cwsexamneed/).
23. This means that even when alternative examination arrangements, including major adjustments which were approved on behalf of Education Committee, have been implemented to take account of a candidate's condition, the candidate, through their college, may submit a mitigating circumstances notice to examiners.
24. It is accepted that examiners cannot assess undemonstrated performance and that candidates should not receive double compensation. Nevertheless, when a mitigating circumstances notice to examiners is received from a student with major adjustments to examinations and assessment, examiners are asked to take a view as to whether the adjustments are likely to have fully compensated for a candidate's condition and allowed them to demonstrate their ability. See Annex C: Consideration of mitigating circumstances by examiners for further guidance on the procedures to be followed in the consideration of these notices.

REQUESTING MAJOR ADJUSTMENTS TO COURSE OR ASSESSMENT REQUIREMENTS

