

Implementing Reasonable Adjustments and the Anticipatory Duty: Legal Framework Guidance for Departments and Faculties

The University's Education Committee has reviewed and endorsed this guidance.

Key action points:

1. Note that the University has a statutory duty to make reasonable adjustments to teaching and assessment in order to prevent disadvantage to disabled students [see section 1]
2. Recognise that this duty applies to all student-facing staff, who should be prepared to take common-sense measures in advance of a DAS ruling [see section 4]
3. Consider implementing universal adjustments that anticipate the most common needs of disabled students [see section 2]
4. Note the role of competence standards in determining what are reasonable adjustments to assessments, and the consequent need to define competence standards for a course clearly [see paras 1.3, 3.3 and 7.2]
5. Note the example scenarios and the implementation support and advice available [see section 9 and Appendix A]

1. The duty to make reasonable adjustments

- 1.1 Where a disabled personⁱ could be put at a substantial disadvantage (substantial means more than minor or trivial) compared with someone who is not disabled, the University has to make reasonable adjustments to help avoid that disadvantage, including by amending its policies or practices, altering physical features or providing auxiliary aids or services where it is reasonable to do so (s.20 Equality Act 2010 ("EA")).
- 1.2 The University has to make such adjustments in the matters of: "Provision of Education" and "Access to a benefit, facility or service". This applies to all disabled students and so is an *anticipatory duty* (Para 3 Sch. 13 EA)ⁱⁱ.
- 1.3 The University is NOT required to make adjustments to *competence standards*, which are academic standards applied for the purpose of assessing a level of competence or ability (Para 4 Sch. 13 EA).ⁱⁱⁱ

2. What is the effect of this being an anticipatory duty?

- 2.1 The fact that the duty to make reasonable adjustments is an anticipatory duty means that, when creating policies or making decisions that impact educational provision and/or

wider student services, the University has to consider what barriers disabled students may face that could affect them accessing services on an equal basis, and put in place reasonable adjustments (e.g. by designing out barriers) from the outset without waiting for an individual disability declaration or request.

- 2.2 Making universal changes that affect all students, for example by implementing inclusive teaching and assessment practices^{iv}, is an effective way of ensuring that disabled students are protected (especially as some disabled students do not declare their disability).
- 2.3 Making anticipatory adjustments that apply to an entire cohort can also be more time efficient than having to make individualised adjustments for particular students. For context, 26% of the student body were known to the Disability Advisory Service (DAS) in 2023 (6999 out of c. 26,000). DAS's view is that it is reasonable to assume disabled students can benefit from a standard set of inclusive practices and reasonable adjustments as set out in the [Disability Inclusion Statement \(SSP A\)](#)^v. The statement is intended to expedite students' access to five key practices and adjustments that previously were recommended for individual students by DAS; it is not intended as a substitute for departments own policies, decision-making and strategies to embed inclusive practice. As set out in the [Guide to Supporting Disabled Students](#), it is the role of disability leads to work closely with other leaders and colleagues in their departments to advocate for and embed an anticipatory approach into policy and decision-making^{vi}.
- 2.4 The purpose of this guidance is to help the University meet its legal obligation to make reasonable adjustments and to make the process of doing so as efficient (and therefore defensible) as possible by ensuring that DAS is not responding to requests which can more appropriately be addressed by a department, either through universal or individual measures.

3. When is an adjustment “reasonable”?

- 3.1 This would ultimately be a question for a court, considering the question of what it was reasonable for the University to do having weighed up any relevant factors including:
 - a) the benefit to the disabled student, i.e., the effectiveness of the adjustment;
 - b) the needs of other students, e.g., whether the adjustment would substantially compromise the wider cohort;
 - c) its resources, in terms of finances, personnel and the built environment;
 - d) the University's wider objectives (for example the maintenance of academic standards).
- 3.2 The University has to make an informed judgment about what a court might consider reasonable. “Reasonable” should not be regarded as synonymous with “convenient”; in cases of severe disability it may involve quite substantial and inconvenient adjustments, including to assessment.
- 3.3 An adjustment is not reasonable if it impacts the attainment or assessment of a competence standard, which is a particular level of competence or ability that a student must demonstrate in order to successfully complete a course or programme of study.
- 3.4 While DAS has experience in assessing what is reasonable when producing the recommendations in its Student Support Plans (SSP), in some circumstances other staff

members will also need to make this judgment and should do so on the basis of a common-sense assessment of the different factors.

4. Who decides whether to make a reasonable adjustment?

- 4.1 Once the University is on notice^{vii} that a reasonable adjustment is required (e.g. because it is evident that a disabled student, or a student who is likely to be disabled, is facing a disadvantage that can be reasonably mitigated or removed) the University needs to make that adjustment as soon as reasonably possible. Every student-facing member of staff therefore needs to understand the University's legal obligations and policy position as set out in this guidance so that they can either make the requested adjustment or sign-post the student accordingly. Appropriate line management channels (ultimately leading to the Head of Department) should be used where there is any doubt about whether or not an adjustment can be determined locally, requires referral to DAS and/or is reasonable.
- 4.2 In some circumstances, the University may be in breach of its legal obligation even if it is waiting for other procedural steps to take place, for example, the provision of medical evidence, for the student to engage with DAS, or for a Student Support Plan to be published.
- 4.3 All parts of the University which provide education and/or other services to students therefore have to be prepared to make reasonable adjustments, including anticipatory adjustments.
- 4.4 For departments, this means taking the duty into account:
 - (a) when determining departmental policies (for example on inclusive teaching and assessment practices); and
 - (b) by ensuring that staff are aware of their responsibility to make adjustments in individual cases. The starting point will usually be the SSP, but staff can also make adjustments without consulting DAS. This may be where a student encounters an unanticipated disability-related barrier during the course of their study, particularly where the adjustment is minor, one-off and/or required urgently^{viii}. This also may be appropriate, as a temporary or permanent measure, having regard to the time that formal registration with DAS and production or updating of an SSP takes, and the consequential impact on the student.
- 4.5 In some cases, an adjustment could be agreed and implemented on a temporary basis pending DAS's consideration and in others referral to DAS may be unnecessary, particularly if the adjustment is uncontroversial and/or self-evident. The student may be able to explain what they need and why, and the staff member may be able to decide that this is a reasonable request based on what they know, including from the SSP, without it being explicitly stated there. Where a staff member suspects that a student requires a reasonable adjustment as a matter of urgency, even when no disability has been declared, they should exercise their common sense and compassion in deciding whether or not to make the adjustment.
- 4.6 Appendix A sets out some examples of how departments may apply this guidance in practice. However, requests for adjustments are fact specific and can arise in a wide range of different circumstances. These examples are not therefore intended to suggest that this guidance is limited to these kinds of scenarios.

5. The University's approach

- 5.1 The University has decided as a matter of policy that, where a student credibly requests a particular adjustment and/or appears to be in need of an adjustment, if that adjustment can be made and it is both effective and practicable, then staff should usually incline towards doing what they can to provide the adjustment, unless it would compromise a competence standard.
- 5.2 If staff are unsure whether a requested adjustment is reasonable (e.g., because it is not clear whether it will be effective, it is impracticable, unreasonably resource intensive, and/or adversely affects others), they may ask for advice from DAS. In many such cases it will be appropriate to await the SSP before making the adjustment. Staff can also seek support from their line manager or Head of Department. The University will ensure that staff members who have to take these sorts of difficult decisions about whether or not to make such adjustments will be fully supported.

6. How does this interact with the Public Sector Equality Duty?

- 6.1 In addition to the duty to make reasonable adjustments, the University also has to have due regard to the [public sector equality duty](#) when taking decisions. This includes considering the need to eliminate discrimination, advance equality of opportunity and foster good relations between those who are disabled (or have other protected characteristics) and those who are not. This should also be taken into account as part of policy development and review, and also course/programme design, cohort level changes may be identified with the intention of creating a more inclusive environment for all students, including for disabled students. Guidance on meeting the equality duty in policy and decision-making is available from the [Equality and Diversity Unit: Equality Analysis](#).

7. Reasonable adjustments to examinations and other summative assessments

- 7.1 To ensure academic integrity and fairness across programmes, reasonable adjustments to examinations and other summative assessments are approved via a formal application process to the Examinations and Assessments Service, after recommendations are provided in an SSP. However, at the point of finalising the SSP, DAS is unlikely to have access to full information about the programme competence standards and the associated assessment tasks and conditions used. Therefore, the Disability Coordinator should consider whether any additional arrangements may be needed in consultation with relevant colleagues in the department, with the student and with DAS at an early stage.
- 7.2 [Dispensation](#) (major adjustments) options should be actively considered as part of this process where there are indications that minor adjustments will not sufficiently mitigate the disability-related disadvantage. Disability Coordinators (with the support of a Disability Lead in complex cases) should be proactive in proposing solutions and consulting with relevant colleagues to complete an application for approval. Protecting student wellbeing and academic integrity are the key considerations throughout the process. The inclusion of clearly articulated core competence standards in course material (from admissions information onwards), and in exam conventions, can facilitate

a more straightforward discussion about what constitutes a reasonable adjustment in individual cases.

7.3 Support and advice on these issues can be provided by DAS, Education Policy Support and the Centre for Teaching and Learning as appropriate.

8. What are the consequences of non-compliance?

8.1 Failing to make reasonable adjustments can leave vulnerable students feeling unsupported and discriminated against, with potentially serious consequences for their welfare.

8.2 There is also a risk of complaints, including to the OIA, and of legal claims of unlawful disability discrimination (ss.20 & 21 EA). The number of such complaints and claims is increasing annually. Such complaints and claims will nearly always allege that the University staff members failed to make sufficient adjustments. Staff members who are involved in a decision relating to whether or not reasonable adjustments should be allowed should be aware that in the event of the student subsequently making a complaint or legal claim they may need to be asked to explain the approach they took in the context of those proceedings; it is therefore important that staff keep clear records of decisions, actions taken, and any associated communications.

9. Resources summary

- The University's [Supporting disabled students: A guide for staff](#) has the following pages which provide further information on the implementation of reasonable adjustments and the anticipatory duty:
 - [Common Framework for Supporting Disabled Students](#)
 - [Anticipatory duty | Academic Support \(ox.ac.uk\)](#)
 - [Key concepts: Reasonable adjustments and inclusivity | Academic Support \(ox.ac.uk\)](#)
 - [Glossary | Academic Support \(ox.ac.uk\)](#)
 - [Responsibilities of disability leads and disability coordinators](#)
- The [Equality analysis](#) web-page from the [Equality and Diversity Unit](#) provides guidance on meeting the equality duty in policy and decision-making.
- The Collegiate University has recently agreed the [Common Approach to Support Student Mental Health](#).
- The [Examinations and Assessment Framework](#) (2023), Annex D, provides some guidance on the interaction between competence standards and reasonable adjustments. Annex F provides guidance on requesting major adjustments to course and assessment requirements including further information on the legal context.
- The Academic Support website [Examination adjustments](#) page sets out the process of applying for examination adjustments, dispensations and extensions. The Guide for Supporting Disabled Students also covers [Examinations and assessments](#).
- The Centre for Teaching and Learning (CTL) has developed:
 - [IncludED: A guide to inclusive teaching](#)
 - [IncludED: A guide to inclusive assessment](#)

- A [Digitally Supported Inclusive Teaching toolkit](#) which can be used to support a review of the way digital tools are used in a course, programme or department.
- CTL also offers a [Consultancy service](#) in the areas of embedding digital education, (re)designing summative assessments, and integrating academic skills.

Appendix A: Example Scenarios

This Appendix provides some examples of how departments may apply this guidance in practice. However, requests for adjustments are fact specific and can arise in a wide range of different circumstances. These examples are not therefore intended to suggest that this guidance is limited to these kinds of scenarios.

Example 1

A student tells their lecturer that they are experiencing a flare-up in a longstanding anxiety disorder and are finding it hard reliably to attend all lectures or to concentrate fully on the lecture when they are there. It is likely to be reasonable to grant temporary access to lecture recordings without delay if: doing so is likely to help the student access teaching; it will not have a substantially adverse impact on other students' learning; and it will not have significant additional resource implications because recordings are already being made for other disabled students. If the department can identify other adjustments that might better mitigate the disability impact (e.g., the provision of a set of summary notes and/or a short supplementary recording), they could offer those as an alternative. The department should also signpost the student to speak with their GP, and to visit the Counselling Service and DAS so they can explore other possible longer-term support.

Example 2

A student tells their Department Disability Coordinator that they cannot attend classes in the morning because the symptoms of their medical condition are particularly severe at certain times of the day. It may not be reasonable to change the programme timetable if this would: cause major disruption to the wider cohort or be exceptionally difficult due to limited staff and/or room availability. However, where that is the case, the department could consider offering alternative ways for the student to access the teaching such as the provision of recordings and/or access to lecture materials in advance, particularly as a temporary measure whilst the student explores alternative treatment options and medical review. Other interim options might include the lecturer offering an occasional meeting or agreeing to reply to email correspondence (specifying when and how frequently) to answer any questions that the student has after watching recordings. These things should be put in place whilst the student registers with DAS and before an SSP is issued to prevent unnecessary disadvantage. Once the SSP is issued the existing arrangements could be adjusted further in light of DAS's assessment of the student's needs, which would usually be informed by advice from medical professionals. If the student is persistently unable to engage with a substantial amount of teaching despite reasonable adjustments, it may be necessary to consider their [Fitness to Study](#) in line with the College or University procedure.

Example 3

A second-year student who has previously performed well in assessments and attended most of their tutorials and classes, has been gradually withdrawing over the last two terms. Their contributions to class discussions are more limited and the quality of their written work is deteriorating, with deadlines being frequently missed. They seem quiet and subdued. When asked, the student tells their tutor that they have been having severe panic attacks whenever they try to start work or leave the house to come to class, and that they are feeling tearful and overwhelmed all the time.

As a first step, the tutor should gently reassure the student that help is available, and signpost them to their GP, the College Welfare Team, and to the University Counselling

Service. They may decide it would be appropriate to adjust any informal academic deadlines, and should monitor how things go in the following weeks. If things do not improve or they become worse, the tutor should have a follow-up conversation with the student to find out what additional help they may need, and offer guidance on managing the ongoing impact on their academic work. For example, the student might need advice on arranging a short extension for any written work due imminently to reduce some short-term pressures.

Eventually it may become necessary to discuss with the student whether it would be in their best interests to suspend their studies whilst they seek help for their difficulties as part of a supportive informal (stage 1) [‘Fitness to Study’](#) conversation, and to refer them to DAS to explore reasonable adjustments for what appears to be a longstanding mental health condition that is significantly affecting their studies. If the student is unable to follow this advice because their mental health has become so poor, staff should explore with the student involving their Trusted Contacts, seek permission to liaise with welfare leads in the College and Department, and in SWSS. Where permission is not provided, a ‘no-names’ consultation with the SWSS Duty Counsellor is recommended to consider whether it would be advisable to share information with the student’s permission (in line with [University Guidance on Confidentiality in Student Welfare](#)), and to arrange a call with the welfare leads in the college and department, and with Student Welfare and Support Services, to discuss a plan and next steps.

Example 4

A student who uses a wheelchair is unable to attend a class because the venue is at the top of a set of stairs with no lift or level access. It is essential that the teaching takes place in-person because it involves student participation in practical demonstrations. It is likely to be reasonable to organise a different venue without waiting for a DAS SSP because: there is an immediate substantial need for the adjustment; without the adjustment the disadvantage suffered by the student is severe (they cannot attend the class); doing so will be effective in ameliorating the disability impact; and it is unlikely to cause more than minor/short-term inconvenience for staff and other students. The student should also be encouraged to register with DAS if they would like to explore other longer-term support (e.g., assistance with getting between study venues where the teaching timetable and availability of accessible venues means it is necessary to travel some distance in a short space of time).

Example 5

A visually impaired student wants to be exempted from submitting formative written work because they are finding it hard to keep up with the pace of study and meet deadlines, which is causing them stress. However, this would compromise the department’s ability to: monitor and support the student’s academic progression; ensure they are developing the skills required to demonstrate they have met the course competence standards. The department should signpost the student to DAS to ensure they have access to all the specialist study aids and support strategies that could help support the production of written work. In the meantime, they could consider offering some occasional flexibility with formative submission dates that will help the student to keep up, and/or allowing the student to supplement their written work with a tutorial to expand upon ideas verbally. If the student considers that these measures are not sufficient, the department could liaise with the college and DAS about an application to Education Committee for a major dispensation that will allow the student to spread summative assessments over a longer timeframe.

ⁱ The DAS webpages provide details of how disability is defined [Who can we support? | University of Oxford](#).

ⁱⁱ NB The University has other legal obligations to make reasonable adjustments, some of which are anticipatory and some of which are responsive to individual cases (for example, in the context of admissions, conferral of qualifications and when acting as a landlord).

ⁱⁱⁱ The University's guidance on competence standards can be found in the [Examinations and Assessments Framework](#) (2023), Annex D.

^{iv} The Centre for Teaching and Learning (CTL) has published a range of resources to support inclusive teaching and assessment, which can be accessed via the [IncludED webpages](#).

^v From AY23-24, DAS has introduced the [Disability Inclusion Statement](#) (SSP A), which sets out the inclusive practices and adjustments now recommended as standard for disabled students. The statement will apply to all students whose eligibility has been verified by DAS from AY23-24 onwards, and means that these needs can be communicated at an earlier stage (prior to the production of a Student Support Plan).

^{vi} Some examples of anticipatory adjustments include: establishing a quiet room in departmental buildings for use by any student who may need it; providing height-adjustable desks in shared study spaces; introducing minimum accessibility standards for teaching and learning resources by providing standard templates for tutors; embedding academic skills teaching and learning consistently across programmes. Examples of steps that can be taken to identify appropriate anticipatory adjustments include: developing a departmental action plan in consultation with students to address mental health and wellbeing needs; (re-)designing summative assessments at programme level, embedding inclusivity from the outset.

^{vii} In some circumstances, 'on notice' may mean disclosure to one member of staff. This is unlikely to be the case where there is a clearly recorded withholding of permission to share information.

^{viii} The High Court provided the following guidance on this issue in a recent court case: "*For the avoidance of doubt, the lesson... is not that due process and evidence are unimportant where the question of reasonable adjustments arises in this context. They are important. There will no doubt be many cases where it is reasonable to verify what the disabled person says and/or to require expert evidence or recommendations so as to make well informed decisions. A degree of procedural formality will also generally be appropriate [...]. But what a disabled person says and/or does is evidence. There may be circumstances, such as urgency and/or the severity of their condition, in which a court will be prepared to conclude that it is sufficient evidence for an educational institution to be required to take action.*" ([The University of Bristol -v- Dr Robert Abrahart \(judiciary.uk\)](#))