Disability Discrimination Act 1995

The Disability Discrimination Act (DDA) 1995 and 2005 and Special Educational Needs and Disability Act (SENDA) 2001

Social and Legal Context

Under the DDA 1995 as amended by the SENDA 2001, the University has an anticipatory duty not to discriminate against disabled people on the grounds of their disabilities and to make reasonable adjustments to meet the needs of disabled staff, disabled students and other disabled users of facilities and services.

The act consists of the following parts:

- **Part I**: Summary of the meaning of disability.
- **Part II**: Discrimination in relation to employment and applicants for jobs.
- **Part III**: Discrimination in relation to public access to goods, facilities, services and premises.
- **Part IV**: Education (SENDA).

The University and Colleges already have a duty under Part II of the Act to make reasonable adjustments to accommodate the employment of staff with disabilities. Part III of the Act requires reasonable adjustment to policy, practice and procedure, and affects anyone who provides goods, facilities or services to members of the public, whether paid for or free. Included in this would be, for example, visitors to Departments, Colleges or users of the public libraries and lectures. Part IV (SENDA) received Royal assent on 11 May 2001. SENDA duties are an extension of the existing DDA and make it unlawful to discriminate against students with disabilities in the provision of education.

The DDA 2005 builds on previous requirements by placing a positive duty on all public bodies, including Higher Education Institutions (HEIs), to eliminate discrimination and harassment and to promote
equality of opportunity for people with disabilities. This is similar to the positive duty to promote race equality already introduced under the Race Relations Amendment Act, the major difference being that the DDA 2005 requires the University to adopt a proactive approach in involving and promoting the full participation of people with disabilities in all activities.

**What is meant by discrimination**

Under the DDA there are two forms of unlawful discrimination:

a) It is unlawful to treat a disabled person less favourably, for a reason which relates to his or her disability, than someone to whom that reason does not apply, unless there is a justification for that treatment.

b) It is unlawful to fail to make reasonable adjustments to assist the disabled person, unless there is a justification for that failure.

**Part I – Definition of disability under the DDA**

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

People who have had a disability within the definition are protected from discrimination even if they no longer have a disability.

The term ‘impairment’ covers physical or mental impairments; this includes sensory impairments, such as those affecting sight or hearing.

The term ‘mental impairment’ is intended to cover a wide range of impairments relating to mental functioning, including what are often known as learning difficulties.

The DDA 2005 amended the definition of disability, removing the requirement that a mental illness should be 'clinically well-recognised'.

A substantial adverse effect is something 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.
A long-term effect of impairment is one:

- which has lasted at least 12 months, or
- where the total period for which it lasts is likely to be at least 12 months, or
- which is likely to last for the rest of the life of the person affected.

Effects which are not long-term would therefore include loss of mobility due to a broken limb which is likely to heal within 12 months and the effects of temporary infections, from which a person would be likely to recover within 12 months.

If an impairment has had a substantial adverse effect on normal day-to-day activities but that effect ceases, the substantial effect is treated as continuing if it is likely to recur; that is, if it is more probable than not that the effect will recur. For example, a person with rheumatoid arthritis may have an impairment that has a substantial adverse effect, but which then ceases to be substantial (i.e. the person has a period of remission).

Normal day-to-day activities are those which are carried out by most people on a fairly regular and frequent basis. The term is not intended to include activities which are normal only for a particular person or group of people, such as playing a musical instrument or a sport to a professional standard or performing a skilled or specialist task related, for example, to a particular academic discipline, education or training course. However, someone who is affected in such a specialised way but is also affected in normal day-to-day activities would be covered by this part of the definition. The test of whether an impairment affects normal day-to-day activities is whether it affects one of the broad categories of capacity listed in Schedule 1 to the Act. They are:

- mobility
- manual dexterity
- physical co-ordination
- continence
- ability to lift, carry or otherwise move everyday objects
- speech, hearing or eyesight
- memory or ability to concentrate, learn or understand
- perception of the risk of physical danger.
Someone with an impairment may be receiving medical or other treatment which alleviates or removes the effects although not the impairment. In such cases, the treatment is ignored and the impairment is taken to have the effect it would have had without such treatment. This does not apply if substantial adverse effects are not likely to recur even if the treatment stops, because the individual no longer has a disability.

The sole exception to the rule about ignoring the effects of treatment is the wearing of spectacles or contact lenses. In this case, the effect while the person is wearing spectacles or contact lenses should be considered.

People with severe disfigurements are covered by the Act. They do not need to demonstrate that the impairment has a substantial adverse effect on their ability to carry out normal day-to-day activities.

Progressive conditions are conditions that are likely to change and develop over time. Examples given in the Act are cancer, multiple sclerosis, muscular dystrophy and HIV infection. Where a person has a progressive condition s/he will be deemed to be covered by the DDA effectively from the point of diagnosis, rather than from the point when the condition has some adverse effect on their ability to carry out normal day-to-day activities.

If a genetic condition has no effect on ability to carry out normal day-to-day activities, the person is not covered. Diagnosis does not in itself bring someone within the definition.

If the condition is progressive, then the rule about progressive conditions applies.

Certain conditions are to be regarded as not amounting to impairments for the purposes of the Act. These are:

- addiction to or dependency on alcohol, nicotine, or any other substance (other than as a result of the substance being medically prescribed)
- seasonal allergic rhinitis (for example hay fever), except where it aggravates the effect of another condition
- tendency to set fires
- tendency to steal
- tendency to physical or sexual abuse of other persons
- exhibitionism
- voyeurism.
Disfigurements which consist of a tattoo (which has not been removed), non-medical body piercing, or something attached through such piercing, are to be treated as not having a substantial adverse effect on the person’s ability to carry out normal day-to-day activities.

Part II – Employment

The employment provision of the Act took effect on 2 December 1996. The Act states that it is unlawful to discriminate against a person with a disability in relation to recruitment, terms and conditions of service, induction, employment retention, promotion and pension provision.

The University’s Equal Opportunities Policy can be summarised as, “The policy and practice of the University of Oxford require that all staff are afforded equal opportunities within employment and that entry into employment with the University and progression within employment will be determined only by personal merit and the application of criteria which are related to the duties of each particular post and the relevant salary structure. In all cases, ability to perform the job will be the primary consideration. Subject to statutory provisions, no applicant or member of staff will be treated less favourably than another because of his or her sex, marital status, sexual orientation, racial group, or disability.”

Disclosure of a disability is encouraged throughout the application process using a staff disclosure form including the following stages:

- The job advertisement
- Further particulars for the post
- The application form
- Once a job offer is made
- Throughout the staff member’s career

Once a job offer is made to a successful applicant who has declared a disability a medical questionnaire is sent by the Occupational Health Service.

Disability Office, University Occupational Health Service, Central Personnel Services and the Government Employment Services can provide advice on work related assessments and arrangements to enable a person with a disability to work. This applies to recruitment
and retention. Funding from the Access to Work scheme (ATW) may be available from the Government.

**Access To Work scheme**: This is available from the Government and can help cover the costs of providing solutions to some of the practical problems experienced by a person with a disability because of their work environment. ATW can assist in a number of ways. For example, it could help pay for a communicator for a person with a hearing impairment, a reader for a person with a visual impairment, special equipment or alterations to existing equipment, adaptations to premises, a support worker to give practical work related assistance, and help with the costs of getting to work.

**Some examples of what may constitute reasonable adjustments are:**

- making adjustments to premises
- allocating some of a disabled person’s duties to another person
- transferring the person to fill an existing vacancy
- altering the person’s working hours
- giving the person training
- providing special equipment, a support worker, interpreter or reader.

A number of factors should be considered when deciding whether an adjustment is reasonable. It might be considered unreasonable to make an adjustment if the effectiveness of the adjustment has only a small-added benefit. The practicality of the adjustment will depend on the circumstances. For example it might be more practical to use an alternative already accessible entrance to deal with an urgent need, rather than waiting for a main entrance to be made accessible. The cost and available resources might have a bearing on the reasonableness of an adjustment. If the cost of an adjustment is very little or nothing, and not disruptive, then it would be unreasonable not to make the adjustment.

In making a judgment, one should consider firstly whether the adjustment will be effective and practical. The cost and availability of resources to support the adjustment also need to be considered. Not all adjustments are expensive. It is good practice to involve the person with a disability in trying to ascertain a cost effective and practical solution.
Ultimately this will be determined by case law. An employment tribunal will decide whether discrimination has taken place. If it is found that an employer or individual has discriminated, then there is no upper limit to the damages that may be awarded.

Part III – Public access to goods and services – October 2004

From 1st October 2004, services providers are required to take reasonable steps to change any practice, policy, or procedure which would make it unreasonable for a person with a disability to use the service. In addition, service providers will have to take reasonable steps to remove, alter or provide reasonable means to enable a person with a disability to use the service.

A service provider is any organisation, which provides a service to the public. This would include, for example, museums, lecture theatres, conference venues, shopping outlets, sports facilities and public parks. The University’s Central Disabilities Fund (CDF), which normally operates on a matched funding basis, can help departments to meet some of the costs incurred by improving general access to the University for those with disabilities.

Part IV – Education and SENDA

1 September 2002: from this date it will be unlawful to treat a disabled student less favourably than other students.

1 September 2003: from this date there will be a responsibility to have made reasonable adjustments that involve the provision of auxiliary aids and services.

1 September 2005: from this date there will be a responsibility to have made adjustments to physical features of premises.

The DDA and SENDA are not just about making buildings accessible. The act applies to all stages of the educational process; enquiry and pre-admissions, interview and selection procedure, and all University and College teaching including lectures, tutorials, laboratory work, field trips, placements, study abroad etc. Some examples of things teaching staff may need to take into account are:
• Is the course information accessible and can it be made available in alternative formats?
• Are the course materials, for example textbooks, overheads and handouts, accessible and can they be made available in alternative formats?
• Can all students access any necessary technology on the course?

The University is not expected to lower its academic standards, however, it might be reasonable to allow a student to validate attainment of academic standards by using means different from those used by others students.

SENDA is an **anticipatory** act. Colleges and departments need to consider principles of universal design and accessibility for all students when designing courses or altering the teaching environment in any way. It would be good practice to consider forward planning, rather than waiting for a disabled student to apply. Institutions must be able to prove that reasonable measures have been taken to inform staff of their responsibilities under this act, and one way of doing this is through staff training.

**Disability Equality Duty 2005 - The General Duty**

There is a general Disability Equality Duty that applies to all public authorities, plus additional specific duties to support the majority of public authorities in achieving the outcomes required by the general duty.

The basic requirement for a public authority when carrying out their functions is to have due regard to do the following:

• promote equality of opportunity between disabled people and other people
• eliminate discrimination that is unlawful under the Disability Discrimination Act
• eliminate harassment of disabled people that is related to their disability
• promote positive attitudes towards disabled people
• encourage participation by disabled people in public life
• take steps to meet disabled people’s needs, even if this requires more favourable treatment.
‘Due regard’ means that authorities should give due weight to the need to promote disability equality in proportion to its relevance.

**Disability Equality Scheme (DES) 2006**

In December 2006, the University developed, published and is in the process of implementing a Disability Equality Scheme (DES). The scheme is expected to plan a range of operational and strategic activities that the University will engage upon over a three year period to meet the requirements of the Act.

The scheme is informed by the social model of disability, which requires that the ‘barriers’ or elements of social organisation that exclude people who have impairments should be identified and removed.

Examples of such barriers include:

- inflexible organisational procedures and practices
- inaccessible information
- inaccessible buildings and
- inaccessible transport
- discriminatory health and social support services

Ultimately it is case law that will be determined if adjustments made are reasonable. The County Court will decide whether discrimination has taken place. If it is found that an institution or individual has discriminated then there is no upper limit to the damages that may be awarded.

**This fact sheet is available in alternative format on request.**

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