

# **Meeting the duty - An assessment of Higher Education Institutions' performance in relation to the Disability Equality Duty**

## **Introduction**

The Disability Equality Duty (DED) came into force on 4 December 2006, requiring all public authorities to give due regard to disability equality. The DED signalled a step change for public authorities, requiring them to think and act proactively to promote disability equality. The DED compliments the existing anti-discrimination legislation by taking an institution wide approach, alongside the individual rights for disabled people already in place in the Disability Discrimination Act (DDA).

## **What do public authorities need to do to meet the DED?**

The DED, or the general duty, requires every public authority, in carrying out its functions, to have due regard to the need to:

- promote equality of opportunity between disabled people and other people
- eliminate discrimination that is unlawful under the Act
- eliminate disability related harassment
- promote positive attitudes towards disabled people
- encourage participation by disabled people in public life
- take steps to take account of disabled people's needs, even where that involves treating disabled people more favourably.

Certain public authorities, as listed in the regulations<sup>1</sup> made under

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<sup>1</sup> The Disability Discrimination (Public Authorities) (Statutory Duties) Regulations 2005, SI No. 2966, Sch. 1

the Act, are also required to produce and publish a Disability Equality Scheme (DES). This includes all publicly funded Higher Education Institutions (HEIs). A DES provides a framework to assist authorities in planning, delivering and evaluating action to meet the general duty and to report on these activities. Disabled people must be involved in the development of the scheme and the scheme should include a statement of:

- the way in which disabled people have been involved in the development of the scheme
- the authority's methods for impact assessment
- steps which the authority will take towards fulfilling its general duty (the action plan)
- the authority's arrangements for gathering information in relation to employment, and, where appropriate, its delivery of education and its functions
- the authority's arrangements for putting the information gathered to use, in particular in reviewing the effectiveness of its action plan and in preparing subsequent schemes.

This report provides an overview of the assessment that took place of the performance of a sample of HEIs in relation to the DED.

## **Sampling**

There are approximately 144 HEIs in England and Wales covered by the DED. A sample of 21 HEIs was selected for assessment. To ensure that the sample group was representative of the range of institutions in the sector, the total number of HEIs were grouped into large, medium, and small HEIs, with 7 institutions being randomly selected from each size group. The assessment of the HEIs' schemes followed the DRC's assessment template which is publicly available on the DRC's website<sup>2</sup>.

The intention was not to name the HEIs sampled in the assessment project. The number sampled is only a small amount

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<sup>2</sup> Disability Rights Commission (2006) 'DRC Assessment Template for use by DRC staff'

of the total number of HEIs in England and Wales. We felt that it was possible to share effective practice, and highlight common weaknesses for the sector to learn from, without it being a 'naming and shaming' exercise. We hope that this overview report will be a positive tool for the sector.

## Findings

38 per cent of the HEIs sampled (8 out of 21) were assessed as being compliant with the regulations. Their schemes demonstrated that they had effectively met each of the key requirements of the duty, with perhaps only minor additions necessary to improve the schemes further.

62 per cent of the HEIs sampled (13 out of 21) were found not to be compliant in some way with the specific duty regulations<sup>3</sup>. The extent to which HEIs were assessed as being non-compliant varied greatly from scheme to scheme. Some HEIs' schemes were deficient in a number of areas, whilst others were marginally non-compliant, with only one area where improvements were needed. Overall all HEIs had some strengths, and, in some cases, examples of effective practice are given from HEIs assessed as being non-compliant, as well as from those assessed as being compliant.

The Disability Rights Commission (DRC) has written to the Vice Chancellors of all the HEIs that were assessed. Reports commended HEIs on examples of effective practice and highlighted areas for improvement where necessary. For those HEIs assessed as being non-compliant, a deadline was given by which improvements would have to be made. It was suggested that these HEIs contact Equality Challenge Unit (ECU) for further support. Once schemes have been re-submitted to the DRC we will re-assess the areas identified as requiring revision. Overall, the reports sent by DRC were found to be a positive basis for the development of the HEI's schemes. One HEI in particular reported that it kept the duty high up on the agenda.

A number of areas of effective practice were identified in the HEIs'

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<sup>3</sup> The Disability Discrimination (Public Authorities) (Statutory Duties) Regulations 2005, SI No. 2966

schemes:

- Involvement of external individuals or organisations was often in collaboration with other public authorities in the area to maximise effective involvement.
- Disabled people's involvement in the development of some of the schemes included approving the method of impact assessment, deciding on data collection, as well as deciding on the priorities for the action plan.
- Baseline data on the numbers of disabled staff and students currently employed or being educated at their HEI was generally set out alongside other statistics.
- Details were provided on how information gathered would be used.
- Information on how differential impact will be determined, dealt with, and the agreed policy implemented was given.
- Disabled people would be involved in the impact assessment process.
- Action plans were well structured showing specific steps that will be taken, set against a timetable with an indication of who is responsible for each step.
- Action plans were often tied in to wider institutional plans and priorities, ensuring that disability equality initiatives could be aligned to the strategic direction of the university.

There were also some common weaknesses:

- A failure to clearly illustrate the priorities raised by disabled people during involvement, and how these influenced decisions and actions within the scheme.
- Little or no information on where there were gaps in information gathering and how these will be remedied in future arrangements.
- A lack of detail provided in the methods for impact assessment.

These areas will be considered in more detail in this report which

we hope will assist the higher education sector in its continued implementation of the duty.

## **Involvement**

“Disabled people have rightly said that policymakers should do ‘nothing about us without us’. None of us can improve opportunities for disabled people effectively unless we talk to disabled people and involve them in our decision-making. That is why I see involvement of disabled people at the heart of the new Disability Equality Duty” Anne Maguire, Minister for Disabled People.

Involvement of disabled people is key to the Disability Equality Duty. Disabled people must be involved in the development of a Disability Equality Scheme and the scheme should include a statement of how this has taken place. This requirement reflects the fact that public authorities will struggle to identify and prioritise equality initiatives without the input and guidance of disabled people.

We found that all schemes in the sample group had included at least some reference, or a statement, on involving disabled people. Most schemes set out their methods for involvement and these ranged from: questionnaires for disabled staff and students; through to disability open forums for staff and students; and partnership arrangements with local organisations of disabled people.

A very small minority of schemes only referred to consultation, and as something that they would do in the future. For these schemes we stressed that ‘involvement’ requires a more active engagement of disabled stakeholders than ‘consultation’.

A small number of schemes in the sample group had effectively showed the priorities raised by disabled people and how these influenced the actions in the action plan. One of the best examples showed the recommendations from disabled staff and students that were raised during focus groups. The recommendations were grouped into relevant sub headings and under each recommendation the response from the HEI was given.

### **Staff recruitment and selection**

For staff who are involved in interviews to have training in disability awareness, communication, being flexible with interview techniques and building in adjustments throughout the process.

All recruitment panel members have already received training. This will be reinforced following revisions to the appointments and guidance policy. This is addressed in Action Plan point 32.4

It won't always be possible to action every point raised through involvement, but where an issue raised can not be translated into an action, feedback on the reasons why should be given.

### **Estates**

The computer room in Clarendon has information on the glass door panel... which is in a too small font size. Be useful to have this notice on the side of the door and in larger font size.

This recommendation may be too specific to include in an Action Plan – but the university will nevertheless work to ensure that staff are generally aware of the need to post notices and information in a way that is accessible.<sup>5</sup>

Unfortunately a lot of the schemes in the sample group had not highlighted the priorities raised by disabled people during the involvement process in this way. The Code states that the involvement process should be both influential – people outside the organisation should be able to see how the involvement has affected the public authority's plans; and transparent – to maintain on-going commitment to involvement of disabled people, disabled people need to know that their involvement has been influential, not merely tokenistic. Public authorities show that their involvement has been influential and transparent when the priorities of disabled people are highlighted. If this is not done, it is

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<sup>4</sup> Example taken from a sampled HEI's Disability Equality Scheme

<sup>5</sup> Example taken from a sampled HEI's Disability Equality Scheme

impossible to see whether involvement has been effective, and where there is a clear link between involvement and decisions within the scheme and action plan.

The Duty to Promote Disability Equality code of practice states that it is important to consider the full diversity of disabled people – in terms of the type of impairment, as well as other dimensions such as ethnicity, age, gender, sexual orientation and religion or belief. The majority of sampled schemes did not include detailed information on the diversity of disabled people involved, though one scheme did set out information on the impairment groupings, gender, ethnicity, and age profile of its disabled staff.

Many of the schemes assessed had involved disabled staff and students in internal involvement, but had not undertaken external involvement of, for instance, potential future students from feeder colleges, disabled members of the public using the university's services or facilities, or local organisations of disabled people. Where HEIs had involved external individuals or organisations this was often conducted in collaboration with other public authorities in the area. This is an effective way of maximising involvement and beating 'involvement fatigue'. One sampled HEI worked in partnership with the local NHS Trust, local health board, and local authority to hear disabled people's views on access to health and social care services. Although not all the points raised were relevant to the HEI, general feedback was taken from the event, as well as specific areas for action relating to the HEI's role in training future health and social care professionals.

The duty to promote disability equality code of practice states that disabled people should be involved in all key aspects of the development of the scheme, such as: identifying the barriers faced by disabled people and unsatisfactory outcomes; setting priorities for action plans; and assisting planning activity. Some schemes that had addressed disabled people's involvement in all aspects, state that disabled people were involved in approving the method of impact assessment, considering what data they currently collect and what they need to collect, as well as deciding on the priorities for the action plan.

Overall, the lack of involvement of disabled people in the development of the scheme was the main reason why HEIs were assessed as being non-compliant. This is probably not surprising given that involvement of disabled people can be difficult to get

right. But when public authorities do get it right, the results are significant. Disabled people know best the barriers they face, and how to eliminate them. By involving disabled people, public authorities are 'asking the expert', getting information that will ensure they prioritise the right areas for action. The best performing public authorities will undoubtedly have involvement of disabled people at their heart.

For more information on involvement please see the Duty to Promote Disability Equality code of practice and the DRC's guidance on involving disabled people at [www.dotheduty.org](http://www.dotheduty.org)

## **Information Gathering**

'Gathering and analysing evidence is an important element of the overall DED, but is not an end in itself. The focus of the duty is to bring about greater equality for disabled people in society. The evidence gathering and analysis process is a means of deciding where action is most needed, taking such action, reviewing its effectiveness and deciding what further work needs to be done'.<sup>6</sup>

The regulations require listed public authorities to include in their Disability Equality Schemes a statement of the authority's arrangements for gathering information in relation to employment, and, where appropriate, its delivery of education and its functions.

Educational bodies<sup>7</sup> must set out their arrangements for gathering information on the effect of their policies and practices on the recruitment, development, and retention of disabled employees; and their arrangements for gathering information on the effect of

policies and practices on the educational opportunities available to, and the achievements of, disabled pupils and students.

Virtually all of the sampled schemes included some reference to information gathering and show some effective practice in meeting

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<sup>6</sup> Disability Rights Commission (2007) 'Guidance on gathering and analysing evidence to inform action'.

<sup>7</sup> Specified in Parts II, III, or IV of Schedule 1, The Disability Discrimination (Public Authorities) (Statutory Duties) Regulations 2005

this part of the duty. As an introduction to the information gathering section most schemes set out baseline data on the numbers of disabled staff and students currently employed or being educated at their HEI, this is recommended. As well as this we looked for systematic detail on: all information currently gathered, including data; identification of where there were gaps in information gathering and how these will be remedied (details of planned information gathering arrangements); and specific arrangements for employment and education. Schemes needed to show that they were gathering, or planned to gather, sufficient information to assess the effect of policies and practices on the recruitment, development and retention of disabled employees, and the educational opportunities and achievements of disabled students.

Some of the best schemes fulfilled most, if not all of these requirements. For example, one scheme states that they collect data on: disabled student applications; offers; offer acceptances; entrants; achievement; completions; early leavers; participation of students in student groups; and student development opportunities, all by impairment group. For staff, the scheme states that information is collected on: disabled applicants for jobs; those who are short listed and successful; the provision of reasonable adjustments; cases dealt with by anti harassment advisers; complaints and grievances; and training. Some data is set out to illustrate these arrangements (though not to the extent that the scheme would become unwieldy). We do recommend that at least some current statistics are included in the scheme. Even where there is relatively limited information or statistics this is still helpful to include as it illustrates how the evidence informed decisions about priorities, and actions planned as a result.

Disabled people with different impairments can experience fundamentally different barriers, and have different experiences of using and being employed in public services. For this reason, if possible, information should also be disaggregated by impairment type. Whether or not it is appropriate to gather data by impairment and reproduce this in the scheme will depend on how the information will be used, and whether disabled staff and students, who may be in small numbers, are happy to have information presented in this way. In some cases, to maintain anonymity, it may be appropriate to state in the scheme that data is disaggregated by impairment, but for this not to be reproduced in the scheme.

Of those schemes that did look at where there were gaps in information, one of the best stated that as part of their impact assessment process a detailed mapping exercise will be undertaken to consider the usefulness of existing data, data not currently recorded, areas that it has been difficult to collect information on, and how this can be remedied.

Most of the schemes assessed provided some detail on how information gathered would be used. The Duty to Promote Disability Equality code of practice states that the scheme should include a statement of the authority's arrangements for putting the information gathered to use, in particular in reviewing the effectiveness of its action plan and in preparing subsequent Disability Equality Schemes. All HEIs appreciated that there is little point in gathering information if it is not going to be used.

For more information on gathering and using information please see the Duty to Promote Disability Equality code of practice and the DRC's guidance 'Gathering and Analysing Evidence to Inform Action' at [www.dotheduty.org](http://www.dotheduty.org)

## **Impact Assessment**

'Disability equality impact assessment is the process of assessing the impact of existing or proposed policies and practices in relation to their consequences for disability equality. It includes looking for opportunities for positive impact that may have been missed or that could be better exploited, as well as the detection of actual or potential negative impact for disabled people'.<sup>8</sup>

The regulations require listed public authorities to set out in their schemes a statement on the authority's methods for assessing the impact of its policies and practices, or the likely impact of its proposed policies and practices, on equality for disabled people.

All of the sampled schemes referred, in varying amounts of detail, to the impact assessment process. Many of the sampled schemes gave some information on how differential impact will be determined, dealt with, and the agreed policy implemented. For example, one scheme states that the HEI will be determining

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<sup>8</sup> Disability Rights Commission (2007) 'Disability Equality Impact Assessment and the Disability Equality Duty'

impact through the involvement of disabled people and analysis of the evidence base, stating that they will take steps to mitigate against adverse impact, and will publish the results of positive impacts. They then go on to state that following impact assessment changes in the policy are likely, and/or a replacement or abandonment of a particular policy, or additional measures being put in place.

Many of the schemes would have benefited from including more information on their method for impact assessment as it stood, even if the process was to be developed further. For example, some schemes needed to make it clear that the process covers new and existing policies and practices, and that missed opportunities to promote disability equality, or positive impact, will be highlighted as well as adverse impact.

One of the best examples, showing the impact assessment process, included information on an initial screening process that policies and practices will be subject to, in order to determine whether a full impact assessment should take place. Separate appendices were attached to the scheme showing the initial screening form that will be used by the HEI. The form requires staff who are undertaking the screening to indicate specific stakeholders that the policy impacts upon, highlight where data exists to facilitate the screening process, and whether previous consultations or involvement of relevant groups have indicated that the particular policy creates problems for them. The screening form is then reproduced again with a fictional example used to illustrate what a typical response might be to each of the stages of the screening process. The same process is repeated for the full impact assessment form, which is triggered once a policy or practice has been through the screening process, and a full impact assessment is necessary.

Most of the sampled schemes provided at least some information on which policies and practices were a priority for impact assessment. In some cases HEIs also provided a basic timetable showing when each assessment will take place. One particular scheme committed itself to assessing a number of relevant functions, and the policies and practices that come under that function in the first year. This included student admissions – applications, offers, and acceptances; curriculum development – course design, teaching and assessment; and staff recruitment and selection - applications, offers, and acceptances.

The DRC recommends that authorities involve disabled people in impact assessments of policies which have been identified through screening as of high relevance. This will ensure opportunities to address the gaps for disabled people are not overlooked and therefore actions are taken to remedy them. Most of the sampled schemes stated that disabled people would be involved in the impact assessment process, an example of effective practice. Schemes stated that disabled people would be involved in assisting the HEI in determining impact, and deciding on actions to take to mitigate against any adverse impact, or to further exploit a positive impact. One HEI intends to form a focus group of disabled students who are paid for the time spent on policy review activities.

Around half of the sampled schemes indicated that they would be providing support for staff in the impact assessment process, in the form of guidance, a toolkit, and/or training. Some HEIs also intend to publish the results of impact assessment to assist transparency and build community confidence in the robustness of their approach to disability equality. These are examples of effective practice.

For more information on impact assessment please see the Duty to Promote Disability Equality code of practice and the DRC's guidance 'Disability Equality Impact Assessment and the Disability Equality Duty' at [www.dotheduty.org](http://www.dotheduty.org)

## **Action Plan**

'The action plan sets out key actions which an authority will take to promote disability equality. The steps must be sufficient to demonstrate that the public authority is complying with the general duty i.e. having due regard to disability equality. Appropriate weight must be given to the different elements of the duty'<sup>9</sup>.

For the most part, the action plans were well structured showing specific steps that will be taken, set against a timetable with an indication of who is responsible for each step. In some cases measures of success, milestones, and outcomes were also included.

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<sup>9</sup> Disability Rights Commission (2005) 'The Duty to Promote Disability Equality statutory code of practice'.

Most of the schemes' action plans included actions covering the three year period, as required by the regulations. There were however a very small proportion of schemes that had only included actions for the first year of the scheme. Where this was the case the intention was to set additional actions after the first year. A number of action plans included steps to improve the HEI's performance on involving disabled people, their arrangements for information gathering and impact assessment.

One of the most important aspects of a scheme's action plan, is evidence that steps have been identified either through the involvement of disabled people, and/or through evidence gathered. Many of the schemes' action plans did not include clear information on those steps identified through involvement. In some cases it was stated that involvement informed the actions planned, but beyond the statement itself, this wasn't made clear. Of those schemes that were explicit on the actions identified through involvement, some of the best examples highlighted actions in bold if they were identified through involvement, another included a 'source' column in the action plan showing where actions have come from, for example forums and questionnaires. As stated earlier, it won't always be possible to action every point raised through involvement, but where an issue raised can not be translated into an action, feedback on the reasons why should be given.

Most of the sampled schemes' action plans failed to reflect all aspects of the general duty. In particular the requirements to give due regard to eliminating disability related harassment, encouraging participation in public life, and promoting positive attitudes. There were some schemes that had included specific actions around these requirements, and generally these were good. For example, to give due regard to eliminating disability related harassment an HEI plans to monitor the university's complaints and harassment processes to determine the extent of harassment of disabled students. To give due regard to encouraging participation in public life an HEI plans to examine how well the social and recreational activities of the university meet the needs of disabled students and to develop a clear plan to enhance this. To give due regard to promoting positive attitudes an HEI plans to develop a programme of regular open sessions of disability awareness training.

Many of the sampled schemes tied in their action plans to wider

institutional plans and priorities. For example in one scheme the equality initiatives in the action plan are addressed alongside the HEI's strategic plan objectives, enabling the HEI to align activities to the strategic direction of the university.

For more information on action plans please see the Duty to Promote Disability Equality code of practice at [www.dotheduty.org](http://www.dotheduty.org)

## **Where now for HEIs and other public authorities?**

All public authorities, including HEIs, who had to produce a Disability Equality Scheme by 4 December 2006, will now be preparing for their first annual report. Publishing this information demonstrates the authority's commitment to disability equality. Disabled people can also refer to the annual report to see the progress made towards the steps planned.

The Duty to Promote Disability Equality code of practice states that public authorities must, on an annual basis, publish a report containing a summary of:

- the steps it has taken to fulfil its disability equality duty (the action plan); what has the authority done over the past year to eliminate discrimination and promote equality of opportunity and is it meeting its targets?
- the results of the information gathering which it has carried out – what evidence has been obtained and what does it indicate?
- what the authority has done with the information gathered – what actions will be taken as a result of what the information indicates?

Public authorities are able to use other documents they publish annually as a vehicle for their annual report as long as disability elements are distinct. Once HEIs and other public authorities have completed their first annual report in December 2007 it is possible to change the reporting date if it fits in with other reporting mechanisms. So for instance an HEI might publish their second annual report in June 2008 to fit in with another major annual report and continue to produce subsequent reports in June 2009 and so on. Alternatively public authorities may want to produce annual reports in April to tie in with the race and gender duties.

The regulations require public authorities, including HEIs to review and revise their Disability Equality Scheme every three years. The revision should take into account the information gathered, and what that information indicates, as well as what areas need to be focused on in the following three years.

When implementing, reporting on, and revising Disability Equality Schemes commitment at the very highest level is crucial to the schemes success. All of the schemes sampled understood the importance of strong, high level leadership in implementing the disability equality duty and securing buy-in across the whole institution.

The findings of this work and other DED work will be passed on to the Commission for Equality and Human Rights when it takes over the Disability Rights Commission's functions in October 2007.