

Equality Commission

FOR NORTHERN IRELAND

Disability Discrimination Code of Practice for Further & Higher Education



**Special Educational Needs and Disability
(Northern Ireland) Order 2005**

NIA 276/03

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This document is available in other formats upon request

**Special Educational Needs and Disability
(Northern Ireland) Order 2005**

Laid before the Northern Ireland Assembly by the Department for Employment and Learning in accordance with Section 54A(4)(a) of the Disability Discrimination Act 1995 (as amended by Article 41 of the Special Educational Needs and Disability (Northern Ireland) Order 2005).

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This Code of Practice is available in a range of accessible formats (for example in Braille, audio cassette, disk or other format) on request from the Equality Commission for Northern Ireland. If you would like a copy in an alternative format please contact:

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The Code of Practice shall come into effect on such a day as the Department of Employment and Learning may by order appoint. Please contact the Equality Commission for further details.

The Code of Practice applies to Northern Ireland

The Special Educational Needs and Disability (Northern Ireland) Order 2005 (SENDO) applies to schools and further and higher education institutions, including the teacher training and agricultural colleges and general qualification bodies.

This Code of Practice explains the duties placed upon educational institutions within the further and higher education sectors only.

This Code explains how SENDO makes it unlawful for bodies responsible for the provision of further and higher education and other related services to discriminate against disabled students and prospective students. SENDO makes it unlawful to treat disabled people less favourably for a reason related to their disability: to make 'reasonable adjustments', to ensure, where reasonable, further and higher education is fully accessible to disabled people and protect students from victimisation. The 'reasonable adjustment' duty is both an anticipatory and reactive duty.

SENDO is a new law, which took effect on 1st September 2005.

Foreword

Education is important, it can unlock talents and provide an opportunity to develop an individual's full potential. The Special Educational Needs and Disability (Northern Ireland) Order 2005 came into effect on 1st September 2005. The Equality Commission for Northern Ireland welcomes the introduction of this new law as it provides an opportunity to make education more accessible for disabled people of all ages in Northern Ireland.

This Code of Practice explains how SENDO makes it unlawful for the bodies responsible for the provision of further and higher education, and other related services, to discriminate against disabled students and prospective students. This Code is important in explaining the complexities of the law. Further and higher educational institutions may benefit from its guidance so allowing them to understand this legislation better and comply with its terms. Furthermore, the Code will inform disabled people what they can do if they feel they have been discriminated against.

This Code is a major tool in helping achieve the aim of a society where all disabled people can participate fully as equal citizens. It aims to highlight when discrimination can occur, even if unintentional, and to give practical guidance and encourage good practice in delivering an inclusive education service.

SENDO is intended to bring about significant changes in the accessibility of educational provision and to achieve the objectives set out by the Disability Rights Task Force in its report in December 1999 'From Exclusion to Inclusion' which stated that: "Inclusion of disabled people throughout their school and college life is one of the most powerful levers in banishing stereotypes and negative attitudes towards disabled people amongst the next generation. When disabled and non-disabled people are educated together, this sends powerful messages to the whole community about the potential for a truly integrated and diverse society".

For SENDO to be effective and achieve this vision it must be implemented in a managed and strategic way in terms of adequate resources, training and evaluation. Central to any management strategy is the dignity of the disabled person. SENDO represents an opportunity to build upon the inclusive practices that are happening in the further and higher education sectors. An important part of this law is the anticipatory duty placed upon educational institutions to make reasonable adjustments. This is a powerful incentive for educational institutions to review policies, procedures, practices, physical access, communication and attitudes to ensure, where reasonable, that unlawful disability discrimination does not happen.

Further and higher education institutions which are designated as public authorities should also bear in mind that they have duties to have due regard to the need to promote equality of opportunity between – among others – persons with a disability and persons without under Section 75 of the Northern Ireland Act 1998. These duties complement and reinforce those required by SENDO.

This Code is necessarily comprehensive and detailed in order to assist in the implementation of the new law for the further and higher education sectors in Northern Ireland. However, the Commission has also produced a range of other information to help disabled people and relevant educational institutions to understand their rights and responsibilities.

The Commission hopes this and all our publications will be widely used and helpful.

Bob Collins

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1 Introduction

Principle that underlies SENDO

- 1.1 The principle behind the Further and Higher Education sections of the Special Educational Needs and Disability (Northern Ireland) Order 2005 (SENDO) is that:

Disabled people should have the same opportunities as non-disabled people to benefit wherever possible from whatever education or other related provision is available.
- 1.2 This principle is core to all the duties placed upon further and higher education institutions within Northern Ireland, and in all their activities relating to the provision of education and other related services.
- 1.3 To fulfil this principle, it must be stressed that to meet their duties under SENDO, further and higher education institutions must make reasonable efforts to ensure that college and university life is fully accessible. This can be achieved by anticipating the needs of disabled students generally as well as meeting the needs of individuals.
- 1.4 By doing so, further and higher education institutions will continue to make significant steps towards an inclusive educational environment.
- 1.5 A disabled student or prospective student is a disabled person as defined by the Disability Discrimination Act 1995 (DDA). Chapter 3 outlines the definition of disability in more detail.

Purpose of the Further & Higher Education sections of SENDO

- 1.6 SENDO became law on 1st September 2005.
- 1.7 Within SENDO there are specific sections relating to the further and higher education sectors. In effect, these sections of SENDO...
- introduce the duty not to discriminate against disabled people or students to further and higher education institutions.
- 1.8 The Further and Higher Education sections of SENDO deal specifically with education, training and related services, provided by further and higher education institutions. From 1st September 2005
- bodies responsible for the provision of education, and other related services within further and higher education, are required not to discriminate against disabled students or prospective students.

Purpose of the Code

- 1.9 The purpose of this Code of Practice (the Code) is:
- to give practical guidance on how to provide an inclusive service and accessible education to disabled people within the further and higher education sectors;
 - to describe the duties on the bodies responsible for the provision of education and other related services within the further and higher education sectors, and help assist in the avoidance of complaints and litigation;

- to outline the rights of disabled people within the further and higher education sectors; and,
- to inform disabled people what they can do if they feel that they have been discriminated against within the further and higher education sectors.

1.10 This Code does not give:

- practical guidance on how to avoid discrimination against disabled people and students with respect to General Qualifications Bodies.

1.11 In SENDO, a duty is placed upon General Qualifications Bodies not to discriminate against disabled people. Information regarding this duty is available free of charge from the Equality Commission for Northern Ireland (the Commission).

1.12 This Code relates exclusively to the Further and Higher Education sections of SENDO and to Northern Ireland only. Schools provision, including that for pupils over 16, is not covered in this Code but in a separate Code of Practice for Schools, which can be obtained from the Commission.

1.13 Those who work with disabled people in education and training are encouraged to go beyond mere compliance with the law and work towards eliminating discrimination against disabled people in these services altogether. Practical guidance is available in Chapter 9 of this Code and by contacting the Commission. Further advice can also be obtained from the organisations listed in Chapter 11.

- 1.14 Each chapter of the Code should be viewed as part of an overall explanation of the Further and Higher Education sections of the legislation and the regulations made under it. In order to understand the law properly it is necessary to read the Code as a whole. The Code should not be read too narrowly or literally. It is intended to explain the principles of the law and to illustrate how the law might operate in certain situations. There are some questions which the Code cannot resolve and which must await the authoritative interpretation of the courts. The Code is not intended to be a substitute for taking appropriate advice on the legal implications of particular situations.

Who has issued this Code?

- 1.15 The Equality Commission for Northern Ireland (the Commission) has prepared and issued this Code under Section 54A of the DDA (as amended by SENDO) and at the request of the Minister with responsibility for Employment and Learning.
- 1.16 The Commission has also prepared and issued a separate Code of Practice covering Schools.
- 1.17 The Commission has also prepared Codes of Practice covering other areas relating to disability discrimination. For example, the Code of Practice on Rights of Access to Goods, Facilities, Services and Premises; and the Disability Code of Practice on Employment and Occupation; and the Disability Code of Practice on Trade Organisations and Qualifications Bodies.

Status of the Code

- 1.18 The Code does not impose legal obligations. Nor is it an authoritative statement of the law – that is a matter for the courts.

- 1.19 The Code can be used in evidence in legal proceedings under SENDO. Courts must take into account any part of the Code that appears to them relevant to any question arising in those proceedings.
- 1.20 If bodies responsible for further and higher education, or other related provision, follow the guidance in the Code, it may help to avoid an adverse judgment by a court in any proceedings.

References in the Code

- 1.21 References made to 'SENDO' apply to the Further and Higher Education sections of the Special Educational Needs and Disability (Northern Ireland) Order 2005.
- 1.22 Throughout the Code, references are made to 'responsible bodies'. These are the bodies responsible for providing education or other related provisions, and who are legally responsible under SENDO. A definition of responsible bodies is given in Chapter 2 of this Code.
- 1.23 The term 'Disabled People' refers to disabled students, disabled prospective students and all disabled people. The term 'Disabled Person' can be interpreted in the same way but in the singular.
- 1.24 It must be stressed that 'Disabled People' are not a homogenous group. There are many types of disability and furthermore seemingly similar disabilities affect different people in many different ways.
- 1.25 Reference is made throughout this Code to 'disabled students or 'disabled people'. The Commission appreciates the sensitivity of language and similar to the Disability Rights Commission has chosen to adopt the social model of disability.

- 1.26 This means that the term ‘disabled person’ is used in our publications as opposed to ‘a person with a disability’ which endorses the medical model of disability. The social model of disability proposes that it is often environmental factors such as the structure of a building, social attitudes, and communication inadequacies rather than the limitations arising from a person’s disability, which unnecessarily restrict a disabled person’s ability to participate fully in educational life. The Commission acknowledges that some people may prefer to use the alternative terminology ‘people with disabilities’.
- 1.27 Many of the terms used in this Code are drawn from legislation and have a particular meaning. Only a court can decide how these terms are interpreted and in which circumstances they apply.

Examples in the Code

- 1.28 Examples of how SENDO is likely to work are given in boxes. They are intended simply to illustrate the principles and concepts used in the legislation and should be read in that light.
- 1.29 The examples should not be treated as complete or authoritative statements of the law. It is not possible to offer generalised solutions. Individual circumstances will always require individual solutions. Changes to specific circumstances in any of the examples given might well change the solution or outcome.

- 1.30 While the examples refer to particular situations, they should be understood more widely as demonstrating how the law is likely to be applied generally. For this reason they attempt to include a wide range of disabilities and situations to demonstrate the width and scope of SENDO. They can often be used to test how the law might apply in similar situations involving different disabilities, or different types of further and higher education or other related provision. References to men or women are given for realism and the examples could, of course, apply to either sex.

Changes to the Law

- 1.31 This Code refers to SENDO as at September 2005. There may be changes to SENDO or to other legislation, for example, to the range of people who are considered to have a disability under the law. These changes may have an effect on the duties explained in this Code.

Everyone who has responsibilities under SENDO will need to ensure that he / she keeps up to date with any developments that may affect SENDO's provisions. You can get information about this from the Commission.

Further information

- 1.32 Copies of SENDO and Regulations made under it can be obtained from The Stationery Office:

Post: TSO
16 Arthur Street
Belfast
BT1 4GD

Telephone: 028 9023 8451

Fax: 028 9023 5401

E-mail: belfast.bookshop@tso.co.uk

Website: www.tso.co.uk

- 1.33 Copies of SENDO and Regulations made under it can be downloaded from the Office of Public Sector Information:

Website: www.opsi.gov.uk

- 1.34 Further copies of this Code and other guidance materials can be obtained directly from the Commission.

- 1.35 Copies of other codes of practice relating to the employment and occupations provisions and the goods and services provisions are available from the Commission. Furthermore, a code dealing with the duties of trade organisations and professional bodies is also available from the Commission.

- 1.36 The Commission can also provide guidance materials on the definition of disability.

- 1.37 Free information can be obtained by contacting the Commission:

Post: Equality Commission for Northern Ireland
Equality House
Shaftesbury Square
Belfast
BT2 7DP

Telephone: 028 9050 0600

Textphone: 028 9050 0589

Fax: 028 9031 5993

Email: information@equalityni.org

Website: www.equalityni.org

- 1.38 The Code and information about SENDO are also available in alternative formats; including large print, Braille and audiotape.

2 Who has Responsibilities?

Educational Institutions

2.1 The Further and Higher Education sections of SENDO place responsibilities on educational institutions not to discriminate against disabled people. The providers covered by this section of SENDO include:

- educational institutions in the higher education sector, such as universities;

Example 1 – A university

A university in Northern Ireland offers courses to prospective students worldwide.

Even though the prospective students, and the funding that will support them while attending the university, come from many different places, they all have rights under SENDO.

The university has responsibilities to all prospective students applying and enrolling upon its courses. This is regardless of where the students come from, the duration of the course, and whether the method of attendance is full-time or part-time.

This scenario could be applied to any institution with duties under SENDO

- educational institutions in the further education sector, such as colleges (or institutes) of further education / further and higher education;

Example 2 – A college of further and higher education

A Northern Ireland college of further and higher education provides courses to students from the local area, from Northern Ireland, and from many other parts of the world.

While attending the college, students have rights under SENDO not to be discriminated against in the provision of student services.

The college has responsibilities under SENDO. It has a duty not to unlawfully discriminate against disabled people in any of the student services that it provides, or offers to provide, wholly or mainly for students attending its courses on the institution's main site, or campus, or in outreach centres.

This scenario could be applied to any institution with duties under SENDO

- institutions providing teacher training, also known as colleges of education;

Example 3 – A college of education

A teacher training college provides degree and PGCE courses, plus other professional courses for those in education related occupations.

Regardless of the nationality of students or prospective students and no matter what types of courses they attend, or wish to attend, the college has responsibilities under SENDO. The college has a duty not to unlawfully discriminate against disabled students and prospective students in the admissions and exclusions of students, in the suspension and expulsion of students and in the provision of student services.

This scenario could be applied to any institution with duties under SENDO

- the College of Agriculture, Food and Rural Enterprise;

Example 4 – A college of agriculture

A college of agriculture offers a wide range of courses, many of which are vocational and practically based.

As many of the courses are vocational and / or practically based, the college may claim when a disabled person applies to do a course that they cannot either meet the academic or prescribed standards of that particular course.

It is the college's responsibility to take all reasonable steps to ensure that all reasonable adjustments are made to enable a disabled student to attend a course. It is only after every reasonable adjustment is investigated, and that it can be clearly demonstrated that the student cannot meet the academic or prescribed standards, that the college can justify its refusal to allow the disabled student onto a course.

This scenario could be applied to any institution with duties under SENDO

- any institution designated in an Order by the Department for Employment and Learning.

2.2 Any institution providing post-16 education that is not covered by the Further and Higher Education sections within SENDO is likely to be covered by Part 3 of the DDA. For more details of what is required under Part 3 of the DDA please contact the Commission.

Responsible bodies - definitions

2.3 The legal responsibility not to unlawfully discriminate against disabled people lies with the responsible body for the provision of education and other related services. In other words, a responsible body is the body that is responsible for fulfilling any legal duties under SENDO.

2.4 In Northern Ireland, the responsible bodies that must comply with the Further and Higher Education sections of SENDO are as follows:

- the governing body of a university;
- the governing body of an institution of further education;
- the managers of a College of Education;
- the Department of Agriculture and Rural Development for the College of Agriculture, Food and Rural Enterprise; and
- any institution designated under an Order made by the Department for Employment and Learning, the body specified under that Order is the responsible body.

Other bodies

2.5 There are a number of other bodies and organisations in Northern Ireland which are not specified by SENDO as responsible bodies but which have an input into the provision of education. It is recommended that these bodies / organisations take cognisance of the disability discrimination duties placed on responsible bodies for further and higher education in the roles that they perform. These bodies / organisations may include:

- Department for Employment and Learning;
- Association of Northern Ireland Colleges;
- trade unions;
- professional & trade organisations;
- Northern Ireland Higher Education Council; or
- health and social service boards and trusts.

2.6 Their support will be vital to the successful implementation of SENDO in the further and higher education sectors in Northern Ireland. Particularly in relation to the provision of:

- finance;
- resources;
- training;
- advice and guidance;
- medical support;
- information;
- technical services; and / or
- legal services.

2.7 All responsible bodies under SENDO are also designated under Section 75, and schedule 9, of the Northern Ireland Act 1998, and have a duty to promote equality of opportunity for disabled students. Other bodies which may have an input into further and higher education may also have duties imposed upon them by Section 75. Further information about the Section 75 duties can be obtained free of charge from the Commission.

Post 16 education providers who do not have duties

- 2.8 The Further and Higher Education sections of SENDO do not apply to all providers of education, even if the provision, education or qualifications they offer are the same as those offered by organisations that are covered. The key issue is whether the institution or providing body itself is covered. If the provider is not one of those listed above, the provision does not fall under the Further and Higher Education sections of SENDO.
- 2.9 Non-statutory youth services, such as clubs and activities run by voluntary organisations, the Scouts or church youth clubs, are not covered by the Further and Higher Education sections of SENDO.
- 2.10 Private providers of education and work-based training providers are not covered by SENDO, but by Part 3 of the DDA.
- 2.11 For more details of what is required under Part 3 of the DDA please contact the Commission.
- 2.12 Here are examples of situations where institutions are not covered by the Further & Higher Education sections of SENDO.

Example 5 – A college owned by an overseas institution

A university in the USA offers its students the opportunity to study for a year in Northern Ireland. The students attend lectures and seminars in a college owned and run by their home institution. This provision is not covered by SENDO, but by Part 3 of the DDA.

Example 6 – A private college

A private college in Northern Ireland offers a course in Typing and Shorthand leading to an examination. The course and the qualification are identical to those offered by a nearby college of further and higher education.

However, the private college is not covered by SENDO, but by Part 3 of the DDA.

Example 7 – A school sixth form

A school sixth form provides further education funded by an Education and Library Board. However, the institution itself is not a college and the provision is not to adults, but for those continuing their education once they have passed the compulsory school age - so-called senior pupils. The sixth form will be covered by the Schools sections of SENDO and not the Further and Higher Education sections.

Example 8 – A voluntary organisation providing the same qualifications as a college covered by SENDO

A voluntary organisation provides work-based training funded by the Department for Employment and Learning. Although the qualification is the same as that provided by a nearby college, also funded by the Department for Employment and Learning, the voluntary organisation itself is not within the further education sector.

This provision is likely to fall within Part 3 of the DDA, not SENDO.

Example 9 – An independent or private service provider within an institution

A students' union at a Northern Ireland university is independent of the institution. It is not a service provided by the institution although it does receive some funding from it. It is not covered by SENDO, but is likely to be covered by Part 3 of the DDA.

However, if the students' union was not independent of the institution, then the institution's responsible body would have duties under SENDO to ensure, where reasonable, that discrimination does not occur.

The actions of a responsible body's employees

SENDO
Part III
Chapter IV
Article 45

- 2.13 Responsible bodies are legally accountable for the actions of their employees in the course of their employment. An employee who discriminates against a disabled person or student will usually be regarded as acting in the course of their employment, even if the responsible body has issued express instructions not to discriminate.

SENDO
Part III
Chapter IV
Article 45(5)

- 2.14 However, in legal proceedings against a responsible body based on the actions of an employee, it is a defence that the responsible body took 'such steps as were reasonably practicable' to prevent such actions. Training for staff on how to work with disabled people is likely to be central to such a defence. It is not a defence for the responsible body simply to show that the action took place without its knowledge or approval. Here are examples that explain how an institution may be responsible for the actions of their employees:

SENDO
Part III
Chapter IV
Article 45

Example 10 – Training delivered to a private company’s employees by an institution

A large private company awards a contract to a college of further and higher education for the provision of tailored information technology training. The training is provided by the college’s staff on the private company’s own premises.

As an employer, the private company has a duty not to unlawfully discriminate against disabled students or prospective students under Part 2 of the DDA. However, the college also has responsibilities under SENDO, as it is responsible for the actions of its employees in the course of their employment.

Example 11 – Staff employed by the institution but teaching in a school

A lecturer at a college of further and higher education teaches at a local school once a week for a one hour information technology class. The college and the school have a formal arrangement to provide this teaching.

The school has responsibilities under the Schools section of SENDO. However, the college may also have responsibilities under SENDO, as it is responsible for the actions of its employees in the course of their employment.

- 2.15 In some cases individual employees may also be legally responsible for their own actions. This is explained in more detail in Chapter 8.

Provisions not made directly by a responsible body

- 2.16 Responsible bodies may arrange for a third party to provide education, training or other related services for students on its behalf. This provision remains the responsibility of the responsible body, and so is covered by SENDO. For more information on a responsible body's responsibility for the actions of its agents, see Chapter 8. Here are some examples:

Example 12 – Contracted out residential accommodation services

Residential accommodation services in a university are contracted out. Although the university is no longer the direct provider of facilities on site, the duty under SENDO not to unlawfully discriminate against disabled people remains the responsibility of the university.

Example 13 – Guest speakers not employed by the institution

As part of a Business Studies course at a Northern Ireland college of further and higher education, local business people are invited in to talk about their experiences. The business people are not employees of the college. It is the college's responsibility under SENDO that disabled students are not unlawfully discriminated against on the course during the sessions with the visitors.

However, the business people may be legally responsible under Part 3 of the DDA.

Example 14 – Contracted out GP services

A Northern Ireland university has contracted with a local GP practice for the provision of health services to students. In arranging a third party to provide health services, the duty under SENDO not to discriminate against disabled students remains the responsibility of the university.

Example 15 – Exchange programmes with overseas institutions

As part of an Art History course at a university in Northern Ireland, students spend a month in France on a programme run by a French university. It is the Northern Ireland university's responsibility to ensure that the French university can provide access for a disabled student who uses a wheelchair. If the French university cannot provide an accessible learning environment for a wheelchair user then the Northern Ireland university may have to seek another partnership agreement with another overseas institution.

Example 16 – Staff employed by the institution and another employer

A university's medical school delivers much of its teaching through the consultants in its affiliated teaching hospital. Consultants at the hospital are employed by the university as well as by the hospital. The university is responsible for teaching conducted in both university and hospital settings.

- 2.17 However, to the extent that the provision is not made by, nor made on behalf of, the responsible body, it is not covered. For example:

Example 17 – A work placement not provided by an institution

A student with cerebral palsy undertakes a work placement in a local business. The placement is a voluntary arrangement with the aim of boosting the student's career prospects. The arrangement was not set up by the student's educational institution.

The placement is not provided by the institution, and the local business is not under any contract with the institution.

Even though the student is not employed by the business he may still be covered by Part 2 of the DDA (employment provision). Any treatment that the disabled student receives on the placement is not covered by SENDO because it is not made by or on behalf of the institution.

Example 18 – Treatment from members of the public on a service used by the institution

Part of the independent living course for students with learning difficulties at an outreach centre run by a college of further and higher education includes going to the shops on the bus. Although this takes place outside the outreach centre, the college is responsible under SENDO to do what it can to ensure disabled students are not discriminated against. However, any treatment that a student receives from members of the public or others on the bus or at the shops is not covered by SENDO because it is not made by or on behalf of the institution.

Example 19 – Partnership arrangements with overseas institutions where the overseas institution provides teaching and services

A Northern Ireland university has a partnership arrangement with a college overseas. The Northern Ireland university awards the qualification. However, all the teaching and all the services are provided by the overseas college. The Northern Ireland university is not responsible, under SENDO, for any treatment that the student receives from the overseas college staff because it is not made by or on behalf of the university.

Example 20 – Partnership arrangements with overseas institutions where the teaching is carried out by the Northern Ireland institution

Another Northern Ireland university has a partnership arrangement with a college overseas. The university provides the teaching on the course using its own staff. The university is responsible under SENDO for ensuring, where reasonable, that students are not discriminated against in relation to the teaching they receive because this is provided by the university.

- 2.18 Even if an initial discriminatory act is not carried out by the responsible body, a responsible body may retain responsibility under SENDO for preventing the discrimination continuing or recurring.

Example 21 – Preventing discrimination on a work placement

A student with diabetes is being harassed by permanent staff members in the office of an insurance company where he is on work placement. The harassment is because of his disability. The placement tutor finds this out when talking to the student as part of his monitoring of the placement.

The institution is responsible for preventing the discrimination continuing or recurring. In this case, the tutor talks to the office manager, who agrees to take appropriate action to make sure this does not happen again. However, there may be joint responsibility. While the student is on the placement the insurance company has responsibilities towards him under Part 2 of the DDA (employment).

Example 22 – Preventing discrimination during a partnership arrangement

Students on a 3 year language course at a Northern Ireland institution spend two months studying at a partner institution in Europe. Despite the work that the Northern Ireland institution has done with the European institution to explain the needs of disabled students on the programme, disabled students continue to complain that they have been discriminated against during their stay.

The Northern Ireland institution is responsible for preventing the discrimination continuing or recurring.

In this case, the Northern Ireland institution might decide to sever its links with that institution, and find an alternative partner.

- 2.19 Some aspects of provision may be the responsibility of bodies other than the responsible body. In particular, entry to some courses may be regulated by a professional body, and many examinations are the responsibility of external examining bodies.
- 2.20 For guidance on the duties placed upon external qualification bodies contact the Commission. A Disability Code of Practice for Trade Organisations and Qualifications Bodies (DDA 1995) is available for guidance on the duties placed upon professional bodies. Furthermore, guidance on General Qualification Bodies will be made available by the Commission.

Example 23 – Modification in the delivery of an examination

A student at a further education college is studying for GCSEs. Modifications to the delivery of the examination have to be agreed by the examination board. The college has responsibility for finding out what modifications the student may need, for requesting these of the examination board and for making any adjustment needed to the administration of the examination in the college.

The college is not responsible for deciding whether modifications are acceptable or for any changes to the examinations themselves. This is a matter for the general qualification bodies which also have responsibilities under SENDO.

Example 24 – Entry onto courses and examinations accredited by a professional body

A student applies to do a degree in Medicine at a Northern Ireland university. Both the course and the examination are accredited by the General Medical Council (GMC).

The exam and the course are inaccessible for the student who is visually impaired. To the extent that the GMC accredits both the course and the examination, the university is not responsible for decisions about whether adaptations may be made. Therefore, it is the responsible body's duty to request any adaptations. The ultimate decision as to whether the adaptations can be made is the responsibility of the GMC. The university would be responsible for making any adaptations agreed by the GMC.

Example 25 – Other services provided by another organisation which uses an institution's property

A high street bank opens a branch on a university campus in Northern Ireland. Although the bank rents premises from the university, it is not part of the provision made by the university for its student body.

The university is not responsible for the behaviour or activities of the bank, although the bank must itself comply with Part 3 of the DDA (goods and services).

Activities of further & higher education affected by SENDO

2.21 There are 3 types of activities within the further and higher education sectors that are affected by SENDO:

- admissions and exclusions;
- services; and
- suspending and expelling.

Admissions & exclusions

2.22 It is unlawful for a responsible body to discriminate against a disabled person:

- in the arrangements it makes for determining admissions or enrolments to the institution;

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Example 26 – Applications

A Northern Ireland college of further and higher education requires all applicants to fill out an application form by hand. It does not allow students with manual dexterity limitations to type or use a helper to fill in the form.

This is likely to be unlawful.

Example 27 – Interviews

In Northern Ireland, one of its universities requires selected applicants to attend an interview. One applicant has a speech difficulty which gets worse when he is nervous. This means he needs more time to express himself. The university refuses to allow him any extra time at interview.

This is likely to be unlawful.

- in the terms on which it offers to admit or enrol a person;

Example 28 – Terms of an offer to admit onto a course

A college of further and higher education informs a student with epilepsy that he may not enrol on a course unless he has an assistant with him at all times in case he has a seizure. In the past the student has only had seizures during the night. The college's demand is likely to be unlawful.

- by refusing or deliberately omitting to accept an application for admission or enrolment.

Example 29 – Refusing or deliberately omitting to accept an application

A particular course run by a university in Northern Ireland proves to be very popular. As a result, the university receives many applications for the course. In order to cut down the numbers that the admissions tutor has to look through, the administrator sets to one side all applications from disabled students. These applicants are considered only if places remain after all other applicants have been considered.

This is likely to be unlawful.

Services

2.23 It is unlawful for bodies responsible for educational institutions to discriminate against disabled students in the provision of 'student services'.

2.24 'Student services' are any services that an institution provides or offers to provide wholly or mainly for students attending or undertaking courses. For convenience, 'Services' is used throughout the Code to refer to 'services' and 'student services'.

2.25 Services will vary from one provider to another, but might include, for example:

- teaching, including classes, lectures, seminars, practical sessions;
- curriculum design;
- examinations and assessments;
- field trips and outdoor education;
- arranging study abroad or work placements;
- outings and trips;
- research degrees and research facilities;
- informal / optional study skills sessions;
- short courses;
- day or evening adult education courses;
- training courses;
- distance learning;
- independent learning opportunities such as e-learning;
- learning facilities such as classrooms, lecture theatres, laboratories, studios, darkrooms, etc.;
- learning equipment and materials such as laboratory equipment, computer facilities, class handouts, etc.;
- libraries, learning centres and information centres and their resources;
- information and communication technology and resources;

- placement finding services;
- careers advice and training;
- careers libraries;
- job references;
- job shops and employment finding services;
- graduation and certificate ceremonies;
- leisure, recreation, entertainment and sports facilities;
- the physical environment;
- chaplaincies and prayer areas;
- health services;
- counselling services;
- catering facilities;
- childcare facilities;
- campus or college owned shops;
- car parking;
- residential accommodation;
- accommodation finding services;
- financial advice;
- welfare services; and / or,
- open days;

- 2.26 Please note, the above list is not exhaustive and is not intended to be.
- 2.27 Some of these areas were previously covered by Part 3 of the DDA (goods, facilities, services and premises) but aspects relating to teaching and learning are covered for the first time by SENDO.
- 2.28 Educational institutions in particular often make provision that is wholly or mainly for other groups of people, not students. These are not covered by SENDO. Examples might include:
- commercial conference facilities (these would be covered by Part 3 of the DDA);
 - commercial research or consultancy services (these might be covered by Part 3 of the DDA); or
 - services and facilities for staff (these would be covered by Part 2 of the DDA).

Suspending & expelling

- 2.29 It is also unlawful for a body responsible for an educational institution to discriminate against disabled students by suspending or expelling them from the institution for a reason which relates to their disability.

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Example 30 – Suspending & expelling

A college of further and higher education learns that a student admitted himself to hospital during the holidays because of an ongoing mental health difficulty. The college expels the student from the institution because staff fear he may be dangerous. The college has no evidence that the student will be dangerous - staff have simply made an assumption. This is likely to be unlawful.

Part-time or short-term courses

- 2.30 A student does not have to be undertaking a complete course to have rights under SENDO. Someone who is enquiring about, applying to, attending or undertaking a course of study at an educational institution, however long or short the study period is, is covered. This includes people doing single modules, evening courses or distance learning. Here are some examples:

Example 31 – An international student undertaking one year of study at a Northern Ireland university

A wheelchair user from Canada comes to a university in Northern Ireland to undertake a year's study for her junior year abroad. The Northern Ireland university has a duty under SENDO not to discriminate against her during her period of study.

Example 32 – When prospective students attend an open day at an institution

A 15-year-old with a disability attends an open day at his local college of further and higher education. He is covered by SENDO during the open day. The college has responsibilities under SENDO towards prospective students. Therefore, the college must ensure, where reasonable, that the open day is accessible to all disabled prospective students.

Example 33 – School pupils attending courses at a college of further & higher education

Once a week pupils at a school attend a local college of further and higher education for one module of their life skills course.

The college of further and higher education has responsibilities under the Further and Higher Education sections of SENDO while the pupils are attending the module. However, the school also has responsibilities under the Schools sections of SENDO not to unlawfully discriminate against disabled people, whether pupils or students, in the arrangements it makes with the local college of further and higher education.

Example 34 – E-learning

A Northern Ireland university offers an e-learning provision for its distant learning courses. The university is responsible under SENDO for all the services that it provides through e-learning. For example, in ensuring that:

- its website is accessible;
- all aspects in the course application process are accessible;
- all aspects of the course's submission and appraisal process are accessible; and
- all methods of communication with the institution such as e-mail, discussion boards and on-line chat are fully accessible to those with disabilities.

The university is responsible regardless of where the student is from, or where the student is accessing the course. Therefore, a disabled person from Thailand who uses the e-learning service of the Northern Ireland university has the same rights under SENDO as a disabled student accessing the service from Enniskillen, Northern Ireland.

Example 35 – Re-sitting exams outside term-time

A student with cerebral palsy attending a college of further and higher education failed a mathematics examination in June and is required to re-sit the exam in September, before the start of the new academic year. The college has responsibilities toward the student in its preparations for the examination and in the way it conducts the examination, as it would if the examination took place within term-time.

Protection & responsibilities under other legislation

- 2.31 In some cases, more than one body may have responsibilities towards the same people under disability legislation including SENDO. The fact that two bodies have responsibility does not diminish the responsibility of either body. For example:

Example 36 – An exchange agreement with an institution in Great Britain

As part of a History course, students at a Northern Ireland university spend a fortnight at another university in Great Britain which has copies of original historical documents. During that time, the students receive teaching from staff at the host institution in Great Britain and use other facilities there.

Both the home institution and the host institution have responsibilities towards disabled students; the Northern Ireland institution under SENDO and the institution in Great Britain under Part 4 of the DDA.

- 2.32 In other cases, disabled people may be protected by a number of different parts of the DDA or under SENDO. In these cases, the individual might seek redress for discrimination under whichever part of the DDA, or SENDO, as is most appropriate. For example:

Example 37 – A disabled tutor attending an evening class

A disabled tutor at a college of further and higher education is taking an evening class in Shorthand at the centre where she works.

While she is teaching, and in her relationship with her employer, she is protected by Part 2 of the DDA (employment).

While she is attending her Shorthand classes, and in her relationship with the centre as a student, she is protected by SENDO.

While she is using the canteen, which is open to staff and students, she is protected by both Part 2 of the DDA and by SENDO.

Furthermore, if the student invites a disabled friend to use the canteen, the disabled friend is protected by Part 3 of the DDA.

Example 38 – A student on an open day for prospective students

A Northern Ireland college of further and higher education arranges a visit to an open day for prospective students at a Northern Ireland university.

One of the visiting students is deaf and her first language is a sign language.

Both the university and the college have responsibilities under SENDO to ensure, where reasonable, that the visit is accessible to the deaf student.

Example 39 – A student on a sandwich placement with an employment contract

A student with mental ill health is studying for an undergraduate degree in Engineering at a Northern Ireland university. As part of the course, she has to undertake a sandwich placement in an engineering firm in Belfast. She works in the engineering firm for a year, and has a contract of employment with them.

While she is on the placement the engineering firm has responsibilities towards her under Part 2 of the DDA (employment). The university where she is studying for her degree has responsibilities towards her under SENDO.

Example 40 – Students on a trip to a service provider arranged by an institution

A group of students with learning difficulties go on a theatre trip as part of the end-of-term celebrations at their college.

The college of further and higher education, which has organised the trip, has responsibilities towards the students under SENDO to the extent that it is reasonable for them to make appropriate adjustments. The theatre, as a service provider, has responsibilities towards the students under Part 3 of the DDA (goods and services).

Example 41 – The responsibilities for courses and assessments

A visually impaired student is taking a National Vocational Qualification (NVQ) at a college of further and higher education. Under SENDO the college is responsible for the training that the student receives. The awarding body for the NVQ may also be responsible for any reasonable adjustments.

The relationship between duties under SENDO & Part 3 of the DDA

- 2.33 Some of the Services covered by SENDO may also be covered by Part 3 of the DDA, which relates to goods, facilities and services. Students are protected by SENDO in respect of education, training and other related services. Service providers are still responsible under Part 3 of the DDA, if they continue to make provision for members of the public other than students.

Example 42 – Catering facilities

In a Northern Ireland college of further and higher education, the catering facilities are currently covered by Part 3 of the DDA as a service provided to the public. Because the catering facilities in the college are provided wholly or mainly for students, a disabled student using the canteen is protected by SENDO.

Example 43 – Conference facilities

A Northern Ireland university has a conference facility. It is not provided wholly or mainly for students. This facility is covered by Part 3 of the DDA.

Example 44 – Library services

The library services at a university in Northern Ireland are open to the general public. As a result, this service is not provided wholly or mainly for students. This facility is covered by Part 3 of the DDA to the public and by SENDO to students.

3 Definition of Disability – Who has Rights?

Definition of a disabled person

- 3.1 SENDO protects disabled students, and prospective students, from disability discrimination in, or applying to, further and higher education.
- 3.2 It defines a disabled student as “a student who is a disabled person”.
- 3.3 This means that a student, who is by the definition given in the DDA a ‘disabled person’, is protected from unlawful discrimination by SENDO.
- 3.4 SENDO defines disabled people according to the definition of disability used in the DDA:

a person has a disability for the purposes of this Act if he has a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities.

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A ‘physical’ or ‘mental’ impairment

- 3.5 The term ‘physical impairment’ covers a number of conditions that affect the body. For example it may include:
 - arthritis;
 - visual impairment;
 - deaf and hard of hearing;

- diabetes;
- asthma;
- epilepsy;
- cancer;
- multiple sclerosis; or
- facial disfigurements.

3.6 The term 'mental impairment' may include:

- learning disabilities / difficulties such as:
 - dyslexia;
 - down syndrome; or
 - ADHD.
- mental ill health, such as:
 - depression;
 - bipolar disorder; or
 - schizophrenia.

3.7 The DDA states that it does not include any impairment resulting from or consisting of a mental illness, unless that illness is a clinically well-recognised illness. A clinically well-recognised illness is one that is recognised by a respected body of medical opinion. This aspect of the definition along with other areas may be reviewed and amended. The reader is advised to keep up-to-date on the definition of disability. To do this, contact the Commission.

- 3.8 Note, the above is simply an example of a list of impairments that may be defined as disabilities under the DDA. These lists are not exhaustive and are not intended to be. When considering disability it is helpful to think in terms of the effect the impairment has upon a person, rather than the impairment itself.

A 'substantial' adverse effect

- 3.9 This is an effect that is more than minor or trivial - a limitation that is more than the normal differences in ability that might exist among people. It makes it more difficult and time consuming for the person to carry out an activity compared to someone without the impairment.

A 'long-term' effect

- 3.10 A 'long-term' effect of impairment is one which:
- has lasted at least 12 months; or
 - is likely to last at least 12 months; or
 - is likely to last for the rest of the person's life.

- 3.11 Effects such as the loss of mobility due to a broken limb or the effects of temporary infections are not considered to be long-term because a person would be likely to recover from these within 12 months.

Effects that come and go over time

- 3.12 If an effect is likely to come and go over a period of time (i.e. it is likely to recur) it is considered to be long-term.

Past disabilities

3.13 People who have had a disability within the terms of the DDA in the past continue to be protected from discrimination (in relation to that disability) even if they no longer have the disability.

‘Normal day-to-day activities’

3.14 ‘Normal day-to-day activities’ are those activities carried out by most people on a fairly regular and frequent basis. The test of whether an impairment affects a person’s normal day-to-day activities is whether it affects one of the broad categories of capacity listed in Schedule 1 to the DDA. 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; and
- perception of the risk of physical danger.

Treatment

3.15 Medical treatment or equipment (such as an artificial limb) which helps an impairment is not taken into account when considering whether an impairment has a substantial effect.

- 3.16 For example, a person who wears a hearing aid to improve their hearing is considered to have the hearing loss that would exist without the use of the aid. Likewise, a person who manages their diabetes with insulin is considered to have the diabetes that would exist without the insulin treatment.
- 3.17 If, however, the treatment is likely to cure the impairment, this should be taken into account in assessing whether the impairment is long-term.

People who wear spectacles

- 3.18 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.

Disfigurements

- 3.19 People with severe disfigurements are covered by SENDO. In these circumstances it is not necessary to demonstrate the effect of the person's disfigurement on his / her ability to carry out normal day-to-day activities.
- 3.20 However, disfigurements which consist of a tattoo (which has not been removed), non-medical body piercing, or something attached through such piercing, are not covered by SENDO.

Progressive conditions

3.21 Progressive conditions are conditions that are likely to change and develop over time. Examples given in the DDA include cancer, multiple sclerosis, muscular dystrophy and HIV infection. Where a person has a progressive condition they will be covered by SENDO from the moment the condition leads to an effect on the ability to carry out normal day-to-day activities - even though not a substantial effect. However, there must be a likely expectation that the condition will eventually have a substantial adverse effect on such ability.

Genetic conditions

3.22 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.

Specifically excluded conditions

3.23 The following is a list of excluded conditions:

- 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; or
- voyeurism.

Other definitions of disability

- 3.24 It may be that some of those who currently receive support or adjustments from education providers because of a disability or learning difficulty are not covered by SENDO. In particular, the definition of disability relevant to SENDO is not the same as the definition of 'learning difficulty' used in the Further Education (Northern Ireland) Order 1997.
- 3.25 The DDA definition is based on ability to carry out normal day-to-day activities, whereas the Further Education (Northern Ireland) Order 1997 definition relates to learning. Some people may be covered by both, and others may be covered by only one of these definitions. Education providers should be aware that they may need to make different provision for people covered by the different pieces of legislation.
- 3.26 All examples used in this Code assume a disability that would come under the definition of disability used by the DDA.

International students

- 3.27 SENDO applies to disabled students from overseas who apply to do or are enrolled on a course in Northern Ireland.

Further information on the definition of disability

- 3.28 The definition of a disabled person used by the DDA can be periodically reviewed. To ensure that the definition cited within this Code is up-to-date at the time of reading, please contact the Commission. See Chapters 1 & 11 for the Commission's contact details.
- 3.29 A publication, available from The Stationery Office, entitled 'Guidance on matters to be taken into account in determining questions relating to the definition of disability', provides additional help in understanding the concept of disability and in identifying disabled persons. See Chapters 1 and 11 for The Stationery Office contact details.
- 3.30 Useful contacts are given in Chapter 11 of the Code.

4 Overview of Duties

Three duties

4.1 This short chapter gives an outline of the duties placed upon responsible bodies by SENDO. They are classified in three ways:

- Less favourable treatment
 - A responsible body must not treat a disabled person less favourably, for a reason relating to the person's disability, than it treats (or would treat) a person to whom that reason does not, or would not, apply and that treatment cannot be justified.

Chapter 5 outlines the less favourable treatment duty.

- Failure to make a reasonable adjustment
 - A responsible body must make reasonable adjustments when a disabled person is placed, or likely to be placed, at a substantial disadvantage in comparison with a person who is not disabled.

Chapter 6 outlines the duty to make reasonable adjustments.

- Victimisation
 - A person, or a responsible body, must not discriminate against another person (the victim) by treating the victim less favourably than they treat (or would treat) other people in the same circumstances – regardless of disability – because the victim has brought proceedings, or given evidence or information in connection with such proceedings, or alleged someone has contravened SENDO or the DDA (whether or not the proceeding or allegations are later dropped). The protection from victimisation applies whether or not the person victimised is a disabled person.

Chapter 7 outlines the duty not to victimise

Reasonable adjustments – anticipatory & reactive duties

- 4.2 When a responsible body becomes aware of an individual person's disability it has a duty to meet that person's individual requirements by making reasonable adjustments.
- 4.3 However, it is not simply a reactive duty owed towards individuals.
- 4.4 The duty to make reasonable adjustments is an anticipatory duty owed to all disabled people and students.

- 4.5 A responsible body should not wait until a disabled person applies to a course or tries to use a service before making reasonable adjustments.
- 4.6 The duty to make reasonable adjustments is also a continuing and evolving duty. A responsible body must keep adjustments constantly under review, building upon its experience with disabled people applying for courses and services. The nature of, and demand for, reasonable adjustments will change over time. It is the responsible body's duty to revisit and to assess how it provides reasonable adjustments.
- 4.7 For more information on the anticipatory duty to make reasonable adjustments, please refer to Chapter 6.

5 Disability Discrimination – Less Favourable Treatment

Introduction

- 5.1 This chapter is split into two sections:
- Less favourable treatment; and
 - What you need to consider.
- 5.2 The first short section looks at a form of discrimination known as less favourable treatment. It describes less favourable treatment and defines what some of the terms and phrases used within the law mean.
- 5.3 The second section practically examines what you need to consider when thinking about less favourable treatment.
- 5.4 This section draws our attention to the three broad areas of further and higher education to which the law is applied: the admissions process, student services, and the suspension and expelling of students.
- 5.5 Also, within this section a primary consideration is the establishment of a link between the less favourable treatment a disabled person receives and that person's disability.

- 5.6 However, there are important points you will also need to consider when establishing a link between a person's disability and less favourable treatment. You will also need to know how, why and when an institution within the further and higher education sectors can justify discriminating against disabled people. You will need to consider whether they can treat a disabled person more favourably than other persons and whether they have to know if someone is disabled.

Less favourable treatment

- 5.7 One form of discrimination is 'Less Favourable Treatment'
- 5.8 SENDO states that the responsible body for an institution within the further and higher education sectors discriminates against a disabled person if:
- for a reason which relates to their disability, it treats them less favourably than it treats, or would treat, others to whom that reason does not apply, or would not apply; and
 - it cannot show that the particular treatment is justified.
- 5.9 The following example shows that the reasons for the less favourable treatment must relate to the disabled person's disability:

Example 45 – A person’s disability and less favourable treatment must be related

A student with dyslexia applies to do a distance learning degree in English at a university in Northern Ireland. The university tells her that it does not accept students with dyslexia on English degrees.

The treatment she receives is less favourable compared to other students, and the reason for the treatment relates to her disability.

The university is likely to be acting unlawfully.

What you need to consider

5.10 This section examines what you need to consider when thinking about less favourable treatment in more detail. These include the following:

- Disability and less favourable treatment;
- Treating a disabled person more favourably;
- Activities covered by SENDO;
- Justification for less favourable treatment; and
- Knowledge of a person’s disability.

Disability & less favourable treatment

5.11 For a disabled person to be treated less favourably, a responsible body must treat him or her less favourably in comparison with how other people are treated or would be treated. The reasons for the less favourable treatment must relate to the disabled person’s disability. These examples show situations where this may occur:

Example 46 – Entry requirements

A deaf student applies to do a course in Dentistry at university. He is turned down because he does not have the right entry qualifications.

The rejection is not connected to his disability.

The rejection is likely to be lawful.

Example 47 – Employees actions

At a college of further and higher education, a student with a facial disfigurement is taking an evening class in yoga. The tutor for the class spends time with all the students individually helping them with their technique. The tutor does not spend any time individually with the disabled student because he feels uncomfortable with her.

As no other student has been treated in this way, and as the less favourable treatment is related to her disability, the treatment is likely to be unlawful.

Anti-social behaviour

- 5.12 The law not to treat disabled people less favourably does not mean that students who happen to be disabled can be disruptive or anti-social. The following example highlights this point:

Example 48 – Anti-social behaviour

A student with cerebral palsy has been asked to leave a university's halls of residence because of the number of noisy parties he has been holding which have been disturbing other students.

The reason for asking him to leave is his disruptive behaviour and is not related to his disability.

Therefore, this action is likely to be lawful.

The correct comparator

- 5.13 Treating a disabled student less favourably cannot be excused on the basis that another student who behaved similarly would be treated in the same way. Here is an example:

Example 49 – The best comparator

At a college of further and higher education, a student's asthma has caused her to take time off and miss three sessions of her course. The college requires all students who miss three lessons to take the course again, and several of the disabled student's classmates are told they must take the course again. However, but for the disability, the student would not have missed any lessons. In this case, therefore, the appropriate comparison is with someone who has not had to take time off.

Removing the disabled student from the course because of her absence would probably be less favourable treatment for a reason relating to her disability, and would be likely to be unlawful.

It may be the case, however, that the college could justify this treatment because of academic or other standards.

Poor treatment

- 5.14 Poor treatment is not the same as less favourable treatment. However, if a responsible body acts unfairly or inflexibly, then a court might draw inferences that discrimination occurred. Here is an example:

Example 50 – Poor treatment

A student who is a wheelchair user is treated rudely by one of the financial advisers in the student advice centre. The staff member is rude to all students that day; her bad treatment of the disabled student is not related to the student's disability.

The disabled student has not been treated less favourably than other students. The treatment may not be considered as unlawful.

Comparisons between disabled students

- 5.15 Comparisons can be made between the way one disabled student is treated with the way other disabled students are treated. Here is an example:

Example 51 – Comparisons between disabled students

A music coordinator tells a student who is visually impaired that she cannot join the college of further and higher education's singing group because she cannot read the sheet music. Two other students who are wheelchair users are allowed to join the group, but the tutor cannot use this fact to claim that discrimination did not take place.

The visually impaired student has been treated less favourably in comparison both with other students and with other disabled students for a reason relating to her disability.

This is likely to be unlawful.

Demonstrating less favourable treatment

- 5.16 Disabled students do not have to show that they were treated less favourably than others. The disabled student only needs to show that others would have been treated better. The comparison might be made on the basis of the usual treatment received by other students, or within the responsible bodies' policies and procedures about how people should be treated. Here is an example:

Example 52 – Other students being treated better

A tutor is arranging practical teaching activities for the students on his course. There is only one student at a loose end. He has a learning disability. The tutor has found it difficult in the past to communicate with him. The tutor decides to see if other students turn up with whom he finds it easier to communicate. None turn up, so in the end the tutor arranges no activities.

It does not matter that the disabled student cannot point to any other student treated better than himself. Had another student, without his disability, shown up then that student would have been treated more favourably.

The treatment received by the disabled student is, therefore, likely to be unlawful.

- 5.17 There must be a connection between the less favourable treatment and the person's disability for the treatment to be discriminatory. If the less favourable treatment of a disabled person was for another reason then it is unlikely to be discriminatory. This is best examined through an example:

Example 53 – Other students being treated better for a reason not related to a person’s disability

A student who is a wheelchair user is told she cannot go on a trip to the theatre organised by the local college of further and higher education. None of the other students are prevented from going on the trip. The reason for her exclusion is that she has still not paid the money she owes for the previous theatre trip; it is not related to the theatre’s accessibility.

The reason for the less favourable treatment is not related to the student’s disability and so is likely to be lawful.

Treating a disabled person more favourably

- 5.18 SENDO does not prohibit positive action in favour of disabled students or prospective students. Here is an example:

Example 54 – Treating a disabled person more favourably

A college of further and higher education runs evening classes in Yoga. The course is always over-subscribed.

The course gives preference to applicants with long-term back problems.

This would be within the law.

- 5.19 Educational institutions may initiate their own positive action schemes. These may use methods of training, learning and appraisal not traditionally used for gaining entry onto courses without compromising the institution's or course's academic standards. Further and higher educational institutions which enact positive action policies should ensure that their policies are objective, justifiable and transparent, and not contrary to other legal obligations. Educational institutions should contact the Commission before taking positive action measures. For more information please refer to Chapter 9.

Activities covered by SENDO

- 5.20 It is unlawful for a responsible body of a further and higher educational institution to discriminate against disabled students or prospective students in:

- the admissions process;
- the provision of student services; and
- the suspending and expelling of students.

- 5.21 Let us now examine these areas in more detail.

Admissions

- 5.22 It is unlawful for a body responsible for a further and higher educational institution to discriminate against a disabled person:

- In the arrangements it makes for determining admissions to the institution;

SENDO
Part III
Chapter II
Article 28
(1)(2)(3)

SENDO
Part III
Chapter II
Article 28
(1)(a)(b)&(c)

Example 55 – Admissions or enrolments

As a condition of entry onto a course, applicants with dyslexia are required to take an additional literacy test by a college of further and higher education. No other students are required to take this additional test. This is likely to be unlawful.

- In the terms on which it offers to admit the person to the institution; and

Example 56 – Terms on which an offer is made

A university makes an offer of a place to a student who is a wheelchair user on the condition that she finds her own living accommodation locally.

No other students have this condition placed upon them.

This is likely to be unlawful.

- By refusing or deliberately omitting to accept an application for admission by the person to the institution.

Example 57 – Refusing or deliberately omitting to accept an application for enrolment

A college of further and higher education in Northern Ireland has an enrolment evening. The staff member registering students instructs an enquirer who is visually impaired to wait to be called until someone else can help him with his form, rather than registering him immediately. The enquirer is not called and, by the time he himself approaches the desk, the course he wants to join is full and he is told it is too late to enrol.

This is likely to be unlawful.

Student services

- 5.23 It is unlawful for the bodies responsible for institutions within the further and higher education sectors to treat disabled students less favourably when providing student services. Here are some examples:

Example 58 – Student services

A new student has an artificial limb. She is told that she cannot train on her college of further and higher education's sports track. Other students are allowed to train on the track.

College staff told the student that her use of the track would damage its surface. However, the staff did not investigate this assumption and therefore have no evidence to back up this claim.

This is likely to be unlawful.

Example 59 – Employment references

A lecturer for a university writes a job reference for a student with dyslexia who has just obtained an upper second class honours degree.

In the reference, he makes disparaging and inaccurate comments about the student's dyslexia, saying that it is likely to make her unfit for any job which involves significant amounts of written work.

This is likely to be unlawful.

Suspending & expelling

- 5.24 It is unlawful for the bodies responsible for further and higher education institutions to discriminate against disabled students in suspending and expelling them from the institution for a reason relating to their disability. Here are two examples:

Example 60 – Suspending or expelling disabled students

A student diagnosed with bi-polar depression attended a college of further and higher education. When this is disclosed to staff they fear the student may become violent and disruptive and so the student is expelled.

There is no evidence to substantiate this fear and he has not broken any of the college regulations.

This is likely to be unlawful.

Example 61 – Suspending or expelling disabled students for bad behaviour

At a university, a wheelchair user is repeatedly rude to other students and staff and, on occasion, has wilfully damaged its property.

This behaviour is not related to the person's disability. Other students behaving in this way would be suspended or expelled. The university decides to expel the student.

This is likely to be lawful.

Justification for less favourable treatment

- 5.25 A responsible body should not look for a reason or an excuse to discriminate against disabled students or prospective students. It is in the responsible body's best interests to see that what they provide is accessible.
- 5.26 In limited circumstances it is permitted for responsible bodies to justify treating a disabled student, or prospective student, less favourably than other students. If a responsible body can show that the treatment in question is "justified", then the treatment is not considered discriminatory in law.
- 5.27 Less favourable treatment of disabled students, and prospective students, can be justified if one of the following occur:
- it is necessary to maintain academic standards;
 - it is necessary to maintain other prescribed standards;
 - it is of a prescribed kind;
 - it occurs in prescribed circumstances; or
 - the reasons are both material (i.e. have a clear connection with the circumstances of the particular case) and substantial (i.e. is more than minor or trivial).
- 5.28 It may not be possible to justify less favourable treatment if there are reasonable steps that should have been taken to avoid putting disabled students at a disadvantage but were not, i.e. reasonable adjustments. Reasonable adjustments are considered in Chapter 6.

General approach to justification

- 5.29 If a disabled student can show that they have been treated less favourably than others for a reason relating to their disability, it is for the responsible body to show that the action taken was justified.
- 5.30 The responsible body can only use one of the justifications cited above, if the justification would still be valid even after a reasonable adjustment had been made. See the following chapter of reasonable adjustments. Here is an example:

Example 62 – Justification for less favourable treatment

A college of further and higher education gives a disabled student a poor mark for his exam. The student experiences fatigue and cannot concentrate for long periods. Medical evidence has been provided. The college has knowledge of the student's disability. The reason he has performed badly in his examination is related to his disability and so he has been treated less favourably.

The college tries to justify treating the student less favourably by arguing that this is necessary for maintaining academic standards. However, the college failed to make any reasonable adjustments for the student such as allowing him short rest breaks.

The college cannot use the justification, because they could have made an appropriate reasonable adjustment.

Academic standards

- 5.31 A responsible body is not required to do anything that would undermine the academic standards of a particular course. Therefore, if it is necessary to maintain these standards, then a responsible body may be able to justify less favourable treatment. Here is an example to show a situation when this may occur:

Example 63 – Maintenance of academic standards

A man with learning difficulties applies to do an Information Technology degree at a university. He does not meet the essential entry requirements to meet the academic standards of the course. This is for a reason relating to his disability.

The university considers what adjustments it needs to make by seeking advice not only from the disabled student but by consulting with his support provider. The university also talks to the college where the man had previously been studying, and obtains expert advice from an advocacy organisation for those with learning difficulties.

Through a thorough assessment, the university concludes that, even if reasonable steps were taken to eliminate any disadvantage caused by his disability, there would be no prospect of him completing the degree course.

This action is likely to be lawful as the student cannot meet the essential entry requirements, even with all reasonable adjustments in place, as the academic standards of the course would be undermined.

- 5.32 Academic standards should not be used spuriously. Where elements are not central or core to a course, they are unlikely to provide a reason to justify discrimination based on academic standards. Academic standards cannot be used to justify barring whole groups of disabled people from courses or services.

- 5.33 Any justification has to be relevant to the academic standards of a particular course and to the abilities of an individual person. Here are a couple of examples:

Example 64 – When a disabled student applies to take a course

A student with severe dyslexia applies to take a course in Journalism at a college of further and higher education.

Even with the provision of reasonable adjustments (for her dyslexia) by her current place of learning the prospective student does not have the necessary literacy skills to complete the course. The college rejects her application, using the justification of academic standards after consultation with the relevant qualifications bodies and the investigation of possible reasonable adjustments.

This is likely to be lawful.

Example 65 – Using a policy to reject all disabled people with the same disability

The same college now introduces a policy of rejecting all applicants with dyslexia to the Journalism course.

The policy does not allow course selectors to consider different levels of dyslexia, the ability of individual applicants or the range of possible adjustments. This is likely to be unlawful.

Prescribed standards & circumstances

5.34 SENDO allows for the Department for Employment and Learning to create future regulations to list any:

- standards;
- treatment; or
- circumstances

that may provide reasons to justify less favourable treatment.

Reasons must be material to the circumstances of a particular case

5.35 Less favourable treatment may also be justified as long as the reasons for the treatment are both ‘material to the circumstances’ of the particular case and ‘substantial’.

5.36 To be material to the circumstances of the particular case, the reasons have to relate to the individual circumstances. Here is an example:

Example 66 – All reasons must be material to the circumstance of a particular case

A student with emotional and behavioural difficulties applies for a course at a college of further and higher education. She has previously been on a link course to the college and staff know that she is extremely disruptive and makes a great deal of noise during classes which prevents other students from learning.

During her previous periods in the college, tutors tried to make adjustments for her, but these were not successful. The college approaches the school, which confirms there has been no change in her behaviour. The college decides that they cannot accept her onto the course. The reasons for the failure to admit her relate to this particular student and her particular behaviour patterns.

For this reason, the college is likely to be acting lawfully in rejecting the student.

Reasons must be substantial

- 5.37 A reason also has to be ‘substantial’ and not just minor or trivial. For example:

Example 67 – Substantial - I

A student with autistic spectrum disorder applies for a course. The student can be disruptive, and sometimes will talk inappropriately during classes. However, her interruptions are not much more than those made by other students, and when she has an assistant with her, her behaviour improves. There is unlikely to be any material and substantial reason to justify not admitting this student.

Example 68 – Substantial - II

A blind woman applies to do a Forensic Science degree. Although she can undertake some parts of the course, she cannot undertake the parts of the course which involve visual analysis of materials. This is a core and necessary component of the course. The college is likely to have a substantial reason to justify not accepting this student.

Example 69 – Substantial - III

A deaf student applies to undertake a college course. She communicates through sign language. The college approaches the interpreting service which provides support for its other deaf students, but due to the exceptionally high demand that year, the service is unable to support this additional student. The college makes wider and exhaustive enquiries, but is unable to find the services of an interpreter or communicator.

Because it is not possible to make the necessary adjustments for her to gain access to the course (see Chapter 6), the college does not accept her application.

This is likely to be a material and substantial reason for less favourable treatment.

Example 70 – Substantial - IV

A student has decided not to tell his institution that he has dyslexia despite several opportunities to do so. The course tutor notices that his test results are poor. He asks the student whether he might like to consider speaking to the institution's Learning Support Coordinator or Student Support Officer to discuss his learning options. This may include the possibility of having a diagnostic assessment by an Educational Psychologist to see whether he has dyslexia. The student tells the tutor that he was just feeling tired that day and this appears a satisfactory explanation.

While chatting to another member of staff however, the student tells her in strictest confidence that he has dyslexia and is finding it difficult to write his essays.

Because she has been asked to keep the information confidential despite her efforts to encourage the student to disclose his disability, the staff member does not pass this information on. The tutor gives a low mark for the student's test. The institution is likely to have a material and substantial reason to justify the less favourable treatment.

Knowledge of a person's disability

- 5.38 To discriminate against someone by treating them less favourably because of their disability, a responsible body needs to have knowledge of the person's disability.
- 5.39 If a responsible body did not know, and could not reasonably have known that a person was disabled, then the disabled person has not been treated less favourably for a reason relating to their disability. A responsible body has to claim lack of knowledge about a person's disability and must have taken reasonable steps to find out about a person's disability. Here are two examples:

Example 71 – When an institution does not take reasonable steps to find out whether a student has a disability

A student has severe depression and, because of the medication she is on, finds it difficult to get to her first morning class. After several weeks during which she has missed all her morning classes, and without approaching the student to find out why she has not turned up, the college of further and higher education decides to remove her from the course as her level of attendance does not comply with the rules and regulations placed upon students attending courses at the college.

The institution has not taken reasonable action to find out whether the student's failure to attend is due to a disability, and so is likely to be acting unlawfully.

Example 72 – When an institution does take reasonable steps to find out whether a student has a disability

In the same situation the tutor approaches the student and asks her in private if there is any reason why she cannot come into her first class. The student denies that there is any particular reason for her non-attendance.

After following its own guidance on attendance, the college concludes that it must remove her from the course. This is likely to be lawful.

5.40 Therefore, a responsible body should be proactive in encouraging people to disclose a disability. Proactive steps might involve:

- asking course applicants to declare their disabilities on application and enrolment forms, and explaining the reasons for doing so;
- publicising the provision that is made for disabled people;
- providing opportunities for students to tell tutors / teachers or other staff in confidence;
- providing staff with disability awareness training;
- asking students when they apply for examinations whether they need any specific individual arrangements because of a disability;
- explaining to students the benefit of disclosure and how this information will be kept confidential; and / or
- ensuring that the atmosphere and culture at the institution or service is open and welcoming so that disabled people feel safe to disclose a disability.

5.41 If the responsible body might reasonably have been expected to know or find out about a person's disability, then it cannot claim that it did not know about a student's or prospective student's disability. Here is one example:

Example 73 – When an institution might reasonably have been expected to know or find out about a person’s disability

A man with a medical condition that causes fatigue and subsequent loss of speech control applies to a university for a postgraduate degree. The application form does not ask whether or not he has a disability or whether he would have any particular needs when attending interview.

He attends an interview, during which he is very listless and his speech is very slurred because he is tired from the journey. The selectors turn him down because of this. He mentioned at the interview that he felt tired but the panel ignored this.

The admissions office made no attempts to find out whether or not the applicant had a disability. Because this information might reasonably have been known, the selectors’ treatment of the applicant is likely to be unlawful.

- 5.42 The action that it is reasonable to take to find out about a person’s disability may differ between different types of provision. Here are two examples of different types of provision:

Example 74 – Appropriate actions depend upon the type of provision - I

A student advice centre states that it welcomes disabled students. However, the staff do not ask each new student whether or not they have a disability, as this could be considered intrusive.

This is likely to be lawful.

Example 75 – Appropriate actions depend upon the type of provision - II

A university has a large number of applicants who say they have dyslexia, and also has a number of referrals during each year from staff who suspect that individual students may have dyslexia.

The university makes an arrangement with an Educational Psychologist locally to provide diagnostic assessments.

This is likely to be reasonable.

- 5.43 If a disabled person has told someone within the institution or service about their disability, then the responsible body may not be able to claim that it did not know. Here is an example:

Example 76 – If a disabled person has told someone within the institution or service about their disability

This example examines a similar situation as those in Examples 71 & 72, however, in this example confidentiality is not requested.

To re-cap, a student has severe depression and, because of the medication she is on, finds it difficult to get to her first morning class. After several weeks during which she has missed all her morning classes, the college notices that her level of attendance does not comply with the rules and regulations placed upon students attending their courses.

However, the student tells her tutor that she is seeing a therapist and is taking medication. Although the tutor knows that the student might have a disability under SENDO, he does not pass this information on to the head of department who is making the decision about the student's continuation on the course. The tutor should obtain consent from the student before passing this information to the head of department.

The college cannot claim that it did not know about the disability, despite the tutor's failure to obtain consent from the student and then pass the information onto the head of department, and so is likely to be acting unlawfully if it removes her from the course.

- 5.44 In some cases, the disabled person may have told someone in confidence about their disability. In this instance, the responsible body might argue that it could not reasonably have known. For example:

Example 77 – If a disabled person has told someone in confidence within the institution or service about their disability

A student visits the counselling service of a university. The student tells a counsellor that she has recently developed multiple sclerosis and this is distracting her from her work.

The counsellor advises the student of the benefits of informing the college of her disability. However, counsellors subscribe to their own code of confidentiality as part of their profession and this is made clear to the student. Because of this, the counsellor does not pass this information on to other staff. The student does not tell anyone else in the institution that she has a disability.

The institution could claim that it did not know of the student's disability.

6 Disability Discrimination – Reasonable Adjustments

Introduction

6.1 The duty to make reasonable adjustments can be hard to understand. Therefore, this chapter has been split into three broad sections to help you:

Section A Understanding reasonable adjustments;

Section B Understanding what is reasonable; and

Section C Reasonable adjustments to leasehold premises.

Section A - Understanding reasonable adjustments

6.2 This section is split into two parts:

- The duty to make reasonable adjustments; and
- What you need to consider.

6.3 The first part looks at the duty to make reasonable adjustments for disabled people and students. It describes the duty to make reasonable adjustments and defines what some of the terms and phrases used within the law mean.

- 6.4 The second part practically examines what you need to consider when thinking about the duty to make reasonable adjustments. For example, the key issue of substantial disadvantage is examined further. However, other key issues are considered, including what adjustments a responsible body might be expected to make, how long does the duty continue, and whether or not the responsible body has to know if someone is disabled.

The duty to make reasonable adjustments

- 6.5 SENDO states that:

A responsible body for an educational institution shall take such steps that are reasonable for it to ensure that:

- in relation to the arrangements it makes for determining admissions, a disabled person is not placed at a substantial disadvantage in comparison with a person who is not disabled; and
- in relation to student services, a disabled student is not placed at a substantial disadvantage in comparison with someone who is not disabled.

- 6.6 Furthermore, SENDO states that the article “Occupational premises by educational institutions”, applies if:
- premises are occupied by an educational institution under a lease;
 - but for this Article, the responsible body would not be entitled to make a particular alteration to the premises; and
 - the alteration is one which the responsible body proposes to make in order to comply with Article 30.

6.7 The duty to make reasonable adjustments requires responsible bodies to take positive steps to make education and other related services accessible to disabled people or students. Reasonable adjustments aim to remove or reduce any substantial disadvantages faced by disabled people or students. This may be achieved by:

- changes in policies, procedures and actions;
- the provision of teaching and / or other materials in accessible formats;
- the use of computer technology when necessary; and / or
- making physical adjustments to premises.

What you need to consider

6.8 To examine reasonable adjustments further consider the following:

- Substantial disadvantage;
- To whom is the duty to make a reasonable adjustment owed?;
- Adjustments that might need to be made;
- Knowledge of a person's disability; and
- Justification for the failure to make a reasonable adjustment.

Substantial disadvantage

6.9 When considering whether a disabled person or student is placed at a substantial disadvantage compared to somebody who is not disabled, factors that could be taken into account include the:

- time;
- inconvenience;
- effort; or
- discomfort

experienced by disabled people or students in comparison with other people or students.

6.10 A 'substantial' disadvantage is one that is more than minor or trivial. Here are a few examples:

Example 78 – During a lecture

A partially deaf student who lip reads is attending a Business Studies course at a local college of further and higher education. One of his lecturers continues to lecture while simultaneously writing on the whiteboard. The student asks her to stop speaking when she turns her back to use the whiteboard so that he can follow what she is saying.

The student is likely to be at a substantial disadvantage if this adjustment is not made.

Example 79 – The provision of notice boards

A student with restricted growth requests that all university student notice boards are lowered in height so that he can read the information more easily. He is, however, able to read the notices without significant difficulty or discomfort when the boards are placed at their regular height.

The student's disadvantage compared to that of other students is unlikely to be found substantial.

Example 80 – A policy which does not allow guide dogs onto the premises

A teacher training college has a policy of not allowing dogs onto its premises. A blind man needs his guide dog to navigate around the premises. The man is likely to be placed at a substantial disadvantage if a change is not made to the policy.

Example 81 – Physical access

A college of further and higher education has three campuses. A wheelchair user wishes to attend a part-time art class at one particular campus which is nearest to her home. Unfortunately, this campus does not have an accessible art room. However, another of the campuses, only a little further away from her home, runs the same class with the same tutor and does have an accessible art room.

The college consults with the student and determines that the student is unlikely to be placed at a substantial disadvantage by attending the second campus as transport, for this particular student, to and from the second campus is as easy as to the first campus.

Example 82 – Administration of support providers' wages

A student is receiving Disabled Students' Allowances to pay for a sign language interpreter and note taker. Because of his disability, the student takes longer on his academic work than other students. On top of this, he has to take on the role of employer to his support providers, including arranging for National Insurance and insurance payments.

In this case, and in agreement with the student, the university arranges to process the support providers' wages through their payroll department.

Without this, the student could be placed at a substantial disadvantage in relation to his access to student services.

Example 83 – Information technology

At a university, a tutor in Zoology delivers one of his modules through a computer-based learning environment and awards marks for students' participation in online discussion. The system does not work with a visually impaired student's software.

The student is likely to be placed at a substantial disadvantage.

To whom is the duty to make a reasonable adjustment owed?

Anticipatory, continuing & evolving duty

- 6.11 The duty to make reasonable adjustments is an **anticipatory duty** owed to all disabled people and students.
- 6.12 It is not simply a duty to individuals.

- 6.13 Responsible bodies should not wait until a disabled person applies to a course or tries to use a service before thinking about reasonable adjustments they could make.
- 6.14 However, when a responsible body becomes aware of an individual person's disability it has a duty to meet that person's individual requirements by making reasonable adjustments
- 6.15 The duty to make reasonable adjustments is a **continuing duty**. Responsible bodies should keep the adjustments constantly under review in the light of their experience with disabled people applying to courses and using services.
- 6.16 It is an **evolving duty**, not something that needs simply to be considered once and once only, and then forgotten. For example, technological developments may provide new and better solutions to the problems of inaccessible services.

Failure to anticipate the duty

- 6.17 Failure to anticipate the need for an adjustment may mean it is too late to comply with the duty to make the adjustment when it is required. Lack of notice would not of itself provide a defence to a claim that an adjustment should have been made.

Anticipatory duty - actions, policies and procedures

- 6.18 The following examples highlight situations where the anticipatory nature of the duty applies. The first set of examples apply to the actions, policies and procedures of further and higher education institutions:

Example 84 – Accessible formats of teaching materials

All teaching staff in a college of further and higher education produce all their handouts in electronic form thus ensuring that they can easily be converted into large print or put into other alternative formats.

In doing so, the staff are anticipating reasonable adjustments that might need to be made.

Example 85 – Modular learning programmes

A college of further and higher education modularises its learning programmes where reasonably possible. This enables more courses to be accessible to students with learning disabilities since course level can be adjusted to match needs.

By having such a flexible policy, the college meets the anticipatory duty to make reasonable adjustments.

Example 86 – Disability awareness training

A university requires that all its staff attend disability awareness training and also ensures that its staff training programme includes regular sessions on issues connected with disability.

This is anticipating reasonable adjustments that might need to be made.

Example 87 – The establishment of a support network by an institution to help in the provision of adjustments

A small agricultural college that is unable to employ a large number of specialist staff ensures it has close links with other organisations so that it is able to call on specialist support providers (for example, for learners with dyslexia) when the need arises.

It therefore anticipates reasonable adjustments that it might need to make if it has applications from students with dyslexia.

Example 88 – Information technology

A university encourages its lecturers to put lecture notes on the institution's intranet. It introduces new procedures to ensure that all notes put on the intranet meet established guidelines to ensure there is no conflict with specialist software or features that students with dyslexia may be using.

It therefore anticipates reasonable adjustments that it might need to make for certain disabled students.

Example 89 – Flexible budgeting and the allocation of resources

A college of further and higher education makes its budget allocations to departments at the beginning of the year. Because it knows that the need for reasonable adjustments may arise at any time during the year, it ensures there is sufficient flexibility in the budget to reallocate money between departments during the year if this is necessary.

It therefore anticipates that it may need to make reasonable adjustments.

Example 90 – Support providers

A college of further and higher education has had a large number of students over the years needing assistance with taking medication.

There are a range of solutions available to the college which may meet its anticipatory duties, including:

- drafting and implementing a policy for the administration of medication;
- providing strict and standardized procedures to support this policy;
- initiating training programmes to advise staff of the policy; and
- providing suitable arrangements for those authorised by the policy to administer medication.

Where those authorised by the policy to administer medication, are employed by the college, they will be fully trained.

Therefore, the college may anticipate the reasonable adjustments that it needed to make for some students.

Anticipatory duty - buildings

- 6.19 The issue of anticipatory reasonable adjustments is particularly relevant in respect to buildings, whether these are owned, rented or leased. Here are three more examples:

Example 91 – Accessibility audits

A university ensures that its Building Works Department is thoroughly briefed on all aspects of physical access. Each time building works are undertaken an assessment is made of how the building can be made more accessible. For example, when an area is repainted the department ensures it is using colour contrasts, which will help students with a visual impairment. It also carries out an acoustic audit to ensure it is responding appropriately to deaf students.

The university is anticipating reasonable adjustments that might need to be made.

Example 92 – Standards for physical accessibility

A college of further and higher education provides a lot of its evening classes in rented accommodation in various locations off campus. It draws up a list of standards for physical accessibility that it wants its rented accommodation to meet and then looks for accommodation that meets these standards, thus anticipating reasonable adjustments that might be needed.

Example 93 – Working in partnership to meet the highest standards for physical accessibility

A university has a partnership arrangement with a housing association to provide residential accommodation for students.

It works with the housing association to make some of the rooms accessible for wheelchair users, thus anticipating reasonable adjustments that might need to be made.

Adjustments that might need to be made

Reasonable steps

- 6.20 There is no definition of what ‘reasonable steps’ an institution should take under SENDO. The purpose of taking the steps is to ensure that the disabled person or student is not placed at a substantial disadvantage. For general guidance on what a court may take into account when considering reasonable steps and reasonableness please refer to Section B on reasonableness in this chapter.
- 6.21 Responsible bodies should consider a wide range of adjustments. In some cases there may be financial or other support available from elsewhere to help provide the adjustments. Here is a series of examples:

Example 94 – Sitting tests & exams

A college of further and higher education insists that all potential students sit a basic Mathematics test before being admitted onto a particular programme. The test lasts an hour. A disabled person applies for the course. She has severe back pain when sitting still for long periods and needs to be able to get up and move around.

The college arranges for her to sit the test in a separate room and for a longer time so that she can do this. This is likely to be a reasonable adjustment for the college to make.

Example 95 – A needs assessment

A student with dyslexia is accepted on a college course. She is unsure exactly what support she will need. The college arranges for her to have a needs assessment to make appropriate adjustments for her. A needs assessment is the first stage in assessing and meeting the needs of a disabled student. This is likely to be an initial step for the college to make in the provision of reasonable adjustments for the student.

Example 96 – Communications support

A deaf student is starting a Social Policy course at a university. The student requires the assistance of a sign language interpreter for lectures and seminars.

The university arranges the appropriate reasonable adjustments. The university arranges for an interpreter and for lecture notes to be available before all lectures and seminars. The university also considers and tries to arrange for the student's lectures, seminars and one-to-one tutorials to be timetabled so that the interpreter could work in an efficient way.

Unfortunately, the re-timetabling of many of the lectures was impractical. However, the re-scheduling of one-to-one tutorials close to the times of some lectures was more easily arranged. This is likely to be a reasonable adjustment by the university for the student.

Example 97 – Information technology

A student with a visual impairment is following a distance learning course administered by a Northern Ireland university. She sends in her essays electronically but receives marked essays by post with handwritten comments in the margins that she is unable to read.

A likely reasonable adjustment would be for comments to be returned electronically.

Example 98 – Adaptable practices

A student with depression is on a Hair and Beauty training course run by the local college for further and higher education. She spends part of the week in a hairdressing salon. Work placements are usually arranged on the basis of a full working day. However, because of the effects of her medication she is unable to attend in the mornings.

A likely reasonable adjustment would be for the college to arrange for this student's work placement to take place in the afternoons only.

However, the professional and general qualifications bodies will also have responsibilities under DDA and SENDO when determining requirements on course attendance.

Example 99 – Field trips

As part of an Earth Science course at a local university, students are required to undertake a field trip involving an overnight stay in a mountain hut. A student who needs regular dialysis cannot stay overnight in the hut because the hut is not an appropriate environment for her to set up her dialysis equipment.

A likely reasonable adjustment would be for the tutor to arrange for her to take part during the days but for someone to return with her to a nearby village at night where she has set up her equipment.

Example 100 – Support providers

A student with learning difficulties is attending a National Vocational Qualification (NVQ) course in Catering run by the local college of further and higher education. She is managing the practical parts of the course but has difficulty with the essential skills required for the theory.

A likely reasonable adjustment would be to provide an essential skills support provider at designated periods each week to give extra help. Alternatively, the student may attend an essential skills course. The type of reasonable adjustment would be dependent upon the individual learning requirements of the student.

Example 101 – Transport to university

A student who has recently become disabled is accepted onto a Business Studies course at a college of further and higher education. Public transport is inaccessible to the student and he has no transport of his own. Without transport he is unable to get to college and is thus placed at a substantial disadvantage.

In this case, the college already operates its own transport for students living in particular outlying areas, and agrees to re-route the bus to stop close to the student's home. This is likely to be a reasonable adjustment.

However, if the college did not operate a bus service, it is unlikely to be considered reasonable to expect the college to start a transport service.

Example 102 – Creating a supportive environment

A student with schizophrenia has to attend a month's work experience placement as part of his college course. The usual college procedure is for students to go independently to their work placement but this student is very anxious about how he will cope.

A likely reasonable adjustment would be for his tutor to arrange to accompany him on the first day and then to telephone him at regular intervals.

Knowledge of a person's disability

Knowing that a student is disabled

- 6.22 If the institution did not know and could not reasonably have known that the student was disabled, then failure to make an adjustment for a disabled person or student is not discrimination. Here is an example:

Example 103 – Disclosure and reasonable steps

A student with a heart condition goes on a field trip as a compulsory part of her Geography course. The student has not told the college of further and higher education about her condition although she had been given the opportunity to do so in private on several occasions including when the field trip was announced. Part of the trip involves walking around the town counting shops and residential housing. During the day, it becomes apparent that she cannot complete the assignment although some last minute adjustments are made.

Because it could not have known about the disability in advance, the college is likely to have been acting lawfully.

Connection between lack of knowledge & failure to make reasonable adjustments

- 6.23 There must be a connection between the failure to make reasonable adjustments and the lack of knowledge. Take a look at this example:

Example 104 – Knowledge of a student’s disability

A man makes a written request to the local college of further and higher education for information about courses. He does not tell the college that he has no sight. Although the college produces its prospectus in electronic format, he is sent the print version, which he cannot access.

The college’s failure to make an adjustment for the enquirer is due to lack of knowledge about his disability.

This is likely to be lawful. However, to attract applicants with disabilities the college may train staff, and offer prospectuses in various formats as a standard practice.

Anticipatory duty & lack of knowledge

- 6.24 In some cases, the knowledge might not be relevant because the responsible body should have made the reasonable adjustment in response to the anticipatory nature of the duty.

Example 105 – Knowledge of a student’s disability and the anticipatory duty

A man with a visual impairment asks for information about courses at a college of further and higher education. He does not tell the college that he has a visual impairment. He can read type if it is of a reasonable size, usually font size 14 or greater. He is sent a prospectus for the college, which is printed in very small type, either font size 8 or 10, that he cannot read. The college does not produce information in any other format or even in reasonably sized type.

The college’s failure to make an adjustment for the enquirer with the visual impairment is not related to lack of knowledge about his disability, it is due to the college’s failure to make anticipatory adjustments for disabled people.

This is likely to be unlawful.

In this example, there are a range of solutions available to the college which may meet its anticipatory duties, including:

- providing the prospectus in alternative formats, such as larger font sized documents that are accessible to disabled students;
- training staff; and / or
- promoting the availability of alternative formats on request.

Claiming a lack of knowledge of a student’s disability even if the student had told someone within the institution

- 6.25 The responsible body may not be able to claim lack of knowledge if the disabled person has told someone within the institution or service about his or her disability. Here is an example:

Example 106 – Disclosure by the student

A student declares her disability on her application form to a local university. Once she is enrolled on a course she receives none of the support or adaptations that she needs.

The tutor claims she does not know that the student is disabled.

However, because the student has disclosed her disability, the university cannot claim it does not know about it.

The failure to offer support and adaptations is therefore likely to be unlawful.

Reasonably knowing that a student has a disability

- 6.26 If the responsible body might reasonably have known, or found out about a person's disability, then it cannot claim that it did not know. For example:

Example 107 – The institution's responsibility

An applicant does not declare his disability on his application form. When he calls up to confirm his attendance at a selection interview he talks to the admissions officer via Tynetalk, the telephone service for deaf people. The admissions officer does not ask the applicant if he will need any adaptations to the selection interview and fails to alert the interviewers for the course that the applicant may be deaf.

The interviewers do not realise that the applicant is deaf and do not take any steps to ensure that the interview is accessible to him. The responsible body might reasonably have known that the student had a disability. The failure to offer adaptations is, therefore, likely to be unlawful.

A proactive approach to encourage people to disclose a disability

- 6.27 A responsible body needs to adopt a proactive approach to encourage people to disclose a disability. This could be achieved by:
- asking people to declare their disabilities on application and enrolment forms;
 - publicising the provision that is made for disabled people;
 - providing opportunities for people to tell tutors, teachers or other staff in confidence; or
 - asking students when they apply for examinations whether they need any specific arrangements because of a disability.
- 6.28 It means ensuring that the atmosphere and culture are open and welcoming so that disabled people feel safe to disclose a disability.

Justification for the failure to make a reasonable adjustment

- 6.29 There may be rare occasions where a reasonable step might be taken but there is a justification for not taking it. If this is the case, then the failure to take the reasonable step is not considered discriminatory in law. The failure to take a reasonable step can only be justified if the reasons are both **material to the circumstances** of the particular case and **substantial**.

Example 108 – The explicitly vocational / practical nature of a course or qualification

A college of further and higher education runs an NVQ in plumbing. A wheelchair user with limited upper body movement applies to do the course. The college is aware that it could take reasonable steps to make the course accessible, but that these adjustments would not be possible in the workplace because of the nature of the job.

Because of the explicit vocational / practical nature of the qualification the college decides it would not be appropriate to make adjustments which are not replicable in the workplace.

This is likely to be a material and substantial justification for not making reasonable adjustments.

Example 109 – A course or qualification that is not explicitly vocational / practical in nature

A man with limited mobility applies to do a degree in Civil Engineering at a university. The course leader meets the student and feels that he would be unable to practice as a civil engineer because of his disability. For this reason he decides that it would be inappropriate to make adjustments to the course and so recommends that his application is rejected.

The degree course is not, however, directly vocational, or entirely practical, and not all graduates from the course progress on to become engineers.

There are therefore unlikely to be material reasons for failing to make reasonable adjustments.

Section B - Understanding what is reasonable

6.30 This section is split into two parts:

- Reasonableness; and
- Factors that may be considered when deciding what is reasonable.

6.31 This section looks at criteria that might be taken into account when determining what is reasonable. The relationship between confidentiality and reasonable adjustments is also addressed.

Reasonableness

6.32 What steps are reasonable for a particular responsible body to take depends on all the circumstances of the case. For example, they will vary according to:

- the type of services being provided;
- the nature of the institution or service and its size and resources; and / or
- the effect of the disability on the individual disabled person or student.

6.33 Under SENDO responsible bodies must have regard to relevant provisions of this Code. All decisions as to whether or not a particular step(s) is reasonable ultimately lie with a county court.

6.34 However, here are some of the factors that might be taken into account when considering what is reasonable:

- the need to maintain academic and other prescribed standards;
- the financial resources available to the responsible body;
- grants or loans that are likely to be available to disabled students for the purpose of enabling them to receive student services (such as learning materials and equipment);
- the cost of taking a particular step;
- the extent to which it is practicable to take a particular step;
- the extent to which aids or services will otherwise be provided to disabled people or students;
- health and safety requirements;
- the relevant interests of other people including other students; and / or
- a disabled person's request for confidentiality.

Factors that may be considered when deciding what is reasonable

6.35 The nine factors cited above are now considered in more detail.

Academic & other prescribed standards

Academic standards

- 6.36 A responsible body is not required to do anything that might mean it cannot maintain academic or other prescribed standards in a particular learning programme. Here are two examples that highlight the subtlety of this point:

Example 110 – Academic standards - I

A man with moderate learning difficulties applies to study for an English A level. He has poor literacy skills and the college of further and higher education does not have sufficient evidence that he could sustain the reading and writing necessary to complete the course. The college obtained evidence from the man's support provider and his previous educational provider.

It is unlikely to be reasonable to expect the college to adjust its entry requirements to accommodate the student.

Example 111 – Academic standards - II

A student with a speech impairment is on a Hotel and Tourism course at a college of further and higher education. Part of the assessment relates to customer service. The assessment usually considers a number of factors including the verbal fluency of each candidate, and on grounds of academic standards, the department refuses to make any changes to the assessment practice. However, fluency is not an essential element of customer service, it is simply an aspect that the assessment to this course habitually takes into account.

It is likely to be reasonable, therefore, to make an adjustment that allows the student to show his customer service and conversational skills without demonstrating verbal fluency.

Prescribed standards

- 6.37 Some courses may not have defined academic standards, but they may have other prescribed standards which the responsible body needs to maintain. Here is an example:

Example 112 – Prescribed standards

A student is following a Music degree at a university which involves both theory and practice. Her specialist instrument is the piano. During the course she develops arthritis. Having sought advice regarding possible adjustments it is agreed that the student is unable to continue with the practical parts of the course.

Although it might be possible for her to continue with the theory it is unlikely to be reasonable for the university to make an adjustment whereby she could receive a degree for the whole course by only completing the theoretical parts.

Different means of validating a standard

- 6.38 The validation of academic standards by using different means from those used by other students may be reasonable. For example:

Example 113 – Using different means to validate an academic or prescribed standard - I

At a college of further and higher education a profoundly deaf student whose first language is a sign language, is following an art course. Most of the course is practically based. However, students are expected to give an oral presentation of their work.

It is likely to be reasonable to allow this student to present her work by booking the services of a sign language interpreter.

- 6.39 For a student who needs additional support to attain the standards prescribed by the course it may be appropriate, in some instances, to make a reasonable adjustment. Here is an example:

Example 114 - Using different means to validate an academic or prescribed standard - II

A partially sighted student applies to do Dance. He has excellent physical mobility but requires floor markings to be very clearly accentuated and also requires extra time to be taken through certain movements. These are likely to be reasonable adjustments for the provider to make.

Financial resources

- 6.40 The extent to which it would be reasonable for a responsible body to make adjustments will depend on the financial resources of the particular responsible body and its other commitments. Here are some examples:

Example 115 – Short notice & large financial commitments of an institution

A person with multiple sclerosis who is a wheelchair user applies to do a Metalwork class for two hours a week in a building that is inaccessible to wheelchair users. The college of further and higher education that runs the class is in the process of making its buildings accessible but has not yet begun altering this particular building. Because of the large amount of fixed equipment needed for the class, it is impossible to move its location this academic year. If the Metalwork class is to be made accessible to the disabled person this year a lift would need to be installed, which would be very expensive. The college has a large number of statutory and other commitments. Its ability to find additional sums of money at short notice is extremely limited. It is unlikely to be reasonable to expect the college to make an adaptation in this case.

Example 116 - Flexible budgeting & the allocation of resources

A sign language user wishes to use the careers service at a university. The university says that funding for an interpreter must come from the Student Service Department but the Student Service Department does not have sufficient funds in its budget to pay for an interpreter.

The university is restricted in how it allocates earmarked funds due to controls placed upon them by the statutory / awarding bodies, it is free to distribute non-earmarked funds internally at its own discretion. To meet its anticipatory duty to make reasonable adjustments this university operates a flexible budgeting system with non-ear-marked funds to allow for unforeseen contingencies; such as the financing of the shortfall in funding to the Student Services Department in order to make its careers service accessible to the student.

Grants or loans

- 6.41 Some disabled students on higher education courses receive Disabled Students' Allowances. The specific purpose of Disabled Students' Allowances is to pay for additional aids or services which students require because of a disability. It would not be reasonable to expect a responsible body to fund aids or services if Disabled Students' Allowances are already being used to provide these same services. Here is an example:

Example 117 – Financial support already supplied by Disabled Students' Allowances

A deaf student on a degree course has been assessed as needing a sign language interpreter for all her lectures and seminars.

It is unlikely to be reasonable to expect the university to fund an interpreter if the student has the resources for this through her Disabled Students' Allowances.

- 6.42 There are instances when disabled students might need reasonable adjustments to be provided by the institution in addition to those resourced through their Disabled Students' Allowances. Institutions should anticipate that there might be shortfalls in the financial assistance available. Therefore, it may be reasonable to expect the institutions to finance such shortfall. For example:

Example 118 – Additional financial support on top of those already supplied by Disabled Students' Allowances

A student who has cerebral palsy has received funding through the Disabled Students' Allowances to buy an adapted keyboard to use with his computer. However, his own computer is too cumbersome to transport every day from his residence to the university.

It is likely to be reasonable to expect the university to provide him with a similar adaptation for a computer within the computer cluster at the university.

Cost of a particular step

6.43 No hard and fast rules can be given as to how much it is reasonable for a responsible body to spend on adjustments. This will depend on several factors including:

- the type of services being provided;
- the nature of the responsible body and its size and resources; and / or
- the effect of the disability on the individual disabled person or student.

6.44 Depending on these circumstances, cost may be a reason for not providing an adjustment.

Practicality

6.45 It may not be practical for a responsible body to make a reasonable adjustment, although an adjustment might be in a person's or student's interests. Here are two examples:

Example 119 – Practicality of making changes to literature and other teaching materials - I

A student with severe learning difficulties is taking a weekly Local History class. Although much of the class is practically based, involving visits to local places of interest, the tutor also regularly gives out articles from history journals.

While every effort should be made to ensure that the person with learning difficulties understands what the articles say, it might not be practical for the tutor to try to represent them all in pictorial or symbol form. However, it is also likely to be reasonable for other adjustments to be considered, such as allowing an advocate to join the class free of charge to support the disabled student in accessing written materials.

Example 120 – Practicality of making changes to literature and other teaching materials - II

A person with dyslexia is a student on a one-year diploma course. His disability makes it difficult for him to read long texts and, ideally, he would like all his books on audiotape. However, his course has a very long reading list which changes every year.

Although the college does have a system for putting texts onto tape, this process takes some time and it is unlikely to be practical for the college to provide him with all his books on tape during the year. However, it is likely to be reasonable to look for other means of providing an accessible reading list to the disabled student.

Aids or services

- 6.46 It would not be reasonable to expect the responsible body to duplicate this support when a disabled person or student is provided with support from another agency. Here is an example:

Example 121 – Duplication of support

A student with both learning and physical disabilities is enrolled on a drama course at the local college of further and higher education. The student requires a support provider with him at all times. He is already receiving a package of care funded by his local health trust and he has a full-time support provider allocated to him.

It is unlikely to be reasonable to expect the college to provide an additional support provider.

Health & safety

- 6.47 SENDO or the DDA do not over-ride health and safety legislation. There might be instances when, although an adjustment could be made, it would not be reasonable as it would endanger the health and safety either of the disabled person or of other people. Here is an example:

Example 122 – Health & safety

A wheelchair user is a student on a Theatre Studies course at a college of further and higher education. One module of the course is on stage lighting. This involves students climbing up scaffolding and sitting on narrow gantry planks while they alter the lighting. Having taken specialist advice, the college decides that, although an adjustment could be made in order to hoist a wheelchair up to the required height, the gantry planks and scaffolding system are not strong enough to hold a wheelchair.

Therefore, it is unlikely to be reasonable for the college to make the adjustment in this instance.

- 6.48 There might be other instances where responsible bodies could make anticipatory reasonable adjustments in line with health and safety legislation. For example:

Example 123 – Health & safety training in anticipation of disabled students

A student with learning difficulties who also has a physical disability applies to do a course for students with learning difficulties at a college of further and higher education's outreach centre. His disability means that he will require staff to lift him from time to time.

To meet its anticipatory duty and in line with health and safety legislation, the college has:

- drawn up a risk assessment policy for lifting, which states that no member of staff should lift a student unless they have received appropriate recognised training on lifting;
- liaised with external organisations, such as the Health & Safety Executive; and
- provided training in lifting to interested staff.

- 6.49 Health and safety issues must not be used spuriously to avoid making a reasonable adjustment.

Example 124 – A failure to make a physical adjustment based on health & safety grounds

A university chaplaincy refuses to provide a temporary ramp into the chapel for a wheelchair user because they say that wheelchair users pose a health and safety hazard by preventing other people reaching the fire exits in an emergency.

In fact, the chapel has a very wide set of double doors alongside a smaller door, where the ramp would be placed. There is unlikely to be a valid reason for not making a reasonable adjustment.

Example 125 – Making a physical adjustment for access and supplying support on health & safety grounds

A student with cerebral palsy who uses a wheelchair wants to take a Photography A level at the local college of further and higher education. The entrance to the darkroom is not wide enough for the student to enter. The college is willing to adapt the doorways but the tutors are concerned that the disabled student should not be allowed to take the course because there would be a health and safety risk when he used the chemicals in the darkroom.

The college therefore agrees to make an additional adjustment to deal with the health and safety risk, by ensuring that the disabled student has an assistant or technician with him when in the darkroom.

Other people & students

- 6.50 There might be instances when an adjustment for a disabled person or student results in significant disadvantage for other people or students. In such a case, the responsible body would not be expected to make the adjustment. Here is an example:

Example 126 – When an adjustment adversely affects other people or students

A student with a learning disability is attending a National Vocational Qualification (NVQ) course in hairdressing at a local college of further and higher education. She finds it difficult to follow the more theoretical parts of the course but is very reluctant to have any individual extra support. One option would be for the course tutor to go very slowly over the parts she finds difficult to ensure that she has understood the points being made. However, the slow pace of delivery would prevent the other students on the course finishing their syllabus and the attainment of their qualification would be put at risk.

It is likely that this would not be a reasonable adjustment, as it would significantly adversely affect other students on the course. In this case, it is likely to be appropriate to look at alternative adjustments.

A balanced approach

- 6.51 There will, however, be other instances, where there is a duty to make an adjustment despite some inconvenience to others. In deciding what adjustments are reasonable it is important to weigh the level of inconvenience to others against the substantial disadvantage to the disabled person. Here is an example:

Example 127 – Balancing convenience and inconvenience

A deaf student on an Essential Skills class has a sign language interpreter during the class. For the final 15 minutes of each class the tutor holds a group discussion. Other students complain that the flow of their discussion is impeded because of having to wait while the sign language interpreter translates for the deaf student. However, the delay does not significantly adversely affect the group's learning.

This is unlikely to be considered sufficient reason for not allowing the deaf student to participate in the discussion using a sign language interpreter.

Confidentiality

- 6.52 A disabled person has a right to request that the existence or nature of his or her disability be treated as confidential. In determining whether it is reasonable to make an adjustment the responsible body must have regard to the extent that making the adjustment is consistent with a disabled person's request for confidentiality.
- 6.53 In some instances this might mean that reasonable adjustments have to be provided in an alternative way in order to ensure confidentiality. The following example highlights this point:

Example 128 – Providing reasonable adjustments to ensure a person’s confidentiality

A student with a visual impairment can only read clearly if he has text enlarged into 16-point type. He is very embarrassed by his disability and has requested strict confidentiality. Normally his tutors would give a visually impaired student large-print handouts at the beginning of each class.

However, because he has requested confidentiality, they agree to give him his handouts in advance so that he can look at them before the lesson but does not have to be seen reading them during the class.

- 6.54 In some cases a confidentiality request might mean that a less satisfactory reasonable adjustment is provided or that no reasonable adjustment can be provided. Here is an example:

Example 129 – Providing a less satisfactory reasonable adjustment to ensure a person’s confidentiality

A student with AIDS is on a Chemical Engineering course at a local university. He does not want other students to know of his condition. His condition means that he sometimes needs to have time off.

His tutors have offered to arrange extra time in the laboratory for him after hours to make up for the time he misses. However, he has refused this on grounds of confidentiality. Instead they offer to provide him with laboratory notes.

Although this adjustment is less effective, it is likely to be lawful.

Section C - Reasonable adjustments to leasehold premises

6.55 The first two sections within this chapter looked at the duty to make reasonable adjustments. This section addresses the issues of how leases or other binding obligations affect the duty to make reasonable adjustments to premises. The issues to examine within this section are:

- Leases, binding obligations and the duty to make reasonable adjustments;
- Leases that permit certain changes to premises;
- Obtaining other consents;
- Landlords withholding consent;
- Landlord withholding consent reasonably;
- Power of landlords to impose conditions on consent;
- Landlords who refuse consent or attach unreasonable conditions; and
- Bringing landlords into proceedings.

Leases, binding obligations & the duty to make reasonable adjustments

6.56 Responsible bodies should anticipate the need to obtain consent to make a proposed adjustment and allow sufficient time to obtain this.

6.57 The Special Educational Needs and Disability (Educational Institutions) (Alteration of Leasehold Premises) Regulations (Northern Ireland) 2005 (the Regulations) came into operation on 1st September 2005. These Regulations were made to clarify the conditions, when consent is required from a landlord, to alter leasehold premises. Copies of these Regulations can be obtained from the Stationery Office (TSO) or downloaded from the Office of Public Sector Information (OPSI) website. Contact details are given in Chapter 1.

6.58 An application to a landlord may be necessary, but, there may also be a need to obtain statutory consent from elsewhere for some alterations. This might include:

- planning permission;
- building regulations approval;
- listed building consent;
- consent to alter buildings in a conservation area; and
- consent to install a ramp onto a public highway.

6.59 SENDO does not over-ride the need to obtain such consents. It may be reasonable therefore to make an interim adjustment that does not require consent. Here is an example of this type of situation:

Example 130 – Need to obtain consents

As part of its planned programme of access improvements, a university is installing a ramped entrance to its library. The university library is a listed building. The university has consulted the local planning authority and was told that consent was likely to be given but would take some weeks.

In the meantime, as a temporary measure, the university arranges for disabled students unable to climb the steps to use an entrance at the rear of the building. Although this entrance is accessible, it is very inconvenient, requiring students to negotiate a series of pathways and wait in an unsheltered back yard.

While this is not ideal, it is likely to be a reasonable adjustment for a limited period while statutory consent is being obtained.

- 6.60 If a lease requires a tenant to obtain permission from a landlord to alter a building, a responsible body must apply in writing to its landlord for consent to make an alteration. The written application should state that the alteration is to comply with a duty to make reasonable adjustments under SENDO. The application should also include plans and specifications of the intended works.

Leases that do not permit alterations to premises

- 6.61 Where a responsible body occupies premises under a lease, the terms of which prevent it from altering the premises, special provisions apply. If the alteration is one the responsible body proposes to make to comply with a duty of reasonable adjustments, SENDO overrides the terms of the lease and entitles the responsible body to make the alteration with the consent of its landlord.

Obtaining other consents

- 6.62 A superior landlord and immediate landlord may give their consent but this does not over-ride the responsible body's duty to obtain other appropriate consents.
- 6.63 These might be from a statutory body or due to the terms of an agreement or other legally binding obligations, for example a restrictive covenant or a mortgage. It is likely that consent from a landlord or superior landlord would be given subject to such obligations. Here is an example which looks at the relationship between the responsible body and a bank:

Example 131 – Other consents

A college of further and higher education holds some of its classes in a building purchased with the assistance of a bank loan. The terms of the loan require the bank's consent for any changes to the building.

The college is proposing to alter the building to comply with its duty to make reasonable adjustments.

It is reasonable for the college to have to seek the bank's consent but it is not reasonable for it to have to make the alteration if this consent is not given.

- 6.64 The Regulations detail the duties and the processes that apply in the relationship between the landlord and any superior landlord. The superior landlord has a duty to the responsible body as if he or she is the immediate landlord.

Landlords withholding consent

SR 371
2005
Reg
3(2)

6.65 If the application includes details of the alterations including plans and appropriate specifications, and indicates that the alterations are to comply with a duty under SENDO, the landlord must reply within 42 days of receiving the application. If the landlord fails to reply within this time, the responsible body can assume that consent has been withheld. In such a case, the responsible body can apply to the court. This procedure is explained later within this section of the chapter.

SR 371
2005
Reg
3(2)

6.66 If the landlord needs to obtain the consent of another person, for example a superior landlord, the immediate landlord must advise the responsible body of this and apply to any superior landlord within the 42-day period. If this is done, consent will not be deemed to have been withheld. If a landlord fails to seek this consent, consent will be deemed to have been withheld.

6.67 A superior landlord or other person whose consent is required also has 42 days from receiving the application (or from receiving plans and further details – see later in this section) to provide consent.

SR 371
2005
Reg
3(5)

6.68 A landlord will also be deemed to have withheld consent if he or she has obtained consent from a superior landlord but has failed to notify the responsible body of this within 14 days.

SR 371
2005
Reg
3(3)

6.69 A landlord or superior landlord will not be deemed to have withheld consent if the responsible body (or immediate landlord) fails to provide appropriate plans and specifications of the intended works with the application. In this situation the landlord may request them. The request must be made within 21 days of receipt of the initial application and the 42-day period begins from the date the landlord receives the appropriate details.

Example 132 – Provision of appropriate plans and specifications

On 1 January, a college of further and higher education writes a brief letter to the landlord of one of the buildings it rents, requesting permission to refit a pottery room with low benches and wider doorways and aisles.

On 22 January the landlord telephones asking the college to send in detailed floor plans and estimated costs for the proposed changes.

The college has been preparing these and sends them to the landlord on 9 February.

The landlord then has until 23 March to notify the authority of the decision.

- 6.70 While a landlord is seeking consent from a superior landlord or other person, he or she must give consent to the responsible body conditional upon the other person's consent. If the responsible body is not advised of this conditional consent, the immediate landlord will be deemed to have withheld consent.

SR 371
2005
Reg
3(7)

Landlords withholding consent reasonably

- 6.71 In most cases whether withholding consent will be reasonable or not will depend upon specific circumstances.
- 6.72 If the lease requires a landlord to give consent to an alteration of the kind in question and the landlord does not do so, the landlord will be deemed to have withheld consent unreasonably.

SR 371
2005
Reg
4(2)

- 6.73 The Regulations provide circumstances in which a landlord can reasonably withhold consent to the making of an alteration. For example, where:
- there is a binding obligation requiring the consent of any person to the alteration;
 - the landlord has taken steps to seek that consent; and
 - consent has not been given, or is given subject to a condition which makes it reasonable for the landlord to withhold consent.

Example 133 – When a landlord is withholding consent reasonably

A college of further and higher education applies for consent to make a new doorway at ground floor level in the side of a building because the main entrance is up a set of steps. The landlord is willing to consent to the alteration but must obtain the permission of an adjoining landowner who has a restrictive covenant. This prevents the making of any openings in the side of the building. The neighbouring landowner will give consent but only if the landlord pays a substantial sum of money. Because of the size of the sum requested it is likely to be reasonable for the landlord to refuse consent.

- 6.74 It is also reasonable to withhold consent where the landlord or superior landlord does not know and could not reasonably be expected to know that the alteration is being proposed to comply with a duty to make reasonable adjustments.
- 6.75 If a landlord is withholding consent reasonably it may be necessary to consider an alternative (even if less effective) adjustment.

Power of landlords to impose conditions on consent

- 6.76 Either the landlord or the superior landlord can give consent subject to the conditions prescribed in the Regulations. They may include an obligation:
- to obtain appropriate other consents including planning permissions;
 - to carry out the works in accordance with the plans and specifications submitted to and approved by the landlord or the superior landlord (such approval may not be unreasonably withheld);
 - to allow the landlord or the superior landlord to inspect the work after it has been completed; and / or
 - to repay to the landlord and the superior landlord any costs reasonably incurred in connection with giving the consent. These costs might include building surveyors', architects' or legal fees incurred to provide documentary evidence for the consent.
- 6.77 The landlord or superior landlord may also impose other conditions so long as these are reasonable.

Landlords who refuse consent or attach unreasonable conditions

- 6.78 If the responsible body has written to the landlord for consent to make an alteration and the landlord:
- has refused consent unreasonably; or
 - has failed to respond (which is deemed as a refusal); or
 - has attached conditions to his consent

the responsible body or a disabled person who has an interest in the proposed alteration may make a claim against a landlord in a county court.

- 6.79 The court will decide whether the landlord's refusal or any conditions imposed are unreasonable. It may make a statement as to whether or not the landlord has been unreasonable and / or authorise the responsible body to make the alteration under a court order. The court order may impose conditions on the responsible body.

Bringing landlords into proceedings

- 6.80 In any legal proceedings under SENDO that involve a failure to make an alteration to premises (see Chapter 10), the disabled person concerned or the responsible body may make the landlord a party to the proceedings. In other words, the claim would be made jointly against both the responsible body and the landlord.

Example 134 – Bringing landlords into proceedings brought by disabled people

A college of further and higher education occupies premises under a lease, a term of which says that a staircase cannot be altered. The college wishes to alter the staircase to fit a chair lift for wheelchair users. The lease prevents the making of alterations and the landlord relies on this to refuse consent. The college takes no further action. A disabled student is unable to gain access to his classes on the first floor. The student may take both the college and the landlord to court.

- 6.81 The responsible body should, therefore, consider whether or not to make an application for a declaration that a landlord has been unreasonable at the time the application for consent has been refused. Failure to do so may mean that the responsible body has no defence to a claim by a disabled person.

Example 135 – Bringing landlords into proceedings brought by disabled people - the educational institution’s responsibility

In the previous example, the college claims that its failure to make an adjustment was because consent was withheld. The court finds that discrimination has taken place. The landlord’s consent is found to have been withheld unreasonably. The fact that the college did not make a claim against the landlord may prevent the college from having a defence.

- 6.82 The court will grant a request to make a landlord a party to proceedings if the request is made before the hearing of the claim begins. It may refuse the request if it is made after the hearing begins. The request cannot be granted if it is made after the court has determined the claim.
- 6.83 Where the landlord has been made a party to the proceedings, the court may determine whether or not the landlord has unreasonably refused consent to the alteration or has consented subject to unreasonable conditions. In either case the court can:
- state whether the landlord was reasonable or unreasonable;
 - authorise the responsible body to make a specified alteration; and / or
 - order the landlord to pay compensation to the disabled person.
- 6.84 The court may require the responsible body to comply with any conditions specified in the order. If the court orders the landlord to pay compensation, it cannot also order the responsible body to do so.

7 Disability Discrimination – Victimisation

Introduction

- 7.1 SENDO states that discrimination can occur in several ways. In the previous chapters, less favourable treatment and the failure to make reasonable adjustments were examined. Another form of discrimination is victimisation.
- 7.2 This chapter is split into two sections:
- Victimisation – definition; and
 - Other considerations.
- 7.3 The first short section looks at a form of discrimination known as victimisation. It describes victimisation and defines what some of the terms and phrases used within the law mean.
- 7.4 The second section examines if an allegation was false and not made in good faith.

Victimisation - definition

- 7.5 Victimisation is a special form of discrimination covered by both the DDA and SENDO. It applies whether or not the person victimised is a disabled person.
- 7.6 Victimisation is unlawful if it occurs in relation to the provision of further and higher education or other related services covered by SENDO.

- 7.7 SENDO says that a person discriminates against another person (the victim) if he or she treats the victim less favourably than he or she treats (or would treat) other people in the same circumstances, regardless of a person having a disability, because the victim has:
- brought proceedings under SENDO or under the DDA (whether or not proceedings are later withdrawn);
 - given evidence or information in connection with such proceedings;
 - done anything else under SENDO or the DDA;
 - alleged someone has contravened SENDO or the DDA (whether or not the allegation is later dropped).

Example 136 – Victimisation

A non-disabled student acts as a witness in a complaint by a disabled student against a college lecturer of a Northern Ireland institution.

Later, in retaliation, other lecturing staff at the college begin to ‘lose’ the non-disabled student’s work, and hand assignments back later than for other students.

This is likely to be victimisation, and therefore unlawful.

Other considerations

- 7.8 SENDO also says that a person discriminates against another person (the victim) if he or she treats the victim less favourably than he or she treats (or would treat) other people in the same circumstances because he or she believes or suspects that the victim had done or intends to do any of the things mentioned in paragraph 7.7. Such victimisation is discrimination whether or not the victim is disabled.

- 7.9 However, it is not victimisation to treat a person less favourably because that person has made an allegation if the allegation was false and not made in good faith. For example:

Example 137 – Unfounded allegations

A disabled undergraduate makes a series of allegations claiming that a postgraduate student employed to hold seminars is discriminating against him during his seminars.

The allegations are without any foundation, and are part of a personal grudge that the young man has against the postgraduate student. The course co-ordinator decides to remove the man from the seminars for the rest of the module.

Because of the particular circumstances, this is not likely to be victimisation and is likely therefore to be lawful.

8 Miscellaneous Provisions

Introduction

- 8.1 This chapter explains a number of other changes that SENDO introduces. It outlines how these changes offer additional protection to disabled people in further and higher education and other related services, and explores the implications for responsible bodies.
- 8.2 This chapter is split into four short sections:
- Responsibility for the actions of employees and agents;
 - Persons who aid unlawful acts;
 - Terms within contracts or other agreements; and
 - Other statutory authorities & national security.

Responsibility for the actions of employees and agents

- 8.3 SENDO says that employers are responsible for anything done by their employees in the course of their employment. As an employer, a responsible body cannot use the defence that discrimination took place without its knowledge or approval. Here are two examples:

Example 138 – Employee actions - I

A security guard employed at a college of further and higher education always takes a long time to open the barrier to the staff car park for a disabled student who has been allocated a space there.

He does this because he disapproves of any student being allowed into the staff car park, even if they have permission. Although the security guard disapproves of all students using the car park, his actions are likely to impact more upon disabled students, as they are more likely to be granted permission to use the car park as a reasonable adjustment. Therefore, it is likely that this behaviour amounts to less favourable treatment and is unlawful.

Although the responsible body of the college is not aware that this is happening, nevertheless it is likely to be responsible under SENDO.

Example 139 – Employee actions - II

A tutor routinely turns his back on the class when he is teaching although he knows that one of the students has a hearing impairment and needs to lip-read. The tutor has been trained by the university in how to work with hearing impaired students, but no one monitors his practice or asks students for feedback on his lectures. The student is being substantially disadvantaged by the failure of the tutor to make a reasonable adjustment.

Even though the responsible body of the university is not aware that discrimination is occurring, it is likely that it is acting unlawfully.

- 8.4 If a claim under SENDO is made against a responsible body based on anything done by an employee, it is a defence that the responsible body took such steps as were reasonably practicable to prevent such acts. Examples of such steps could be developing policies on disability matters and communicating these to employees and ensuring all staff are aware through training that it is unlawful to discriminate against disabled people.
- 8.5 Responsible bodies are also responsible for anything done by their agents, if done with their authority. That authority may be expressed or implied and may have been given before or after the act in question.

SENDO
Part III
Chapter IV
Article 45(5)

SENDO
Part III
Chapter IV
Article 45(2)(3)

Example 140 – Agent actions - I

The cleaning at a university is contracted out to an agency. A blind student has asked the hall warden to ensure that cleaners replace things where they find them in his room and in the kitchen. The hall warden passes on this request to the agency. One of the cleaners continually moves things around which means the student cannot find them. The responsible body is likely to have been acting unlawfully by failing to ensure that the reasonable adjustment was made. The cleaner, and / or the agency employing the cleaner, may also be responsible for aiding an unlawful act - see paragraph 8.6.

Example 141 – Agent actions - II

A visiting part-time lecturer provides a series of lectures at an outreach centre for a local college of further and higher education. He is not given any instructions about the reasonable adjustments that need to be made for disabled people on the course. The lecturer fails to make adjustments for these students and some students are substantially disadvantaged as a result. The responsible body is likely to have been acting unlawfully by failing to ensure its agent, the visiting lecturer, made reasonable adjustments. The lecturer may also be responsible for aiding an unlawful act - see paragraph 8.6.

Aiding unlawful acts

- 8.6 An agent or employee may also be taken to have aided the responsible body in committing an unlawful act. This can be the case even in circumstances where the responsible body has a defence. Any person, whether or not they are an employee or agent, who knowingly helps someone else do something which is unlawful under SENDO is also acting unlawfully. Here are two examples:

Example 142 - An individual's discriminatory act despite training from the educational institution

Unknown to the college of further and higher education, a tutor is excluding a deaf woman involved in a seminar from discussions that he has been facilitating. The tutor has been involved in a training day with other colleagues from the college in which the rights of disabled people under SENDO were discussed, and where ways of including deaf people had been explained.

The college regularly monitors its provision to ensure that its equal opportunities policy is being put into practice and that its guidance on SENDO is being followed.

The college may have a defence under SENDO as they have provided the tutor with training.

However, the college may be responsible if it can be proven that it has not monitored compliance with its policies and procedures effectively.

The tutor is likely to be personally responsible because he is aiding an unlawful act.

Example 143 – An educational institution’s discriminatory act

A college of further and higher education provides guidance to its part-time agency administration staff. The agency staff are employed to cover staff shortages due to maternity and sickness leave taken by the permanent administration staff. The guidance states that they should not agree to the provision of any additional materials, other than standard photocopies, for disabled students because of the extra time and costs involved.

When a student with dyslexia requests reading materials in large font and on coloured paper from the library staff he is told that this is not available, although the administration staff know that this is likely to be against the law.

It is likely that the responsible body is acting unlawfully, and that the agency employing the administration staff is also likely to be responsible for aiding the responsible body’s unlawful act.

- 8.7 A person does not knowingly aid someone else to do something unlawful if:
- the other person tells them that it would not be unlawful because of any provision of SENDO; and
 - he or she acts in reliance on that statement; and
 - it is reasonable to rely on the statement.
- 8.8 A person who knowingly or recklessly makes such a statement which is false or misleading in a material respect is guilty of a criminal offence and will be liable on conviction to a fine of up to level 5 on the standard scale (£5,000 at present).

Example 144 – Committing a criminal offence

A college manager sends a memo out to all the part-time teachers and lecturers of a college of further and higher education to advise them that the legislation does not apply to part-time or evening class students. The manager knows that this is not the case.

Acting on this advice, a lecturer who comes in to teach a local history course refuses to provide electronic copies of her overheads for a blind woman taking her class.

The responsible body of the further education college is likely to be acting unlawfully, although not criminally because it had no knowledge of the manager's memo.

The lecturer is unlikely to be knowingly aiding an unlawful act because it is likely to be reasonable for her to rely on the memo she was sent.

However, the manager is likely to have committed a criminal offence.

Terms within contracts or other agreements

- 8.9 Any term in an agreement is void (and therefore unenforceable) if its effect is to:
- require someone to do something which would be unlawful under SENDO;
 - exclude or limit the operation of SENDO; or
 - prevent someone making a claim under SENDO.

Example 145 – Terms of agreements

A college of further and higher education requires a disabled student travelling on a field trip to sign an agreement stating that he does not hold the college responsible for making any adjustments to aspects of the trip because of his disability.

This agreement is not legally binding.

- 8.10 An agreement to settle or compromise a claim brought under SENDO is not affected by this rule.

Other statutory authorities & national security

- 8.11 A responsible body is not required to do anything under SENDO that will result in a breach of legal obligations under any other legislation or enactment. Nothing in SENDO makes unlawful anything done for safeguarding national security.

9 Practical Guidance for Inclusive Education

Introduction

- 9.1 There are various actions which an institution within the further and higher education sectors can take in order to avoid discriminating against disabled students and prospective students. By doing so, further and higher education institutions are not only likely to minimise the incidence of expensive and time-consuming litigation, but will also improve their general performance and the quality of their educational and business operations. This chapter sets out some guidance on ways to help ensure that disabled people and students are not discriminated against.
- 9.2 The guidance is designed to help educational institutions build an equality culture. When utilised, they can create an inclusive and harmonious educational environment in which all students are treated with dignity and respect regardless of their disability.
- 9.3 It aims to assist educational institutions develop an environment in which students and employees understand in clear terms what behaviour is and is not acceptable and that appropriate disciplinary action will be taken against those who act in a discriminatory manner.
- 9.4 The guidance will also assist educational institutions to build an environment in which students can raise complaints of discrimination without fear of repercussions or victimisation from employees or management. An environment where students can be confident that their complaints of discrimination will be treated seriously and dealt with effectively.

- 9.5 Educational institutions should remember that the successful implementation of the following measures requires the commitment of management, particularly senior management. Through words and actions, management are recommended to demonstrate their commitment to eradicating unlawful discrimination and fully integrating equality of opportunity into the educational environment. Adequate resources, in terms of staff, time, funding, etc must also be allocated.

Creating an inclusive environment

- 9.6 The primary objective of disability and equality legislation is the promotion and development of fully inclusive environments; not only in the workplace but in all aspects of life, including education. To facilitate this, educational institutions are encouraged to pursue good practice.
- 9.7 It is good practice to consider carefully what information can be included in advertisements and promotional materials and where they may be placed.
- 9.8 It is also good practice for an educational institution to consider its image to ensure that it gives an impression of itself as an institution that is aware of the needs of all students and is striving to create a more diverse student body.
- 9.9 An educational institution which recognises that suitably qualified disabled people have not applied to study at it may want to make contact with the local suppliers of education. For example, in the case of a university, the local colleges of further and higher education and schools providing sixth form education, and other providers of education for disabled students.

- 9.10 It is not only important for an educational institution to strive to produce a diverse and accessible learning and working environment, it is important that it can maintain such an environment. Effective dispute resolution is a key component to maintaining an open and accessible educational institution.

The social dimension of disability

- 9.11 The concept of discrimination in SENDO reflects an understanding that it is often environmental factors, such as the structure of a building, social attitudes, communication or the policies, procedures and practices within an educational institution rather than limitations arising from a person's disability, which unnecessarily restrict a disabled person's ability to participate fully in society.
- 9.12 This principle underpins the duty to make reasonable adjustments. Understanding this principle will assist educational institutions within Northern Ireland to avoid discrimination and promote an inclusive environment in all their activities relating to the provision of education and other related services.
- 9.13 It is as important to consider which aspects of education and service provision create difficulties for a disabled person as it is to understand the particular nature of an individual's disability.

The diverse nature of disability

9.14 Around one in five people in Northern Ireland have a disability. The nature and extent of disabilities vary widely, as do the requirements for overcoming barriers. If institutions in education are to avoid discriminating and promote an inclusive education environment, they need to understand this, and to be aware of the effects their decisions and actions, and those of their agents and employees, may have on disabled people. The evidence shows that many of the steps that can be taken to avoid discrimination cost little or nothing and are easy to implement.

Practical steps

Avoid making assumptions

9.15 It is advisable to avoid making assumptions about disabled people. Any given disability will affect different people in different ways and individual needs may be different as well:

- do not assume that because a person's disability cannot be seen, that person is not disabled. Many disabilities are not visible;
- do not assume that because you do not know of any disabled people in an educational institution or organisation that there are none;
- do not assume that most disabled people use wheelchairs;
- do not assume that people with learning disabilities cannot be valuable students, or that they can only do certain types of courses;

- do not assume that a person with mental ill health cannot do a demanding course;
- do not assume that all blind people read Braille or have guide dogs;
- do not assume that all deaf people use sign language; and,
- do not assume that there is only one sign language. In Northern Ireland both British (BSL) and Irish (ISL) sign languages are extensively used.

Seek expert advice

- 9.16 Information or views regarding solutions to meet the needs of disabled people may be obtained from the disabled person concerned. It seems sensible that in order to obtain the most effective solution to removing barriers (whether physical, communicational or attitudinal) to access education, the first person to speak to is the student facing those barriers
- 9.17 However, although SENDO does not specifically require anyone to obtain expert advice about meeting the requirements of disabled people in practice it may sometimes be advisable to do so in order to comply with the principal duties set out in SENDO.
- 9.18 The educational institution may establish a Disability Forum chaired and managed by those with responsibilities for equality and inclusion to inform the institution of possible solutions to meeting the needs of disabled students. The Forum may include students from all areas within the institution, disabled individuals and those who wish to support them, and both academic and non-teaching staff.

9.19 In addition, expert advice might be especially useful particularly if a person is newly disabled or if the effects of a person's disability become more marked. Expert advice about meeting the needs of disabled people may be available from:

- Equality Commission for Northern Ireland;
- Association of Northern Ireland Colleges;
- SKILL: National Bureau for Students with Disabilities – Northern Ireland;
- Disability Action;
- Mencap;
- RNIB;
- RNID; or
- from other local and national disability organisations

9.20 Finally, advice may be sought by using the in-house knowledge from:

- the educational institution's own disability services;
- the student union's disability adviser;
- the support providers employed by / or registered with the educational institution;
- the educational institution's equality officers working on employment related duties; or
- the disability services of other educational institutions.

9.21 Chapter 11 Useful Contacts contains a list of organisations that may be able to provide advice and information. Please note that the lists of organisations are not exhaustive and are not intended to be.

Planning ahead

9.22 Under SENDO there is an anticipatory duty owed to all disabled students and all students at large by institutions within the further and higher education sectors. With this in mind, it is likely to be cost effective for educational institutions to plan ahead. Considering the needs of a range of disabled people when planning for change (such as when planning a building refurbishment, a new IT system, or the design of a website) is likely to make it easier and more cost effective to implement adjustments for individuals when the need arises.

Access audits

9.23 It is good practice for educational institutions to have access audits carried out to identify any improvements which can be made to a building to make it more accessible. It is recommended that access audits be carried out by suitably qualified people. Websites and internet sites could be reviewed to see how accessible they are to disabled people using access software.

Develop & implement an inclusion strategy

9.24 Educational institutions within the further and higher education sectors are more likely to comply with their duties under SENDO, and to minimise the risk of legal action being taken against them, if they implement anti-discriminatory policies, practices and procedures.

9.25 Additionally, in the event that legal action is taken, an educational institution may be asked to demonstrate to a county court that they have effective policies, practices and procedures in place to minimise the risk of discrimination.

9.26 Outlined below are certain good practice measures which educational institutions are recommended to put in place in order to be more inclusive:

- **Develop** inclusive policies, practices and procedures (see paragraphs 9.28 to 9.31), including the:
 - Initiate positive action schemes (see paragraphs 9.32 to 9.33),
 - Implementation of an anti-bullying policy (see paragraphs 9.34 to 9.35);
- **Consult** on all policies, practices and procedures (see paragraph 9.36);
- **Communicate** all policies, practices and procedures (see paragraphs 9.37 to 9.41);
- **Allocate responsibility** for all policies, practices and procedures (see paragraphs 9.42 to 9.45), that will also allow the institution to:
 - Deal effectively with complaints (see paragraphs 9.46 to 9.50);
 - **Provide training and guidance** on all policies, practices and procedures (see paragraphs 9.51 to 9.55);
 - **Audit** all policies, practices and procedures (see paragraph 9.56);

- **Monitor and review** all policies practices and procedures (see paragraphs 9.57 to 9.60), including:
 - The use of qualitative and quantitative methods (see paragraphs 9.61 to 9.69);
 - The implementation of action plans (see paragraphs 9.70 to 9.71); and
 - Review disciplinary rules (see paragraphs 9.72 to 9.73).

9.27 Let us consider these in more detail.

Develop inclusive policies, practices & procedures

9.28 Educational institutions may develop and implement a clear, comprehensive, effective and accessible inclusion policy, which specifically covers disability.

9.29 The inclusion policy should try and spell out in clear terms the organisation's commitment to the promotion of equality. The policy also needs to make it clear to all that disability discrimination is unlawful and will not be tolerated in any aspect of education and service provision.

9.30 Any policy is only as good as the procedures and practices that support its enactment. An educational institution's inclusion policy requires clear and unambiguous procedures to ensure that disabled people have the same rights as all people in:

- admissions;
- services; and
- suspensions and expulsions.

9.31 Importantly, disabled people will need to know how to access the processes through which disabled people's rights can be enforced. All policies ideally need to have processes that are clear, transparent and easily accessed, for example, in terms of a request for reasonable adjustments.

Initiate positive action schemes

9.32 Educational institutions may initiate their own positive action schemes. These may use methods of training, learning and appraisal not traditionally used for gaining entry onto courses without compromising the institution's or course's academic standards. All further and higher educational institutions which enact positive action policies are recommended to ensure that their policies are objective, justifiable and transparent and not contrary to other legal obligations. These may include:

- **outreach** - further and higher educational institutions may identify a lack of applications from disabled people. Therefore, further and higher educational institutions may reach out and work with community groups and encourage applications from disabled people to redress the imbalance. In doing so, further and higher educational institutions may consider non-traditional methods of admission onto courses as forms of reasonable adjustments;
- offering **placement opportunities** which may lead to admission to courses if the educational institution is satisfied with the individuals performance during the temporary placement; and / or
- **training for courses** which guarantee a disabled person a placement on another course on successful completion of a structured training programme. This training programme may use teaching, learning and appraisal methods not traditionally used for gaining entry onto other courses.

9.33 If initiating new and creative ideas for positive action an educational institution could:

- develop inclusive policies, then monitor and review their implementation and outcomes;
- monitor all people who interact with the educational institution;
- seek admissions from as wide a pool as possible;
- ensure all groups of disabled people are represented; and
- ensure that the positive action initiatives are:
 - objective;
 - justifiable;
 - transparent;
 - well recorded; and
 - skill related.

In doing this, it is less likely that any positive action initiative will contravene other legislation.

Implementation of an anti-bullying policy

9.34 It is also recommended that educational institutions have a clear, comprehensive, effective and accessible policy and procedure which covers complaints of bullying for a reason relating to a person's disability.

9.35 It is recommended that this policy and procedure outline how disabled people can raise complaints of bullying and how such complaints will be dealt with.

Consult on all policies, practices & procedures

9.36 It is also good practice for educational institutions to consult with the appropriate recognised student and employee representatives or directly with employees and students when developing and implementing an inclusion policy.

Communicate all policies, practices & procedures

9.37 To create an inclusive culture it is vital that educational institutions effectively communicate their inclusion policy and all other policies or procedures they may have relating to equal opportunities, for example an anti-bullying policy, to all students, employees, contractors and agency staff.

9.38 This could be done, for example, through:

- student and staff briefings;
- contracts of employment;
- staff handbooks;
- notice boards;
- circulars;
- guidance materials for teachers and lecturers;
- student prospectuses;
- all advertising material;
- annual / corporate reports;
- student information packs;
- student application materials;

- written notifications to individual employees;
- equal opportunities training;
- induction training;
- management training; and / or
- training manuals.

9.39 It is recommended that educational institutions take all available opportunities, especially when recruiting new staff, to ensure that their policies, practices and procedures are widely known. No one should be in any doubt about their inclusion policies and practices.

9.40 They can make it clear to their employees, contractors and agency staff what is required of them with regard to their duties and responsibilities under SENDO and the extent of their authority.

9.41 It is recommended that an educational institution's inclusion policy and its procedures are accessible to all students and employees, particularly those with a disability. It is also recommended that accessibility is sought in respect of their format, content and implementation. Further information as regards accessibility can be obtained from the Commission.

Allocate responsibility for all policies, practices & procedures

9.42 It is also recommended that educational institutions allocate overall responsibility for their disability policies, practices and procedures to a member of senior management.

- 9.43 In addition, responsibility for ensuring compliance with disability policies and procedures could be incorporated into the job descriptions of all employees.
- 9.44 In the appraisal process of employees, it is recommended that educational institutions try to set objectives for personnel staff and those with managerial responsibilities in relation to how they have contributed to the implementation of the organisation's disability policies and procedures.
- 9.45 In addition, where applicable, equal opportunities for all and including disabled people could be incorporated into an educational institution's business plans and strategies.

Deal effectively with complaints

- 9.46 It is essential that educational institutions deal effectively with all complaints of disability discrimination.
- 9.47 Disability discrimination complaints should be dealt with promptly, seriously, sympathetically, confidentially and effectively. By dealing with complaints in this way, educational institutions are reinforcing their message to all students, employees and their agents, that they consider complaints of disability discrimination a serious matter.
- 9.48 Also, where reasonably practicable, educational institutions are recommended to have a designated adviser(s) to whom students can speak to in confidence in order to provide support, advice and assistance to disabled people who believe they have been discriminated against. It is recommended that designated advisers receive appropriate training in order to enable them to carry out their roles effectively.

- 9.49 It is also vital that educational institutions take all reasonably practical steps to ensure that individuals who do raise complaints of disability discrimination are not victimised because of their complaints.
- 9.50 It is recommended that educational institutions try to ensure that their complaints procedures are accessible to all students. They should be accessible in respect of their format, content and implementation.

Provide training & guidance on all policies, practices & procedures

- 9.51 Educational institutions are recommended to provide training and guidance for all employees to ensure that they understand their duties and responsibilities under SENDO and the institution's disability policies and procedures. The training and guidance may also include disability awareness and etiquette training.
- 9.52 It is important to recognise that the reasonable adjustment duty requires the responsible body to be anticipatory in meeting this duty. The provision of training is a key component of the anticipatory duty. The duty to make reasonable adjustments is also a continuous and evolving duty. Therefore, the provision of training should not be considered as a one-off event.
- 9.53 It is particularly important that academic staff, personnel staff, managers and supervisors, designated advisers, and other employees who have key roles in relation to the planning and implementation of equality of opportunity in the workplace, receive appropriate training, so that they can perform their roles sensitively and effectively. The training should also ensure that such staff be familiar with the provisions of this Code.
- 9.54 It is recommended that all training and guidance is regular, relevant and up-to-date.

- 9.55 To increase awareness of disability issues, those with disabilities, including disabled students, need to be encouraged to deliver staff training.

Audit all policies, practices & procedures

- 9.56 Under SENDO there is an anticipatory duty owed to all students. To facilitate this it is recommended that educational institutions regularly monitor and review all their policies, practices and procedures to ensure that they are not unlawfully discriminating under SENDO. As part of this process, consideration of the requirements of disabled people is important. It is advisable for educational institutions to do this in addition to having a specific policy to prevent discrimination.

Monitoring & reviewing all policies, practices & procedures

- 9.57 It is recommended that educational institutions monitor and review the implementation of all policies and procedures. Monitoring and reviewing is an important way of determining whether the inclusive strategies taken by an organisation are effective, and of ensuring that an inclusive education is being provided within that educational institution.
- 9.58 There are various ways in which educational institutions can monitor in the area of disability. Designated public authorities, such as universities and colleges of further and higher education, can refer to the 'Guide to the Statutory Duties' produced by the Commission for further guidance in relation to their responsibilities as regards the collection of monitoring data in this area.

- 9.59 It is important to stress that monitoring the number of disabled students within an institution will be more effective if disabled people feel comfortable about disclosing information about their disabilities. Educational institutions can take steps to reassure disabled people about why the information is required and how it will be used.
- 9.60 All disabled students need to be reassured that any information given will be treated, subject to statutory requirements, in the strictest confidence. Educational institutions should ensure that appropriate safeguards are put in place in order to achieve such confidentiality. It is recommended that educational institutions endeavour to make all monitoring forms accessible as regards to their format, content and implementation. Remember that all monitoring methods used should comply with the human rights and data protection legislation.

Audit methods

- 9.61 The auditing methods used by educational institutions can employ both:
- quantitative methods; and / or
 - qualitative methods.
- 9.62 Quantitative monitoring is concerned with the systematic collection of statistical data, used to calculate or estimate the number of disabled people. This can be achieved by issuing monitoring questionnaires to:
- all existing students; and
 - all student applicants.
- 9.63 A sample monitoring disability questionnaire can be obtained from the Commission.

9.64 Monitoring will allow the educational institution to:

- assess where policies and practices need to be improved;
- understand the barriers faced by people with different disabilities; and
- determine what reasonable adjustments disabled students require.

9.65 Qualitative monitoring involves direct consultation with disabled people in order to obtain in-depth views, attitudes and opinions and to identify concerns or issues. Through consultation an educational institution can improve the service it provides to its disabled students. Qualitative monitoring allows an educational institution to obtain feedback on the impact of the educational institution's policies, practices and procedures, and the effectiveness of any reasonable adjustments. Measures may include consultation with:

- individuals;
- representatives of disabled people;
- external disability organisations; and / or
- focus groups from within the educational institution.

9.66 The monitoring of complaints is of paramount importance. An educational institution could:

- monitor the number of complaints;
- catalogue how complaints are resolved;
- determine the outcomes of complaints; and / or
- record how long each complaint took to be resolved.

- 9.67 Through the monitoring of complaints an educational institution may be able to consider whether there are a greater number of complaints or grievances in certain departments or campuses.
- 9.68 Finally, exit interviews and final destination questionnaires could be used to determine why disabled students leave the educational institution.
- 9.69 The information obtained using the auditing methods cited above can then feed into an educational institution's action plan.

Action plans

- 9.70 An educational institution's action plan may review and identify areas for improvement within an inclusion policy. It should ensure that the educational institution is applying the principles and spirit of the inclusion policy. Through continual monitoring and review processes and the effective enactment of action plans, an educational institution can improve the effectiveness and general working of an inclusion policy, and of all policies, practices and procedures.
- 9.71 An action plan can typically include the:
- performance indicators;
 - performance measures;
 - measurement method;
 - reporting mechanism; and / or
 - primary responsibility.

Review disciplinary rules

- 9.72 It is recommended that educational institutions check their disciplinary action rules and / or procedures to ensure that unlawful discrimination is regarded as misconduct and could lead to disciplinary proceedings.
- 9.73 In addition, appropriate action, including disciplinary action, could be taken in relation to employees who unlawfully discriminate under SENDO.

Resolving disputes

- 9.74 Having policies and practices to combat discrimination, together with regular consultation with students and employees, is likely to minimise disputes about disability discrimination. But when such disputes do occur, it is in the interests of the educational institutions to attempt wherever possible to resolve them as they arise.
- 9.75 Complaints procedures can provide an open and fair way for students to make their concerns known, and can enable complaints to be resolved quickly before they become major problems. Use of the procedures may highlight areas in which the duty to make reasonable adjustments has not been observed, and can prevent misunderstandings leading to complaints to the county court. It is important to ensure that complaints procedures are accessible.

10 Resolving Disputes

Introduction

- 10.1 This chapter explains what happens if someone makes a complaint against a responsible body, and what routes for redress exist. It also explains what actions may be taken to put right any discrimination that is found to have taken place.
- 10.2 This chapter is split into six short sections:
- Making a complaint;
 - Internal procedures of a responsible body;
 - Independent conciliation service;
 - Legal remedies;
 - Protection by other legislation; and
 - Information and advice.

Making a complaint

- 10.3 A person who believes that a responsible body has discriminated against them can challenge and seek resolution in several ways, these are:
- internal complaints procedures of the responsible body;
 - independent conciliation; and,
 - legal action.

- 10.4 It must be stressed that a person who believes that they have been discriminated against can follow more than one route of redress at the same time.
- 10.5 It is important to remember that court / legal action must be brought within six months of the alleged discrimination, or if one of a series of events, within six months of the last alleged discriminatory act.
- 10.6 Therefore, a person who believes that they have been discriminated against should contact the Commission to seek advice as soon as possible after the alleged act of discrimination.

Internal procedures of a responsible body

- 10.7 A disabled person can raise a complaint directly with the responsible body. Responsible bodies should have complaints procedures which aid the speedy resolution of disputes. Complainants may raise an issue with a responsible body either before or after legal proceedings have started.
- 10.8 Legal time limits are not altered by trying to resolve a dispute through a responsible body's internal procedures.
- 10.9 If the legal time limits are not met, an individual may lose the right to take legal action. Using internal procedures may not be good justification for failing to meet the time limits.

Independent conciliation service

- 10.10 The Commission has the power to set up an independent conciliation service for disputes arising under the Further and Higher Education sections of SENDO to promote the settlement of disputes without recourse to the courts.
- 10.11 Disputes may be referred to the conciliation service only if both the person claiming disability discrimination and the responsible body agree to this. However, the conciliation service does not have power to impose a settlement on either party.
- 10.12 Agreeing to the conciliation process does not prevent a complainant from pursuing a case through the courts. The time limit for bringing an action in court is extended by two months if the conciliation process has been used within six months of a discriminatory act. No information disclosed to a conciliator during the conciliation process may be used in any subsequent court case without the permission of the person who disclosed it.

**SENDO
Part III
Chapter IV
Article 42(1)**

**SENDO
Schedule
Part II**

**SENDO
Part III
Chapter IV
Article 42(7)**

Legal remedies

- 10.13 A person who believes that a responsible body has discriminated against them may bring civil proceedings. In Northern Ireland, these take place in a county court. Similar proceedings may also be brought against a person who has aided someone else to commit an unlawful act.
- 10.14 To recap, court / legal action must be brought within six months of the alleged discrimination.

**SENDO
Part III
Chapter II
Article 31**

- 10.15 Furthermore, where discrimination takes place over a period of time, the six months begins at the date of the last discriminatory act.
- 10.16 If conciliation or agreement cannot resolve a dispute, and the complainant has brought legal proceedings, the matter is decided by a court. If successful, a disabled person could be awarded compensation, including compensation for any financial loss, or injury to feelings. In Northern Ireland, the disabled person may also seek an injunction to prevent the responsible body repeating any discriminatory act in the future, or an order to require positive action. The court may also make a declaration as to the rights and responsibilities of the parties involved.

Protection by other legislation

- 10.17 In some circumstances it is possible for a disabled person to be protected by more than one section of SENDO and / or the DDA at the same time. For example, a disabled employee who is also studying at an institution may be protected by both Part 2 of the DDA and SENDO when he is using the gym which is open to staff and students alike. In such circumstances, should a disabled person decide to pursue a case under SENDO (or under Part 2 of the DDA), a responsible body may not use the defence that a case should have been pursued under another part of the DDA and / or SENDO. A responsible body must respond to the substance of the complaint made against it.

Information & advice

- 10.18 Students or others wanting to make complaints under SENDO against a responsible body may get further information and advice about their rights and the legal process from the Commission. In some circumstances, complainants may be able to receive direct financial assistance to make a legal complaint from the Commission.
- 10.19 The Commission also provides advice to responsible bodies about their legal responsibilities under SENDO.

11 Useful Contacts

11.1 Free information can be obtained from:

The Equality Commission for Northern Ireland
Equality House
7-9 Shaftesbury Square
Belfast
BT2 7DP
Telephone: 028 9050 0600
Textphone: 028 9050 0589
Fax: 028 9024 8687
E-mail: information@equalityni.org

11.2 The Code and Information about SENDO are also available in other formats, including large print, Braille and audiotape. If you require further assistance, please contact the Commission.

11.3 Other Codes of Practice and guidance materials relating to disability discrimination are also available from the Commission, these include:

- Disability Discrimination Code of Practice for Schools – Special Educational Needs and Disability (Northern Ireland) Order 2005;
- Disability Code of Practice for Trade Organisations and Qualifications Bodies – Disability Discrimination Act 1995;
- Code of Practice for Rights of Access: Goods, Facilities, Services and Premises – Disability Discrimination Act 1995; and
- Disability Code of Practice for Employment and Occupation – Disability Discrimination Act 1995.

11.4 Guidance materials on General Qualification Bodies will be made available from the Commission.

11.5 Contact details of additional sources of information follows:

Advice NI
1 Rushfield Avenue
Belfast
BT7 3FP
Telephone: 028 9064 5919
Fax: 028 9049 2313
E-mail: info@adviceni.net

Association for Northern Ireland Colleges (ANIC)
Unit 3
The Sidings Office Park
Antrim Road
Lisburn
Co Antrim
BT28 3AJ
Telephone: 028 9262 7512
Fax: 028 9262 7594
Website: www.femeansbusiness.com

Blind Centre for Northern Ireland
70 North Road
Belfast
BT5 5NJ
Telephone: 028 9050 0999
Fax: 028 9065 0001
E-mail: info@bcni.co.uk
Website: www.bcni.co.uk

Deaf Association of Northern Ireland
Northern Ireland Office
Suite 3
Cranmore House
611b Lisburn Road
Belfast
BT9 7GT
Text: 028 9038 7706
Voice: 028 9038 7700
Fax: 028 9038 7707
Videophone: 028 9068 2677
E-mail: northernireland@bda.org.uk
Website: www.britishdeafassociation.org.uk

Children's Law Centre
3rd Floor
Philip House
123-137 York Street
Belfast
BT15 1AB
Telephone: 02890 245704
Fax: 028 9024 5679

Department of Education for Northern Ireland
Rathgael House
43 Balloo Road
Bangor
BT19 7PR
Telephone: 028 9127 9279
Fax: 028 9127 9100
Website: www.deni.gov.uk

Department for Employment and Learning
Adelaide House
39-49 Adelaide Street
Belfast
BT2 8FD
Telephone: 028 9025 7777
Fax: 028 9025 7778
Website: www.delni.gov.uk

Disability Action
189 Airport Road West
Belfast
BT3 9ED
Telephone: 028 9029 7880
Fax: 028 9049 1627
E-mail: hq@disabilityaction.org
Website: www.disabilityaction.org

Education Guidance Service for Adults (EGSA)
4th Floor
40 Linenhall Street
Belfast
BT2 8BA
Telephone: 028 9024 4274
Fax: 028 9027 1507
E-mail: info@egsa.org.uk
Website: www.egsa.org.uk

Equality 2000
Willowbank Community Resource Centre
Carland Road
Dungannon
BT71 4AA
Telephone: 028 8775 3253
E-mail: Equality2000@tiscali.co.uk

Mencap
Annadale Avenue
Belfast
BT7 3JH
Telephone: 028 9069 1351
Website: www.mencap.org.uk

National Disability Team
APU
Bishop Hall Lane
Chelmsford
CM1 1QS
England
Telephone: 012 4560 7508
Fax: 012 4560 7509
E-mail: natdisteam@apu.ac.uk
Website: www.natdisteam.ac.uk

Northern Ireland Association for Mental Health
Central Office
80 University Street
Belfast
BT7 1HE
Telephone: 028 9032 8474
Website: www.niamh.co.uk

Northern Ireland Association of Citizens Advice
Bureau (NIACAB)
Regional Office
11 Upper Crescent
Belfast
BT7 1NT
Telephone: 028 9023 1120
Fax: 028 9023 6522
E-mail: info@citizensadvice.co.uk

Northern Ireland Commissioner for Children and Young
People (NICCY)
Millennium House
17-25 Great Victoria Street
Belfast
BT2 7BN
Telephone: 028 9031 1616
E-mail: info@niccy.org
Website: www.niccy.org

Northern Ireland Dyslexia Association
17a Upper Newtownards Road
Belfast
BT4 3HT
Telephone: 028 9065 9212
E-mail: help@nida.org.uk
Website: webmaster@nida.org.uk

Northern Ireland Human Rights Commission
Temple Court
North Street
Belfast
BT1 1NA
Telephone: 028 9024 3987
Fax: 028 9024 7844
E-mail: info@nihrc.org

NUS-USI
29 Bedford Street
Belfast
BT2 7EJ
Telephone: 082 9024 4641
Fax: 028 9043 9659
Textphone: 028 9032 4878
E-mail: info@nistudents.org
Website: www.nistudents.org

Parents' Advice Centre
Head Office
Floor 4
Franklin House
12 Brunswick Street
Belfast
BT2 7GE
Telephone: 080 8801 0722 - Helpline Freephone
Telephone: 028 9031 0891 - Office Line
Fax: 028 9031 2475
E-mail: belfast@pachelp.org
Website: www.pachelp.org

Parents and Professionals and Autism
PAPA Resource Centre
Donard House
Knockbracken Healthcare Park
Saintfield Road
Belfast
BT8 8BH
Telephone: 028 9040 1729
Fax: 028 9040 3467
E-mail: info@autismni.org

Positive Futures
2B Park Drive
Bangor
BT20 4JZ
Telephone: 028 9147 5720

Rethink Northern Ireland
'Wyndhurst'
Knockbracken Health Care Park
Saintfield Road
Belfast
BT8 8BH
Telephone: 028 9040 2323
Fax: 028 9040 1616
E-mail: info.nireland@rethink.org
Website: www.rethink.org

Royal National Institute of the Blind (RNIB)
40 Linenhall Street
Belfast
BT2 8BA
Telephone: 028 9032 9373
Fax: 028 9027 8119
E-mail: rnibni@rnib.org.uk
Website: www.rnib.org.uk

RNID Northern Ireland
Employment, Training & Skills Office
Wilton House
College Square North
Belfast
BT1 6AR
Telephone: 028 9032 1733
Textphone: 028 9024 9462
Website: www.rnid.org.uk

Skill NI
Unit 2
Jennymount Court
North Derby Street
Belfast
BT15 3HN
Telephone: 028 9028 7000
Fax: 028 9028 7002
Website: www.skillni.org.uk

Stationery Office Bookshop
16 Arthur Street
Belfast
BT1 4GD

TECHDIS
The Higher Education Academy
Innovation Way
York Science Park
York
YO10 5BR
England
Telephone: 028 9071 7580
Website: www.techdis.ac.uk

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Equality Commission

FOR NORTHERN IRELAND

How can we help?

The Equality Commission for Northern Ireland can give advice and information on the Special Educational Needs and Disability (Northern Ireland) Order 2005 (SENDO) through training, telephone and textphone advice, booklets and leaflets or we can meet with you.

For further information, please contact us at:

Promotion and Education Department
Equality Commission for Northern Ireland
Equality House
7-9 Shaftesbury Square
Belfast BT2 7DP



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Textphone: 028 9050 0589



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