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The Changing Legal Context, Continuing Professional Development and the Promotion of Inclusive Pedagogy for Disabled Students: some questions

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ABSTRACT

As a consequence of changes to anti-discrimination legislation in the UK relating to disabled people, higher education institutions have additional duties, one of which is to devise and publish a Disability Equality Scheme (DES). The first section of the paper argues that this requirement will mean staff spending valuable time in compiling the DES, time which might be used more effectively in other ways especially in promoting inclusive classroom practices. The latter is identified as the major challenge facing those promoting the recruitment and participation of disabled students. For this to happen, there is a need for effective professional development, both at an initial level and on a continuing basis. Issues associated with professional development are explored in the second section of the paper prior to the concluding part which presents a number of suggested exercises which could be used when planning and delivering staff development. The paper ends by considering progress made so far and identifies a challenging and potentially controversial target by which to judge the attainment of effective inclusion.

Introduction

It is timely to consider whether the Disability Discrimination Act (DDA) 2005 is having a positive impact on the development of inclusive policies and provision in higher education. The paper starts by arguing that any benefits which accrue could be at the cost of slowing existing progress, especially with regard to classroom processes. Disability advisers suggest that their major challenge is working with teaching staff to help them to develop and support inclusive

practices. For this to be effective, attention needs to be given to training and development. The paper provides a brief outline of some tried-and-tested ways of working with academic staff to promote and sustain inclusive learning for disabled students. The paper is based on a Higher Education Funding Council for England (HEFCE) Special Initiative-funded project aimed at developing high quality materials which can be used by mainstream staff developers as part of their standard programmes and which do not rely too much on input and participation from disability specialists. In addition to offering a sample of the materials, the paper raises questions about staff development strategies more generally.

The changing legal context

Since 1990, policies directed towards widening participation and ensuring that more learners with impairments enter and complete successfully courses in post-compulsory education have been effective. Special initiatives and the availability of additional core funding in England have encouraged this process. Whilst pockets of resistance remain within institutions, the challenge now is to monitor and enhance the experience of disabled students.

The implementation of the Special Educational Needs and Disability Act 2001 (SENDA, effectively part 4 of the Disability Discrimination Act 1995) made it imperative that all staff working in higher education know of their responsibilities in relation to SENDA if they are to avoid putting themselves and their employing institution 'at risk' in relation to the law. In particular, academic staff need to understand the learning needs of students with impairments and make 'reasonable adjustments'. The law brought with it anticipatory duties and so institutions have to plan in advance for the possible future participation by disabled students as opposed to making provision on an ad-hoc, reactive basis.

The Disability Discrimination Act 2005 means that all public bodies have to eliminate unlawful discrimination, promote equal opportunities, eliminate disability-related harassment, promote positive attitudes towards disabled people, and encourage participation by disabled people in public life. In addition to these general duties, higher education institutions have specific duties. They have to devise and publish a Disability Equality Scheme (DES) that must be updated annually to demonstrate how the general and the specific duties are being met. This must involve collecting evidence from a variety of sources such as disabled staff, students and

disabled people in the local community. A major focus is on assessing the impact of current and proposed policies (and routine operating procedures and practices) on the experiences of disabled people.

In the time available between the passing of the Act and its implementation, it would be impossible to assess the impact of every single policy in an institution. Therefore there is a need to prioritise. Given that a major function of higher education institutions is teaching and learning, it is sensible to suggest that impact assessment should give a high priority to policies associated with learning, teaching and assessment.

Devising the Disability Equality Schemes – an unnecessary diversion?

There is ample evidence that disabled people encounter disadvantage and discrimination in many aspects of life. For example, *The Guardian* reported the following:

> 'Even ten years on from the establishment of the DDA 1995, the figures are stark. Only 50% of disabled people of working age are in employment, compared with 81% of non-disabled people - and they earn 30% less when they are working. Disabled people are twice as likely to have no qualifications and are more likely to live in unsuitable housing than their non-disabled counterparts.'
> (*The Guardian*, 2005)

This is the position ten years after the first significant piece of anti-discrimination legislation. Since then, there have been the Human Rights Act 1998, SENDA in 2001 and now the DDA 2005. It is questionable, therefore, whether laws have made any contribution to changes. If a positive outcome is in some doubt, then efforts to compile a DES might be wasted, or better used in other ways as will be suggested later.

The process of compiling the DES is complex and raises several key questions. For example, it is a requirement to 'involve' disabled people in the process, but what does 'involvement' mean? Can it be measured and quantified? What is it that people are involved in? The range of variables which have potential influence in higher education is wide: size and scope of institutions, subjects/courses/study programmes on which staff work and students learn, mode of employment/study (full time/part-time), nature of impairment, age, gender, community background. It might be that the field is too broad

to provide meaningful data. This does seem to be acknowledged in guidance from the Equalities Challenge Unit (ECU):

> 'Disabled people are not a homogeneous group. They have multiple identities and other aspects of their identities may influence outcomes. Data on the number of disabled people with a black or ethnic minority background, the number of disabled women or the age of disabled staff, for example, will potentially be very useful when pursuing lines of enquiry about discrimination against particular groups'.
> (ECU, 2004: paragraph 20)

There are other questions. Firstly, there might be implications if different groups such as staff and students have different interests. Secondly, becoming 'involved' will mean disclosing a disability so this could be significant for people with non-visible impairments. If the latter are not part of the process, not only will it cast doubt on the validity of the evidence, it could also contribute to the perpetuation of stereotyped images of disabled people. Thirdly, there is the potential contribution of surrogates, disability 'experts' and experienced consultants.

There is a variety of possible approaches to involving disabled staff and students: elected representatives; co-option; selection; self selection; random participation; but this raises further questions as we know that higher education institutions vary in complexity, size, and diversity of programmes. The ECU guidance itself offers a reminder about the danger of self selection:

> 'Institutions may find that they have previously relied on a small group of active disabled staff and/or students for feedback. These individuals will continue to be of great importance in the preparation of a DES but it would not be wise for a handful of individuals to represent the full range of concerns within an institution's disabled community'.
> (ECU 2004: paragraph 7)

In some institutions there are no official student union and / or elected disability representatives; where there are such offices, sometimes they are not filled and an annual election raises questions of continuity.

So, is the DES an unnecessary diversion? The main focus of attention should now be on classroom processes and yet the DES could prompt institutions to return to broader environmental concerns such as physical access. Were this to happen, it would be a retrograde step. Time and effort spent on compiling the DES might divert attention

from other more important concerns e.g. the effectiveness and efficiency of the current funding arrangements such as the Disabled Students' Allowances (DSA) and the HEFCE additional premium; and the need to review the baseline established by the HEFCE-sponsored study to ascertain whether the level of basic provision has improved (HEFCE, 1999).

Progress has been made through the efforts of other agents of change such as the Institute for Learning and Teaching in Higher Education and subsequently the Higher Education Academy. Also, the Higher Education Funding Councils for England and Scotland have provided national co-ordination and the allocation of funds. Skill: National Bureau for Students with Disabilities has disseminated information and good practices. These existing systems could be more effective than the DES. For example, all institutions could make it a routine aspect of their operating procedures to check inclusivity when new courses are proposed for validation and existing courses revised. The Higher Education Academy and its network of subject centres could be used more extensively to identify and disseminate good practices and innovations in inclusive pedagogy. Underpinning these suggestions is the need for staff development. This issue is addressed below.

Staff development and disabled students: some questions

Awareness raising, equality training – what's the difference?

This question intends to prompt thinking about the terms used and their implications. This is an important consideration when devising publicity for sessions/programmes to attract participants. For example, there is disability awareness, disability awareness training, and disability equality training. The first of these implies a general effort to sensitise people to what it might mean for someone with an impairment to participate in society, in this case higher education. The second suggests that participants will be given specific instructions on appropriate behaviour when engaging with a person with a particular impairment. The third contains a focus on treating disabled people equally. All have weaknesses. Awareness might mean knowing but not acting. Training suggests ensuring particular actions occur irrespective of context and individual. Equality with its inference on treating everybody in the same way ignores the old adage that equal treatment for all is unfair to some.

It might be preferable to promote the notion of 'disability education' since this recognises not only that people have knowledge but that they can build on and adapt that knowledge to meet different situations. Perhaps the concept of disability education might embrace all aspects and would be congruent with views on professional development expressed by those e.g. Craft (2000), who suggest that it is really an attempt to change culture. It might also be more appropriate to consider 'equity' rather than 'equality' since the heart of the matter is about securing fairness for everyone.

Organising sessions and taking responsibility – an additional duty for mainstream staff?

Given that there might be scope for some input of a specialist kind, ideally sessions should be a partnership of 'mainstreamers' and specialists. One matter which is often raised is whether only those with impairments are in the best position to conduct the sessions. Undoubtedly, because of their personal experiences, they will have an important perspective; however, they might not be familiar with appropriately detailed knowledge of learning, teaching and the general higher education context. Also, the individual and the personal could get in the way of objectivity and detachment. It should not be assumed that those involved do not themselves have impairments which are not visible and obvious and which they have chosen not to disclose. One aspect that has sometimes been useful is the involvement and participation of disabled students. If students are willing and have the confidence to participate and if the atmosphere in the sessions is supportive, opening themselves up to questioning can lead to staff gaining useful insights.

Participating – what's the point?

There is an argument to be made for suggesting that disability education should be compulsory for all staff. This comes from adopting a position which could be more resistant to legal challenges under disability discrimination law than if attendance remains voluntary. During the HEFCE-funded special initiative project on which this paper is based, a variety of approaches was adopted. Their success was linked to prevailing institutional cultures and also to the size of the institution. Some institutions issued an open invitation to all staff to participate; some identified particular units such as schools and departments and faculties; some organised sessions around a particular theme such as assessment or placement; some included sessions within existing training programmes, particularly those

directed towards new and untrained staff. Only in the last case could an element of compulsion be detected.

At many other sessions, it came as no surprise to find that those present were 'the converted' and were already committed strongly to developing and improving their knowledge of disability issues. The concept of 'compulsion' to some extent goes against the traditional culture of higher education where staff have been allowed to base their actions on their own professional judgements. Certainly, presenting sessions at which attendance has been made compulsory and with reluctant and resistant participants is an unenviable challenge. On the other hand, some staff are required to undertake compulsory professional development, for example in relation to health and safety.

In terms of the successful embedding of practice, perhaps the best answer is to ensure its inclusion in programmes directed to all new staff and which all must attend. One potential strategy to use when trying to attract existing staff is to offer some incentive. For example, some institutions use certificates of attendance; the gradual acquisition of these can count towards salary increments or promotion opportunities. Another powerful development is to try to organise sessions for senior managers of the institution. These set an example for all staff. It could also be very useful in terms of persuading this group to reaffirm or enhance their commitment to high quality policy and provision for disabled students.

Timing – is there an optimum?

One could argue that it might be preferable for staff to undertake some development prior to encountering disabled students on the grounds that they can be prepared before any prejudices, stereotyping and expectations begin to grow. In contrast, some of the content included in sessions could make use of previous experience of working with a range of students including those with impairments. Knowing a little of the background, experiences and any emerging concerns is helpful to those responsible for organising and delivering the sessions.

It is useful to note that sometimes colleagues anticipating future institutional events request staff development sessions. Perhaps the best example of this is the Quality Assurance Agency's Institutional Audit when questions might be asked about the extent to which the various parts of the QAA Code of Practice (QAA, 1999) are being implemented. Equally significant might be when course validation and periodic review/evaluations are due to take place. Preparations

for such events could include how the needs of a diverse range of students are addressed, another form of continuing professional development.

Delivering the sessions – principles of effective learning applied

Ideally, sessions should be participative and active. Given that people learn in different ways, there should be variety in the sessions, for example, using visual materials such as video or DVD can aid learning and could also be used to demonstrate examples of inclusive practice. (How can visual materials be made available to those with visual impairments?) The cartoons of John Callahan use humour to stimulate thinking on a range of points some of which might indicate matters that are felt to be sensitive (Callahan, 1989). It is this spontaneity and vibrancy that is of crucial importance. In the past few years, a number of opportunities for training and continuing professional development in relation to disabilities have been made available online for individuals to complete. Despite their undoubted quality and despite their fulfilling a useful role, undertaking them as a solitary exercise does not provide the immediacy and spontaneity stemming from working alongside others. At best they are a supplement to, rather than a substitute for, face-to-face interaction and the liveliness and challenges experienced by both participant and presenter.

Another approach is to include simulations. For example, materials are available to simulate a range of visual and auditory impairments. However, this approach was the subject of a paper by French (1992) where, as an individual with an impairment, she was very critical of simulations. She argued that they cannot represent the totality and permanence of having an impairment and hence can be accused of trivialising disability. Since then others have suggested that the impact of simulations as learning experiences is questionable (Gosen & Washbush, 2004). Simulations were not used during the sessions discussed in this paper.

Continuing professional development: some ideas for sessions

The final part of this paper describes some of the small group exercises that have been developed during the organisation and delivery of disability education programmes. The exercises and tasks

can be readily adapted to meet the needs of different audiences and a range of contexts. (See Hurst, 2006 for further discussion and more examples.)

Icebreaker exercise

The following 'icebreaker' can form a good introduction. The task involves the compilation of an inventory of ideas. The group consists ideally of between four and six members. One is invited to act as recorder and compile a list of the contributions, and another to act as group chair. Stimulus word(s) are then presented to trigger ideas. Group members are asked to say the first thing that enters their minds on hearing the trigger word(s). Those chairing the groups are encouraged to try to keep a speedy pace and to close the exercise after three or four rounds or when it is clear that participants are losing momentum.

The triggers have been chosen because they elicit two quite different lists. Those concerned with 'student' will provide quite a collection of items, perhaps related to study or accommodation or to general attitudes and demeanour. The list most often submitted in connection with 'disabled student' contains a significant number of items that suggest that participants have focused more on the impairment rather than the student. It usually offers a graphic example of what has sometimes been called the 'inundating potential' of an impairment, i.e. the individual person is lost sight of and the concern is with the wheelchair, the white stick, or the hearing aid. A key point to stress is that disabled students are first and foremost students with all the positive and negative qualities that might be attributed to everybody.

True or False exercise

A useful exercise comes from the pack of training materials originally produced and disseminated by Skill in conjunction with the Further Education Unit in the 1980s. The exercise is based around statements which have to be judged to be 'true' or 'false'. The statements are accompanied by answers which also provide an explanation. The approach requires a collection of true/false statements relevant to higher education. First, the task can be completed individually and then answers compared in pairs/trios, etc. Following this, the distribution of the answer sheets is a source to stimulate further discussion. If time permits, participants could be asked to devise a set of their own true/false statements, and of course these then add to the growing store of items. This task has been used with staff

working in different countries (e.g. Belgium, Ireland, Sweden) and so it is important to keep in mind different characteristics of national policy and provision for disabled students; however, experience indicates that the general issues are common to many countries.

Student-focused case history exercise

It will be evident that as the session proceeds, attention is narrowing and the next task/exercise is very much concerned with policy and provision. A number of case histories of individual students can be used according to the group size. Again, small groups of no more than six people are ideal. Each group is asked to focus on one case history and to identify any points which might need to be taken into consideration and where 'reasonable adjustments' might be necessary if the student is to enter higher education. The task/exercise started originally using four 'cases': a student who is deaf wishing to study physics; a blind student keen to study French; a wheelchair user interested in social work; and a part-time mature student with a specific learning difficulty wanting a course with minimal requirements for written work. Each case provides details of the individual's family circumstances, previous educational experiences, qualifications and career plans. The task takes up around 30 minutes and then each group is asked to report their findings.

It becomes clear that many challenges are common and are irrespective of the nature of the impairment (for example, the need for additional financial support). Also, there are examples of how exploring the case studies has impacted on learning, teaching and assessment. For example, several 'reasonable adjustments' have been identified and tested in relation to the assessment of students with specific learning difficulties. In one institution, a modification to the standard examination arrangements has avoided both the need to provide separate invigilators and rooms and also any disruption created by having students allowed additional time.

These early examples of case histories have now been overtaken in the 'real world' by students whose situations and needs are much more complex, for example, students who are mental health service users or who have multiple impairments. Accordingly, depending on the group and the purpose of the session, there are other case histories which try to explore these less clear-cut examples.

To do justice to the task and to those working on it, a sufficient block of time is needed: probably a minimum of 60 minutes. As with previous exercises there is scope for development and amendment.

For example, it is possible to change the course of study which the students wish to take to one which is relevant to the participants. More demanding is to ask participants to create their own case histories, which involves not only outlining the context and taking into account any local or national differences but also providing a list of points which those undertaking the exercise ought to have identified.

Institution-focused exercise

One exercise is to ask participants to identify factors associated with high quality policy and provision. This can be done with the group as whole or with sub-groups. As a stimulus, participants are given a list of factors taken from the evaluation report on the first two special initiatives directed towards widening the participation of students with disabilities (HEFCE, 1996). The report lists eight factors, but for the task a further five have been added. Participants are asked first to select eight which they consider would be in the evaluation report. Having reached this point, they are required to put their selection into an order of priority. Having had time to discuss and agree on this, the feedback can prompt further discussion. To complete the picture, a copy of the paragraph from the evaluation report is distributed.

A number of other exercises have been devised which also focus attention on aspects of policy and provision from the perspective of the institution. An essential element of making progress towards being more inclusive is that all staff and students are aware of their roles and responsibilities. For too long, it has become custom and practice for anything and everything to be directed towards specialist staff who are expected to make decisions and to take action based primarily around the impairment. For example, staff in Disability Services may be expected to make any examination arrangements which are different from those for non-disabled students. Yet, in truly inclusive institutions, actions would be taken by those responsible for this aspect of the work and it would be a standard expectation of their roles that they take into consideration the needs of different students.

The exercise developed to promote this inclusive approach can be implemented using small groups. Each participant is supplied with a paper which lists along one side the career path of a student from pre-entry through to graduation. Alongside these horizontal divisions, the sheet is divided vertically into four columns. These are headed 'Students', 'Department/Faculty/Administrative Staff', 'Disability Services' and 'Other Remarks'. The participants are asked to indicate who is responsible and for which actions at the career points listed. Once the sheet has been completed, it is possible to start discussions

in small groups by comparing responses. This can be concluded with a full group plenary. The exercise is interesting no matter whether it is used with staff based in one institution or staff from different places. A useful supplement is to have available a completed pro forma based around systems operated in one institution. This too can be a focus for discussion.

Closing comments —'are we nearly there yet?'

The question often asked concerns the extent of progress made. There is still a long way to go … but where are we going? One indication that genuine, fully inclusive provision is in place would be the lack of the need for specialist disability services in institutions, and the ending of the Disabled Students' Allowances. We are a long, long way from that. A major reason for this is the previous lack of attention to the initial and continuing professional development of staff. This paper offers some suggestions about how to address this.

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Born in Atherton, Lancashire, **Alan Hurst** has degrees from Hull, Manchester and Lancaster universities. After teaching history in school he became a lecturer in education at Lancashire Polytechnic. He joined the National Bureau for Handicapped Students (now Skill: National Bureau for Students with Disabilities) in 1978 and remains a Trustee. He investigated access to higher education and disabled students for his doctoral thesis, published as 'Steps Towards Graduation' in 1993. The title of Professor was awarded by the University of Central Lancashire for his work with disabled students in the university, nationally and internationally. In June 2005, he was awarded the honorary degree of Doctor of the University (D.Univ) by the Open University in recognition of his contribution to developing policy and provision for people with disabilities in higher education. He continues to publish papers, lecture and lead workshops at conferences throughout the world. In 2006, he completed a practical guide on staff development and inclusion.