Guidance on matters related to the provision of lecture recordings for disabled students

Background
On the 8th of July 2022, guidance was issued to all Faculty Boards and Heads of Department, from GBEC, in relation to the institutional expectation to provide recordings for all lectures as standard. However, the guidance also states that whilst there is an expectation that all live lectures should be recorded, no member of staff is required to do so and Faculties and Departments can decide that particular courses will not have their lectures recorded. If lectures are not recorded there are implications for the provision of reasonable adjustments for disabled students which need to be clearly understood. This document details these implications and provides recommended approaches.

Provision of Lecture Recordings for Disabled Students
The provision of recordings of lectures for disabled students with a wide variety of impairments is considered a reasonable adjustment under the Equality Act 2010. The statutory duty to make reasonable adjustments is anticipatory, which means that if we do not implement an adjustment which we could have reasonably foreseen we could be found to have not met our legal duties. As an institution we are aware that a significant minority (approximately 20% of the total student population) of our students fall under the legal definition of disability, and that a large number of those students require lecture recordings to help offset the substantial disadvantage they would otherwise face as a result of their impairment(s). In dispensing our statutory anticipatory duty we should therefore ensure that we have effective processes to provide those recordings in a manner which does not place an additional time burden on those students.

Departments and Faculties are made aware of disabled students studying on their courses in two ways. The Disability Resource Centre (DRC) sends a summary report (a Disabled Student Cohort Summary) indicating those incoming students who have disclosed a disability, and their anticipated access requirements, in the July and September preceding the start of the next academic year. Individual Student Support Documents (SSDs) are also issued (now via CamSIS) which will contain any recommendation for provision of recordings of lectures.

The recent Civil Court ruling (Abrahart v University of Bristol) advises universities to take care in not conflating the statutory anticipatory duty to make reasonable adjustments with extenuating circumstances processes (i.e. we should not make students apply for something which they have a legal right to, and which we are aware would reduce disadvantage). It also stresses that where universities have actual or constructive notice/knowledge that a student is disabled (whether there is formal evidence or not, and also whether they are engaged with disability services or not) they should put in place the appropriate adjustments for those students in the most effective way possible, and that this duty lies with the institution and it is not for the student to have to identify or apply for reasonable adjustments.
Providing recordings of lectures for all students has been recommended by the Office for Students, the Department for Education, the Quality Assurance Agency, the Office of the Independent Adjudicator, the Disabled Students Commission and Disabled Students UK as an example of inclusive practice and is also in line with the University’s Code of Practice: Access and Inclusion for Disabled Students.

It would therefore represent a retrograde and legally challengeable step to reintroduce the process of asking disabled students to seek permission to record lectures and then have to manage the process of making recordings themselves (and then managing the administration of these recordings). Many disabled students already face significant time penalties as a result of their impairments and as an inclusive institution we should, wherever possible, avoid adding additional time burdens to these students. Returning to a process where permission has to be sought and approved also places a significant cost and time burden on the DRC, Colleges, Departments and Faculties, as they are required to administer this process. It also adds a financial burden to the University as in some cases recording equipment will need to be provided to the student. The cost of this cannot be passed to the student, as it is not permitted (under the provisions of the Equality Act 2010 S.20 (7) EqA) to pass the cost of any reasonable adjustment on to the disabled person. The University may need to consider charging Departments and Faculties where recording devices must be purchased to satisfy legal obligations.

The Expectation to Record paper sets out clearly the institutional expectation to provide recordings for all lectures as standard. However, in cases where a decision is made not to make recordings available to all students, because of our anticipatory duty and possible disadvantage to disabled students, it is permissible to restrict recordings only to certain groups, which is preferable than no recordings being provided at all. These recordings could be made via central lecture capture procedures and restricted only to disabled students rather than making them generally available. Other UK universities, including the University of Manchester, the University of Exeter, and the University of Oxford have taken a similar approach in recommending the provision of recordings to disabled students in instances where a lecture is not being made available to all students. If it is possible for the institution to make a recording of a lecture and the decision is made not to make a recording, and there are disabled students who require a recording who do not have access to one, this could be seen to represent a failure to make a reasonable adjustment, to which there is no legal defence.

**Recommendation**

Therefore, it is strongly recommended that in those courses where there is evidence that there are disabled students for whom access to recordings of lectures would remove disadvantage, that a recording of the lecture is made and provided to these students, even if the recording is not provided to all students on that course.

As set out in the appendix to the GBEC Expectation to Record paper, it should also be noted that in cases where there is an evidenced requirement for a disabled student to have a note-taker to take lecture notes for them as a reasonable adjustment, and no recording is
made, it will be the responsibility of the department/faculty to manage and fund note-taking for the student, not the DRC.

This guidance is issued by the General Board’s Education Committee as an addendum to the Expectation to Record Statement for the 2022-23 academic year.

26th July 2022

References:

- Abrahart v-v University of Bristol, May 05 2022, Judgement, County Court at Bristol
- Disabled Students’ Commission Annual Report 2020-21: Enhancing the disabled student experience
- Disabled Students UK report: Going back is not a choice (2022)
- Department for Education (2017): Inclusive Teaching and Learning in Higher Education as a route to Excellence
- Office of the Independent Adjudicator (OIA, October 2017): The good practice framework: Supporting Disabled Students
- The Quality Assurance Agency’s (QAA) Quality Code for HE on teaching and learning
- Shakespeare Martineau: Going Further and Higher – Education Podcast (May 26, 2022), The Learnings from a Tragedy.