

Disabled Students Allowance draft guidance for 2015/16

Comments from the National Deaf Children's Society

This document is a response by the National Deaf Children's Society to an email of 19/12/14 inviting comments on the draft guidance on Disabled Students Allowance (DSA) in 2015/16. We would like to make the following points.

1. Inadequate consultation

1.1 At the outset, we would like to make clear our views that the consultation over this guidance is inadequate and unacceptable, for the following reasons:

- i. It is unclear what is being consulted on. There are no consultation questions and the accompanying on the website is limited to a few paragraphs on a long webpage about DSA. The website implies that comments should be restricted to the content of the guidance rather than on the merits of the changes being made. Email communications alerting us to the draft guidance have stated that "some aspects of DSAs funding *will* be changing" (italics added for emphasis). However, separately, the Department for Business Innovation and Skills have stated that no final decisions have been made and that proposals will be finalised following consultation. We believe that the lack of clarity on what is being consulted on and what decisions have been made is likely to have a chilling effect on people's responses to the request for comments.
- ii. Lack of time. We were informed on the 19th December that the deadline for responding to the consultation was the 9th January. This was later extended to the 14th January. This consultation period falls over Christmas when many people are likely to be on leave. The absence of clear consultation timescales precludes us from seeking views from deaf young people or allowing us to respond in a full and considered way.
- iii. It appears to us that the only people who will be aware of the opportunity to comment on the draft guidance are those who are on a BIS email list or who proactively check the Student Finance England website. There is no dedicated 'consultations' section of the Student Finance England website that we can see. Neither is this opportunity to comment shown on the BIS website in its existing section on consultations. We therefore believe that many deaf young people who would like to respond will not have the opportunity to do so because they are not aware of it.

1.2 Given the importance of these changes and the possible impact of deaf young people, we would have expected a full and proper consultation to be carried out. We would also expect a proper consultation document to be published explaining what is being proposed with clear consultation questions allowing people to respond at a formative stage on all possible options. We would also expect a period of around 3 months for all stakeholders to have the opportunity to respond and to also canvas the views of their own members.

1.3 This "opportunity to comment" isn't clearly labelled as a consultation exercise, the timescales are extremely limited and there are no clear numbered consultation questions. The only indication as to the scope of the consultation is a few paragraphs on a website and the opportunity does not appear to have been widely publicised.

1.4 In light of these concerns, we believe that the current exercise should be suspended and a new full and proper consultation carried out. We wish to make clear that in providing the following comments on the draft guidance that NDCS does not believe that this constitutes a full and proper consultation.

2. Information to applicants

2.1 In the new framework, “increased responsibility for reasonable adjustments is expected to fall on institutions”. Under the changes, we are concerned that deaf students will be put in a position where they apply to HEIs without knowing for certain that they will provide the reasonable adjustments required.

2.2 In light of these changes, we would have expected to have seen new statutory duties on HEIs to be more transparent about what support they will provide. The draft guidance contains no clear requirement on HEIs to make information on reasonable adjustments available in advance – this is described as something that “should” rather than “must” happen.

2.3 Reference in the guidance is made to including information on DSA in the ‘Local Offer’. However, as far as we can tell, local authorities will only be required to inform disabled young people that DSA exists. Local authorities would not be required to include information on what support would be available from universities in their area. Neither does the Children and Families Act 2014 require HEIs to co-operate with local authorities in the development of a Local Offer.

2.4 The likely impact is that the deaf student will have to invest considerable amounts of energy in identifying which HEIs will provide the necessary reasonable adjustments in advance of application or risk making an application to a HEI that will not then provide the support required. Given that students usually apply whilst preparing for their A Levels, the level of uncertainty and anxiety this introduces would amount to an unacceptable burden in our view.

2.5 If BIS intends to proceed with these changes, we believe that the draft guidance should include more rigorous requirements for HEIs to be more transparent about their offer to disabled students so that students can make applications in good faith and confidence that they will get the support they need.

3. Role of DSA study needs assessors

3.1 We feel that the section on the role of the assessors is vague and unclear on what their role would be in ensuring that the HEIs makes the expected reasonable adjustment. The process by which this would be agreed is also unclear. We also believe that there is insufficient challenge to the HEI.

3.2 Page 14 simply states that the assessor “will wish” to advise HEI on what DSA will not cover and “suggest” that the HEI “consider” where the student may need additional support. We find this text to be extremely light-touch.

3.3 There appears to be no process by which the HEI is expected to reply to the assessor, Student Finance England or the student within specified timescales to confirm if they will or will not make the “suggested” reasonable adjustment. We would have expected to have seen some form of agreement between DSA and the HEI what respective bodies will be responsible for covering. Ideally, such an agreement will be legally binding.

3.4 Page 15 implies that Student Finance England would be more concerned about a situation where the assessor has ‘wrongly’ recommended that DSA applies as opposed to situations where the HEI has not confirmed that they will make the necessary reasonable adjustment.

3.5 There appears to be little thought given in the guidance to how to manage a situation where the HEI does not or cannot make a reasonable adjustment. We feel this would generate unnecessary anxiety and uncertainty for the deaf student.

3.6 Separately, paragraph 8.1 on who meets the cost of DSA study needs assessments would benefit from confirmation over the fact that DSA can also be used to fund communication support, if needed, within these meetings.

4. Role of services

4.1 Paragraph 1.10 of the guidance on page 13 states that disability services within HEIs will have the best understanding of disabled students and their needs. We do not agree.

4.2 We believe that this statement fails to recognise that the complexity of needs within the disabled population. Even with the deaf population, there is a wide diversity of needs; some deaf students communicate orally or through British Sign Language; some use hearing aids, others use cochlear implants; some have good language skills whilst others have a language deficit; and so on.

4.3 Further, we believe that this statement fails to recognise that as deafness is a low incidence need, HEIs are less likely to come into contact with deaf students and be familiar with their needs.

4.4 This statement belies an assumption by BIS and the Student Finance England that HEIs are well-placed to meet the needs of deaf students which we do not believe has been fully tested through consultation with deaf students. NDCS has heard reports of deaf students being badly let down by disability services, as the following case study demonstrates.

Case study: Isla

The below case study from Scotland cited in research carried out by the University of Edinburgh¹, illustrates some of the risks involved in relying on universities to provide appropriate support, and the need for clear means of redress if changes to DSA are made in England.

In summer, as soon as she was accepted, Isla had a meeting with a disability advisor. Then in October she contacted the Disability Office once more to ask about support. She was told that the paperwork was being processed. During the following three months Isla had no communication support and no adjustments were made for her. She arrived early for lectures and asked tutors to wear the loop system microphone, but found that microphones rarely worked or tutors forgot to use them. In a laboratory session she asked to be allowed to sit at the front so she lipread, but the tutor was not supportive:

“She said to me, ‘well you just have to sit through it for this tutorial, this lab, but for the next time I’ll have you down the front’. Next time I went in, still hadn’t changed it. I was raging. I was like really angry.”

As time went by, Isla realised that she was missing out most of the content of her course. She dropped out at Christmas, just before she was due to hand in her first assignments.

“We had a couple of big papers coming up. I had started them. I had no idea where I was going with it. I e-mailed my tutor and said, ‘look I’m not coming back. I can’t, I can’t hear anybody so I can’t. He said, ‘I’m sorry to hear that’. That was it! I think I cried for days.”

After she dropped out of university her dad wrote a letter to the Disability Office listing their complaints. The Disability Office responded in writing:

¹ http://www.docs.hss.ed.ac.uk/education/creid/Reports/30iii_NDCS_PostSchTransit_FinalRpt.pdf

“We got two letters back. One telling my dad that they need written consent for him to contact the University on behalf of me, although I had signed the bottom of the letter along with my dad! I think that constitutes written consent. The other one I got back was an eight page letter simplifying all the points that I had pointed out to them as to what they had done wrong, accusing me of being a liar! Saying that I had never been up to speak to them.”

There was no other contact between Isla or her parents and the university.

We do not believe that Isla’s experiences are atypical.

4.5 As we go on later to explain, elements of the draft guidance indicate that even the Student Finance England does not always have a good understanding of the support that deaf students may require.

4.6 This assumption has underpinned much of the proposed changes. As we believe the assumption is false, we believe that the changes should be dropped or the implications of this more thoughtfully considered through a full public consultation.

5. Knowing where a student is applying

5.1 Much of the guidance is written as if the DSA study needs assessor will know which HEI the student is applying to. However, our understanding is that in many cases this may be uncertain until the last minute – i.e. if deaf students are waiting for exam results to identify if they meet the conditions of their offer, have to go into clearing, etc.

5.2 One advantage of DSA was that it was effectively transferrable from one HEI to another – i.e. it did not necessarily rely on HEIs being consistent in the support they provide to deaf students. The change therefore introduces another level of uncertainty and the draft guidance fails to clarify how this will be managed. It introduces a new risk that deaf students will begin term without their support in place or without agreement with the HEI that they will or can make the necessary reasonable adjustments.

6. Non-medical help allowance

6.1 Paragraph 5.4.1 does not specify the qualifications that communication support workers (CSW) should hold. NDCS has seen examples of deaf young people being supported by CSWs with a level 1 or 2 qualification in sign language, both of which are worth less than a GCSE and is not sufficient to meet a students’ needs. We believe that a deaf student should be supported by someone with **at least** a level 3 qualification, or higher if needed.

6.2 NDCS does not consider that HEIs will necessarily be familiar with the BSL qualifications framework. If this support is now expected to be provided by HEIs rather than DSA, it is therefore important that the draft guidance specifies this as a clear expectation.

6.3 Paragraph 5.4.2 seems to confuse the different types of “electronic notetakers”. The main difference is between an electronic notetaker providing a summary of what is being said and a speech to text reporter (sometimes called a palantypist) who is providing a live verbatim transcript. The latter will be more beneficial to deaf students who want to follow what is being said as it is being said and/or for interactive lectures / discussions or who are likely to suffer concentration fatigue from lipreading for long lengths of time.

6.4 Some speech to text reporters now work remotely – i.e. listen in via Skype and provide a live verbatim transcript via a web-link.

6.5 It is important that this distinction is clearly made in the draft guidance. It strikes us that if the Student Finance England is unaware of the difference between these types of support, then the HEI is even less likely to know the difference. This again demonstrates the risks associated with relying on HEIs to make the necessary reasonable adjustments that a deaf student may need.

6.6 Speech to text reporters are likely to be more expensive than someone providing general notes via a laptop. We are extremely concerned that HEIs would not be able to fund this support as a reasonable adjustment and believe this should be designated as band 3 or 4 support.

6.7 More generally, if it is proposed that responsibility for funding and identifying non-manual help is to be held by the HEI, NDCS would have expected Student Finance England to put in place some standards or specifications for qualifications that different roles should hold.

7. Specialist equipment

7.1 Paragraph 6.4 states that DSA cannot be used for tablets. Where a student is using a remote speech to text reporter (see earlier), an iPad may be necessary to enable the deaf student to follow the lecture. This is because iPads are known to have better microphones than standard laptops.

7.2 We are extremely concerned about the absence of any reference to radio aids (sometimes known as FM systems) for deaf students within the guidance. Paragraph 6.11 refers to “microphones” but in the context of “audio capture equipment”. This is confusing as the purpose of radio aids is for amplification and to enable the deaf student to more easily follow the speech of a lecturer, tutor or fellow students. It is a vital element of support for many deaf students and the absence of any specific reference to this in the draft guidance is worrying.

7.3 Radio aids are not routinely provided by health services. They are provided to deaf young people within education but our understanding is that most local authorities expect young people to return the equipment when they leave school.

7.4 Given the cost of one-off purchases of radio aids, NDCS is concerned if the Student Finance England would be expecting HEIs to meet this cost as a reasonable adjustment. We suspect that many would be unable to meet the cost and therefore strongly believe that radio aids should be included under band 3.

8. Exceptional case process

8.1 We believe that this section is inadequate. It does not provide us with reassurance that, where there is disagreement over a reasonable adjustment, that deaf students would be provided with the support they need in a timely and urgent way. Instead, it appears that there is no real legal compulsion against a HEI to make necessary reasonable adjustment even though, as the guidance concedes, “increased responsibility for reasonable adjustments is expected to fall on institutions”. This is a key change. Until and if this is addressed, we believe that the proposals should be dropped or a new consultation issued exploring adequate safeguards in more detail.

8.2 We are also concerned that we are being asked to comment on something which is not yet final. The draft guidance states that the details of the process “will be confirmed in due course”. It also states that details of arbitration are “to be confirmed”. It is unclear if there will be a separate opportunity to comment on this. In any event, it is difficult to provide an informed response to what is being proposed in the absence of this information. This notwithstanding, the below sets out our specific concerns in this area.

8.3 The section on appeals lacks any real clarity on timescales or responsibilities. NDCS is extremely concerned that where difficulties or disagreements arise, it will be left to the deaf student to push things along (when they should be focusing on their studies) and that matters will drift. We are concerned that many deaf students will be inclined not to pursue any difficulties because of their studies, lack of confidence or a desire not to cause a difficult relationship with the HEI they are studying at.

8.4 The DSA study needs assessors' role appears to be limited to deciding whether or not DSA can be used, and not on requiring a HEI to make the reasonable adjustment. There appear to be no clear role for the assessor to arbitrate if there is a disagreement and ensure the matter is resolved.

8.5 In a situation where there is a disagreement, NDCS would also expect DSA to be automatically issued if and until the HEI agrees and accept that they should make a reasonable adjustment. NDCS believes it would be unfair for the deaf student to pay the price for a failure for a HEI / DSA study needs assessor to agree whose responsibility it is to meet their needs.

8.6 The draft guidance states that the OIA can hear appeals against HEIs. However, in a response to a Parliamentary Question in October 2014, where Kate Green MP asked how many appeals had been heard by the OIA, the Minister replied that the OIA "does not publish this data". The Minister did not indicate if this was because the data is not collected or otherwise. Either way, this raises serious questions about the OIA's commitment or readiness to resolving disagreements in this area.

8.7 The draft guidance contains no indicative timescales for when appeals should be made and heard by. A vague reference to aiming to "minimise any delay" is not satisfactory.

8.8 In any event, we also understand that the OIA has no powers to direct a HEI to make a reasonable adjustment. There appears to have been no consideration as to whether the OIA is the right body for this and what the purpose of making an appeal would be.

8.9 No reference is made to the fact that disabled students can also challenge HEIs in a county court. However, NDCS understands again that courts would have no powers over a HEI to instruct them to take action to remedy a failure to make reasonable adjustments.

8.10 In debates on the Children and Families Act 2014, Ministers made a conscious decision not to bring HEIs under the scope of existing SEN legislation (on the basis that DSA already met this need). This puts deaf students at a HEI in an anomalous position compared to deaf students aged 19 to 25 who have an Education, Health and Care plan and who are at college. Deaf students at college have a number of legal rights against the college - specifically, a SEN and Disability Tribunal can hear appeals over disability discrimination or over the content of their plan and the support they require. We have previously suggested to BIS that they consider bringing HEIs under the scope of this Act or at least allow deaf HEI students to appeal to Tribunal. The draft guidance indicates that no consideration has been given to this possibility, even though there are clear inadequacies with the existing means of redress within HEIs.

8.11 The failure of the draft guidance to set out a clear means of redress where reasonable adjustments are not made by the HEI risks putting disabled students in an intolerable situation where the support they need is not provided leaving the student with little they can do about it. We would have expected to have seen this issue addressed before any changes made to the DSA framework.

9. Summary

9.1 The proposed changes to DSA, as reflected in the draft guidance, risks putting deaf students in a position where they do not receive the support they need. The means of redress for a student in such a situation are inadequate. Ultimately, the draft guidance, if implemented, is likely to lead to a decline in the number of deaf HEI students or poorer outcomes for those who try to 'cope' in what is already a demanding learning environment.

9.2 These changes have not been adequately consulted on. We urge Student Finance England and the Department for Business Innovation and Skills to either abandon these changes or carry out a full and proper consultation on the changes that carefully considers the implications of these changes.