

+ Competence Standards Guidance

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1 Introduction

The appropriate application of competence standards is central to inclusive teaching and learning for disabled students.

Competence standards are necessary for academic and/or professional integrity and to ensure the value of qualifications, describing the very few aspects of a course or programme that must be attained by all students. This means they are not subject to the reasonable adjustment duty that may otherwise apply for those who are disabled under the Equality Act 2010.

In the context of disability discrimination, any requirement that does not meet the legal definition of a competence standard may be deemed a provision, criterion or practice (PCP). PCPs are subject to the duty to take such steps as it is reasonable to take to avoid putting a disabled person at a substantial disadvantage (the Reasonable Adjustments duty).

By integrating their adherence to the reasonable adjustments duty and commitment to inclusivity with a full understanding of competence standards, higher education providers can uphold academic standards and the integrity of qualifications while providing a supportive and equitable learning environment for all students.

[The Equality and Human Rights Commission \(EHRC\) Advice Note in July 2024](#) following the court of appeal judgement in the Abrahart case. This guidance should be read in conjunction with the Note, which provides essential guidance for higher education providers regarding the establishment and application of Competence Standards. See Part 2 of this guidance for further detail.

This document has been prepared for guidance purposes only and does not constitute legal advice.

2 Aims and objectives

This guide aims to embed an understanding that the duty to consider reasonable adjustments rests directly with all those involved in supporting a student throughout their education.

Whilst the guide will be of interest to those with organisational or management responsibilities, the shared nature of the reasonable adjustments duty means that it will also be relevant to any staff involved in the design and delivery of teaching and learning, assessment, support and wellbeing, which will include a large proportion of staff working in HE.

It will help you:

- + Develop your awareness and understanding of competence standards, and how they differ from, and are related to, concepts such as learning outcomes and modes of assessment;

- + Understand the interplay between competence standards and reasonable adjustments;
- + Identify competence standards in the review of current courses, programmes, policies or practices;
- + Ensure institutional systems, processes and policies adequately reflect the anticipatory duty to make reasonable adjustments, including the planning and decision making needed to make those adjustments;
- + Appreciate the need for relevant staff to receive appropriate training.

2.1 Why is this relevant to me?

Under the Equality Act 2010, Providers (and also individual employees and agents) are accountable for their acts and omissions in relation to disabled students. This responsibility applies to all employees and agents of the Provider and must be discharged through compliant policies and procedures as well as systems and practices. The Provider must ensure that all its employees and agents are adequately equipped to comply with the reasonable adjustments duty.

3 Definitions and legal overview

3.1 What is a 'reasonable adjustment'?

The Equality Act 2010 places a legal duty on Providers to make reasonable adjustments in order to ensure disabled applicants and students do not experience substantial disadvantage in comparison with non-disabled people.¹ The duty to make reasonable adjustments is unique to the protected characteristic of disability.

The reasonable adjustments duty contains three requirements, which relate to changing how things are done, changing the built environment to avoid such a substantial disadvantage and providing auxiliary aids and services. Specifically:

- 1 A duty to make reasonable adjustments to any provision, criterion or practice (PCP) which places disabled students at a substantial disadvantage²
- 2 A duty to make reasonable adjustments to physical features
- 3 A duty to provide auxiliary aids (including services)

¹ <https://www.legislation.gov.uk/ukpga/2010/15/schedule/13>

² The Equality & Human Rights Commission, *Technical guidance on further and higher education* (2014) p110: <https://www.equalityhumanrights.com/equality/equality-act-2010/technical-guidance-further-and-higher-education?return-url=https%3A%2F%2Fwww.equalityhumanrights.com%2Fsearch%3Fkeys%3Dtechnical%2Bguidance%2Bhe>

The duty to make adjustments is anticipatory, meaning that Providers must proactively consider what adjustments might be reasonable whether or not an issue has yet arisen in relation to a particular individual or adjustments have been requested.

What is reasonable is not defined in the Act and will depend on the circumstances of each case.

3.2 What are Provisions, Criteria and Practices?

The Equality and Human Rights Commission (EHRC) interprets PCPs as including:³

- + arrangements (for example, for deciding who to admit)
- + the way that education, or access to any benefit, service or facility is offered or provided
- + one-off or discretionary decisions
- + proposals or directions to do something in a particular way
- + formal and informal policies
- + rules

PCPs can be disapplied or varied as a form of reasonable adjustment.

In the context of Higher Education, policies relating to making reasonable adjustments and the setting of competence standards are themselves PCPs.

3.3 What is 'reasonable'?

There are two key considerations of 'reasonableness' which can help when thinking through when an adjustment may be reasonable:⁴

- + Could the adjustment be **practicable** in its application (is it possible)?
- + Could the adjustment be **effective** in achieving its aim (will it work)?

There is no need to prove that the adjustment is practicable and effective in advance, just that it **might be**. An adjustment should not be considered unreasonable if it does not remove the disadvantage fully; an adjustment which partially removes or reduces substantial disadvantage is also likely to be reasonable.

³ The Equality & Human Rights Commission, *What equality law means for you as an education provider – further and higher education* (2014) p15:

https://www.equalityhumanrights.com/sites/default/files/what_equality_law_means_for_you_as_an_education_provider_further_and_higher_education.pdf

⁴ <https://www.equalityhumanrights.com/guidance/business/employing-people-workplace-adjustments/what-do-we-mean-reasonable>

Decisions around reasonableness may involve the disabled student, specialist disability practitioners, and academic colleagues. In considering reasonableness, Providers can take into account a range of factors⁵, including:

- + The views of the student
- + The effect of the disability on the student
- + The relevant interests of other people, including students
- + The practicability of the adjustment
- + The extent to which any adjustment could effectively overcome the substantial disadvantage facing the student
- + The extent to which an alternative adjustment might more effectively overcome the disadvantage facing the student
- + The total resources of the Provider
- + The financial cost to the Provider
- + Availability of financial or other assistance to the student
- + Health and safety requirements.

It is important to remember that these factors alone rarely automatically preclude an adjustment from being reasonable. Most reasonable adjustments will be relatively cost effective to introduce, but some may involve significant cost or complex changes and still be reasonable. It is therefore necessary to evidence clearly any challenge to an adjustment based on these factors.⁶

⁵ The Equality & Human Rights Commission, *Technical guidance on further and higher education* (2014) p121: <https://www.equalityhumanrights.com/equality/equality-act-2010/technical-guidance-further-and-higher-education?return-url=https%3A%2F%2Fwww.equalityhumanrights.com%2Fsearch%3Fkeys%3Dtechnical%2Bguidance%2Bhe>

⁶ The Equality & Human Rights Commission, *Technical guidance on further and higher education* (2014) p120: <https://www.equalityhumanrights.com/equality/equality-act-2010/technical-guidance-further-and-higher-education?return-url=https%3A%2F%2Fwww.equalityhumanrights.com%2Fsearch%3Fkeys%3Dtechnical%2Bguidance%2Bhe>

3.4 What is 'substantial disadvantage'?

'Substantial' is defined in the Act as 'more than minor or trivial'.

Examples of disadvantage recognised by the EHRC include⁷:

- + The additional time and effort expended by a disabled student
- + The inconvenience, indignity, discomfort, or perceived disadvantage suffered by a disabled student
- + The loss of opportunity or diminished progress experienced by a disabled student.

3.5 What is a 'competence standard'?

The Act contains a number of exceptions relating to the duty not to discriminate within the context of education. Schedule 13 includes a specific exemption for further and higher education providers to the reasonable adjustments duty when applying a competence standard.

The legal meaning of competence standard is distinct from that of other ostensibly similar concepts used in academic language, such as 'competency', 'competent' and 'competencies'. Any language which uses a variation of the word 'competence' is usually describing a level of ability or skill, but some definitions may also include attributes, attitudes or behaviours for learning.⁸ It is important that the term "competence standard" is not used interchangeably with these other terms because doing so could lead Providers to fall short of their duties under the Equality Act.

The Act 2010 defines "**competence standard**" as:

'An academic, medical or other standard applied for the purposes of determining whether or not a person has a particular level of competence or ability.'

(Schedule 13, paragraph 4(3))⁹

Only a court or tribunal can decide what is in practice a competence standard that warrants the protection of the exemption.

⁷ The Equality & Human Rights Commission, *What equality law means for you as an education provider – further and higher education* (2014) p20:

https://www.equalityhumanrights.com/sites/default/files/what_equality_law_means_for_you_as_an_education_provider_further_and_higher_education.pdf

⁸ Arifin, Muhammad Aiman. (2021). *Competence, Competency, and Competencies: A Misunderstanding in Theory and Practice for Future Reference*.

⁹ The Equality Act 2010: <https://www.legislation.gov.uk/ukpga/2010/15/schedule/13>

However, it is the responsibility of Providers to demonstrate a sound understanding of competence standards with reference to the Act, relevant case law and authoritative guidance such as that published by the EHRC.

EHRC Technical Guidance published in 2014 states that for a competence standard to fall within the legal definition requires several key requirements to be met.¹⁰

A competence standard will be lawful where all of the following are satisfied:

- + **Equal application** to all students
- + Demonstrable **relevance** to the course
- + Being **necessary** in service of a lawful objective (e.g. ensuring a level of knowledge sufficient to protect the integrity of the discipline or the safety of the public)
- + **Proportionality** (i.e. being suitable and not excessive. Does the importance of the aim outweigh the discriminatory effect? Are other less discriminatory approaches available?)

If proposed (or purported) competence standards do not meet these requirements and could have a substantial adverse impact on a disabled student, then they may not be protected under Schedule 13 and therefore be discriminatory. In these cases, an alternative PCP should be developed which achieves the same purpose in line with these requirements.

Even a legitimate competence standard may function in a way which is indirectly discriminatory. A provider would need to demonstrate that the competence standard is a proportionate means of achieving a legitimate aim.

Those staff responsible for the design of programmes of study, course content and assessment are also responsible for identifying, determining and reviewing competence

¹⁰ The Equality & Human Rights Commission, *Technical guidance on further and higher education* (2014): <https://www.equalityhumanrights.com/equality/equality-act-2010/technical-guidance-further-and-higher-education?return-url=https%3A%2F%2Fwww.equalityhumanrights.com%2Fsearch%3Fkeys%3Dtechnical%2Bguidance%2Bhe>

standards.¹¹ However, in some subjects competence standards are determined externally by professional bodies¹² (see below).

3.6 Professional Statutory and Regulatory Bodies (PSRB)

PSRBs are an important feature of the regulatory landscape in higher education.

Professional bodies are usually membership organisations which operate to promote and support the profession in question.

Regulatory bodies may also act in the public interest by gatekeeping admittance to professions. They protect the integrity of professional titles by requiring levels of technical and ethical competence, facilitating ongoing professional development and intervening in cases where registered members may have fallen short of what is expected of them. This can be through disciplinary or fitness to practise proceedings, which are in turn based on maintaining minimum standards of competence.

PSRBs that have statutory authority to regulate higher education programmes operate in the fields of accounting, architecture, medicine (and allied health), law and teacher training,

Some higher education providers have codes of practice to help shape their engagement with PSRBs. This can enable helpful dialogue around individual subject curriculum content and standards. It is also a way of co-ordinating the balance between provider quality assurance and practise requirements around competence.

Both providers and PSRBs have a legal duty to comply with the Equality Act and to devise and implement competence standards that are not discriminatory. It is therefore incumbent on both to work together in a way that ensures the reasonable adjustments duty is met.

3.7 Consumer Law

Higher education providers deliver education services to students in exchange for fees. While providers have public and private law obligations, their relationship with students is based primarily in contract. As the contract is between a business (the Provider) and a consumer (the student), which is deemed to be an asymmetrical relationship, it is subject to the requirements of consumer law.

Consumer law operates to ensure that consumers are treated reasonably and fairly by businesses. While only a court can determine if consumer law has been breached, the Competition and Markets Authority and the Office for Students have an important role to

¹¹ Equality Challenge Unit, *Understanding the interaction of competence standards and reasonable adjustments* (2015) p9: <https://www.advance-he.ac.uk/knowledge-hub/understanding-interaction-competence-standards-and-reasonable-adjustments>

¹² Equality Challenge Unit, *Understanding the interaction of competence standards and reasonable adjustments* (2015) p23: <https://www.advance-he.ac.uk/knowledge-hub/understanding-interaction-competence-standards-and-reasonable-adjustments>

play in promoting compliant practice and intervening where potential non-compliance is identified.

In 2015, the CMA published higher education specific consumer law guidance, which was updated in 2023. This focuses on three main elements:

- + Contractual Terms and Conditions
- + Information Provision
- + Complaints Handling

Providers should use competence standards in relation to relevant regulation in their context. For instance, in England, since 2018, the regulatory framework for HE has included the 'C Conditions' of registration which require:

- + C1 - Compliance with consumer protection law and guidance with particular regard to the CMA guidance
- + C2 - Co-operation with the OIA student complaints scheme
- + C3 - Development and publication of a student protection plan

It is incumbent on higher education providers to ensure that applicants and students are provided with accurate and clear information about the courses they are considering and studying. This obligation extends to pre-course information and any representations that providers make to prospective students and covers details of any PSRB requirements and competence standards that apply to them. Programme catalogues, module handbooks and placement guidance must all be written and maintained with these obligations in mind.

3.8 To whom do competence standards apply?

The Act does not specify to whom competence standards may be applied but it is clear that anti-discrimination provisions apply to prospective and current students (and in some cases former students).

Providers commonly apply competence standards to:¹³

- + **Applicants**, to determine whether they have the knowledge and skills necessary to participate in and complete a course of study
- + **Students**, to determine whether they are ready to progress to the next year/stage of study, and to determine whether they have demonstrated the requirements in order to be awarded a qualification that necessitates a competence standard to be applied.

¹³ Equality Challenge Unit, *Understanding the interaction of competence standards and reasonable adjustments* (2015) p6: <https://www.advance-he.ac.uk/knowledge-hub/understanding-interaction-competence-standards-and-reasonable-adjustments>

3.9 Do competence standards vary by subject?

Competence standards can - and should - vary between courses of study. What may constitute a competence standard in one subject area may not be justifiable in another.

3.10 What about Academic Judgement?

Concerns about the need to preserve academic integrity and standards are often cited as reasons why adjustments to admissions, curriculum and assessment design are not made. As academics determine integrity thresholds and standards, this has the potential to stifle consideration of whether their approach is necessary and appropriate and crucially, the consideration of reasonable adjustments.

Academic judgment, defined as judgment made about a matter where the opinion of an academic expert is essential, is important. However, decisions made by academics about admissions, curriculum and assessment can still constitute failings of procedure and therefore be open to legal challenge.

The Abrahart litigation highlighted the distinction between modes of assessment, which are PCPs and therefore subject to the reasonable adjustments duty, and competence standards, which are not. Approaches to teaching and learning, including many thresholds and standards applied to admissions, curriculum and assessment, which are deemed justified by academics based on pedagogical tradition, may well simply be PCPs. Neither academic judgment nor the competence standard exemption will put them outside of the requirements of the Act and the duty to make reasonable adjustments.

3.11 Implementation: identifying, applying and communicating competence standards

Identifying competence standards

Competence standards must be carefully considered and identified. They must also be communicated clearly to applicants and students so they can make informed decisions about which programmes of study or individual modules to take.¹⁴

In the recent High Court case of *University of Bristol v Abrahart* [2024], Mr Justice Linden set out a series of questions for establishing if a PCP is a lawful competence standard:

- i. What competence or ability is being measured?
- ii. What are the standards which are being applied to determine whether a person has met the relevant level of competence?
- iii. What aspect of the process are methods of assessment of whether those standards have been met?

¹⁴ Equality Challenge Unit, *Understanding the interaction of competence standards and reasonable adjustments* (2015) p30: <https://www.advance-he.ac.uk/knowledge-hub/understanding-interaction-competence-standards-and-reasonable-adjustments>

Applying these questions, it is possible to determine what a competence standard is **not**. This includes:

- + A method of assessment (e.g. way of gauging an ability or level of knowledge such as a practical test)
- + A requirement unrelated to the content and objectives of the course (e.g. a fitness requirement for a course not involving strenuous physical activity)
- + A requirement that arises from pedagogic preferences or arbitrary norms of practice (unless that is the competence standard, e.g. the ability to perform a task in a specific timeframe)
- + A requirement based on notions of what is deemed to constitute a 'good degree' (e.g. subjective approaches to particular activities imposed by tradition and historic practice)

It follows that a competence standard should:

- + Be clear and signposted to applicants and students
- + Be related to the content and objectives of the course
- + Be distinguishable from a method of assessment
- + Have the purpose of requiring demonstration of a specified and necessary level of ability, skill or knowledge

Part II

3.12 Abrahart and the EHRC Guidance

In [July 2024](#), the [Equality and Human Rights Commission published an advice note](#) for the higher education sector to assist providers to comply with Equality Act in light of the Abrahart High Court appeal.

The note reflects the gap that the High Court judgment in the Abrahart case bridges between the law as set out in the Equality Act 2010 and what is required of higher education providers in practice. Clearer documentation may support providers to apply competence standards in courses where they are appropriate.

However, another key message from the judgment is that once a provider has ‘constructive’ knowledge of a disability, a reactive duty to make reasonable adjustments applies. A provider cannot fall back on the argument that another part of the institution was not aware of the disability or that due process and evidence are unimportant when making decisions about reasonable adjustment.

"They are important. There will no doubt be many cases where it is reasonable to verify what the disabled person says and/or to require expert evidence or recommendations so as to make well informed decisions. A degree of procedural formality will also generally be appropriate for the reasons which the University advanced. But what a disabled person says and/or does is evidence. There may be circumstances, such as urgency and/or the severity of their condition, in which a court will be prepared to conclude that it is sufficient evidence for an educational institution to be required to take action. That was the view of the County Court on the facts of this particular case."

This is a reminder that the individual facts of a case remain critical in determining what is reasonable and ultimately lawful in the circumstances and care is needed to ensure that fear of litigation does not undermine the preservation of competence standards that are properly defined and required.

Another key message from the judgment is that universities cannot fall back on the argument that due process requires them to follow their own published regulations and policies if that would lead to unlawful outcomes.

"The problem with the university's reliance on its own Regulations and policies...was that they are not the law. They were subject to the law, including the requirements of the Equality Act 2010."

With these and other points in mind, the note provides compliance commentary under the headings of **Knowledge of and evidence of disability** and **competence standards** and makes recommendations for practical action around:

- + Processes and procedures (including common practices) which are PCPs and therefore subject to the reasonable adjustment duty

- + Training for staff in academic, administrative (student facing), accommodation and support roles to ensure they are aware of the duty to make reasonable adjustments, and have the necessary authority to make them, before a full disability assessment in urgent or serious cases
- + Awareness of common reasonable adjustments and process to be followed to make them
- + Reviewing course criteria to ensure they are clearly defined, explained and justified
- + Liaising with those responsible for setting assessments and PSRBs regarding required standards of attainment and methods of assessment

In summary, a combination of updated systems and training, improved awareness and more agile and confident decision-making will help higher education providers to ensure that legal duties are met and appropriate support is given to those who are entitled to differential treatment.

3.13 Further information and suggested reading

The Equality Act and associated guidance

- + The Equality Act 2010 (Schedule 13 – Reasonable Adjustments): <https://www.legislation.gov.uk/ukpga/2010/15/schedule/13>
- + EHRC general guidance: <https://www.equalityhumanrights.com/en/advice-and-guidance/what-are-reasonable-adjustments>
- + EHRC Technical Guidance: <https://www.equalityhumanrights.com/en/publication-download/equality-act-2010-technical-guidance-further-and-higher-education>
- + EHRC guide: What equality law means for you as an education provider – further and higher education: https://www.equalityhumanrights.com/sites/default/files/what_equality_law_means_for_you_as_an_education_provider_further_and_higher_education.pdf

Understanding reasonable adjustments and competence standards

- + Advance HE guidance: <https://www.ecu.ac.uk/publications/managing-reasonable-adjustments-in-higher-education/>
- + AdvanceHE guidance: <https://www.advance-he.ac.uk/knowledge-hub/understanding-interaction-competence-standards-and-reasonable-adjustments>
- + OIAHE: <https://www.oiahe.org.uk/media/1039/oia-good-practice-framework-supporting-disabled-students.pdf>

- + EHRC - [Advice Note for the higher education sector from the legal case of University of Bristol vs Abrahart](#)

Case studies

- + Advance HE case studies: <https://www.ecu.ac.uk/inclusive-learning-teaching/competence-standards-reasonable-adjustments/>

Case Law

Meagher v University of Cambridge [2025] EWHC 30 (KB)

The University of Bristol v Abrahart [2024] EWHC 299 (KB)

Abrahart v The University of Bristol [2022] 5 WLUK 260

Koci v University College London [2014] Lexis Citation 5

Burke v College of Law [2012] EWCA Civ 37

Islam v Bar Standards Board [2012] All ER (D) 05 (Aug)

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