

How does, and should, the law ensure accessible spaces for learning in universities?

Introduction.

The law ensures accessible spaces for learning in universities through the Equality Act 2010 whose strict classification of a ‘protected characteristic’ proves to be both its strength and its weakness in this endeavour. The term ‘accessible spaces’ is a broad one and will be considered in two ways: 1) as a physical space; and 2) as a metaphysical space. This distinction is made by aligning accessibility with ability. An accessible physical space looks at ability on a physical level, whether a student might be at a disadvantage due to specific additional needs they may have. Discussion of such an accessible space is appropriate within the context of disabled students who may require certain adjustments to be made to be able to approach the same tasks as non-disabled students. On the other hand, an accessible metaphysical space considers ability on the basis of opportunity, whether a student may be at a disadvantage due to the lack of opportunities and resources that were available to them. This accessible space will be discussed in the context of students from underrepresented socio-economic backgrounds.

Both types of accessible space are significant; it is submitted that the law successfully ensures provision for only one of these accessible spaces, namely physical spaces. The law’s success is evidenced by the establishment of a statutory duty through the Equality Act 2010 for universities to make necessary reasonable adjustments for disabled students. However, there are no parallel requirements for students from underrepresented backgrounds – it will be argued that the law’s failure in this area is due to the statutory absence of the notion of class. This absence results in the lack of a requirement of such a duty, thus preventing the flourishing of accessible metaphysical spaces for learning in universities. This essay will be divided into two parts: firstly, a discussion about the current law and its application; secondly, an analysis regarding the inclusion of class as a protected characteristic and how this might lead to reforms of accessible spaces for learning.

Part I: A Statutory Duty to Accessibility.

The law.

Currently, the law ensures accessible spaces for learning in universities through the statutory duty imposed by the Equality Act 2010 (“EA”). This is outlined in chapter 2 of part 6 of the

EA, where negative duties against discrimination;¹ harassment;² and victimisation³ are set out, applying to higher education institutions, including universities.⁴ A statutory duty to make ‘reasonable adjustments’⁵ is made out in alignment with the relevant protected characteristics; the EA sets out a total of nine protected characteristics, including race, age, disability, sex, and sexual orientation.⁶ These protected characteristics are highly important as they form an integral part of a person’s identity and should therefore be safeguarded.

The EA identifies two primary types of discrimination: direct and indirect discrimination. Direct discrimination is the discrimination of B by A because of a protected characteristic, where A treats B less favourably than other people.⁷ Indirect discrimination, however, requires A to discriminate against B by applying a provision, criterion, or practice considered to be discriminatory in relation to B’s protected characteristic.⁸ Evidently, both types of discrimination require B to be at a disadvantage, which is subsequently exploited by A. Such provisions are crucial in helping to identify the type of harm underrepresented groups may experience, providing them with legal recourse. The existence of protected characteristics in discrimination law encourages compliance from professional bodies, who generally seek to observe legal entitlements placed upon them, which in turn may help to prevent the degree of harm experienced by disadvantaged and minority groups.

In observing the application of the EA in providing accessible spaces for learning in universities, the provision of accessible physical spaces for disabled students will be the focal point of the analysis.

Statutory compliance to enhance accessibility for disabled students.

Since 2014/2015, the number of students with a known disability has increased by 47%,⁹ rendering it increasingly important that universities abide by this duty and make the reasonable adjustments necessary to provide accessible learning spaces for disabled students. S.20 of the EA requires adjustments to be made for disabled people: the primary focus is

¹ Equality Act 2010, s 91(1), s 91(2), s 91(3), and s 91(4)

² *ibid* s 91(5)

³ *ibid* s 91(6), s 91(7), and s 91(8)

⁴ *ibid* s 91(10) in England and Wales, and s 91(11) in Scotland

⁵ *ibid* s 91(9)

⁶ *ibid* s 4

⁷ *ibid* s 13(1)

⁸ *ibid* s 19(1)

⁹ Sue Hubble and Paul Bolton, ‘Support for Disabled Students in Higher Education in England’ (House of Commons Briefing Paper, 2021) <<https://commonslibrary.parliament.uk/research-briefings/cbp-8716/>> accessed 5 September 2023

ensuring that the disabled person is not put at a ‘substantial disadvantage’ to non-disabled people. The execution of this duty has manifested itself in various ways in UK universities: from assigning students a third-party support worker responsible for obtaining accessible course materials¹⁰ to having a room in the library with different lighting options, seating options, and supply of sensory objects.¹¹ Ensuring that such accommodations are made to students with accessibility requirements helps to curate a safe and welcoming learning environment, demonstrating the positive impact of the law in creating such obligations.

Although it is evident that the law ensures accessible physical learning spaces in university, it does not necessarily set a standard at which this ought to be implemented, triggering the question of the efficacy of the law. In a study about unseen disabilities, it was uncovered that universities’ interpretation of what constitutes as a reasonable adjustment proved to be ‘inconsistent’.¹² This raises the inquiry as to the true nature of the relationship between students and universities: whether the relationship between the two parties can be reduced to one of ‘investment’, with universities complying with this statutory duty, merely to avoid the prospect of litigation.¹³ It is clear that in this instance, the law serves as an important tool, used to protect the interests of marginalised members of society; this may suggest that institutional attitudes are less of a concern so long as the institutions in question abide by the legal duty. Setting a minimum standard as to what a reasonable adjustment might constitute would not resolve the varied approaches taken by different universities. Firstly, in the explanatory notes, the EA gives multiple examples of the duty to make adjustments,¹⁴ as well as examples for other statutory provisions. Whilst not creating a framework *stricto sensu*, it nevertheless provides a guiding point for institutions such as universities to abide by. Secondly, it is submitted that this is not the role of the law and is more aligned with policy; a law that is too rigid and too interventionist would be undesirable in the sphere of discrimination law. The law should trust that universities are capable of not only interpreting and identifying the scope of a minimum standard, but also to surpass it. The inclusion of

¹⁰ University of Glasgow, ‘Review of Provision for Students with Disabilities’ (2021) < https://www.gla.ac.uk/media/Media_778095_smxx.pdf> accessed 5 September 2023

¹¹ Office for Students, ‘Beyond the bare minimum: Are universities and colleges doing enough for disabled students?’ (2019) < <https://www.officeforstudents.org.uk/publications/beyond-the-bare-minimum-are-universities-and-colleges-doing-enough-for-disabled-students/>> accessed 4 September 2023

¹² Harriet Cameron and others, ‘Equality law obligations in higher education: reasonable adjustments under the Equality Act 2010 in assessment of students with unseen disabilities’ (2019) 39 LS 204, 209

¹³ *ibid*

¹⁴ Explanatory Notes to the Equality Act 2010, para 86

protected characteristics is necessary to set a minimum standard; efficacy can be improved with the publication of policy guidance.

Part II: Class as a New Protected Characteristic

The recognition of class as a protected characteristic for the purposes of the EA would improve the way in which accessible spaces for learning are provided. This part will be divided into two sections: firstly, a discussion as to why class deserves to have protected characteristic status in the law; and secondly, an examination of the positive impact of such a reform.

Class as a means of causing harm.

To omit class as a protected characteristic is to disregard the discriminatory and harmful impact class may have on people, particularly university students. Class divisions are arguably a foundation of British society, evidenced in the prevailing identities with which people presently continue to align themselves, eg: ‘working class’ and ‘middle class’. Despite this, class is not a valid ground of discrimination in the law; the EA makes a brief mention to a public sector duty with regard to socio-economic inequalities,¹⁵ but this cannot be enforced as an action in its own right at private law.¹⁶ Despite advances in social mobility, class remains an unprotected factor with the potential to cause harm to people in two ways: firstly, as a form of misrecognition; and secondly, as a form of maldistribution.¹⁷ The former conveys the harm experienced by a person as a result of their identity, affected by harmful stereotypes and stigmas, whereas the latter purports to describe a type of harm experienced due to a person’s general access to resources and opportunities. In the case of classism, these harms are interlinked and can apply simultaneously.

A common argument advanced against the inclusion of class as a protected category in the EA is that it is a term conceptually too complex to define. This argument lacks merit for the following two reasons. Firstly, a significant benefit conferred by a common law legal system is one of interpretation: rigid definitions risk ‘eroding the proper scope of legal protection’.¹⁸ Furthermore, a tight-knit definition is not necessary for the validity of a protected category, as

¹⁵ Equality Act 2010, s 1

¹⁶ *ibid* s 3

¹⁷ Alex Benn, ‘The Big Gap in Discrimination Law: Class and the Equality Act 2010’ (2020) Oxford Human Rights Hub Journal 30, 42

¹⁸ *ibid* 38

evidenced by the classification of race within the EA: it is classified as including ‘colour’,¹⁹ ‘nationality’,²⁰ and ‘ethnic or national origins’.²¹ This is a remarkably broad classification, yet it is wilfully accepted within legislation. Racial classification is something which to this day remains arbitrary and has a complex history and development, originally being based on connotations with appearance, which allowed political circumstance to become biological fact.²² Such a conglomerate statutory definition of race defeats any argument against class as a protected characteristic on the grounds that it is too complex to define or encapsulate.

As previously mentioned, the law successfully requires the provision of physical accessible spaces for learning, but this success is not extended to the provision of metaphysical accessible spaces. Take the following example: student A treats student B in a manner significantly less than A would treat other students on the grounds that B has a northern accent and lives in a council house. This description fits perfectly within the remit of direct discrimination, but student B would have no such claim given that class is not a protected characteristic. Whilst student B’s physical space may not be under threat, student B’s learning space has become a hostile one, rendering it less accessible. No legal recourse is available simply due to the fact that B cannot rely on an existing protected characteristic, such as sex or race, to evidence the harm experienced. Universities should ensure that both this metaphysical space is protected as well as taking active measures to provide aid for students whose experiences may place them at a significant disadvantage by virtue of their background with regards to class.

The need to reform accessibility.

In an era where the government are attempting to ‘clamp down on low quality courses’²³ as a means of bridging the gap between university students from disadvantaged backgrounds and their counterparts, the question of accessibility reform is more important than ever. The use of such rhetoric is antithetical to the provision of accessible learning spaces, adding an unnecessary hierarchical structure to university courses, which may have the opposite effect intended. It risks the possibility of discouraging the very students it targets from pursuing certain courses which may be better suited to them and their needs, leaving them feeling

¹⁹ Equality Act 2010, s 9(a)

²⁰ *ibid* s 9(b)

²¹ *ibid* s 9(c)

²² Angela Saini, *Superior: The Return of Race Science*, (4th Estate, 2019), p 48

²³ Minister of State for Equalities, *Inclusive Britain: the government’s response to the Commission on Race and Ethnic Disparities* (Cm 625, 2022), action 51

pressured to opt for a course deemed ‘high quality’. Alternatively, the acceptance of class as a protected characteristic within the legal framework has the potential to generate even more accessible spaces for learning within universities. One way in which class may highlight a disadvantage between different groups of students is by looking at the difference in the standard and quality of teaching between different types of school. Studies have shown disparity between students attending schools in economically deprived areas (typically encompassing inner-city state schools) and their peers attending independent schools: the former are less likely exposed to ‘standard English’, resorting to communicating in their own local dialect.²⁴ Following from this, it would be reasonable to assume that these students face a substantial challenge in articulating themselves academically, an issue which is made prominent as they progress into the realm of university, particularly within prestigious institutions like Oxbridge or Russell Group universities. There is no doubt as to the intelligence and academic potential of the students attending these top universities, however, an increase in admissions of students from disadvantaged areas is unproductive if these students are not adequately supported in realising this potential. This is where the inclusion of class as a protected characteristic under the EA is crucial. In addition to accepting that class can be a type of harm and a viable justification for discrimination, such an action would place a positive duty on universities to make reasonable adjustments where necessary to aid and support students disadvantaged by class. Despite an increasing amount of institutional focus on access and outreach, there is no legal requirement for universities to prioritise these efforts, remaining voluntary incentives. The emergence and growth of outreach summer programmes prove to be a means to motivate and encourage students from disadvantaged backgrounds to realise their academic potential, but this degree of support should not end at the pre-university level. Placing a legal obligation on universities to make reasonable adjustments for students from disadvantaged backgrounds can be achieved by recognising class as a protected characteristic under the EA, a process guaranteeing a better provision of accessible spaces for learning for a broader spectrum of students.

Conclusion.

The EA is a valuable and effective framework in ensuring accessible spaces for learning at the physical level but lacks in addressing challenges at the metaphysical level. Recognising class as a protected characteristic would acknowledge class-related harm, enabling students to

²⁴ Ian Cushing and Julia Snell, ‘The (white) ears of Ofsted: A raciolinguistic perspective on the listening practices of the schools inspectorate’ (2022) 52 *Language in Society* 363, 375-6

resort to legal action and creating an obligation for universities to enhance support for disadvantaged students, ultimately improving overall access to learning spaces.

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