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# Lead Scotland Advocacy Briefing, March 2019

Evidence from Lead Scotland’s Disabled Students’ Helpline suggests there are a lack of suitable options to provide advocacy and representation for disabled students who are in dispute with their institution. Over a third of our calls relate to a disabled student making a complaint or appeal after experiencing issues around appropriate support and adjustments on their course. Students and their families regularly report experiences of disability discrimination, normally in the form of ‘failure to provide reasonable adjustments’, rather than overt direct discrimination. A lack of training and inappropriate culture and attitude towards disabled people are possible causes for what appears to be a systemic issue, and we are trying to influence change in this area with our policy work.

The impact of not getting the appropriate support to learn and study at college and university can be significant, with callers and their families reporting a deterioration in physical and mental wellbeing, an increase in suicidal thoughts, lower pass marks than expected, an interruption to their studies and ultimately for some students, early withdrawal before completion. Students who have had to leave their course before completion report worsening of their impairment, isolation, depression, unemployment or underemployment, and reliance on social security benefits. Students who achieve a pass mark lower than a 2:1 at degree level have limited options for postgraduate study, lower-level job prospects and lower earnings potential.

A recent discussion paper about [Disabled Students at University](https://www.gov.scot/publications/commissioner-fair-access-discussion-paper-disabled-students-university/) from the [Commissioner for Fair Access](https://www.gov.scot/about/how-government-is-run/directorates/advanced-learning-and-science/commissioner-fair-access/), showed disabled students, particularly those with mental health issues or autism, were more likely to withdraw from their course than non-disabled students, and were less likely to achieve a 1st/2:1 degree classification.

Currently students can only access representation from their institution’s students’ association to enter into a formal complaints or appeal procedure. However, callers report a number of issues with getting support from student associations, including limited capacity, narrow remit and a lack of specialist knowledge. Student associations are mainly staffed by student volunteers and although they are separately constituted from institutions, callers report a perception of bias in favour of the institution. NUS Scotland confirmed that providing in-depth advice, advocacy and representation for disabled students in dispute with their institution, was out with the remit of student associations. Cases can be complex and drawn out, so a specific skill set and level of knowledge and expertise in disability issues, the Equality Act and the tertiary education system in Scotland, is required.

The actual process of entering into a complaint or appeal procedure is also problematic. Students need to concurrently manage their impairment or health condition as well as their studies, while also trying to understand arduous and complex complaint and appeal policies. They are required to gather appropriate evidence to support their complaint and then need to compose an articulate and convincing statement to challenge their institution. The institution can then take months (more than 6 months in some of the cases I have supported) to investigate and respond and are free to assign their own lawyers and senior staff to the cases. Students may be asked to attend meetings for further investigation as well as appear at hearings and panels. There are currently no expert organisations with the capacity and remit to provide independent support and advocacy for students during these meetings. The responsibility often falls on a family member, which can create a significant level of stress as well as emotional burden.

While all this is going on, the student may still be waiting for the appropriate support, equipment or adjustments they need to fully access their course, further disadvantaging them and impacting their potential to successfully complete their studies. One student with multiple impairments had no equipment in place when she started her course, despite disclosing as disabled and stating her needs six months before the course started. While she was waiting for the outcome of the complaint, she said,

“The college dragged their heels and I had to literally beg in writing for equipment to be able to write my essays. I had to ask for extensions and ended up missing a lot of classes because of the pain.

…their response many weeks after was to send me a letter about my poor attendance, offering “support”. I pointed out that I had warned I was not coping and the situation would result in pain, stress which would affect my studies and that “help “ should have been put in place at the time.”

The scales in this system are very much tipped against students. They face taking on an entire institution by themselves and may have limited energy or the appropriate skill set to engage in the process fully, reducing their chances of success.

To further complicate matters, many of the students we speak to are reluctant to make formal complaints for fear of repercussion in how they will be treated and subsequently assessed on their course. Many do try to speak up, but if the first attempt fails, they may struggle to do so again and just accept the situation. This happened to one visually impaired student we supported after her tutors did not follow her support plan to provide materials in alternative formats. She found it very difficult to ask for support as she felt like she was adding to her tutors’ workload and being an inconvenience. She did speak up once, but nothing changed. She didn’t feel she could speak up again, eventually failed her course and was forced to repeat.

Many of the students and families contacting Lead’s helpline have asked us to provide advocacy and representation in these procedures. There seems to be a higher demand for this support from cases involving autistic students and students with either a learning disability or mental health issues. This supports the findings from the Commissioner’s discussion paper referenced earlier and is likely due to the issues these students experience with confidence, assertiveness, anxiety, social interaction and communication.

We signpost callers to local advocacy organisations, however they have very limited capacity and strict eligibility criteria, so it is rare for them to be able to take on the cases. Previously, there was a service available for disabled people in dispute with service providers, provided and funded by the Disability Rights Commission, called the Disability Rights Conciliation Service. However it was discontinued when the DRC was disbanded in the transition to the Equality & Human Rights Commission following the introduction of the Equality Act. When we enquired with the EHRC why this service no longer existed under their remit, they indicated it was because it had not been deemed to be financially viable.

There are processes, systems and organisations in place to provide mandatory funded advocacy, mediation, conciliation and tribunal services for disabled people in dispute with their employers and for children with additional support needs and their families in dispute with their schools. There is no equivalent system for disabled students at college and university, and therefore no pathways for redress. Additionally there are significant challenges in accessing justice via a legal route, as there very few solicitors in Scotland currently willing or able to take these cases on using legal aid.

So, should Lead seek to develop an additional service to provide advocacy to disabled students and their families, or should we focus our energy on influencing policy in this area? Lead are well placed to provide this type of support due to our background and expertise, however logistically, it is difficult to envisage an appropriate business model that would allow us to provide effective ongoing in-depth support to students across the country. Depending on the workload, one advocate could be in place to respond to requests as they arise and work to their capacity with a waitlist system, or sessional workers could work on a regional basis. A pilot could help to inform what approach might work.

In terms of influencing policy, it was raised as a concern in our Scottish Funding Council jointly hosted policy group, Outcomes for Disabled Students, however the group did not rate it as a top priority to focus on at that time. We will continue to explore this issue with SFC separately. We have also raised this as a key concern with the Scottish Government in their preparations to review the financial system of support available to disabled students in higher education, the Disabled Students Allowance. We have asserted how important it is to consider disabled students’ rights and what protections are in place for them when things go wrong. SG have agreed to include questions about advocacy, appeals and quality assurance in the public consultation paper (due out approximately start of April) and have invited us to write a forward for the paper.