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Autism and Asperger's Syndrome in the Law Student – Making Accommodations in Academic Assessments.

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What is autism?

High-functioning autism (HFA) and Asperger syndrome (AS) are autism spectrum disorders (ASDs) characterised by disturbances in social interaction, both verbal and non-verbal communication and repetitive and/or restrictive behaviour since early childhood. As the name suggests, it is a spectrum condition and therefore the range of symptoms and their severity is very wide; the symptoms which appear (generally during early childhood and adolescence¹) will differ significantly from person to person. The main difference between autism and AS is thought to be in language development, in that those with AS will not have had delayed language development when younger. However, trying to fit a person into a particular sub-group is not helpful, and all persons with ASD should be assessed for their abilities and difficulties rather than being overly concerned with whether they have autism or AS.

Autism is a lifelong developmental disability that affects how a person communicates with, and relates to, other people. It also affects how they make sense of the world around them. For reasons not yet fully understood, ASD affects approximately four times as many males as females.²

While all people with autism *share* certain difficulties, their condition will affect them in different ways. All those with autism have the “triad of impairments” - impairments of social interaction, communication and development of imagination. They may also have an inability to put together information derived from past memories and present events and to make sense of the world, to learn from experiences and plan future events. Some people with autism are able to live relatively independent lives and,

¹ Lenhardt F.G. et al *Autism spectrum disorders in adulthood: clinical and neuropsychological findings of Aspergers syndrome diagnosed late in life*. Fortschritte der Neurologie-Psychiatrie, 2011, Vol. 79(5), pp. 290-297

² <http://www.autism.org.uk/about-autism/autism-and-asperger-syndrome-an-introduction/gender-and-autism/autism-why-do-more-boys-than-girls-develop-it.aspx>

since the explosion of diagnoses of autism in children in the 1990s, it is a reasonable prediction that more young adults with ASD will be entering higher or further education from now on.

Those students with high functioning autism and Asperger's are often exceptionally intelligent and are frequently diagnosed late in their teens, thereby missing out on appropriate support at school, since they do well academically and are not seen as having "special needs". While they have significant and limiting interpersonal deficits, they may possess cognitive abilities similar to neurotypical or gifted individuals.³

The hallmark of autism is a marked impairment of social interaction and communication skills. Individuals will have stronger nonverbal than verbal skills and will typically have a limited range of activities and interests. Students with Asperger's will usually have impaired development of social interaction and will develop restricted patterns of behaviour, interests and activities. In addition, while they may have extensive vocabularies, they are likely to exhibit difficulties in the semantics and pragmatics of speech, and will not understand the 'give and take' of a conversation, often preferring to talk at length on a subject that interests them.⁴

People with autism may also experience hyper or hypo-sensitivity to sounds, touch, tastes, smells, light or colours and may therefore require special accommodations in the classroom and the whole student environment. It is with all these factors in mind that this paper is presented with a view to highlighting some of the difficulties experienced, or likely to be experienced, by ASD students, and to suggest some practical ways to support the student and in particular to make the necessary accommodations in the way they are assessed.

The legal obligation on education providers

As higher and further education providers, we are of course under a *legal* as well as a moral obligation to make reasonable adjustments for disabled learners. The

³ Barnhill, G, Hagiwara T., Myles, B. S, and Simpson, R. (2000) Asperger Syndrome: A study of the cognitive profiles of 37 children and adolescents. *Focus on Autism and Other Developmental Disabilities*, 15(3), 146-153

⁴ VanBergeijk, E., Klin, A., Volkmar, F. *Supporting More Able Students on the Autism Spectrum: College and Beyond*. *Journal of Autism Developmental Disorders* (2008) 38:1359-1370, p. 1360

Equality Act 2010 introduced a new head of discrimination specific to disability – *discrimination arising from disability*. The Equality Human Rights Commission has issued some useful guidance on what this may mean to educators⁵. This clarifies that “discrimination arising from disability occurs when you treat a disabled student because of something connected with their disability and cannot justify such treatment.” Discrimination arising from disability will occur if the following three conditions are met:

- You treat a disabled student unfavourably, that is putting them at a substantial disadvantage, even if this was not your intention, and
- This treatment is because of something connected with the disabled student’s disability..., and
- You cannot justify the treatment by showing that is ‘a proportionate means of achieving a legitimate aim.’⁶

However, if the education provider does not know, nor could be reasonably expected to know of the student’s disability, then this will not amount to unlawful discrimination arising from disability. It is imperative that the student takes responsibility for notifying the provider of his or her disability at the earliest opportunity, either on the UCAS application or as soon as he or she is offered a place at their university or college of choice.

Thus it is vital for the education provider to put in place reasonable adjustments for disabled students to avoid putting them at a substantial disadvantage. The duty is anticipatory and corresponding adjustments must also be anticipatory.

The level of disadvantage must be *substantial*, that is more than minor or trivial.⁷ Where a provision, criterion or practice places or would place disabled students at a substantial disadvantage, the education institution must take such steps as it is reasonable to take in the circumstances to ensure that the provision, criterion or practice no longer has that effect.

⁵ “*What equality means for you as an education provider – further and higher education.*”
Published by Equality and Human Rights Commission 2010

⁶ Ibid p.18

⁷ Equality Act 2010, s.20

A competence standard is defined as a standard applied by an education provider for the purpose of determining whether or not a person has a particular level of competence or ability. It is *not* a provision, criterion or practice, so there is no duty to adjust the application of the competence standard. The time constraint requirement of an exam, and whether this is a competence standard, was given careful consideration in the case of *Justin Burke v College of Law*.⁸ Both the Employment Tribunal and Employment Appeal Tribunal considered that it was a competence standard and therefore there was no automatic requirement to allow extra time for exams. The Court of Appeal was not required to decide that specific point; however, it did agree that the package of adjustments, including the provision of extra time for exams, was reasonable. The provision of extra time for exams is therefore not a legal requirement under the Equality Act, but there is an *entitlement* on the part of the examining body to provide it or to include it as part of a package of adjustments.

However, there is a legal duty in relation to the *process* of determining whether a student meets the competence standard. Thus, the mark required to meet a competence standard should not be adjusted, nor should the assessment criteria or the standard of exam question.

If equipment or extra staff assistance is needed, the higher education institution or college must take such steps as it is reasonable for it to take to provide these auxiliary aids to avoid the substantial disadvantage experienced by the disabled student.

Students on higher education courses may be able to access the Disabled Students Allowance which helps to provide for the cost of study support, for example a laptop computer, note-taker or general disability support.

Validation and Review

The QAA Code of Practice reminds institutions that the anticipatory duty identified in the Disability Equality Duty requires them to be able to show that they have taken the entitlements of disabled students into account when designing and reviewing programmes of study. The validation and review processes should “include an

⁸ [2012] EWCA Civ 37

evaluation of the programme aims, teaching and learning methods, intended learning outcomes, and assessment strategies in order to identify potential barriers to the participation of disabled students.” The Code of Practice recommends that the institution seeks to “involve disabled students in the design and review of inclusive provision.”

“Institutions are expected to be able to justify the application of competence standards in their academic programmes and to be able to demonstrate that they regularly review those they set themselves to ensure that they are non-discriminatory and proportionate.”⁹

“The assessment methods to be used on programmes should be sufficiently flexible to enable all students to demonstrate that they have met the learning outcomes, that is, they should allow for appropriate and reasonable adjustments. There may be more than one way of a student demonstrating that they have achieved a particular outcome and these methods should be explored prior to the start of the programme following disclosure by the student of a particular impairment.”¹⁰

“Staff should be aware of their responsibility to design inclusive programmes and should seek training and ongoing support where necessary. Staff should be given access to sources of advice both from within the institution and externally.”¹¹

Learning and Teaching

The Code of Practice recommends that staff are made aware “of their anticipatory duty under the DED to provide flexible and inclusive approaches to learning and teaching to ensure that all students, including disabled students, are able to demonstrate that they meet intended learning outcomes and so minimise the need for reasonable adjustments.” However, the Code of Practice does point out that, far from being an onerous duty towards a small minority of students, “ensuring that

⁹ QAA Code of Practice for the assurance of academic quality and standards in higher education, Section 3: Disabled Students - March 2010, para.25

¹⁰ *Ibid* section 10, Curriculum Design

¹¹ *Ibid*

learning and teaching practices are inclusive of disabled students can enhance the learning opportunities of *all* students.”

It recommends using a range of teaching and learning methods such as group work, seminars, lectures and practical classes, all of which create different challenges for students with different types of learning impairment. Staff should, however, seek to work in partnership with individual students to understand the implications of their impairment in the context of their learning in order to help them adapt their own particular approaches.

Teaching staff have a shared responsibility to support disabled students and should work in partnership with them, and with other bodies such as student services and disability services, to achieve this.

“Clear demarcation of roles and responsibilities helps these partnerships to work effectively. Feedback from students should be used to further adapt methods of teaching and learning. Staff should be given access to sources of advice, both from within the institution and externally, to support their own work in developing inclusive teaching methods.”¹²

Representation and attainment

Tutors may be of the opinion that the number of autistic students is so small that the extra work involved in catering for their needs will be disproportionate to the advantage gained. The number of ASD students wishing to study on a pure law course may also be negligible, but there may be a law module which the student is required to complete when doing other degrees which play more to the strengths of the autistic student, such as maths, science, accountancy or computing, and law tutors should ideally consider the potential for the presence in their classes of such disabled students. Moreover, ASD is often accompanied by other, more common disabilities such as dyslexia, dyspraxia and attention deficit hyperactivity disorder,

¹² Ibid, section 11 Learning and Teaching

and a proactive stance towards catering for learning difficulties in general is recommended as the most appropriate strategy for all tutors.

Flexible Assessment

A vital part of any proactive disability strategy is a flexible approach to assessment. As the final determiner of overall competence and grading, an unduly harsh approach will not only restrict the progression of existing ASD students but may also contribute to unwillingness of future candidates to take up what are sometimes considered “unsuitable” courses.

In fact, there is no such thing as a completely unsuitable subject. All courses include learning and ability outcomes that can be demonstrated in a number of different ways. As such, a truly student-centred approach should allow variation to meet particular strengths and weaknesses. That is not to deny the genuine need for standardisation, particularly given the volume of assessments that require preparation, administering and marking within short timeframes. The requirement for flexibility is necessarily limited to making “reasonable” adjustments, but for many assessments it is not necessary to change all of it, but rather to alter how some information is presented and the response that is expected, much of which can be done at the outset with proper planning.

The following discusses how the standard forms of assessment used in higher education can be adapted for students with ASD. In particular, it challenges the historic reliance on a language oriented approach with its heavy focus on fluency, articulation and structuring. A move to a more diverse range of assessment measures based more on demonstrating comprehension of the topic and reasoning in respect of the particular issues would not only assist those with ASD, but also help open up educational opportunities to those from a range of backgrounds and abilities rather than those predisposed to, or educated along the more traditional lines.

With all of the suggestions given below, the key feature is to discuss possibilities with the ASD students as early as possible, to enable assessment needs to be incorporated into planning from the start. It should form a central part of the process

to develop each student's Personal Learning Support Plan, and part of the ongoing monitoring of the student to check how successful the measures are.

Examinations

Examinations are a necessary element to Law degrees. While some degree of stress is unavoidable, it can be reduced not only through adjustments to the exam itself, but also to the way in which it is delivered.

Delivery, firstly, is an aspect of examinations that generally receives a ready response from Universities. It tends to involve specialised staff making centralised decisions about rooming, equipment, support and timing needs. Standard accommodations work across all subjects and most disabilities, and could include, for example, extra time to allow the student to assimilate and understand the questions or to take account of fine motor difficulties; a scribe or computer to help with capturing ideas; a separate room to avoid distraction from other students or from sources such as noise or flashing lights;¹³ or reducing the stress those with ASD may experience in unfamiliar situations by allowing early access to the room or timetabling all exams for the same location.

These standard accommodations are often where support currently stops, with only limited involvement of academic staff due to a perception that it should be "left to the experts". However, using academic staff could potentially allow for greater changes to delivery. For example, an agreed move to in-class testing, where suitable, may reduce the stress of new surroundings for students with ASD. Inclusion in course delivery of mock examinations may be beneficial, particularly if any equipment to be used in the formal exam is accessible for the formative, and if the setting remains the same for both. Having a staff member available who is able to further explain the meaning or requirements of particular questions will assist a student confused by

¹³ Sensory dysfunctions may make it difficult for students with ASD to process some information and could also make them hypersensitive to any distracting sensory stimulation. See Ayres AJ, *Sensory Integration and Learning Disorders* (Los Angeles: Western Psychological Services, 1972) and Bogdashina O, *Sensory Perceptual Issues in Autism and Asperger Syndrome: Different Sensory Experiences – Different Perceptual Worlds*. (London: Jessica Kingsley Publishers, 2003)

what is required.¹⁴ Time management prompts could also be considered to encourage students not to spend too long on any one question and ensure they are kept aware of time passing.

None of the above adjustments, when used correctly, provide an unfair advantage, nor would they compromise the function and integrity of the exam. Taking the most notable option of offering clarification of the meaning of a question: confusion about wording neither indicates a lack of understanding of the law, nor an inability to apply it. In a more normal, real-life situation, a student or lawyer would be expected to ask follow-up questions for more detail about what a client wants, or about the facts of the problem facing them. Such an adjustment offers no threat to the competence requirements of assessment.

While clearly essential, it must be remembered that changes to delivery can only assist to a certain degree. To achieve the best results, a holistic approach is needed where the actual format and the structure of the exam are considered as well. The construction of the papers could represent a substantial disadvantage to a student with ASD and amount to indirect discrimination. The main consideration throughout is that questions are relevant, unambiguous and make clear what the examiner expects. In the first stages of developing papers, academics involved should ideally be in contact with staff specialising in disability to ensure that the various needs are taken into account. A welcome consequence of considering whether an exam can be clarified for those with ASD is likely to be improvement in performance for all students.

The first point to note is use of incomplete questions that rely on the student “filling in the gaps”. Students with ASD will have a literal approach and may not understand how to make assumptions based on previous experience. On most occasions, it is possible to provide all the facts a student needs in order to give sound advice. There is nothing wrong with producing a comprehensive list of all relevant details, in real life situations that is how a legal advisor would be expected to gather the necessary

¹⁴ Use of a member of staff familiar with teaching that student will further ensure that any such clarification is effective.

information themselves. Equally, facts should be presented in the order in which an advisor would seek them out.

Students with ASD often demonstrate strong skills in learning rote knowledge and in applying it in predictable scenarios with considerable attention to detail. Such an ability has value, but where information is provided which is well outside of the structure with which a student is familiar then that may unsettle them. Again, in a real context the student would gather the detail required according to the structure learned and indeed such a logical approach for certain types of legal advice is to be encouraged.

In situations where some information is deliberately left out in order to check the ability of students to recognise its importance and the need to identify it, the question should make it clear that details are omitted, e.g. that the client was asked whether the agreement was made by deed and responded that they were unsure. Otherwise, they may be tempted to make assumptions rather than realise what the examiner is looking for.

Secondly, having made the facts of the question clear, the next challenge is to communicate what response is required. It may be tempting to end a long series of facts about a situation with a request to “advise” one of the parties. For many students it will be clear what the examiner wants, but for those with ASD it may be more difficult to predict what an individual wants to know. A better approach is to instead set out what the client is planning to do and how that has triggered their request for advice. That ASD students may have a weaker central coherence does not mean that they are unable to take in a large amount of information, but rather that they may not put it into context and so miss the general gist and purpose of all the detail.¹⁵ The relevance of information to an actual problem the client is facing or a question they have asked needs to be made apparent.

It is useful for all students to break a longer question down into manageable parts to keep attention focused. Otherwise, a student with ASD and a monotropic tendency or detail-focused cognitive style may mean that he concentrates on one thing so

¹⁵Happe’ F & Frith U, ‘The Weak Coherence Account: Detail-focused Cognitive Style in Autism Spectrum Disorders’ (2006) *J Autism Dev Disord* 36, 5–25.

intensely that he misses out on other interests¹⁶. Giving a number of specific questions will allow the student to order his thoughts and so focus attention on one issue at a time as a means of looking for and so processing all the information provided. This gives a better fit, with a more local rather than global aspect to processing data. In practice, a legal advisor will have clear client goals that would indeed allow them to identify and deal with one issue at a time. In particular, it is important where the examiner expects discussion around a point that is not strictly necessary to telling the client the potential outcome of the case. A student with ASD may not understand the need to give more information than is directly requested, given a tendency towards a literal interpretation of requirements.

Splitting questions also allows the appropriate allocation of marks for different points. This provides some guidance about the expected level of discussion on each, thereby reducing the temptation to give an excessive amount of fine detail on one issue which the student finds to be of particular interest.¹⁷ It may also ease the burden of a marker in determining whether all the key points have been correctly understood, a helpful resource bearing in mind the potential for a student with ASD to otherwise produce a long response that may have a number of tangents.¹⁸

Some questions may lend themselves to multiple choice responses. Where this is done, it need not be a case of simply testing the student's memory for facts. By introducing the questions with a short practical problem or academic debate, they can be put into a context where understanding and application is also tested by his making an appropriate selection.

For essay style questions, questions giving a general direction to "discuss" a statement should be avoided, as those will ASD may struggle to link theory to

¹⁶ For an interesting analysis of a range of research on issues with attention and monotropism see Murray D, Lesser M & Lawson W, '*Attention, Monotropism and the Diagnostic Criteria for Autism*' (2005) *Autism* 9, 139

¹⁷ Students with ASD may develop a preoccupation with one particular aspect, they may also be tempted to go into all of the specifics of the law, wanting to provide all the detail whether needed or not.

¹⁸ While the study of law is necessarily discursive in its approach as the means of identifying future developments and the possible outcomes of cases on borderline issues, it is not clear why this is often thought to translate into the setting of long answer questions.

practice. Instead, the question should identify a practical issue within that area of law and ask for analysis of how it could be resolved. Once the relevance and value of the task is clear, students will be better able to understand its requirements to discuss real-life issues in depth and the possible solutions.¹⁹ Critical analysis is not demonstrated by the abstract thought required to interpret the question itself in an original and incisive way, but rather by taking known problems and being able to explore new ways of dealing with them.

Coursework

A number of the points for preparing a good coursework are the same as for the examinations.

When setting questions, any facts the student must be aware of and the specific requirements of the assessment must be made clear. On that issue, advice should once more be available from a tutor where some uncertainty remains. Exploring how the student is interpreting the question is not the same as checking they have the right answer; in practice, if he was unsure what was required of him, he would be encouraged to ask before undertaking any work. Self-directed study may present a stressful challenge, so some direction may be given to ensure that a wide enough range of relevant materials is being covered. Again, making suggestions about where to find relevant law is not the same as telling them what it is.

Another point already discussed above in the context of exams is the use of time management prompts; there is no reason not to adopt a similar approach for coursework in terms of setting out a timescale for completing different stages of the drafting process. This is something that could be monitored by subject tutors or by academic skills or disability specialist staff. Where more than one coursework is due over the same timeframe, extra attention should be paid to ensure that one coursework is not over-pursued to the deficit of another.

¹⁹ This should also fit with how students are taught about such issues throughout the course.

Some possible adjustments are specific to coursework only, given the greater flexibility to respond to student needs. The first consideration is the availability of a flexible word count. If the assessment is centred upon a practical skill such as preparing a letter or a report, then the word limit has relevance, but if the skill required is rather to demonstrate academic understanding, analysis and research of a topic, then it is arguable that the word count is more related to convenience for the marker and so could be flexed where the student's needs justify it. Linked to the view that such assessments are more about demonstrating skills and overall understanding rather than ability to complete one specific task, the option of allowing a student to work with the tutor to adapt the question to one that they understand and have a particular interest in could also be a consideration. Again, the logic for not doing this across the board is really the needs of the marker, but making an adjustment for a limited number of students may not be too onerous.

Presentations

Employability skills are an important aspect of a good education and so it is unsurprising that they now form part of the formal assessment for some modules. However, for students with ASD they may present a very stressful experience. The first option, after discussion with the student, is to adapt the skill as far as possible. Options might include giving the presentation in front of fewer people, or to those with whom they are familiar and therefore more comfortable, or via a different means such as a pre-recorded electronic version. Another option is to remove the presentation requirement altogether. Provided the student has given their best effort, it is not a case of them trying to take the "easy option". Learning is about developing each individual student to their maximum potential, not about excluding or punishing people unable to reach the ideal.

Group Work

This is another useful skill that sometimes forms part of assessment. Again, where possible, students with ASD should be encouraged to take part. However, it should be recognised that additional support may be required for the ASD student due to his possible difficulties with social interaction and a "mind-blindness" that can restrict his

understanding of what other people are thinking.²⁰ Options such as allowing him to contribute work to the group in an alternative format should be considered. If necessary, the presentation should be replaced with a more suitable means of assessment.

Conclusions

Students with ASD and Asperger's Syndrome will form an ever-increasing sector of the student cohort, both in Further and Higher Education, and it is important that we, as academics, take a proactive stance and fully embrace our legal and moral duties towards fully supporting these students. There are a number of adjustments that can be made, and most of them will result in improvements to the learning experience of the entire student cohort. The focus in this paper has been on making accommodations in assessment, which should be as inclusive as possible. When developing an overall assessment strategy, the focus should be on creating tools that allow the maximum number of people to show what they have learned. Rather than considering inclusiveness in terms of making reasonable adjustments only when forced to, it needs to instead be the starting point in the design process. Any requirements that act as a barrier to participation would have to be justified as necessary for the skill being tested.

²⁰ Those with ASD may struggle to understand social rules due to difficulty reading non-verbal signals and facial expressions, and also a tendency towards a very literal interpretation of discussions. See Baron-Cohen S, Tager-Flusberg H & Cohen D J, *Understanding Other Minds: Perspectives from Developmental Cognitive Neuroscience* (2nd edition, Oxford: Oxford University Press, 2000).

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