

ACCESSIBLE VIRTUAL LEARNING ENVIRONMENTS

Making the most of the new regulations

This report has been produced in advance of the new digital accessibility regulations becoming law in September 2018, to help the Government and FE/HE providers put in place the necessary guidance and practical provisions to turn the regulations into reality.

The new regulations, in improving equal access to higher and further education, can – if implemented well - make an important contribution to meeting the Government’s ambition to create a more prosperous and equal Britain by growing our domestic talent pool and closing the disability employment and attainment gaps.

The report’s recommendations are aimed at doing much more than simply achieving compliance with the regulations. They set out how the requirements can be met in such a way as to improve learning and education for all students whether disabled or not.

The report begins with with the context of why digital accessibility is important in education. It starts with the recent history of inclusion and sets out how digital accessibility can make virtual learning environments (VLEs) a key learning tool for all users. Chapter 2 sets out what the new regulations will mean for educational leaders, lecturers and teachers, and what kind of information and data is included or exempt. Chapter 3 describes how the Government and sector bodies can help higher and further education institutions deliver on their obligations under the regulations – implementing these recommendations will be cost-effective and help consistency of application across the sector. Chapter 4 is targeted at the higher and further education institutions themselves and provides a strategic ‘how-to’ guide to implementation, with the objective of using the requirement for digital improvements to make education and learning better for all students.

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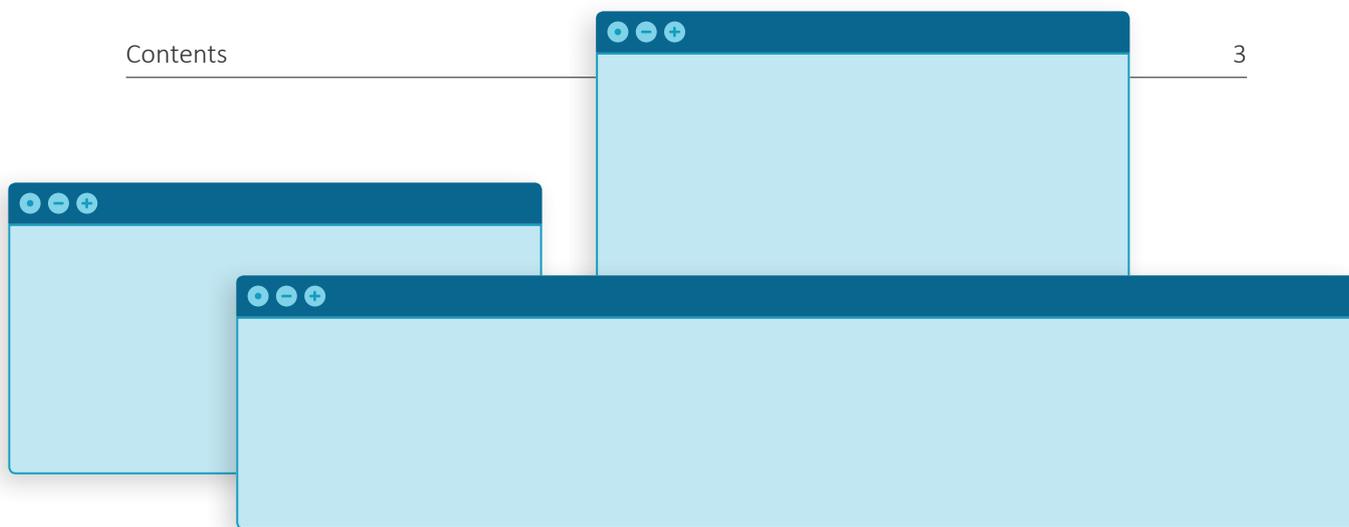
September 2018

This report follows an inquiry co-chaired by Seema Malhotra MP and Lord Holmes of Richmond CBE.

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The All-Party Parliamentary Group for Assistive Technology's report was kindly sponsored by Blackboard Ally.

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Co-chairs' Foreword

We were delighted to co-chair this first inquiry by the All-Party Parliamentary Group for Assistive Technology (APPGAT).

This report is the outcome of our inquiry, and draws on findings from the APPG's consultation with the sector, from our roundtable evidence session in Parliament, and from previous APPG policy events on employment, skills and education.

We would like to thank all the experts, students and education professionals who gave evidence to this report.

We would particularly like to thank Blackboard Ally for their sponsorship of the inquiry, without which this report would not have been possible.

Accessible Virtual Learning Environments is not a niche technical subject; it is about improving learning and education for all students in our colleges and universities. Improving digital accessibility may be required by legal requirements and regulation, but – as this report sets out – it should be at the heart of our colleges and universities and driven by each institution's leadership. Providing a variety of learning tools suitable for all students – whether disabled or not – will allow us to both close the skills and disability employment gap and provide all students with a better opportunity to succeed in education and work.

The Public Sector Web Accessibility Regulations will come into force this month and will impact on all HE and FE institutions. They provide a real opportunity to transform online and blended learning to enhance education for all students. We formed the APPG for Assistive Technology over a year ago because we are passionate about the potential of technology as a tool of inclusion. At a recent APPG meeting at Westminster University we heard first-hand the difference that assistive and accessible technology can make to students when it's mainstreamed as part of the fabric of learning.

This report sets out that to achieve the win-win of great virtual learning environments improving the learning experience for all, the government, regulators, and the education sector must work together to make the new rules a start point for new and innovative ways to harness educational technology for inclusion. Our recommendations are very deliberately specific and targeted, so as to set out a route-map to achieve that objective. We commend them to the government.



Seema Malhotra MP

The Lord Holmes of Richmond MBE

Recommendations

For government and sector organisations

RECOMMENDATION 1

The Government Digital Service (GDS) guidance document should specifically name colleges and universities as organisations that are covered by the regulations (i.e. they are public bodies and distinct from schools), and provide guidance on the application of the Accessibility Requirement to VLEs.

RECOMMENDATION 2

Once the GDS guidance document is published, the Department for Education (DfE) should post a notice on its website, and send an accompanying letter to Vice Chancellors and college Principals notifying them of the new regulations. The DfE should also promote its notice of the new regulations to a broad range of sector organisations.

RECOMMENDATION 4

To promote digital accessibility training in the sector, the DfE should create a Digital Accessibility Guidance and Workforce Development initiative. This would take the form of a contract with a respected sector organisation(s), to deliver training to key staff in colleges and universities to develop their own skills and understanding, and their ability to train colleagues.

RECOMMENDATION 3

Sector organisations should raise awareness among their stakeholders as a first step to considering how they themselves can help promote digital accessibility and compliance with the new regulations.

RECOMMENDATION 5

Professional accreditation schemes should review their training programs to ensure that teaching and academic staff have the skills to make accessible learning materials.

RECOMMENDATION 6

The Digital Accessibility Guidance and Workforce Development contract (Recommendation 4), should include an element on guidance resources. The recipient of the contract should develop and manage an online platform to support the sharing of resources and best practice.

RECOMMENDATION 7

The Government's monitoring stakeholder group should include stakeholders from the education sector, to ensure that monitoring takes into account the specific nature of education-sector websites, including VLEs.

RECOMMENDATION 8

The Government should reconsider its decision to nominate Equality and Human Rights Commission (EHRC) as the enforcement body for the accessibility requirement. Either the EHRC should be provided with new powers and resources to act as ombudsperson and proactive regulator, able to impose meaningful sanctions outside the courts, or a new body should be nominated.

RECOMMENDATION 9

The Government should reconsider its decision to nominate the Cabinet Office as the enforcement body for Accessibility Statements. Enforcement of the Accessibility Requirement and Accessibility Statements should be carried out by a single organisation which has access to the government's monitoring data.

RECOMMENDATION 10

Ofsted should update their public resources on VLEs to include case studies and survey data that addresses digital accessibility. Furthermore, the Ofsted inspection framework should direct inspectors to take accessibility into account when they consider an institution's use of a VLE.

RECOMMENDATION 11

The Office for Students' (OfS) 2019 review of support for disabled students should assess the sector's progress toward digital accessibility; promote compliance with the regulations as an essential part of inclusive teaching and learning; and make new recommendations for universities to improve digital accessibility. The 2020-2021 guidance on Access and Participation Plans should then direct universities to consider the recommendations of the 2019 review. HE regulators for Scotland, Wales and Northern Ireland should also promote compliance with the new regulations through equivalent access agreements with universities.

For individual higher and further education institutions

RECOMMENDATION 12

Colleges and universities should establish multi-departmental working groups, with student representation and participation from the leadership, to develop/review and oversee a strategy for improving digital accessibility.

RECOMMENDATION 13

Colleges and universities should develop a digital accessibility strategy. The objective of the strategy should be to improve teaching and learning across the board, recognising that this can be achieved through meeting or exceeding the requirements of the new regulations.

RECOMMENDATION 14

Colleges and universities should audit the accessibility of their VLE and make a public timeline and plan for addressing different types of pre-existing inaccessible content.

RECOMMENDATION 15

Colleges and universities should set targets for training and raising awareness among content creators, including academic staff. In order to reach all content creators within the required timeframe, this programme may need to be mandatory for some staff.

RECOMMENDATION 16

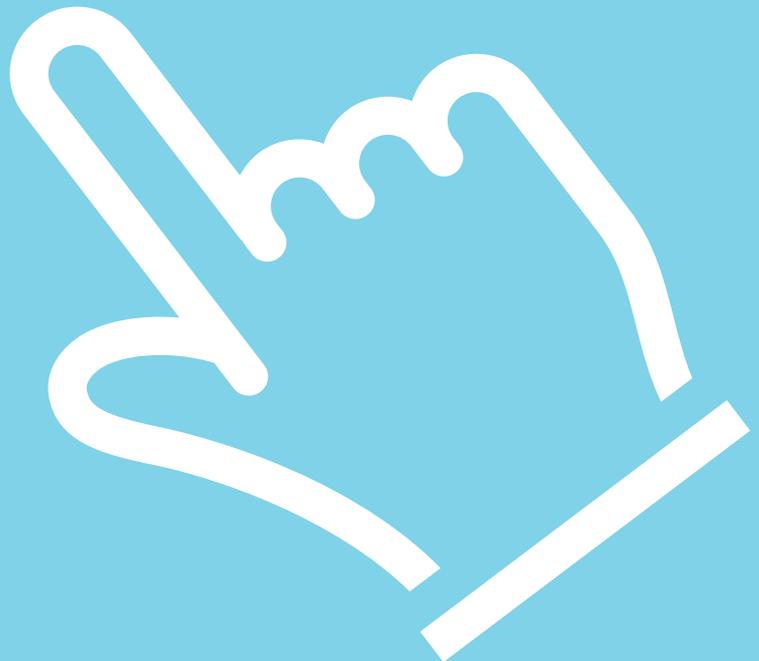
Colleges and universities should raise awareness of the Accessibility Statement and make it public and easy to navigate to. Accessibility Statements should also provide guidance on how to use the VLE's accessibility features.

RECOMMENDATION 17

Colleges and universities should design an effective procedure responding to students' requests and notifications relating to inaccessible content. The procedure should be clear to students and focused on both helping them get the content they need and in parallel improving the VLE for the next student. Colleges and universities should minimise the need for students to make such requests and notifications, by designing content to be accessible from the start.

1

Why digital accessibility in education is important



Digital accessibility - making education inclusive

Digital Accessibility is a part of making teaching and learning inclusive for all students - a growing priority in both further and higher education. The policy context is somewhat different in each sector, but the aim is the same: to improve educational and student experience for both disabled and non-disabled students alike. As the Higher Education academy has put it, “inclusive learning and teaching recognises students’ entitlement to a learning experience that respects diversity, enables participation, removes barriers and anticipates and considers a variety of learning needs and preferences without directly or indirectly excluding anyone.”¹ This inclusive practice approach has also been connected to ‘Universal Design for Learning’: when we recognise that courses and teaching methods are products of design and planning, we can apply the principles of universal design, building in inclusivity and flexibility from the start.

The policy background to inclusion in HE institutions

Inclusive practice in Higher Education Institutions (HEIs) has been shaped in England by governmental reforms to Disabled Students Allowances (DSAs) - government-funded allowances used to provide support for disabled students, such as a laptop with assistive software. DSAs pay for targeted support for the student who receives the allowance, rather than funding institution-wide inclusive practice.

In the 2016/17 academic year the Government started implementing reforms to strike a new ‘balance’ between “support supplied by HE providers and [support provided through] DSAs”.² The Government’s aim was to avoid paying for additional support that it felt universities are required to provide under the Equality Act (2010). It scaled back the DSAs program and doubled the funding to universities to support disabled students, from £20 million to £40 million per year across England.³ These reforms did not just represent a change in the source of funding for support, they affected the nature of that support. Universities were encouraged to meet the challenge of DSA cuts by “create[ing] a more inclusive learning environment” rather than replicating the targeted support that DSAs used to fund.⁴ Inclusive practice was promoted by the Government to “encourage greater independence [among students] and less reliance on individual interventions” of the kind funded by DSAs.⁵ For example, DSAs no longer typically fund support workers to take notes for disabled students in lectures, rather the Government suggested the alternative of providing video lecture recordings to all students.⁶

The increased focus on inclusive teaching and learning is to be welcomed; indeed it is championed by policy makers in Wales, Scotland and Northern Ireland, where DSAs have not been reformed in the same way.⁷ However, as many in the higher education sector have pointed out, targeted support - funded either by universities or DSAs - can complement inclusive practice, and vice versa, so it should not be a question of one or the other.⁸

- 1 Cited in the Disabled Student Sector Leadership Group, *Inclusive teaching and learning in higher education as a route to excellence* (2017), page 12
- 2 Department for Business Innovation and Skills (BIS), *DSAs Consultation outcome* (2015), page 5
- 3 Office for Students: *Models of support for students with disabilities* (2017). The report was published by the Higher Education Funding Council for England which is now part of the OfS
- 4 Department for Business Innovation and Skills, *DSAs Consultation outcome* (2015), page 12
- 5 Department for Business Innovation and Skills, *DSAs Consultation outcome* (2015), page 12
- 6 Department for Business Innovation and Skills, *DSAs Consultation outcome* (2015), page 28
- 7 See for example: Welsh Government, *A Review of the Disabled Students’ Allowances* (2017)
- 8 Seema Malhotra MP, *Assistive technology can help ‘even the playing field’ for disabled people*, in *PoliticsHome* (24th January 2018)

The policy background to inclusion in Further Education

A key context for inclusive practice in Further Education (FE) is the post-2014 reforms addressing provision for children and young people with Special Educational Needs and/or Disabilities (SEND).⁹ The SEND reforms had a particularly significant impact on FE because they aimed to create a coherent system of support for children and young people up to the age of 25, allowing students longer to complete further education with support in place. The government published a general SEND Code of Practice and an additional guidance document for FE¹⁰. The SEND Code of Practice gives a prominent place to inclusive teaching and learning as one of the principles underlying the Code. The guidance makes clear that colleges should both provide targeted support for young people with SEND and “focus on inclusive practices and removing barriers to learning.”¹¹

Since the Children and Families Act in 2014, the focus on SEND in FE has only increased. In particular, the Government has placed great emphasis on SEND and apprenticeship programs as part of its 10-year plan to reduce the employment gap between disabled and non-disabled people.¹²

What the public sector equality duty means for HEIs and FE

The Equality Act (2010) counts disability as among a list of protected characteristics and places duties upon institutions with respect to disabled people. Importantly, colleges and universities are counted as ‘public authorities’ for the purposes of the Equality Act and so have a higher level of duty: they are subject to the Public Sector Equality Duty.¹³ This requires colleges and universities to have regard to the need to minimise disadvantage suffered by disabled people; take steps to meet what may be the different needs of disabled people; encourage the participation of disabled people in public life; tackle prejudice; and promote understanding.¹⁴ Colleges and universities must make reasonable adjustments so that disabled people are not disadvantaged relative to non-disabled people. Further, these adjustments should be made *in anticipation of* the needs of disabled people, rather than only on request. As a governmental guidance document put it “Public sector organisations shouldn’t simply wait and respond to difficulties as they emerge: the duty on them is ‘anticipatory’, meaning they have to think out what’s likely to be needed in advance.”¹⁵

This anticipatory duty means changes need to be made without a disabled student having to make a special request or even, in some cases, disclose a disability. A recent article in The Journal of Inclusive Practice in Further and Higher Education explained:

“*Embedding inclusive teaching and learning practices form part of HEP’s [Higher Education Providers’] anticipatory equality duty*”¹⁶

- 9 See the Children and Families Act (2014) and the SEND code of practice (2015)
- 10 Department for Education, SEND reform: further education (2014)
- 11 Department for Education, SEND code of practice (2015), pages 19-20 and Further education: guide to the 0 to 25 SEND code of practice, page 6
- 12 Department of Work and Pensions, Improving Lives: The Future of Work, Health and Disability (2017)
- 13 Equality Act (2010), Schedule 19 (consolidated) (2011)
- 14 Equality Act 2010, Part 11, Chapter 1, Section 149
- 15 Public Health England, Reasonable adjustments: a legal duty (2018). See also: Equality and Human Right Commission, Equality Act 2010 Technical Guidance on Further and Higher Education (2014)
- 16 Draffan, E.A., James, Abi., and Martin, Nicola, Inclusive Teaching and Learning: What’s Next? in The Journal of Inclusive Practice in Further and Higher Education, (2017) issue 9.1, page 30

Virtual Learning Environments (VLEs)

As Peter Mayhew-Smith, Group Principal and CEO of South Thames Colleges Group, said: Virtual Learning Environments (VLEs) are part of the “digital infrastructure” for learning in modern FE and HE.¹⁷ As far back as 2013, 95% of FE colleges and 100% of universities reported having a VLE.¹⁸

A VLE is a form of intranet, a website that is only open to a specific group of people, in this case, students and staff. Typically, each course has its own section of the VLE. Like the physical learning environment (lecture halls, libraries and labs, etc.), the Virtual Learning Environment is a site of learning in two senses: it is a place where information is imparted and a space for active participation in the course.¹⁹ In a lab session, students may be given a handout and hear a talk by the tutor, through which students receive subject-related information and practical guidance (information), and then the students carry out lab work itself (participation). Using a VLE, information is provided primarily in the form of downloadable documents and videos, while participation comes in the form of interactive exercises, online assessments, and course management tasks such as submitting work and registering for modules.

There are many different VLE ‘solutions’ or platforms, developed by companies such as Blackboard and Instructure. Each college or university then builds its own VLE on this platform, which will be unique to that institution, depending on the resources and the engagement tools they include as part of it. Colleges and universities develop their VLEs collaboratively as staff and students across the institution add and change content regularly.

VLEs and inclusive teaching and learning

Equality duties mean both virtual and physical environments must be accessible, but VLEs can also be used to make teaching as a whole more inclusive. Alistair McNaught, an accessibility and inclusion specialist at Jisc, explained how this can be done by using VLEs to offer continuous access to the course materials, new ways of accessing information, and more opportunities for active learning.²⁰ For example, a student who becomes anxious in a lecture room can leave and then watch the rest of the lecture on a recording on the VLE; and a student who is dyslexic can take a quiz on a VLE instead of a writing-heavy test.

“The virtual learning environment helps us go from that simplistic mono-culture of text to something that is rich, that’s varied, that’s diverse, that plays to different peoples’ different strengths, as well as helping them skirt around their potential weaknesses.”
Alistair McNaught, Jisc, inquiry evidence session

Inclusive practice benefits both disabled and nondisabled students - and this is particularly true in the digital space. For example, lecture recordings can be helpful across the board because students can re-watch parts of the recording to revise, and using different types of assessment can help make a course more varied and interesting for all students.

17 South Thames Colleges Group, written evidence

18 OSS Watch, National Software Survey (2013), page 28

19 This distinction is based on the distinction drawn by Alistair McNaught (Jisc) between the role of VLEs in holding ‘learning resources’ and in facilitating ‘engagement’. Inquiry evidence session

20 Inquiry evidence session

Making digital content accessible

As the Office for Students (OfS) points out, the inclusivity value of a VLE is undermined when the content is not accessible.²¹ Digital content is accessible when it is designed to be usable and useful for everyone. Uploading lecture slides is good practice because it allows the student to prepare for the lecture, and it is particularly helpful for dyslexic students who may struggle to read the slides at the same time as concentrating on the lecture. However, if the slides use the wrong colour contrast it can make them hard to read for many dyslexic students and so merely providing the slides is not sufficient: digital accessibility needs to be achieved.²²

As with any form of inclusive practice, digital accessibility in VLEs makes for good teaching for all students. For example, when a course handbook is published in a range of alternative formats it gives students the choice to engage with the content in the way that suits them best, whether that is a non-disabled student who listens to a journal article audio file while walking to college, or a student who uses the audio file format because they have a visual impairment - or another student with a visual impairment who prefers the document in HTML so they can easily change the size of the font. Accessible formats also work well on mobile phones, something that students increasingly expect from websites. As these examples make clear, digital accessibility isn't a "one size fits all": it allows each student to engage with content in their own way. Disability is just one factor that influences how a person will want to interact with content. In short, digital accessibility is good design and a vital component of an inclusive learning environment.

"Having your journal article converted into an MP3 and listening to it on the bus in the morning: who wouldn't find that helpful? But historically that's been a niche thing, and that seems a missed opportunity, so this [digital inclusion] is a universal opportunity for improvement." Ben Watson, University of Kent, inquiry evidence session.

How well is the sector doing with VLE accessibility?

Although there has not been a comprehensive study of VLE accessibility across FE and HE, there have been a number of studies which together show the sector has a long way to go in making VLEs accessible to all.²³

A long way to go

In 2014, Ofsted published a package of resources on good practice in VLEs, including eleven case studies "of providers that, in Ofsted's judgement, have been using virtual learning environments well", and a survey of young people's experience with VLEs.²⁴ Only one of these eleven case studies claimed that the VLE was "accessible and easy to use".²⁵ None of the other

21 Office for Students, Models of support for students with disabilities (2017), page 72. Note: this study was produced by the Higher Education Funding Council for England which has since been brought into the new Office for Students: as such, we shall refer to the study as authored by the Office for Students

22 Office for Students, Models of support for students with disabilities (2017), page 72

23 The need for a more comprehensive study of the level of accessibility in online learning was identified in the Office for Students' report Evaluation of Provision and Support for Disabled Students in Higher Education (2009)

24 Ofsted, Virtual learning environments: resources for providers (2014)

25 Ofsted: Virtual learning environments: Eleven case studies of effective practice (2013), page 37, case study of the Premier League's youth development department, which "manages the work-based learning contract for advanced

Accessibility Standards

*“The power of the Web is in its universality. Access by everyone regardless of disability is an essential aspect.” - Tim Berners-Lee, World Wide Web Consortium Director and inventor of the World Wide Web.**

The World Wide Web Consortium has developed guidance for web accessibility: the Web Content Accessibility Guidelines (WCAG). We are currently on version 2.1 of these guidelines.* These guidelines also constitute a standard, recognised by the International Standards Organisation. The WCAG explains how to create accessible content, including videos and downloadable documents. It is based on four principles of digital accessibility, according to which content should be:

Perceivable	e.g. images and videos should be accompanied by text descriptions
Operable	e.g. websites should be designed so that people can engage with it only using only a keyboard
Understandable	e.g. text should be organised with headings
Robust	e.g. websites should be designed to work with assistive technologies and other user tools.

Websites can meet these standards to a greater or lesser extent so the standard contains different levels: A, AA, AAA

Following WCAG is good practice. But the object of accessibility isn't to satisfy the World Wide Web Consortium, or even the new regulations we shall discuss later: digital accessibility is part of teaching practice and so is judged according to the impact it makes for students.

* World Wide Web Consortium, Accessibility (accessed 27 August 2018)

case studies addressed accessibility at all. This suggests that even institutions focused on the effective use of their VLE did not at that time prioritise digital accessibility.

The accompanying survey (2012) found that VLEs were widely used. Only 2% of learners had never used the VLE for their course. However, only 66% agreed that their “VLE was well designed and easy to use.”²⁶ Furthermore, very few students (18%) used their VLE on their mobile phones even though just over half (51%) said mobile would be their preferred method of access. As the authors of the survey research point out, this suggests that many “current VLE users do not use their phone to access the system because it is not a viable option”.²⁷ One reason why a VLE may not work well on a phone is if the files on the VLE are inaccessible formats that don't reflow the text to the size of the screen. However, as we shall discuss in Chapter 3, the survey may need to be updated.

26 apprenticeships in sporting excellence (AASE)
Report for Ofsted, Virtual Learning Environment Survey (2012), page 8

27 Report for Ofsted, Virtual Learning Environment Survey (2012), page 7

In 2017, the OfS published a report into models of support for disabled students.²⁸ The report was based on an online survey of 137 higher education providers and case studies of 13 providers. The report found that universities saw VLEs as a way to “make TLA [teaching, learning and assessment] more accessible and inclusive”.²⁹ But it stressed that “putting materials onto online platforms such as VLEs does not mean that the materials themselves are accessible”.³⁰

The report did show that some universities are taking positive steps such as “making materials available in different formats”.³¹ Nonetheless, the OfS saw a clear need for improvement in digital accessibility and made two recommendations for universities on the topic. First, the report noted that “it may be good practice to use a checklist or to provide guidance for staff to ensure VLE resources are truly accessible”.³² Second, in its formal recommendation section, the report states that universities should “Work with their IT centres to assess and improve the accessibility of digital resources such as VLEs.”³³

Piers Wilkinson, a member of the NUS Disabled Students Committee, in our evidence session warned that accessibility problems mean some VLEs present a “barrier” to students rather than an asset.³⁴ In an article for the NUS website, Wilkinson concluded that “the rapid expansion of virtual learning environments with little progress in digital inclusion has left accessibility as a ‘bolt on’ afterthought”.³⁵

A law student who gave written evidence to this report suggested that accessibility, particularly for documents, can be highly variable:

“Documents that are uploaded onto the VLE are usually intended for sighted users. The formatting of a document can therefore be difficult to navigate at times; for example, some fonts or font sizes are difficult to navigate with a visual impairment. I have found, however, that accessibility of [documents] varies a great deal because each lecturer has their own tastes. You are often at the mercy of the lecturer.”³⁶

A study from Newcastle University Students Union showed the importance students place on the VLE as a learning tool: they chose modules in part based on whether lectures would be recorded and added to the VLE.³⁷ This, Wilkinson said, could be part of a wider phenomenon where “students are choosing their modules, their course, their university, their entire stepping stone to their life, based on whether or not they can access content”.³⁸

28 Office for Students, Models of support for students with disabilities (2017), page 72

29 Office for Students, Models of support for students with disabilities (2017), page 72

30 Office for Students, Models of support for students with disabilities (2017), page 72

31 Office for Students, Models of support for students with disabilities (2017), page 72

32 Office for Students, Models of support for students with disabilities (2017), page 72

33 Office for Students, Models of support for students with disabilities (2017), page 118

34 Inquiry evidence session

35 Piers Wilkinson, The new EU Web Accessibility Directive and what you need to know! (2018)

36 Law student with a visual impairment: written evidence

37 Newcastle University Students' Union, Student Use of ReCap (2017)

38 Inquiry evidence session

Perhaps the most substantial study of VLE content accessibility was carried out by Blackboard (the sponsors of this inquiry).³⁹ Their study used the Blackboard Ally tool to scan documents in a range of VLEs and gave them accessibility scores (out of 100) based on the WCAG 2.0. The study focused on North American higher education, however it is likely that UK VLE practice is similar in respect of accessibility. After scanning 21 million content items, across 20 institutions, Blackboard found that, between 2012 and 2017, the average accessibility score for a VLE document has increased from 27.5 to 30.6, an increase of 11.27%. The research also identified a strong correlation between an institution's accessibility performance and institutional accessibility initiatives, showing that improving accessibility is something that can be tackled effectively across the organisation. Clearly, this progress is welcome but is quite slow and began from a low level - there is a long way to go.

But good practice does exist

This inquiry did find an impressive range of excellent examples of digital accessibility (largely from HEIs). Notable collections include ALERT (2006),⁴⁰ The Disabled Students Sector Leadership Group (2017),⁴¹ The Office for Students (2017),⁴² Advance HE (2018),⁴³ and Jisc (2018).⁴⁴ The University of Southampton has trialled the provision of lecture recordings with time-synchronised transcripts;⁴⁵ the University of Kent helped lead an audit of e-book formats and is using the results to ensure they procure accessible content;⁴⁶ Bournemouth University provides a range of alternative assessment types through the VLE;⁴⁷ and the University of Derby creates multiple document formats for different students' needs.⁴⁸ Yet these are cases of best practice for the sector to emulate, rather than a representative sample. What they show is that digital inclusion is possible and that there are encouraging high points of good practice in the sector.

39 See Blackboard, *Accessibility of digital course content: Insights and trends from Blackboard Ally (2017)* and *Inside Higher Ed's coverage of the study 'Glacial Progress' on Digital Accessibility (2017)*

40 ALERT project, *Accessibility in Learning Environments and Related Technologies (2006)*

41 Office for Students, *Inclusive teaching and learning in higher education (2017)*

42 Office for Students, *Models of support for students with disabilities (2017)*

43 Advance HE, *Case studies: Reasonable adjustments and inclusive education environments (2018)*

44 Jisc, *Supporting an inclusive learner experience in higher education (2018)*

45 Advance HE: 'Case studies: Reasonable adjustments and inclusive education environments' (2018)

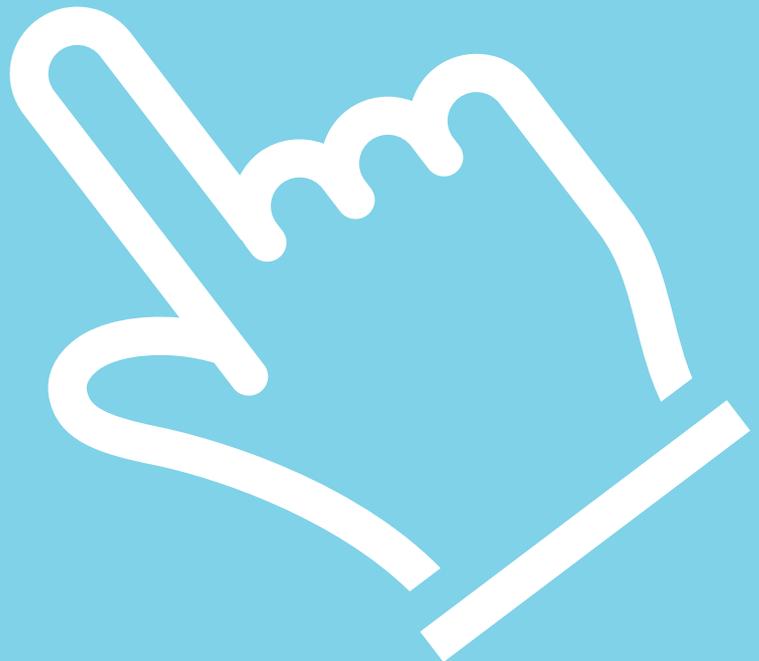
46 Office for Students, *Models of support for students with disabilities (2017)*, page 63. For more details see University of Kent, *Accessibility in procurement* (accessed 27 August 2018)

47 Bournemouth University: *Written evidence*

48 University of Derby: *Written evidence*

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What the new regulations mean for HEIs and FE



Overview

On 23rd September 2018 a new law will come into force: the Public Sector Bodies (Websites and Mobile Applications) Accessibility Regulations 2018.⁴⁹

These regulations have their origin in an EU Directive⁵⁰ and Seema Malhotra MP noted that the EU Web Accessibility Directive “may be one of the last pieces of human rights legislation to come to us from the EU”.⁵¹ However, the regulations will remain part of UK law regardless of our future relationship with the EU; they will help the UK meet its obligations as a signatory to the UN Convention on the Rights of Disabled People.⁵²

The Government will publish a guidance document on the regulations, which set out two requirements for public bodies:

1. Public bodies’ websites and apps must meet an *Accessibility Requirement*.
2. Public bodies must publish an *Accessibility Statement* on all their websites and apps.

The Accessibility Requirement – what’s in and what’s exempt

Websites and apps must in future comply with the European accessibility standard EN 301 549.⁵³ This standard is based on the WCAG 2.0 discussed in the box on Accessibility Standards above. In December 2018 the European Commission will publish an updated standard which will be used to define the Accessibility Requirement.⁵⁴

There are some forms of content that are exempt or partially exempt from the Accessibility Requirement. Even where content is exempt from the Accessibility Requirement, however, organisations still have duties with respect to their web content. This means that if a public body publishes inaccessible content, a user may request access to that information in an accessible alternative format, and the public body must make a “satisfactory response” to the request.⁵⁵

Accessibility statements – what needs to be in them

It is common practice for websites to include an Accessibility Statement. However, the regulations make this a requirement and specify what elements must be included in the statement. The European Commission will publish a model accessibility statement in

49 The Public Sector Bodies (Websites and Mobile Applications) Accessibility Regulations (2018) henceforth, ‘The Public Sector Accessibility Regulations’

50 Directive (EU) 2016/2102 – known as the EU Web Accessibility Directive (2016)

51 Seema Malhotra, The digital revolution must be accessible for everyone (2018) PoliticsHome

52 Once the UK ceases to be a member state of the EU, it can repeal the law. However, there is no suggestion that the government plans to do this and in any event it responds to international not EU obligations (see EU Web Accessibility Directive (2016), Recital 12)

53 European Commission, Accessible ICT Procurement Toolkit (accessed 27 Aug 2018)

54 When this ‘harmonised standard’ is published, we will report on it at the APPGAT website: <https://www.policyconnect.org.uk/appgat/news>

55 The Public Sector Accessibility Regulations (2018), Part 5, Paragraph 11 (2)

TIMELINE FOR IMPLEMENTATION

September 23rd 2018

The regulations become law

September 23rd 2019

Websites that are published on or after September 23rd 2018 must meet the Accessibility Requirement and have an Accessibility Statement

September 23rd 2020

All websites must meet the Accessibility Requirement and have an Accessibility Statement

September 23rd 2020

All apps must meet the Accessibility Requirement and have an Accessibility Statement

December 2018.⁵⁶ Drawing from the text of the regulations themselves,⁵⁷ we can get ahead of the game and identify four elements that must be present:

1. **Compliance.** The statement must acknowledge any parts of the website that are not accessible and explain why that content is exempt from the Accessibility Requirement
2. **Requests.** Public bodies must respond to requests for accessible alternatives to inaccessible content on the website. Therefore, the accessibility statement must include a link to a form that allows users to make this request
3. **Notifications.** Users may notify the public body that they have failed to comply with the accessibility requirement. So the statement must link to a form that allows users to do this, and the public body must respond adequately to feedback that notifies them of potential compliance failures
4. **Reporting.** The statement must provide a link to the Government's enforcement procedure for the regulations (see below for details of this procedure).

In addition, the accessibility statement must itself be accessible, and should be regularly updated.

Government monitoring and enforcement

The Government Digital Service (GDS) will have responsibility for monitoring the degree to which the public sector is complying with the regulations. To do this, GDS will assess a sample of websites (and their accessibility statements) that fall under the scope of the regulations.⁵⁸ The precise methodology for measuring compliance will be published by the European Commission by the 23rd December 2018.⁵⁹

The regulations will have two enforcement mechanisms, one for the accessibility requirement, and one for the requirement for accessibility statements:

1. The enforcement body for the **accessibility requirement** is planned to be the Equality and Human Rights Commission (or the Equality Commission for Northern Ireland, for Northern Ireland). Failure to meet the accessibility requirement, and/or failure to provide a satisfactory response to a request for an accessible alternative to inaccessible content, will be treated as a failure to make a reasonable adjustment under the Equality Act (2010) (or the Disability Discrimination Act 1995, for Northern Ireland).⁶⁰ Failure to make a reasonable adjustment can be remedied through the civil courts.⁶¹ The Equality and Human Rights Commission can also issue a compliance notice.⁶²

56 EU Web Accessibility Directive (2016), Article 6. When the model accessibility statement is published, we will report this on the website of the All-Party Parliamentary Group for Assistive Technology

57 The Public Sector Accessibility Regulations (2018), Part 2, Regulation 7

58 The Public Sector Accessibility Regulations (2018), Part 4. See also, Cabinet Office, Accessibility of public sector websites and apps: new duties and regulations – Consultation outcome (2018)

59 EU Web Accessibility Directive (2016), Article 8

60 The Public Sector Accessibility Regulations (2018), Part 5

61 EHRC, Equality Act 2010 Technical Guidance on Further and Higher Education (2015), Chapter 15

62 EHRC, Monitoring and enforcement (accessed 27 August 2018)

- The enforcement body for the **accessibility statement** is the Cabinet Office. The Cabinet Office can make an assessment of an Accessibility Statement (or lack thereof) and issue a public statement of non-compliance.⁶³

What the regulations will mean for colleges and universities

Both colleges and universities count as public sector bodies under the definition in the regulations. The reason for this is that the Directive, from which the regulations are generated, uses the same definition of public sector body as EU procurement law. As case law and recent scholarship has established, universities are public bodies under the definition used for EU procurement law.⁶⁴ This is in large part because of the amount of public funding that universities receive as a proportion of their overall funding. Colleges receive an even greater proportion of their funding from the state.⁶⁵ The regulations do have a partial exemption for 'schools', but FE colleges (and universities) are distinct from schools in UK law.⁶⁶

General and specific exemptions

⊖ ⊕ DISPROPORTIONATE BURDEN



Some organisations will be able to exempt some of their web content from the Accessibility Requirement on the grounds that making such content accessible would “impose a disproportionate burden” on the organisation.* To receive the exemption an organisation will have to carry out a “disproportionate burden assessment” that considers the benefits to disabled people of making the content accessible, the cost to the organisation of making the content accessible, the size of the organisation, and the audience for the content. This assessment can then be referred to in the Accessibility Statement to explain why some content remains inaccessible on the website. It is possible that, as a result of this rule, some small colleges - that are not part of a college network - will not have to comply fully with the accessibility requirement. We should note, however, that VLEs are integral to teaching and learning, and so VLE accessibility has a particularly high impact on disabled people and this would have to be taken into account in any disproportionate burden assessment.

* The Public Sector Accessibility Regulations (2018), Part 2, Regulation 6

63 The Public Sector Accessibility Regulations (2018), Part 5

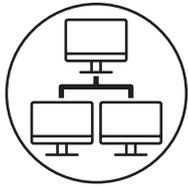
64 This point was made in written evidence to the inquiry by Dr Andrea Gideon and Dr Albert Sanchez-Graells. The public procurement law in question is Directive 2014/24/EU. The case law is University of Cambridge (C-380/98, EU:C:2000:529). The scholarship referred to is Gideon, A, and Sanchez-Graells, A, ‘When are universities bound by EU public procurement rules as buyers and providers? - English universities as a case study’ (2016) 5(1) *Ius Publicum*, part 4. See also: Albert Sanchez-Graells, UK Universities must soon comply with the EU Web Accessibility Directive (accessed 27 August 2018), University of Bristol Law School Blog

65 The Association of Colleges notes that colleges are, on average, 80% publicly financed. See the Association of Colleges, Funding (accessed 27 Aug 2018)

66 This point was made in written evidence by Dr Andrea Gideon and Dr Albert Sanchez-Graells. These authors show out that the Public Contracts Regulations (2015) define schools by reference to the definition given in the Education Act 2002, and a systematic analysis of the Education Act (2002) demonstrates that, under domestic law, ‘school’ is up to and including secondary school, but not further education colleges or universities

VLEs, including documents and recorded audio and video, are covered by the accessibility requirement. However, there are some partial exemptions for intranet content in general, and documents and recorded video in particular:

⊕ ⊖ ⊕ INTRANET CONTENT



Intranet content must be accessible if it is published on or after 23rd September 2019. There is an exemption for intranet content published before that date, until the intranet is subjected to “a substantial revision”: at that point, the whole intranet is treated as if it is a new publication and so must be accessible in full.* The regulations do not give a definition of what counts as ‘substantial revision’. However, Dr Maren Deepwell, chief executive of the Association for Learning Technology (ALT), explained that, because VLE content is regularly and frequently updated and changed, the accumulation of these incremental changes means that “it is likely that VLE users would find that their system would be substantially revised at least once each academic year.”**

* The Public Sector Accessibility Regulations (2018), Part 1, Regulation 2, Paragraph 2(g).

** Written evidence

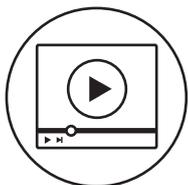
⊕ ⊖ ⊕ DOCUMENTS



Documents on websites must be accessible if they are published to the website on or after 23rd September 2018; documents older than 23rd September 2018 do not need to meet the accessibility requirement. However, this exemption does not apply where documents are ‘needed for active administrative processes relating to the tasks performed by the public sector body’ - for example a form that students are asked to fill out in order to apply, or sign-up, for something. Arguably, any ‘essential’ document that a student must use in order to carry out a study task could also count, such as module handbooks, assessment guidance, or course readings.*

* Robin Christopherson MBE, Head of Digital Inclusion at AbilityNet, suggested that all “learning materials could be seen as administrative in the sense that being able to provide those materials is part of [delivering] the services involved”. Inquiry evidence session.

⊕ ⊖ ⊕ RECORDED VIDEO

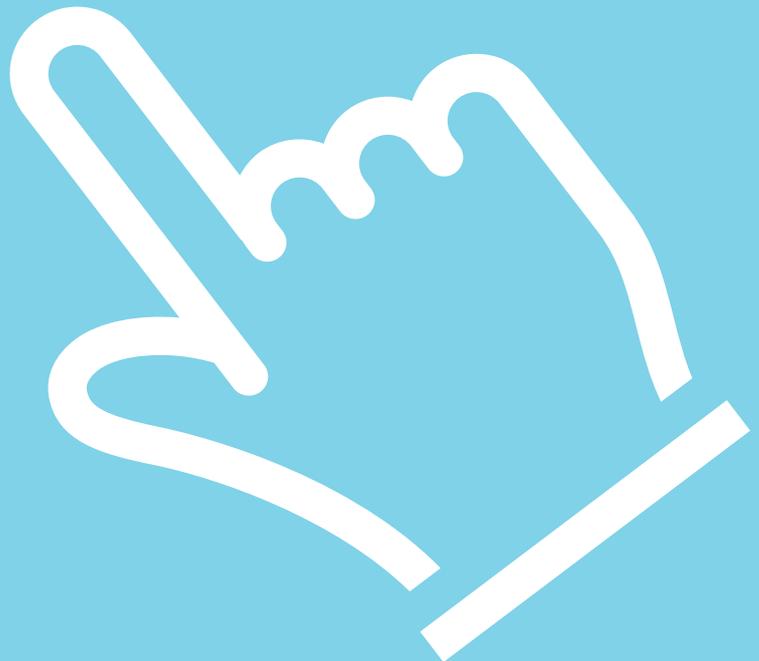


Recorded videos, such as lecture capture recordings, are exempt if they are published before 23rd September 2020. Live video is exempt altogether.

An important caveat is that even where these exemptions apply, colleges and universities still have duties with regard to content accessibility: if VLE content of any kind is not accessible, students will be entitled to ask for the relevant information via some accessible alternative.

3

How government and sector bodies can help higher & further education institutions



In order to promote compliance with the legislation, the Government is required to raise awareness of the new regulations and the benefits of digital accessibility; it must also promote training on digital accessibility.⁶⁷ However, these actions alone will not be enough to ensure the sector takes this opportunity to improve digital accessibility in teaching and learning. Implementing the regulations must be a collaborative effort between government, sector organisations, and of course, colleges and universities themselves. In this chapter, we consider how both government and sector bodies can support colleges and universities to comply with the regulations and benefit from so doing.

Raising awareness

The GDS, which sits in the Cabinet Office, is working to raise awareness of the regulations. As part of this, GDS will publish a guidance document for all public sector bodies. This is a welcome and necessary step; however it will need to be made clear to colleges and universities that they are covered by the public digital accessibility regulations. As Peter Knight, former Vice Chancellor of Birmingham City University has written, universities in particular can feel themselves in an ambiguous position with regard to the public / private divide.⁶⁸ For this reason, a new set of guidance for 'public bodies' may not immediately be recognised by colleges and universities as relevant to them. The official guidance should directly address the education sector (along with health, local government etc.) and include guidance on issues specific to education. It could include guidance on which kinds of processes will be regarded as 'administrative', in the context of the partial exemption for documents, and under what conditions will a VLE be considered as having undergone a 'substantial revision'.

RECOMMENDATION 1

The Government Digital Service (GDS) guidance document should specifically name colleges and universities as organisations that are covered by the regulations (i.e. they are public bodies and distinct from schools), and provide guidance on the application of the Accessibility Requirement to VLEs.

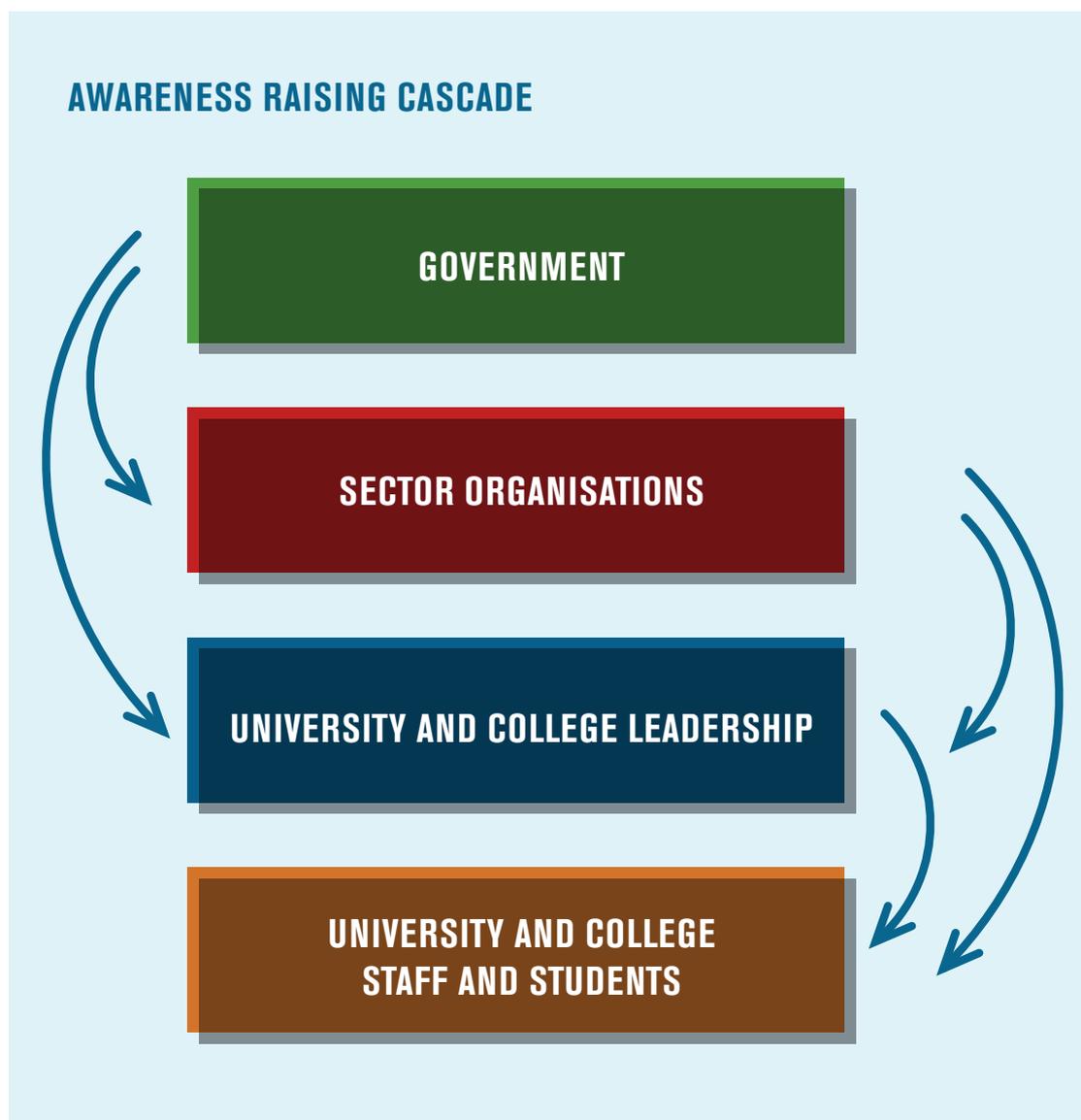
It is also important that the Government's guidance document is disseminated through the correct channels so that the message reaches those working in education. In our evidence session this inquiry found that GDS has little or no profile within the sector.⁶⁹ To help fill that gap we have provided GDS with a preview of this report and we understand that, following that briefing, officials from GDS and the Department for Education (DfE) have arranged for the DfE to take ownership of awareness-raising efforts within the education sector. We welcome this commitment on the part of the DfE, which has the reach and recognition to bring awareness of the regulations to educational institutions. In particular, the DfE has access to college principals and university vice chancellors. This is crucial since - to be successful initiatives to improve digital accessibility must be backed by active and involved leadership.

67 EU Web Accessibility Directives (2016), Article 7

68 Peter Knight, 'So are universities public or private?' (2006), The Guardian, (accessed 27 August 2018)

69 Inquiry evidence session

The DfE will not be able to generate sufficiently broad awareness of the regulations using only its own channels of communication. As Mary Bishop, Dean of Students for Staffordshire University said: awareness should be “cascaded”.⁷⁰ As well as reaching college and universities leadership directly, the DfE can raise awareness among sector bodies such as the Association of Colleges and Universities UK, who will in turn engage with colleges and universities.



In our evidence session and from written submissions we heard recommendations for governmental engagement with a wide range of sector organisations including professional associations and unions, and organisations that provide guidance to the sector such as the Association of Colleges. These bodies can support their stakeholders to meet the challenge of the regulations in a number of ways. Many sector bodies work by engaging their members to lead on projects: acting as a platform for staff across different colleges and universities to collaborate and share practice - but this too requires the sector body itself to first raise awareness among its membership.

RECOMMENDATION 2

Once the GDS guidance document is published, the Department for Education should post a notice on its website, and send an accompanying letter to Vice Chancellors and college Principals notifying them of the new regulations. The DfE should also promote its notice of the new regulations to a broad range of sector organisations.

RECOMMENDATION 3

Sector organisations should raise awareness among their stakeholders as a first step to considering how they themselves can help promote digital accessibility and compliance with the new regulations.

Providing training – on a systematic and consistent basis

“Our education is going to be more digital in the next ten years, and it should be accessible - from using iPads in reception classes through to submitting PhD theses.”
Dr Abi James, Chair of the New Technologies Committee of the British Dyslexia Association, inquiry evidence session.

VLEs are a collaborative creation of the whole college or university, and academic and teaching staff play a major role producing content for the VLE. Yet as we heard in evidence to this report, teaching staff in particular often lack the skills to produce accessible content. Rob Martin, Learning Development Tutor at Birkbeck, reported that “what we are seeing is that lecturers are putting up materials themselves, but they are putting up a scan that’s not accessible at all”.⁷¹ The skills required are not highly technical, e.g. choosing appropriate colours for a slide background or adding heading styles in Word. However, as Michele Farmer, Disability IT Support Analyst at UCL, explained, this accessibility skills gap arises from a more general digital skills gap: “for a lot of lecturers, people of my age and beyond, technology wasn’t something you were born with, so it’s another barrier for them to get over”.⁷²

Some colleges and universities do provide training or guidance for teaching staff on the use of the VLE, often delivered by learning technologists or other support staff. However, internal training programs on use of the VLE may not always include sufficient information about accessibility or may not reach enough staff members:

71 Inquiry evidence session

72 Inquiry evidence session. In addition, Susan Day, Managing Director of Connect, noted that the same is also often true of teachers in FE: ‘teachers... don’t have adequate training in accessibility and assistive technology...[so] we need to support the teachers to support students’, Inquiry evidence session

“The biggest challenge is getting very under-pressure academics to change the way they make resources. Most universities don’t seem to have a staff development window when you can say ‘right, here we’re going to learn today about how to do an [accessible] Word document or caption a video.” Ben Watson, University of Kent, inquiry evidence session.

Staff also receive training associated with professional development accreditations, such as Fellowship of the Higher Education Academy. Yet here again, digital accessibility skills have not been given a high priority. Dr Andrea Gideon, an academic at the University of Liverpool shared her experience of training for Academy fellowship:

“There could have been so much more that we could have learned on accessibility and making content accessible. I think it would be quite easy to integrate into some of the modules and quite helpful.” Inquiry evidence session.

This suggests that existing training structures for teaching staff, both internal training programs and formal structures of training, will have to be strengthened in order to develop the skills needed to meet the requirements of the new regulations.

To some extent, this change will need to come from individual institutions, who must enhance and prioritise internal training on accessible content. However, the government can play a role by helping colleges and universities build the capacity to provide internal training. As we heard in evidence to this report, internal training is often provided by learning technologists and other technical support staff. Some technologists will be more skilled in digital accessibility than others and all of those who deliver training in connection with these regulations will want to ensure that they are doing so on the basis of a firm understanding of the Accessibility Requirement. Furthermore, technologists have their own roles in developing the VLE and may need additional training to improve their own practice.

There are existing routes by which technologists can enhance their own accessibility skills and knowledge of the regulations: for example conferences and online courses.⁷³ Several evidence submissions to this report recommended that a more systematic training program for the sector be delivered by organisations such as Jisc, QAA, Advance HE, and AbilityNet.⁷⁴ Without a sector-wide training scheme that reaches out to key staff members in every institution it is likely that many colleges and universities will be left without the capacity to carry out an effective internal training program for teaching and academic staff. As we heard in our evidence session, the regulations can be a ‘training opportunity’ for the sector, but without a coordinated and systematic approach that opportunity may be missed.⁷⁵

73 One prominent online accessibility course has been developed by the University of Southampton, available at <https://www.futurelearn.com/courses/inclusive-learning-teaching/>

74 Staffordshire University: Written evidence; Anonymous university: written evidence

75 Ben Watson, University of Kent, Inquiry evidence session

RECOMMENDATION 4

To promote digital accessibility training in the sector, the DfE should create a Digital Accessibility Guidance and Workforce Development initiative. This would take the form of a contract with a respected sector organisation(s), to deliver training to key staff in colleges and universities to develop their own skills and understanding, and their ability to train colleagues.

RECOMMENDATION 5

Professional accreditation schemes should review their training programs to ensure that teaching and academic staff have the skills to make accessible learning materials.

Guidance and resources

Alongside the guidance that the government will make available on the regulations, to complement and support training described above colleges and universities will need more practical guidance on creating accessible VLE content. In particular, VLE content creators, including teachers and academics, need 'how-to' guidance on producing accessible learning resources. Some universities have already produced this kind of guidance for teaching staff. Birkbeck University has created a website called 'Birkbeck for All' that introduces staff to accessible content creation, and the University of Kent has produced resources as part of their OPERA Project (Opportunity, Productivity, Engagement, Reducing barriers, Achievement).⁷⁶ Microsoft has created guidance on using Office software to publish accessible documents.⁷⁷ However, universities and colleges differ significantly with regard to how much guidance they offer on accessible content creation. Importantly, as learning technologists at the University of Derby explained, they will want to be confident that their guidance resources are fit-for-purpose in light of the new regulations.⁷⁸

In addition, learning technologists themselves will require practical guidance on some of the more technical elements of VLE accessibility, such as running tests, and on producing an Accessibility Statement for a VLE. The model Accessibility Statement that will be published by the European Commission in December 2018 is not specific to VLEs and may not provide detailed enough guidance for learning technologists.

Ben Watson from the University of Kent suggested that the sector could come together to share resources and best practice, based on a sector-wide platform to reduce costs:

"The sector is very giving. I don't feel myself in competition with other universities; if we find out something useful, I'm very happy to share it.... What's the point of Kent creating a whole lot of materials and then Sussex and East Anglia doing the same - that seems like a complete waste of effort." **inquiry evidence session.**

⁷⁶ See University of Kent, Accessibility (accessed 27 August 2018) and Birkbeck, Birkbeck for All (accessed 27 August 2018)
⁷⁷ Microsoft, Create accessible Office documents (accessed 27 August 2018)
⁷⁸ University of Derby: Written submission

“...some way of coordinating... that people could all contribute to [would be helpful]. If we want to be serious about digital inclusivity, shouldn't we all be using the same sort of tools to build that? I think it would be really productive and helpful for the government to create a central location for us all to share that... the digital assets, the support materials that we create that would all be shared.” Inquiry evidence session.

The kind of platform suggested here could be delivered in parallel with the sector workforce development program we discussed above. This would also help the experts facilitate the discussion and sharing based on authoritative understanding of the regulations and digital accessibility more broadly.

RECOMMENDATION 6

The Digital Accessibility Guidance and Workforce Development contract (Recommendation 4), should include an element on guidance resources. The recipient of the contract should develop and manage an online platform to support the sharing of resources and best practice.

Monitoring

GDS will have responsibility for monitoring the public sector's compliance with the regulations. The Government has announced that GDS will be advised by a stakeholder group, which will help select the sample of websites for testing.⁷⁹

RECOMMENDATION 7

The Government's monitoring stakeholder group should include stakeholders from the education sector, to ensure that monitoring takes into account the specific nature of education-sector websites, including VLEs.

Enforcement – how should it work?

***The Directive states that** “in order to avoid systematic recourse to court proceedings, provision should be made for the right to have recourse to an adequate and effective procedure to ensure compliance.”⁸⁰*

Elsewhere the Directive states that “Member States shall ensure that an enforcement procedure, such as the possibility of contacting an ombudsman, is in place to guarantee an

79 Cabinet Office, Accessibility of public sector websites and apps: new duties and regulations – Consultation outcome (2018)

80 EU Web Accessibility Directive (2016), Recital 53

effective handling of notifications [of failure to meet the accessibility requirement] or requests received [for accessible alternatives to inaccessible content]”⁸¹

In short, users must be able to engage with the enforcement procedure and see their cases effectively handled, without recourse to the courts. This is important because, as a House of Lords Select Committee report found, enforcement of the Equality Act (2010) via the courts is becoming increasingly difficult and costly for disabled people.⁸²

We also heard evidence that the enforcement mechanism should have a pro-active element to further reduce the burden on users:

“It can’t be disabled student-based monitoring or enforcement. It needs to have a student reporting process: for example, a disabled student who is struggling with a university should be able to go to a third party and ask them to look at it. But we shouldn’t rely on that.” Piers Wilkinson, NUS Disabled Students’ Committee, inquiry evidence session.

Finally, several of those who gave evidence suggested fines should be introduced as part of the enforcement procedure. Francesca Di Giorgio, Inclusion Policy and Campaigns Manager at the Royal National Institute of Blind People (RNIB), linked this to the Directive’s requirement that enforcement procedures avoid litigation:

“If there aren’t fines included, proportionate fines of course, [enforcement] would lead to unnecessary litigation, which is not in the spirit of the act, the spirit of the act says that there should not have to be litigation to enforce the act.” Inquiry evidence session.

In contrast some have suggested fines would be unnecessary so long as the sector regulators are sufficiently involved in promoting compliance with the regulations (we shall discuss the role of sector regulators below).⁸³ Another suggested sanction was public notice of non-compliance:

“Universities don’t want to be named and shamed. If there is a list of recommendations on how they need to improve, and then those [who don’t improve] are published, I think that will have a major effect.” Lynn Wilson, NADP, inquiry evidence session.

In summary, an enforcement mechanism should include (a) a procedure for handling user complaints when the public body’s own complaints resolution process has not been adequate (e.g. an ombudsperson), and (b) an element of proactive enforcement and meaningful sanctions (not requiring litigation).

81 EU Web Accessibility Directive (2016), Article 9

82 Select Committee on the Equality Act 2010 and Disability, The Equality Act 2010: the impact on disabled people (2016), Chapter 9

83 John Harding, Head of the Disability Resource Centre at the University of Cambridge, inquiry evidence session

Enforcing the Accessibility Requirement – who should do it?

Failure to comply with the Accessibility Requirement will count as failure to comply with the Equality Act (2010) duty to make reasonable adjustments for disabled people. The Equality and Human Rights Commission (EHRC) is the enforcement body for the Equality Act (2010) and the Government has likewise nominated the Equality and Human Rights Commission (EHRC) to enforce the Accessibility Requirement.⁸⁴ However, as several of those who gave evidence explained, the enforcement of the Equality Act (2010) has relied heavily on litigation.⁸⁵

There is a significant risk that the Government’s planned mechanism for enforcing the Accessibility Requirement will not achieve the Directive’s aim of an enforcement mechanism that “avoids systematic recourse to court proceedings”. It is true that the EHRC can act to prevent the need for legal action in relation to non-compliance, but as the House of Lords’ Equality Act (2010) and Disability Committee noted, the EHRC no longer has the power to “arrange the provision of conciliation services for non-employment discrimination claims”.⁸⁶ The regulations state that a member of the public “may complain to the applicable enforcement body” if a website is not compliant but this requires the enforcement body to be able to resolve the complaint independent of the courts.⁸⁷ The EHRC does have the power to issue a ‘compliance notice’ to an organisation that fails to make reasonable adjustments (and these, if not initially public, could likely be made so with freedom of information requests).⁸⁸ In practice, however, unless the EHRC is given adequate resources to investigate individual cases and issue such notices, this will not be a realistic alternative to litigation. So far, no additional funds have been announced to support the EHRC as the enforcement body for the Accessibility Requirement. Nor has the Government included fines as part of enforcement, and the EHRC does not have the power to impose fines.

In short, it is not clear that the EHRC can provide the kind of enforcement that is required by the Directive and recommended by the evidence presented to this inquiry. In its response to the consultation on the regulations, the Cabinet Office said that “this enforcement approach reflects the importance of the new requirements, and makes sure the process for resolving accessibility concerns is robust.”⁸⁹ However, the consultation response did not address the key issues raised here; most importantly, it did not explain how the proposed enforcement mechanism would serve to prevent the need for litigation.

84 Except in Northern Ireland where, instead of the Equality Act (2010), the relevant legislation is the Disability Discrimination Act (1995) and the enforcement body is the Equality Commission for Northern Ireland

85 Robin Christopherson (AbilityNet) and Dr Abi James (British Dyslexia Association); Dr James put it by saying “The equality act is great on paper but implementation is harder in practice within education.” Inquiry evidence session

86 Select Committee on the Equality Act 2010 and Disability, *The Equality Act 2010: the impact on disabled people* (2016), Chapter 9

87 Public Sector Web Accessibility Regulations (2018), Part 5, Paragraph 12 (4)

88 EHRC, *A guide to regulation of the Public Sector Equality Duty in England, Scotland and Wales* (2016), page 12

89 Cabinet Office, *Accessibility of public sector websites and apps: new duties and regulations – Consultation outcome* (2018). The response continues, “We also believe it is important that users of websites and apps are not required to understand whether a website is public or private sector to be able to seek resolution for accessibility issues”. This is a valid consideration but those who use a website’s Accessibility Statement will see the correct procedure to follow

RECOMMENDATION 8

The Government should reconsider its decision to nominate EHRC as the enforcement body for the accessibility requirement. Either the EHRC should be provided with new powers and resources to act as ombudsperson and proactive regulator, able to impose meaningful sanctions outside the courts, or a new body should be nominated.

Should enforcement action be brought into a single body?

The procedure for enforcing the requirement for Accessibility Statements does effectively avoid recourse to court proceedings. The Cabinet Office acts as the enforcement body: it can issue a public statement of non-compliance, and litigation plays no part in this. Furthermore, this enforcement procedure is proactive in that it can be triggered by GDS's monitoring of Accessibility Statements. However, it is not clear from the description of the procedure in the regulations how, or whether, disabled students themselves will be able to notify the Cabinet Office of websites which fail to comply with the requirements for an Accessibility Statement.⁹⁰ The ability of disabled people to take complaints to the enforcement body is central to an effective enforcement procedure. As GDS will only monitor a sample of public sector websites, a public body whose website is not included in the monitoring sample may not come to the attention of the Cabinet Office unless members of the public are able to raise complaints.

To address these issues, the Cabinet Office could open up channels to reporting by members of the public, however, it may not be equipped to handle public complaints. Also, it would be overly complicated for members of the public to contact one organisation (e.g. the Cabinet Office) about a website's accessibility statements and contact another organisation (e.g. EHRC) about the rest of the website.

There are other concerns about splitting enforcement between two organisations. An Accessibility Statement cannot be considered in isolation from the question of whether the website has complied with the Accessibility Requirement. This is because the statement is expected to give an accurate account of which parts of a website are not accessible and why. The importance of enforcing the accuracy of accessibility statements was stressed by Piers Wilkinson (NUS), who drew an analogy to statements about physical access:

"The amount of times that, for example, a Hotel will tell me that they have an accessible hotel room, and then I turn up, and I've got to go up 15 steps to get to reception to ask for a ramp. The enforcement organisation should enforce the accessibility statement being factually correct." Inquiry evidence session.

The need to enforce accuracy of statements will put the Cabinet Office in the position of having to assess the accessibility of the websites as whole, and therefore duplicating the work of the enforcement body for the Accessibility Requirement. This would be wasteful of resources and confusing for both complainants and public bodies.

The Government has chosen the Cabinet Office as an enforcement body because it will have access to the data on accessibility statements gathered by GDS. However, this monitoring data could be shared with a different organisation so as to bring enforcement action into a single body.

RECOMMENDATION 9

The Government should reconsider its decision to nominate the Cabinet Office as the enforcement body for Accessibility Statements. Enforcement of the Accessibility Requirement and Accessibility Statements should be carried out by a single organisation which has access to the Government's monitoring data.

Sector Regulators' role in enforcement

Education sector regulators can play an important complementary role in promoting compliance with the regulations. Indeed, in the evidence session for this report several participants suggested that the role of Ofsted for FE colleges, and of the Office for Students for universities, may be at least as significant as that of named enforcement bodies.

Peter Kilcoyne, Information and Learning Technology Director, Heart of Worcestershire College and board member of the FE Blended Learning Consortium, explained the power of Ofsted to influence decision making in FE:

“What would make FE colleges’ principals and senior leaders sit up and take notice is if this was something that was covered in the Ofsted inspection framework. If we know anything is going to be covered by Ofsted, and they will be looking at it, then the college will make sure that it is implemented.” Inquiry evidence session.

Currently, Ofsted's further education inspection framework states that “The quality of provision for learners who have special educational needs and/or disabilities... will always be considered during the inspection.”⁹¹ And virtual learning environments are considered as part of inspections.⁹² However, there is no explicit reference, in the framework, to ensuring that VLEs are designed and managed to work for all students.

We noted elsewhere in this report that Ofsted has published a webpage of resources on VLEs: best practice case studies and survey results. The resources page invites further input on the resources and advertises that “comments will be published here when the resources are updated.”⁹³ Yet no update has been published since 2013 and the resources are now significantly out of date. Expectations and requirements around digital accessibility have increased significantly as a result of the inclusive practice agenda and the incoming regulations, but only one of the Ofsted case studies addressed digital accessibility. Although

91 Ofsted, Further education and skills inspection handbook (2018), page 12

92 Ofsted, Further education and skills inspection handbook (2018), page 47

93 Ofsted, Virtual learning environments: resources for providers (2014)

the Ofsted-commissioned survey asked students if their VLE is ‘well designed and easy to use’ this question is overly general. It would be more helpful to ask first about ease of use for the VLE platform - navigating the pages etc. - and then ask about ease of use for the content part of the VLE, such as documents, videos and interactive elements such as forms and quizzes. Finally, one of the key findings from the 2012 survey was that students wanted the option of using their VLE on mobile devices but appeared to find the mobile experience of the site poor: an updated survey could be used to assess progress on this aspect of VLE use.

RECOMMENDATION 10

Ofsted should update their public resources on VLEs to include case studies and survey data that addresses digital accessibility. Furthermore, the Ofsted inspection framework should direct inspectors to take accessibility into account when they consider an institution’s use of a VLE.

John Harding, Head of the Disability Resource Centre at the University of Cambridge, highlighted the important role the Office for Students (OfS)⁹⁴ can play in promoting digital accessibility.

“In terms of encouraging institutions from a senior level, we need to find a measure that they think is important. I don’t think fining institutions is the way to do it and using a structure that already exists (such as the TEF) is probably the best way to go about it.” Inquiry evidence session.

The Teaching Excellence Framework (TEF) is used by the OfS to rank participating universities as Bronze, Silver or Gold, with the rankings being made according to metrics such as student satisfaction and post-graduate outcomes. It does not require an inspection of teaching practice directly⁹⁵ so it is unclear whether the TEF could be modified to address digital accessibility specifically.

The TEF is not the only means by which the OfS regulates the higher education sector. In order for a university to charge higher rate fees the OfS must approve the institution’s annual Access and Participation Plan. These plans set out the investment the university will make to support disabled students and others belonging to ‘underrepresented groups’.⁹⁶ By setting the terms under which plans are assessed, the OfS has considerable power to influence universities’ strategies to support disabled students. For example, the OfS’s good practice advice on preparing an Access and Participation Plan recommends that universities consider the OfS’s own 2017 report into supporting disabled students.⁹⁷

94 In Scotland, Wales and Northern Ireland the key regulators are, respectively, the Scottish Funding Council, the Higher Education Funding Council for Wales, and the higher education division of the Department for the Economy (Northern Ireland Executive)

95 Universities may also make a 15-page written submission as part of the TEF but the OfS does not require them to address specific areas of teaching such as VLEs in the submission

96 Office for Students, Regulatory Notice 1: Guidance on access and participation plans for 2019-20 (2018)

97 Office for Students, Regulatory Advice 6: Good practice advice on the preparation of access and participation plans for 2019-20 (2018)

The 2017 OfS report recommended that universities “Work with their IT centres to assess and improve accessibility of digital resources such as VLEs”.⁹⁸ This should already encourage universities to invest in improving digital accessibility and detail this in their Access and Participation Plan. Since that report was written the new regulations have set much clearer expectations and requirements for digital accessibility. In addition, evidence to this report suggests that the focus on ‘work[ing] with IT centres’ is overly narrow, as an effective strategy for improving digital accessibility must include representatives from across the organisation.

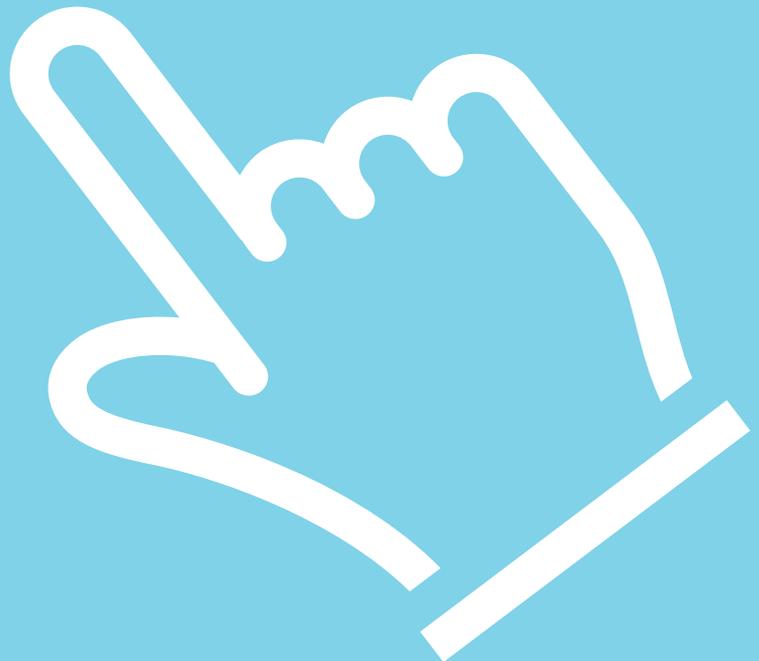
The OfS is planning a 2019 follow-up report to track the progress of the sector in supporting disabled students and this could take advantage of the regulations to make new recommendations to universities. The 2019 report will also be able to take advantage of university VLE accessibility statements and GDS monitoring data to gain insight into the state of digital accessibility in the sector.

RECOMMENDATION 11

The OfS’ 2019 review of support for disabled students should assess the sector’s progress toward digital accessibility; promote compliance with the regulations as an essential part of inclusive teaching and learning; and make new recommendations for universities to improve digital accessibility. The 2020-2021 guidance on Access and Participation Plans should then direct universities to consider the recommendations of the 2019 review. HE regulators for Scotland, Wales and Northern Ireland should also promote compliance with the new regulations through equivalent access agreements with universities.

4

Guidance for building your college or university strategy



Many colleges and universities already have strategies in place to improve the accessibility of their VLE. The new regulations will undoubtedly require a reassessment of those strategies to meet the new requirements and improve online resources for all students. Other institutions will need to launch a digital accessibility strategy for the first time in order to respond to the regulations. This chapter looks at what factors should be considered when developing or updating such a strategy.

Who should be engaged?

Several of those who contributed evidence to this report highlighted the need to form a working group with representation from across the college or university.⁹⁹ There was a broad consensus that the key stakeholders include:

- Students and their representatives. Since the improvements are aimed at benefiting all students, the project should involve the students union education officer as well as the disabled students officer
- A member of Institutional leadership, at least at Deputy-Principal or Pro-Vice-Chancellor or Dean level
- Teaching staff and/or staff from teaching-improvement centres
- Technical staff such as Information technologists, librarians and learning technologists
- Student services, including the disability department or equivalent.

Leading from the top

Many of those who gave evidence emphasised the need to secure the involvement of leadership. For example Noel Duffy, Managing Director of Dolphin Computer Access, said that from his experience in meeting with universities to discuss inclusion:

“Nothing is likely to happen unless it’s imposed from the top. So it’s absolutely critical that, if you’re trying to change what goes on in a university, the leaders of the university have to say ‘this is going to happen.’” Inquiry evidence session.

The Disability Sector Student Leadership Group report, published by the Department for Education, also identified the critical role played by leadership in ensuring inclusive practice of all kinds.¹⁰⁰

99 The University of Kent OPERA (Opportunity, Productivity, Engagement, Reducing barriers, Achievement) Project has published its Working Group membership and terms of reference on their website, available at <https://www.kent.ac.uk/studentsupport/accessibility/opera.html>

100 DSSSLG, Inclusive Teaching and Learning in Higher Education as a route to Excellence (2017), page 18

Lynn Wilson, from the National Association of Disability Practitioners in HE and FE, suggested that advocates for digital accessibility begin by raising awareness in the leadership of why the issue matters to students:

“I was working with a student in the Library at a university, and he had a visual impairment, and was using font size 23/34, and the Vice Chancellor was walking by, and he took me to one side and said ‘but he can’t see a whole word on the screen’ - he’d never seen anybody working with that before.” Inquiry evidence session.

Leaders of colleges and universities should also be shown the benefits of accessibility in making course content more usable, and making learning more flexible, for all students.

RECOMMENDATION 12

Colleges and universities should establish multi-departmental working groups, with student representation and participation from the leadership, to develop/review and oversee a strategy for improving digital accessibility.

Components of a strategy

The right objective – improving teaching for all students

As we saw in Chapter 1, digital accessibility is part of inclusive practice, which benefits all students, disabled and nondisabled alike. So a digital accessibility strategy should be aimed at improving teaching and learning across the board. A strategy that only aims at compliance and is isolated from the institution’s larger objectives for teaching and learning may be too narrow in its focus. In addition, a strategy that only emphasises compliance may not win support from teaching and academic staff and students. At the same time, institutions will naturally wish to design their strategy so as to bring their VLE into compliance with the digital accessibility regulations and this work can be used to drive the wider objective of improving learning for all students.

RECOMMENDATION 13

Colleges and universities should develop a digital accessibility strategy. The objective of the strategy should be to improve teaching and learning across the board, recognising that this can be achieved through meeting or exceeding the requirements of the new regulations.

Knowing your baseline, prioritising and fixing

To comply with the accessibility requirement, colleges and universities must understand which of the content on their VLE is not currently accessible. There are digital tools that some institutions use for this, such as document accessibility checkers in Microsoft Office and features within Blackboard Ally. Some colleges and universities have also worked with outside

organisations such as Jisc to help them conduct a baseline audit. One Senior Learning Technologist said of their own university that:

“We have made the case that materials need to be accessible from the start and the Learning Technology unit has in the past run workshops to encourage staff to use the Microsoft accessibility checker tool to ensure that Word and PowerPoint resources are accessible. There is no way to measure if these recommendations have been applied broadly, an accessibility checker built into every VLE would help this goal.”

Inquiry written evidence.

Once an institution has identified which VLE content is not accessible, it can categorise that content according to when it needs to be made accessible, to meet both the regulations timeline and needs of students. The college or university can then make its own timeline for making the content on its VLE accessible. This timeline could be published on the VLEs Accessibility Statement.

There are several ways in which inaccessible content can be ‘fixed’ or ‘made accessible’. First, as Nicolaas Matthijs product manager for Blackboard Ally pointed out, some VLE content just duplicates other items elsewhere in the VLE and a large amount of older content is unused.¹⁰¹ In some cases this content could be archived away from student-facing parts of the VLE, or away from the VLE altogether. Second, the best practice is often to provide a range of alternative forms of content to suit different needs and so content that doesn’t meet the accessibility standard used in the regulations can be kept if it is useful to some students and supplemented with content in another format that is accessible. In some other cases, inaccessible content can be changed to make it more accessible, e.g. heading styles can be added to an existing Word document or captions can be added to an existing video. The baseline auditing process can be used to identify which forms of inaccessible content should be addressed, and how. Accessibility auditing typically involves both manual checking and automated tools, and can be conducted at regular intervals to monitor progress.

RECOMMENDATION 14

Colleges and universities should audit the accessibility of their VLE and make a public timeline and plan for addressing different types of pre-existing inaccessible content.

Training on creating accessible content

As well as addressing existing content, colleges and universities must assess and mitigate the risk of new inaccessible content being added to the VLE. Indeed, given the priority that the regulations place on making new content accessible, and the tendency for new content to be in greater use by students than older content, training on creating content should be central to the strategy to improve the VLE.

We set out earlier a recommendation for a cascaded training system for the sector. At the institutional level, this would require an internal training and awareness raising programme for

all those who contribute content to the VLE, e.g. teaching and academic staff. However, several of those who gave evidence explained that opportunities for training are not taken up where teaching staff lack the time to participate:

“No one has ever said ‘I think accessibility is a terrible idea’, everyone gets it, everyone wants to do it, we’re pushing an open door, but the difficulty is the time factor.”
Ben Watson, University of Kent, inquiry evidence session.

A lack of time for training suggests that higher priority needs to be given to it. One way to address this to avoid making digital accessibility training a niche area. As Nicolaas Matthijs (Blackboard) pointed out:

“[Training] doesn’t have to stand on its own as accessibility. A lot of things around ‘how do I create accessible content?’ are really just about good digital practice, and [training] could fall into the broader category.” **Inquiry evidence session.**

Another suggestion was to give a clear message that digital and inclusive practice skills are valued by the institution as a component of teaching:

“One of the things that we did was to look at criteria that are included in academic promotion pathways, and build a much stronger emphasis in the criteria on inclusion and accessibility.” **John Harding, University Cambridge, inquiry evidence session.**

Finally, several of those who gave evidence saw an issue with training being merely optional:

“We would see inclusive design or digital inclusion as a core part of any member of staff’s CPD - as much as diversity training, for example, or health and safety.” **Robin Christopherson, AbilityNet, inquiry evidence session.**

What this points to is that simply offering training is not sufficient; a program should be measured on its take-up rather than its availability.

RECOMMENDATION 15

Colleges and universities should set targets for training and raising awareness among content creators, including academic staff. In order to reach all content creators within the required timeframe, this programme may need to be mandatory for some staff.

A good Accessibility Statement

The regulations set out four roles for the Accessibility Statement: a public declaration of compliance; a channel for requests for alternatives to inaccessible content; a channel for notifications of failure to comply; and a channel to the Government's enforcement procedure.

Several of those who gave evidence pointed to ways in which colleges and universities can use the Accessibility Statement to improve student's experience of the VLE. First, in order for an Accessibility Statement to be useful, students must be aware of it and be able to navigate to it easily and quickly:

"There is a really important issue about where [an Accessibility Statement] is on the page. There are many VLEs I've been to where the Accessibility Statement is one of the last links on the page... It can take 200 actions to get to it." **Alistair McNaught, Jisc, inquiry evidence session.**

Prospective students have also an interest in learning more about the accessibility of the VLE and this should be addressed:

"An Accessibility Statement would give information upfront for students who are going to be investing a lot of time and money." **Robin Christopherson, AbilityNet, inquiry evidence session.**

This suggests that the statement should not be hidden behind the login of the VLE: it should be viewable on the login page and the institution's public-facing website.

Second, the Accessibility Statement can go beyond simply affirming compliance with regulations: it can give positive guidance to students about how to use the web browser feature or add-ons to improve their experience with the VLE, and how to do things like turn the captions on for a video recording. Used in this way, the Accessibility Statement can become a resource for students rather than purely a legal document. As digital law and policy specialist, Heather Burns put it:

"Accessibility statements should be user-centred – here is what the site should do, here is what you can do if you are not able to use any aspect of it, here is who you can contact with an accessibility concern, and so forth – and should give people information and options they can use right away." **Inquiry evidence session.**

RECOMMENDATION 16

Colleges and universities should raise awareness of the Accessibility Statement and make it public and easy to navigate to. Accessibility Statements should also provide guidance on how to use the VLE's accessibility features.

Requests and notifications:

Making it simple for students and efficient for colleges and universities

The Accessibility Statement must link to a form that users can fill out in order to either *request* an accessible alternative to inaccessible content or *notify* the college or university that they are not complying with the Accessibility Requirement. The distinction between these two cases is that a *request* is made in relation to inaccessible content that is exempt from the Accessibility Requirement, while a *notification* is made when the content is covered by the Requirement. In practice, however, a student who finds some content inaccessible may be unaware of whether or not it is exempt from the Accessibility Requirement. For this reason, it would be good practice to design the form so that students can use it without having detailed knowledge of the regulations. For example, the form could ask what content the user would like to be provided with, and what format - HTML, PDF etc. - they would like it in. There could then be a non-mandatory field box that asks the user if they would like to categorise their communication as just a request for accessible content or also a notification of failure to meet the Accessibility Requirement.

A further distinction between *requests* and *notifications* is as follows. If a public body is notified that they have failed to comply with the Accessibility Requirement they need to correct this by fixing the website to be in compliance. A public body can respond to a request for accessible content that is outside the scope of the Accessibility Requirement by providing the user with the alternative content directly, e.g. via email. However, once an accessible alternative is produced for a user who has requested it, it is of course best practice to add that content to the VLE as well.¹⁰² For example, if a student finds that a PDF of an assessment guidance sheet is not accessible, they will ask for an accessible version of the document. Once that accessible document is provided, it can be uploaded to the VLE so that the next student has immediate access to it. Thus, in the case of either a request or a notification, the college or university should respond by providing the student with relevant information in the form of accessible content and then adding that content to the VLE.

Although we have referred to a 'form' here, because that is the channel named in the regulations, a form may not be the best means of communication for some students. As Piers Wilkinson (NUS) noted, students often find that the reporting process is embedded within the same inaccessible system that they are reporting about: "They have a barrier, and they have to report the barrier to the university".¹⁰³ A phonenumber or in-person reporting could be offered alongside the form.

Finally, it must be emphasised that best practice, and in some cases compliance with the regulations, requires that VLE content is designed from the start to be accessible. One consideration is that providing accessible content on an ad hoc basis when requested can overwhelm staff resources. As Alistair McNaught (Jisc) explained,

"When you create or buy inaccessible content, colleges and universities should ask 'what additional support costs am I buying into?'" Inquiry evidence session.

¹⁰² In some cases, the accessible alternative will be hard copy, in which case this does not apply
¹⁰³ Inquiry evidence session

For this reason alone, it may be more cost effective to make all content accessible, even when it falls outside the scope of the Accessibility Requirement, rather than spend time and money on later ad hoc adjustments, especially since the duty to provide the alternatives on request still holds for content that is outside the scope of the Accessibility Requirement.

More importantly, relying on the requests procedure disadvantages students. As one disabled student explained, this is the case even when the procedure works as well as it can:

“My experience at Cambridge was very positive. People would go out of their way to change the formats of things. I even had hard books turned into PDFs. However, the only problem with all of this is time. It takes a lot of time to turn things around and I wish there was a quicker way of doing this.” **Visually impaired law student, inquiry written evidence.**

Francesca Di Giorgio (RNIB), made the point that it shouldn't become standard practice to expect disabled people to have to submit requests for accessible alternatives: “we need to start thinking about [making sure] that VLEs are accessible for everyone from the start, and that is what true parity is.”¹⁰⁴

Finally, where the content in question is covered by the Accessibility Requirement, it should have been made accessible prior to a student request, and failure to make it so, even if the issue was fixed after a student flagged it, is still a failure to comply with the anticipatory regulation.

RECOMMENDATION 17

Colleges and universities should design an effective procedure responding to students' requests and notifications relating to inaccessible content. The procedure should be clear to students and focused on both helping them get the content they need and in parallel improving the VLE for the next student. Colleges and universities should minimise the need for students to make such requests and notifications, by designing content to be accessible from the start.

Methodology

This is the first inquiry by the APPG for Assistive Technology. The findings and policy recommendations in this report are based on a review of pertinent literature, interviews, responses to a written call for evidence, an evidence session held in Parliament, chaired by the APPG for Assistive Technology co-chair Seema Malhotra MP, and findings from previous APPG policy work on employment, skills, and education.

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We would like to thank Blackboard Ally for sponsoring this inquiry and report.

Blackboard Ally is a revolutionary product that integrates seamlessly into the Virtual Learning Environment and helps make digital course content more accessible in a way that benefits all students. Ally is focused on helping institutions build a more inclusive learning environment and improving the student experience by helping them take clear control of content with usability, accessibility and quality in mind. More information about Blackboard Ally can be found at <https://www.blackboard.com/accessibility/blackboard-ally.html>.

About the All-Party Parliamentary Group for Assistive Technology

The APPGAT is an All-Party Parliamentary Group (APPG) made up of MPs and Peers who are interested in the opportunities presented by assistive technology to make society inclusive for all. The group is designed to facilitate discussion between the sector and Parliament and make policy interventions on issues surrounding assistive technology (AT).

The APPG works by holding events in Parliament, bringing experts and politicians together for roundtable discussions, symposia, and receptions; we use the findings from these policy events to develop briefings, term papers and research reports, to inform and influence Parliament, Government and the sector.

The All-Party Parliamentary Group for Assistive Technology is part of the Industry, Technology & Innovation team at the cross-party collaborative think tank Policy Connect:

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