**Summary of Legal Opinion for DAWN - Letter of Advice - Reasonable accommodation of disability in Universities in the absence of (full) documentation - Michelle Ni Longain (Byrne Wallace) 18th April 2023**

The Equal Status Act 2000 is a law in Ireland that governs the provision of services by educational establishments, including universities and other higher-level institutions. The Act includes specific provisions regarding discrimination on the grounds of disability.

Under Section 7 of the Act, an educational establishment is prohibited from discriminating against a person with a disability in relation to various aspects, including admission or terms of admission, access to courses and facilities, participation in the establishment, and disciplinary actions.

The Act defines disability broadly, encompassing the total or partial absence of bodily or mental functions, chronic diseases or illnesses, physical malformations, learning differences, and conditions that affect thought processes, perception, emotions, or behaviour.

The Act also addresses discrimination between disabilities and allows for comparison between a person with a disability and a person with a different disability. Discrimination between disabilities is considered disability discrimination under the Act.

A significant aspect of the Act is the concept of reasonable accommodation, which is covered in Section 4. Discrimination includes a refusal or failure by a service provider to make reasonable accommodations for a person with a disability, provided that without such accommodations, it would be impossible or unduly difficult for the person to access the service. The Act emphasizes the obstacle faced by the person rather than specific evidence of the disability.

There is a qualifier in Section 4(2) stating that a refusal or failure to provide reasonable accommodation shall not be deemed reasonable unless it would give rise to a cost, other than a nominal cost, to the service provider. The availability of public funds and the financial resources of the organization are considered in determining what constitutes a nominal cost.

However, the "nominal cost" exemption has been criticized by human rights and equality institutions, such as the Irish Human Rights and Equality Commission (IHREC), for setting a low standard for service providers. The IHREC and the UN Convention on the Rights of Persons with Disabilities impose a higher onus on providers of goods and services to provide reasonable accommodation unless it imposes a disproportionate burden.

The Act does not require different standards of proof or evidence for different disabilities. If a person establishes facts that may give rise to a presumption of disability discrimination, the burden is on the respondent to provide evidence to the contrary. Medical evidence is not always necessary, and evidence provided by the individual themselves may be accepted, even if it lacks corroboration.

Both actual and constructive knowledge of a disability are considered under the Act. Constructive knowledge may arise when there are observable indications of a disability or when a person requests assistance without fully explaining the need. Timely action is advised when a university is notified of the need for reasonable accommodation.

The reasonableness of the university's engagement and actions in response to a student's request for reasonable accommodation will be considered. Universities should explore accommodations that do not impose significant costs and engage with students to determine feasible accommodations.

The concept of reasonableness in reasonable accommodation should not act as an exception clause. Once reasonable accommodation measures are required by students with disabilities, they should be implemented unless they impose more than a nominal cost. The standard of reasonableness considers the balance between the needs of the disabled person and the provision of necessary accommodations.

It is important for universities to act promptly, consider all possible accommodations, and engage with students to ensure compliance with the Act.

**Recommendations**

When dealing with disabled students who may not have full evidence of their disability, universities should take the following steps to ensure fairness:

Promote an inclusive environment: Create a culture of inclusivity and diversity within the university community. This includes raising awareness about disabilities, fostering a supportive atmosphere, and promoting equal opportunities for all students.

Establish clear policies and procedures: Develop clear policies and procedures regarding disability accommodation. These should outline the process for requesting accommodations, the documentation required, and the steps the university will take to assess and provide reasonable accommodations.

Provide information and support: Ensure that students are aware of the available resources and support services for disabled students. This includes providing information on how to request accommodations, whom to contact for assistance, and the types of accommodations that may be available.

Engage in an interactive process: When a student indicates they may have a disability and require accommodations, engage in an interactive process with the student. This involves open and respectful communication to understand their specific needs and explore potential accommodations that can facilitate their access to education.

Individualized assessment: Evaluate each student's situation on an individual basis. While documentation can be helpful, it should not be the sole determining factor for granting accommodations. Consider the student's self-disclosure, personal experiences, and any supporting evidence they may provide.

Seek expert opinions if necessary: If there is a lack of conclusive evidence or uncertainty regarding the student's disability, the university can seek expert opinions or consult with relevant professionals to gain further insight. This may include engaging with disability service providers, counsellors, or medical experts who can offer guidance on accommodations and support.

Consider temporary or interim accommodations: If there is a need for immediate support while awaiting further evidence or assessments, consider providing temporary or interim accommodations to ensure the student's access to education is not significantly hindered. These accommodations can be re-evaluated and adjusted based on additional information obtained later.

Review the impact of accommodations: Regularly review the impact of provided accommodations on the student's academic progress and overall well-being. Adjustments can be made if necessary to ensure the accommodations are effective and meet the student's evolving needs.

Maintain confidentiality: Treat all information related to a student's disability with confidentiality and in accordance with applicable data protection and privacy laws. Only share relevant information with individuals directly involved in the accommodation process and ensure that it is handled sensitively.

Continuous improvement: Regularly assess and update policies and practices to align with best practices and legal requirements. Monitor feedback from disabled students and make necessary adjustments to ensure fairness and inclusivity are prioritized.

By following these steps, universities can strive to provide fair and equitable treatment to disabled students, even in cases where there may not be full evidence of their disability.