



UNIVERSITY OF
LIVERPOOL

Diversity & Equality of Opportunity Policy

Human Resources

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Glossary of Terms

Please see Appendix B

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Diversity & Equality of Opportunity Policy

SUMMARY

PROMOTING EQUALITY, DELIVERING INCLUSION, ELIMINATING DISCRIMINATION

The University of Liverpool is committed to promoting an environment which recognises and values people's differences, capitalises on the strengths that those differences bring to the institution and supports all staff and students in maximising their potential to succeed.

The University works to ensure that staff and students are not disadvantaged on the grounds of any of the nine protected characteristics defined in the Equality Act 2010. These being the Protected Characteristics of Age, Disability, Gender Reassignment, Marriage & Civil Partnership, Pregnancy & Maternity, Race, Religious Belief & Non-Belief, Sex and Sexual Orientation.

The University is committed to eliminating the defined categories of unlawful discrimination of Direct Discrimination (including by Association and Perception), Indirect Discrimination, Discrimination arising from a Disability, Failure to make disability related reasonable adjustments, Harassment (including by Association and Perception), Victimisation, and Instructing, inducing or causing discrimination.

The University is committed to implementing the requirements set out in the Public Sector Equality Duty. The duty requires the University to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it, with a specific requirement to tackle prejudice, and promote understanding.

The University recognises that this policy relates to all of its functions with specific reference to employment, the provision of education, and the provision of goods and services.

It is the duty of each member of staff and every student not to engage in discriminatory behaviour and to implement this policy. Any breach of this policy will be dealt with in accordance with the relevant student or staff disciplinary policies.

1.0 Introduction

The University of Liverpool is committed to promoting an environment which recognises and values people's differences, capitalises on the strengths that those differences people to the institution and supports all staff and students in maximising their potential to succeed.

Specifically the University is committed to creating an inclusive learning and working environment for people with the Protected Characteristics of:

- Age
- Disability
- Gender Reassignment
- Marriage & Civil Partnership
- Pregnancy and Maternity
- Race
- Religion & Belief and Non Belief
- Sex; and
- Sexual Orientation

Refer to [Appendix A](#) for descriptions of the Protected Characteristics.

In promoting a community in which all staff and students feel able to contribute and develop their knowledge and skills fully the University will be proactive in its work with external partners to ensure that the University is accessible and viewed by everyone as a desirable place to work and study.

The University is committed to providing a positive, professional environment in which work is carried out against a background of mutual respect for the experiences, abilities and skills of all individuals. In doing so the University will take action against any individual responsible for perpetrating forms of discrimination as identified in the legislation and the appropriate University policy (see [Appendix B](#) for useful terms in identifying discrimination).

Individual members of staff and students have a responsibility to draw to the attention of their line manager or Head of Department any incidences of harassment, bullying, direct or indirect discrimination or victimisation in order that action can be taken.

2.0 Legal Framework

The **Equality Act 2010** created 9 Protected Characteristics. The University recognises its requirements to eliminate the following types of unlawful discrimination:

- Direct Discrimination
- Direct Discrimination based on Perception and Association
- Indirect Discrimination
- Discrimination arising from a Disability
- Failure to make a disability related reasonable adjustment
- Harassment

- Harassment based on Perception and Association
- Victimisation
- Instructing, inducing or causing discrimination

Definitions of what these types of discrimination are is outlined in [Appendix B](#)

In addition, for the benefit of the Equality Act the University is recognised as a Public Authority. The **Public Sector Equality Duty**¹ requires the University to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it, having due regard, in particular, to the need to:
 - remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
 - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
 - encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it, with a specific requirement to:
 - tackle prejudice, and
 - promote understanding

The Equality Act Public Sector **Specific Duties**² require the University to:

- Set Equality Objectives to eliminate unlawful discrimination and promote equality. The objectives are required to be specific and measurable³
- To collect relevant equality data on staff and customers and publish this data (no later than the 31st December 2011 and then) annually.
- All information published must be in a format that is accessible to the public.

The University recognises that the scope of the Equality Act 2010 includes:

- Employment
- Provision of Goods and Services
- Provision of Education

¹ The Equality Act 2010, Section 149(1)

² The Equality Act 2010 (Specific Duties) Regulations 2011

³ Equality objectives must be published by the 6th April 2012 and reviewed at least every 4 years.

Further details of the legislation are given in [Appendix C](#).

3.0 Freedom of Speech

The University has adopted a [Code of Practice on Freedom of Speech](#) which states how it will meet its duty to secure freedom of speech within the law.

4.0 Leadership and Management

All members of staff and students have a responsibility to ensure that legislation is complied with and that this policy is adhered to. The following individuals and groups have particular responsibilities as detailed below:

4.1 Council

The Council is responsible for ensuring that:

- The University complies with all duties placed on it by legislation.
- This Policy and its related strategies, statements and procedures are implemented.
- The processes are set in place to ensure that all are aware of their individual responsibilities.

4.2 The Vice-Chancellor

The Vice-Chancellor is responsible for:

- Promoting general awareness of this Policy both internally and externally.
- Requiring managerial action to implement the Policy.
- Ensuring that all staff are aware of their responsibilities and accountabilities under the Policy, that they are given appropriate training that is evaluated and monitored and that they are adequately supported in order for them to fulfil these responsibilities.
- Ensuring that action is taken should any cases of discrimination or harassment occur.

4.3 University Committees

All University Committees in the exercise of their remits are to show due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

In particular the Student Experience Committee and the Corporate Services and Facilities Committee have overall responsibility for equality within the scope of their remit.

4.4 Diversity and Equality Team

Acting on behalf of the Academic Secretary and the Director of Human Resources, the Diversity and Equality Team is responsible for developing and reviewing policies to promote a positive environment in which to work and study, that are informed by robust monitoring mechanisms and by consultation with those affected by the policies.

4.5 Staff

All members of staff should:

- Comply with their legal obligation under the Equality Act 2010 and this policy to refrain from unlawful discrimination and harassment.
- Familiarise themselves with this policy and other appropriate policies and action plans such as the Dignity at Work and Study Policy.
- Challenge unlawful behaviour by the University, members of staff or students either directly, through the appropriate management structure (line manager or head of department) or the appropriate complaints procedure.
- If applicable, be aware of their managerial responsibilities to manage diversity and equality in the workforce and amongst the student body.
- To anticipate disabled access to the University and take appropriate action to proactively remove barriers.
- To have due regard to the need to eliminate unlawful discrimination; promote equality between different groups and foster good relations.
- Promote a positive environment in which to work and study.
- Be prompt, efficient, effective and courteous in their dealings with fellow members of staff, students and visitors to the University.
- Keep up to date with equality legislation; student and staff support mechanism and issues in this area by attending training and taking advantage of information opportunities as appropriate.

4.6 Students

All students should:

- Comply with their legal obligation under the Equality Act 2010 and this policy to refrain from unlawful discrimination and harassment.
- Familiarise themselves with this policy and the Dignity at Work and Study Policy.
- Challenge unlawful behaviour by the University, members of staff or students either directly, through the appropriate department structure (programme leader, head of department or Executive Pro Vice Chancellor of Faculty) or through the appropriate complaints procedure.
- Promote a positive environment in which to work and study.
- Be prompt, efficient, effective and courteous in their dealings with fellow students, members of staff and visitors to the University.

4.7 Contractors and Services

All contractors, professional, statutory and accredited bodies and those who provide services to the University are expected to comply with the relevant legislation.

5.0 Promoting Diversity

The University is proactive in seeking to attract a staff and student body that reflects the communities it serves, and in so doing to maximise the pool of talent from which it is drawing its staff and students.

Ongoing monitoring of the composition of our staff and student body by the University's Committees allows the University to judge its success in promoting a culturally diverse University community and to take positive action as necessary to ensure that we are meeting our objectives in this area.

To achieve its aim of creating an environment that fosters excellence, the University strives to capitalise on the skills and competencies of all staff within the organisation and in doing so ensure that all types of contribution are valued. Matters of equality and diversity will therefore be embedded within all institutional strategy documents.

6.0 Ensuring Equality of Opportunity

6.1 University Governance

The University is committed to a fair and transparent approach to filling vacancies on its Council. Vacancies for lay members are advertised and members appointed by an appropriately constituted selection committee.

6.2 Students

Ensuring equality of opportunity is a guiding principle behind all of the University's policies and procedures. Of particular importance to the diversity and equality agenda, in the context of our student body, are the departmental admissions policies which support the institutional admissions policy, and the discussion of diversity and equality issues as a requirement of programme approval, annual programme monitoring and periodic review.

The University is committed to providing its staff with the appropriate training to support their work in this area.

The Education Committee monitors the following internally generated statistics to ensure that our policies are effective and to enable action to be taken when necessary:

- Applications and admissions by department
- Degree classifications by department
- Retention rates by department
- Complaints and appeals by department
- First destination statistics

In addition, the Committee monitors the institutional performance against national benchmarks produced by the Higher Education Statistics Agency.

6.3 Staff

The University of Liverpool is committed to offering equality of opportunity and equal pay for work of equal value. Underpinning this commitment is a review of the University's advertising strategy to ensure that employment opportunities are effectively promoted, a review of the institution's recruitment, selection and appointment processes and a comprehensive role evaluation scheme, which addresses the roles of academic and support staff.

The University has implemented a professional development and review process, which applies to all categories of staff and through which the equality of opportunity agenda is taken forward by ensuring a consistent approach to performance review, reward, access to training and development opportunities, and the identification of individuals for undertaking senior roles. An extensive training programme supports this development.

The introduction of the professional development and review process illustrates the University's approach to embedding diversity and equality of opportunity within its business practices.

The Planning & Resources Committee monitors the following internally generated statistics to ensure that our policies are effective and to enable action to be taken when necessary:

- Enquiries, applications and appointments
- Workforce analysis
- Promotions

In addition, the committee monitors the institutional performance against national benchmarks.

6.4 Visitors

The University will continue to work towards making its campus, facilities and services accessible and creating an environment in which visitors are treated with respect.

7.0 Other Relevant University Documents

This Policy is underpinned by a number of institutional strategies and policies within which diversity and equality are embedded. A list of such documents is available in [APPENDIX D](#).

8.0 Review of the Policy

This Policy will be reviewed annually by the Diversity and Equality Team and make appropriate amendment proposals for the Education Committee and the Planning & Resources Committee.

9.0 Communication and Training

The Policy will be communicated through Heads of Department, the Guild of Students, and the University's website. It is also be available upon request from:

Diversity & Equality Team
Human Resources Department
Hart Building
University of Liverpool
Mount Pleasant
Liverpool
L3 5TQ

Equality@liv.ac.uk

Training on this policy and the practical implications of the legislation will be made available to staff through the Organisational Development & Diversity Team in Human Resources.

10.0 Management of Implementation

The production of timely and accurate management information informs the development of policy and allows the University to monitor the effectiveness of policies.

The University collects equalities information for both staff and students at various stages. Staff can update their own details via CoreHR (an online package accessed via the staff intranet) which then informs the HR database. Staff without internet access can be sent monitoring forms to complete.

The action plans associated with this Policy indicates how the University intends to improve the way it collects information and uses it to inform policy development.

The Policy and progress against the action plans will be monitored through the committee structure on an annual basis and the relevant committees will be responsible for taking corrective action as appropriate. The primary committees and groups responsible for this oversight are the Education Committee and Planning & Resources Committee.

11.0 Breaches of the Policy

It will be the responsibility of all staff, students and associated stakeholders to observe the Policy, to act in a way consistent with its aims and to report any breaches to their

line manager, Head of Department or, in the case of external stakeholders, the Diversity and Equality Officer.

Any reported breaches of the Policy will be dealt with in accordance with the appropriate University policy, specifically harassment, complaints, grievance and disciplinary policies. Copies of these policies are available on the University's website.

APPENDIX A: PROTECTED CHARACTERISTICS

Age

Age is defined by reference to a person's age group. An age group can mean people of the same age or people of a range of ages. Age groups can be wide (for example, 'people under 50'; 'under 18s'). They can also be quite narrow (for example, 'people in their mid-40s'; 'people born in 1952'). Age groups may also be relative (for example, 'older than me' or 'older than us').

Disability

Disability is defined as:

“a physical or mental impairment which has a substantial and long-term, adverse effect on the ability to carry out normal day-to-day activities”.

Physical or mental impairment includes sensory impairments (hearing, sight etc), progressive conditions (motor neurone disease), organ specific, developmental (dyslexia, dyspraxia), learning difficulties, mental health conditions, or impairments produced by injury to the body. Long-term means that the impairment has lasted or is likely to last for at least 12 months or for the rest of the affected person's life. Substantial means more than minor or trivial. Normal day-to-day activities of activities that an average person would do on a regular or daily basis such as sleep, walk, talk, write, get washed etc.

Conditions which are specifically protected include:

- Cancer (from the point of diagnosis)
- HIV+ (from the point of diagnosis)
- Multiple Sclerosis (from the point of diagnosis)
- Severe disfigurement
- Certified blind

In most circumstances a person who has had a disability is protected, as well as people who may be receiving treatment which reduced or removed the substantial impact, but if that treatment stopped the effect would become substantial.

Conditions which are specifically excluded include:

- Visual impairments corrected by glasses
- Addiction to nicotine, alcohol or other substances
- Tendency to set fires, steal, physical or sexual abuse
- Exhibitionism
- Voyeurism
- Tattoos and non medical piercings

Gender Reassignment

Gender reassignment is defined as people who are proposing to undergo, are undergoing, or have undergone a process (or part of a process) to reassign their sex by changing physiological

or other attributes of sex such as name and appearance. The legal end point of this process is when a person acquires a Gender Recognition Certificate which legally changes all records of their birth gender, though this is not a requirement. A Transsexual person is someone with the protected characteristic of gender reassignment.

Within a work context unlawful treatment against a transsexual person includes discrimination because of:

- Absence from work due to sickness or injury related to gender reassignment
- Absence from work for another reason due to gender reassignment

Marriage & Civil Partnership

A person who is married or in a civil partnership has the protected characteristic of marriage and civil partnership.

Pregnancy and Maternity

Pregnancy and maternity is defined as:

- a woman who is pregnant,
- and woman who has been pregnant,
- a woman who has given birth within 26 weeks,
- is breastfeeding a child up to 26 weeks of age

The date from which a woman gave birth is defined as:

- The day she gave birth to a live child.
- The day she gave birth to a dead child which occurred more than 24 weeks of the pregnancy period.

The definition and criteria outlined above relate to the provision of goods, services and public functions, the disposal of premises, education and associations.

Within a work context a woman is protected from unlawful discrimination because she:

- is pregnant,
- because of illness which is a result of the pregnancy,
- is on compulsory maternity leave
- is planning to take ordinary or additional maternity leave
- is taking ordinary or additional maternity leave
- has taken ordinary or additional maternity leave

It is unlawful for an employer to subject a woman to unfavourable treatment during the protected period. The protected period starts when a woman becomes pregnant and continues until the end of her maternity leave, or until she returns to work if that is earlier.

Race

The definition of race includes:

- colour,
- nationality and
- ethnic or national origins.

The definition of a race also includes reference to a particular racial group, and a racial group can include more than one distinct racial groups e.g. Black Afro/Caribbean people could include Jamaicans, Cubans, Haitians etc

In specific circumstances caste can be added to the definition of race by the government, but currently this is not applicable.

Nationality (or citizenship) is the specific legal relationship between a person and a state through birth or naturalisation. It is distinct from national origins

Everyone has an ethnic origin but the provisions of the Act only apply where a person belongs to an 'ethnic group' as defined by the courts. This means that the person must belong to an ethnic group which regards itself and is regarded by others as a distinct and separate community because of certain characteristics such as a long shared history and a cultural tradition of its own.

The courts have confirmed that the following are protected ethnic groups:

- Sikhs,
- Jews,
- Romany Gypsies,
- Irish Travellers,
- Scottish Gypsies, and
- Scottish Travellers.

Religion & Belief and Non Belief

The protected characteristic of religion or belief includes any religion and any religious or philosophical belief. It also includes a lack of any such religion or belief.

'Religion' means any religion and includes a lack of religion. The term 'religion' includes the more commonly recognised religions in the UK such as:

- Baha'i faith,
- Buddhism,
- Christianity,
- Hinduism,
- Islam,
- Jainism,
- Judaism,
- Rastafarianism,
- Sikhism and
- Zoroastrianism.

It is for the courts to determine what constitutes a religion. A religion need not be mainstream or well known to gain protection as a religion. However, it must have a clear structure and

belief system. Denominations or sects within religions, such as Methodists within Christianity or Sunnis within Islam, may be considered a religion.

'Religious belief' goes beyond beliefs about and adherence to a religion or its central articles of faith and may vary from person to person within the same religion.

For a philosophical belief to be protected under it must:

- be genuinely held;
- be a belief and not an opinion or viewpoint based on the present state of information available;
- be a belief as to a weighty and substantial aspect of human life and behaviour;
- attain a certain level of cogency, seriousness, cohesion and importance;
- be worthy of respect in a democratic society, not incompatible with human dignity and not conflict with the fundamental rights of others.

Sex

Sex is a protected characteristic and refers to a male or female of any age. In relation to a group of people it refers to either men and/or boys, or women and/or girls.

Sexual Orientation

Sexual orientation is a protected characteristic. It means a person's sexual Orientation (romantic and physical attraction) towards:

- persons of the same sex (that is, the person is a gay man or a lesbian);
- persons of the opposite sex (that is, the person is heterosexual); or
- persons of either sex (that is, the person is bisexual).

Sexual orientation discrimination includes discrimination because someone is of a particular sexual orientation, and it also covers discrimination connected with manifestations of that sexual orientation. This may include someone's appearance, the places they visit or the people they associate with.

APPENDIX B: GLOSSARY OF TERMS

The information contained within this section is for information only and provides an introduction to these terms. Please contact the Diversity & Equality Team for clarification on any particular term or practical implications.

- [Bullying](#)
- [Direct Discrimination](#)
- [Discrimination arising from a Disability](#)
- [Harassment](#)
- [Indirect Discrimination](#)
- [Institutional Discrimination](#)
- [Instructing, causing or inducing discrimination](#)
- [Objective Justification](#)
- [Occupational Requirement](#)
- [Positive Action](#)
- [Protected Characteristic](#)
- [Reasonable Adjustment](#)
- [Victimisation](#)

Bullying

Actions, criticism or personal abuse, either in public or private, that humiliates, denigrates, undermines, intimidates or injures the recipient.

Direct discrimination

Direct discrimination occurs when “a person treats another person less favourably than they treat or would treat another because of a protected characteristic”.

A comparison must be made with how they have treated other people or would have treated other people without that [protected characteristic](#) in similar circumstances. If it is shown that the person has a clear disadvantage then the treatment is likely to be less favourable.

The Comparator must:

- Have no material differences between their circumstances and the person
- The circumstances that lead to the treatment must be the same or similar
- It is not required that both are identical in every way.
- If there is not an actual comparator a hypothetical comparator can be used.

Behaviour that is automatically considered Direct Discrimination includes racial segregation and there is no need for a comparator. Direct discrimination can occur even when the victim and the perpetrator share the same protected characteristic. It does not matter what a person’s motive or intentions are and it does not matter whether the treatment was conscious or unconscious. Less favourable treatment of a person based on stereotypes related in a protected characteristic, whether or not that stereotype is accurate, would also be considered direct discrimination, and unfavourable treatment cannot be based on another criterion which is discriminatory e.g. an external rule by a funding body.

Discrimination that is related to the perception that someone has a protected characteristic and the association with someone with a protected characteristic is also covered by this. Associated discrimination can also include:

- When the person campaigned to help someone with a protected characteristic
- Refused to act in a way that disadvantage someone with a protected characteristic

Direct Discrimination based on Perception and Association does not apply to Marriage & Civil Partnership or Pregnancy & Maternity (this would be covered by sex)

The Equality Act allows for Direct Discrimination in certain circumstances. These are:

- *More favourable treatment of disabled people* – it is not discrimination to treat a non disabled person less favourably than a disabled person (e.g. reasonable adjustments)
- *Age* – If the University can show that there is a 'proportionate means of achieving a legitimate aim' (the objective justification test) then direct discrimination on age can be lawful by applying age based rules and practices.
- *Occupational requirements* – a general exception where it is a genuine requirement for a job for someone to have a particular protected characteristic, for example to be a women, be blind, to be Asian etc.

Discrimination arising from a disability

Discrimination arising from a disability occurs when you treat a disabled person unfavourably because of something connected with their disability and cannot justify such treatment as a proportionate means of achieving a legitimate aim. This is different to direct and indirect discrimination.

Harassment

Harassment is unwanted conduct that may create the effect (intentionally or unintentionally) of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment which interferes with an individual's learning, working or social environment or induces stress, anxiety, fear or sickness on the part of the harassed person.

Unwanted or unwelcome conduct covers a wide range on behaviours and includes spoken or written words of abuse, imagery, graffiti, physical gestures, facial expressions, mimicry, jokes, pranks, acts affecting a person's surroundings etc.

There are three specific types identified within the Equality Act.

1. Harassment related to a [protected characteristic](#)

Examples of harassment include:

- Ageism
- Disability related harassment
- Homophobia
- Racism
- Religious related harassment
- Sexism

- Transphobia

Harassment also includes situation where the victim does not have the protected characteristic but is subject to unlawful behaviour. This includes when:

- The person is associated with someone with a protected characteristic
- The person is wrongly perceived assumed to have a protected characteristic.
- The person is known not to have the protected characteristic but is subjected to harassment related to that protected characteristic
- The unwanted conduct is not directed at a particular person but at another or no one in particular.
- The unwanted conducted is related to their protected characteristic, but not because of their protected characteristic.

2. Sexual Harassment

Sexual harassment occurs when a person engages in unwanted conduct which is of a sexual nature. This can include verbal, non-verbal or physical conduct including unwelcome advances, touching, forms of sexual assault, sexual jokes, displays of pornography, emails of a sexual nature etc.

3. Less favourable treatment for rejecting or submitting to unwanted conduct

The third type of harassment occurs when a person is treated less favourably by the University because they had submitted to, or rejected unwanted conduct of a sexual nature, or unwanted conduct which is related to sex or gender reassignment, and that unwanted conduct violates the persons dignity or created an intimidating environment etc.

For all three types of harassment, if the purpose of subjecting the person to the conduct is to violate their dignity or create an intimidating etc environment then this will be sufficient to establish unlawful harassment.

Regardless of the intention, unwanted conduct will also amount to harassment if it has the effect of creating any of the unlawful circumstances outlined previously.

In deciding whether conduct had had that effect, each of the following must be taken into account:

- *The perception of the person* – that is, did they regard it as violating their dignity etc. This is a subjective question and depends of their opinion.
- *What the other circumstances of the incident are* – circumstances that may be relevant are personal circumstances (health, mental health, culture norms, previous experiences etc), the environment in which the conduct took place, the situation of the incident.
- *Whether it is reasonable for the conduct to have had that effect* – this is an objective test, would a normal person expect the incident to be harassment etc

Indirect discrimination

Indirect discrimination occurs when a provision, criterion or practice is neutral on the face of it, but its impact particularly disadvantages people with a [protected characteristic](#). For Indirect Discrimination to take place, four requirements must be met:

1. The University applies (or would apply) the provision, criterion or practice equally to everyone within the relevant group including a particular person.
2. The provision, criterion or practice puts, or would put, people who share a protected characteristic at a particular disadvantage when compared to people who do not have that characteristic
3. The provision, criterion or practice, puts or would put, the person at that disadvantage; and
4. The University cannot show that the provision, criterion or practice is a proportionate means of achieving a legitimate aim.

If the four criteria above have been met, the next step is to consider a comparison between people with the PC and those without it. As with Direct Discrimination the circumstances of the two must be sufficiently similar for comparison, and there must be no material differences in circumstances.

The intention of the indirect discrimination does not matter; it is still illegal unless it can be objectively justified.

If the University can show that the provision, criterion or practice is a 'proportionate means of achieving a legitimate aim', then this will not amount to discrimination. This is known as the objective justification test.

Generalisation will not be sufficient to provide justification. Deciding if the provision *et al* is a proportionate means of achieving a legitimate aim follows two stages

1. Is the aim of the provision criterion & practice legal and non-discriminatory, and one that represents a real, objective consideration?
2. If the aim is **legitimate**, is the means of achieving it **proportionate** (e.g. appropriate and necessary) in all the circumstances?

Indirect discrimination does not apply to the protected characteristic of pregnancy or maternity.

Institutional discrimination

Institutional discrimination is defined as the collective failure of an organisation to provide a professional and appropriate service to people because of who they are. This is often a result of the policies, procedures and culture of an institution and is often linked to [indirect discrimination](#).

Inducing, instructing or causing discrimination

It is unlawful to instruct someone to discriminate against, harass or victimise another person because of a protected characteristic or to instruct a person to help another person to do an unlawful act. Such an instruction is unlawful even if not acted upon.

An inducement may amount to no more than persuasion and need not involve a benefit or loss. Nor does the inducement have to be applied directly: it may be indirect. It is enough if it is applied in such a way that the other person is likely to come to know about the inducement. This duty exists even where the relationship has ended, for example ex-employees or ex-students.

The Equality Act makes it unlawful to knowingly help someone to discriminate against, harass or victimise another person. Someone who knowingly assists will be considered as carrying out the act themselves.

Objective Justification

To show objective justification, the employer would be required to demonstrate that the requirement adopted:

- corresponded to a real need;
- was appropriate with a view to achieving that need; and
- was necessary to achieve that need.

Occupational Requirement

In certain circumstances it is lawful for an employer to require a job applicant or worker to have a particular protected characteristic, provided certain statutory conditions are met.

The University may apply, in relation to work, a requirement to have a particular protected characteristic if the University can show that having regard to the nature or context of the work:

- The requirement is an occupational requirements
- The application of the requirement is a proportionate means of achieving a legitimate aim
- The applicant or worker does not meet the requirement; or
- Except in the case of sex, the University has reasonable grounds for not being satisfied that the applicant or worker meets the requirements.

The requirement must not be a sham or pretext and there must be a link between the requirement and the job. Examples include Jobs that require someone of a particular sex for reasons of privacy, decency or personal services.

Where the position relates to an organised religion there are allowed exceptions based on sex, transsexuals, marriage and civil partnership and sexual orientation. For the University of Liverpool this is unlikely to occur in most situations.

Positive Action

Positive action is whereby an organisation can implement certain strategies to tackle a particular disadvantage by a particular Protected Characteristic group. This can be taken where it is shown that a particular group:

1. Experience a disadvantage connected to that characteristic; or
2. Have needs that are different from the needs of persons who do not have that protected characteristic; or
3. Have disproportionately low participation in an activity compared to others who do not share that protected characteristic.

This is not positive discrimination (recruiting or admitting someone simply because they are black for example) which is illegal. Treating disabled people more favourable is never illegal. Positive action is optional.

The University may take any action which is proportionate to meet the stated aims. The stated aims are:

- Enabling or encouraging persons who share the PC to overcome or minimise that disadvantage (actions to remedy disadvantage)
- Meeting those needs (actions to meet needs)
- Enabling or encouraging persons who share a PC to participate in that activity (actions to encourage participation in activities)

Actions may be taken when any one or all of these conditions exist. In order to take action the University must reasonably think that one of the above conditions applies. Some indication or evidence will be required to demonstrate this. It does not have to be sophisticated statistical data or research nor does it have to be specific to the University and could involve benchmarking with similar institutions or national data profiles.

The Equality Act does not limit what type of actions can be taken, as long as they satisfy the conditions above and are a **proportionate** way of achieving the aims of overcoming genuine disadvantage.

Proportionate refers to the balancing of competing relevant factors. These will vary depending on the basis for the positive action. Other relevant factors will include the objective of the action, the cost of the action taken, the seriousness of the disadvantage, the impact such action may have on other protected groups. The University needs to consider:

- Is the action an appropriate way to achieve the stated aim?
- If so, is the proposed action reasonably necessary to achieve the aim (in all the circumstances)?
- Would it be possible to achieve the aim as effectively by other actions that are less likely to result in less favourable treatment of others?

Unlimited positive action is not proportionate. Any action will need to be reviewed regularly.

Protected Characteristic

Under the Equality Act 2010, the following [protected characteristics](#) are grounds upon which discrimination is unlawful; age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief (including lack of belief), sex and sexual orientation.

Reasonable adjustment

To avoid as far as possible by reasonable means the disadvantage which a disabled person experiences because of their disability. There is a duty to take anticipatory and continuing positive steps to ensure disabled people can fully participate in the education and other benefits, facilities and services provided by the University. The aim is to avoid substantial disadvantages by making reasonable adjustments to the provision, criterion, practice or physical features; and to provide auxiliary aids.

Discrimination occurs when the University fails to comply with the duty to make reasonable adjustments in relation to disabled people.

A substantial disadvantage is one that is more than minor or trivial and whether a disadvantage exists is a question of fact and is assessed using an objective basis. The comparison for reasonable adjustments is between the disabled person and non disabled people. There is no right to find a similar comparator with the same circumstances.

The duty only applies where the University knows or is likely to know that a person is disabled, but it must take all necessary steps to find out if a person is disabled. A failure to take reasonable steps to find out will not be a defence.

What steps are reasonable depends on the circumstances of the individual situation in question. There is no onus on the disabled person to suggest what the adjustments should be. If an adjustment increases risk to health and safety of any person this would be a relevant factor in deciding what is reasonable.

Some factors that may need to be considered are:

- The effectiveness of any particular adjustments
- The practicality of the adjustments
- The costs of the adjustments (financial or otherwise such as disruption)
- The extent of the available resources to carry out the adjustments
- The type and size of the organisation

The University cannot justify a failure to make reasonable adjustments, only to state that such adjustments were 'unreasonable'.

Victimisation

The person does not have to have a particular protected characteristic in order to be protected against victimisation, but the victimisation must be linked to a protected characteristic. People are protected if they:

- Bring proceedings under the Act (a complaint about discrimination)
- Give evidence or information in connection with proceedings brought under the Act;
- Do anything which is related to the provisions of the Act
- Make an allegation (whether or not express) that another person has done something in breach of the Act.

Detriment in the context of victimisation generally means anything which the individual might reasonably consider changes their position for the worse or puts them at a disadvantage. This could include rejected for promotion, denied an opportunity, excluded from opportunities, overlooked etc. Victimisation does not require a comparator.

APPENDIX C: LEGISLATIVE FRAMEWORK

On the 1st October 2010 the [Equality Act 2010](#) came into force and replaced the pre-existing equality law, which were repealed. The main acts being the:

- Equal Pay Act 1970
- Sex Discrimination Acts 1975, 1986
- Race Relations Act 1976 (amended 2000)
- Disability Discrimination Act 1995 (amended 2001, 2005)
- The Employment Equality (Religion and Belief) Regulations 2003
- The Employment Equality (Sexual Orientation) Regulations 2003
- Employment Equality (Age) Regulations 2006
- Equality Act 2006 (*only sections were repealed*)

The Equality Act 2010 streamlined equality law to provide standard definitions and remove duplication. It also strengthened equality protected across the defined protected characteristics.

The Equality Act is structured into sections which outline prohibited behaviour including in the areas of the provision of goods and services and public functions, employment, education, disposal of housing and public transportation.

Other legislation that relates to the rights of staff and students include:

- Rehabilitation of Offenders Act 1974 as amended
- Criminal Justice Public Order Act 1986 amended 1995
- Employment Rights Act 1996
- Protection from Harassment Act 1997
- Public Interest Disclosure Act 1998
- The Human Rights Act 1998
- Maternity and Parental Leave etc. Regulations 1999
- Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000
- Employment Act 2002 including Fixed Term Workers (Prevention of Less Favourable Treatment) Regulations
- Civil Partnership Act 2004
- Gender Recognition Act 2004
- The Racial and Religious Hatred Act 2005

APPENDIX D: EQUALITY POLICY FRAMEWORK

The Diversity & Equality of Opportunity Policy provides an overarching framework for the University's approach to equality. Supporting this policy is a number of additional Policies, Statements and Action Plans. These are:

- Dignity at Work & Study Policy
- Equality Framework
- Maternity Leave Policy
- Paternity Leave Policy
- Adoption Leave Policy
- Parental leave Policy
- Compassionate, Domestic and Personal Leave Policy
- Athena SWAN Action Plan

Other University Documents

- Student Charter
- Student Complaints Procedure
- Student Discipline Procedure
- Staff Grievance Procedure
- Staff Disciplinary Procedure
- Code of Practice on Freedom of Speech
- Professional Development and Review Procedure
- Annual Review Procedure