

# **Diversity in the workplace**

## **Section 1: What is diversity?**

Welcome to this course on Diversity in the workplace. By completing this course, you can expect to;

- gain an understanding of the broader equality and diversity issues
- become familiar with equality's legislation
- know your rights and responsibilities as a member of staff and be able to explain the negative effects of discrimination.

On many pages, there are links to further information.

### **What is Diversity?**

Diversity involves acknowledging and valuing the individual differences in personal attributes, skills, and contributions of everyone within and outside the University.

It's also about respecting these differences and being able to connect with colleagues and students regardless of their personal characteristics. It is not about treating people the same; instead, it is about recognising that everyone has different needs that may have to be met in different ways.

So, this course will illustrate the benefits of appreciating diversity while showing how individuals – and the University– can be negatively affected by discrimination.

## **Why Diversity matters**

“Society – and our workplace – are diverse, and we cannot (and should not) avoid that.”

It sometimes takes us out of our comfort zones, but everyone benefits from contact with people with different experiences and backgrounds. The University values diversity and appreciates that people perform best when they are free to be themselves, and when their differences are respected, valued and celebrated.

## **Why are equality and diversity important?**

Equality and diversity are important to the University as:

- We want our staff to reflect our diverse society and understand and respect differences
- We want to create an inclusive environment where all our students and staff feel their contribution is valued
- Staff and students will increasingly judge the University on its commitment to equality and diversity
- The University is regarded as an employer of choice
- We need staff working at their full potential

## **What are the benefits of embracing diversity?**

Discrimination doesn't just impact 'minority' groups but affects anyone who is treated differently because of actual or perceived personal characteristics. It can also apply if a different treatment is applied due to an association with someone else's personal characteristics – e.g. disability. Where discrimination is present, the environment is uncomfortable for everyone. So it's important to realise how our personal values and prejudices affect our behaviour, and the impact this can have on other people.

Students are also protected by discrimination legislation, so staff should consider how their behaviour may be interpreted by everyone they come into contact with, not just by colleagues.

Embracing diversity can drive positive change for both an organisation, and the people within it – for example, staff from different cultures bring fresh perspectives. Our staff will identify strongly with the University as an employer if they feel they are recognised and their contribution is valued.

Furthermore, if you are not seen as someone that can form or work within a diverse team, your career may be hindered.

## **What can happen if we don't think about this?**

The legal issues in this area are increasingly complex and far-reaching, with legislation extending beyond the traditional boundaries of sex, race and disability discrimination. So staff need to be aware of their legal responsibilities, both for themselves and the University. Victims of discrimination may raise legal claims, and in cases where Employment Tribunal action is taken, financial penalties may be levied against both organisations and individuals. There is a monetary cap for unfair dismissal, but no limit for discrimination payouts.

There are also human costs for the person taking the case and the prospect of negative publicity for the University.

## **Types of discrimination**

Under the UK law discrimination is defined in four different ways, all of which are unlawful in the workplace, in education, and the provision of goods, facilities and services.

### **What is 'direct discrimination'?**

Direct discrimination occurs where a person is treated less favourably than another in similar circumstances because of a protected characteristic. The Equality Act 2010 introduced the term 'protected characteristics' to refer to groups that are protected under the Act. These are Age, Disability, Gender Reassignment, Marriage and Civil Partnership, Pregnancy and Maternity, Race, Religion and Belief, Sex, and Sexual Orientation.

An employer cannot argue that it was not their intention to discriminate, as the law only considers the end result. Data Protection legislation now makes it possible for job candidates to see interview notes, making it easier to produce evidence for some discrimination claims.

A person can also be a victim of direct discrimination because of their association with a person who has a protected characteristic, or because they are wrongly perceived to have one, or are treated as if they do. E.g. a straight person is treated less favourably because they are assumed to be gay.

### **What is 'indirect discrimination'?**

Indirect discrimination is where an employer implements a policy or practice which applies to everyone, but which puts members of a group sharing a protected characteristic at a particular disadvantage. This is often a less obvious form of discrimination than direct discrimination.

For example, Jude is a student with Chronic Fatigue Syndrome. As part of his Chemical Engineering course, it is a requirement that he undertakes practical laboratory sessions. The Laboratory is, however, located on the 3rd floor in an old University building, and it does not have lifts. He raises the issue with the University to see if they can move the class to an alternative accessible location but is advised that there is nothing they can do. Jude seeks advice and notifies the University that he feels he has been discriminated against on the grounds of his disability.

## **What is 'harassment'?**

Harassment is 'unwanted conduct' (from the perspective of the complainant) which has the purpose or effect of violating the complainant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

Harassment related to any of the protected characteristics (with the exception of marriage and civil partnership, and pregnancy and maternity) is unlawful. The provisions on harassment do not apply to the protected characteristics of pregnancy and maternity and marriage and civil partnerships. However, someone subject to harassment related to these protected characteristics may be able to bring a claim of harassment related to sex and/or sexual orientation.

Harassment may be verbal, non-verbal or physical, and can include comments and jokes, as well as other behaviours that create a stressful working environment, even when it is not directed specifically at the complainant. Such behaviour can be persistent or can consist of an isolated incident.

The Act also introduced what is called 'Third Party Harassment' which make employers liable for their staff being harassed by people not employed by them.

## **What is 'victimisation'?**

Victimisation involves penalising someone for exercising their rights under equality legislation, or for making an internal complaint, or for supporting someone else in doing so. For example, this could cover bringing a complaint on behalf of another employee who has brought proceedings for discrimination.

Concerns that they will be penalised in some way can deter employees from challenging discrimination or taking cases to Employment Tribunals. Understanding that victimisation in itself can be unlawful may give them the confidence to pursue legitimate cases.

## **Acceptable or not?**

A job advertisement imposes an age restriction yet calls for a certain number of years' experience. Is that okay?

This is an example of what is called 'indirect' sex discrimination, as it precludes a larger number of women from applying for the job than men because a larger proportion of women take a career break when raising a family.

As it is a provision or criterion that can be met more easily by one group (males) over the other (females), it, therefore, discriminates indirectly.

## **Section 2: Bias and Behaviours**

### **Donna's promotion**

What is bias? What are its consequences? And how can we recognise – and overcome it? This Section covers the key issues.

Donna joined the University 12 months ago and wants to go for promotion. She has demonstrated that she has potential, but her manager says: "I don't think you are ready yet, you've only been here for a year".

Most of us think we treat people fairly. But the truthful answer to: 'Are you biased?' is 'yes'. We know it's wrong to 'judge a book by its cover'. Yet we do this most of the time. We all have biases, and these can affect our ability to make good decisions. So, it's important to identify them and put them aside to support the development of all staff. And we shouldn't let irrelevant factors like age, race, disability or even size affect our judgement.

### **Recognising bias**

**"THE FIRST STEP TO OVERCOMING THE INFLUENCE OF BIAS IS TO RECOGNISE THAT IT EXISTS."**

We all make split-second decisions based on what people look like, and our own beliefs and feelings about certain groups as a result of influences throughout our lives. For example, in many cultures, 'tall' is equated with 'powerful' - and research shows that tall people are often favoured for promotion.

Research by leading academic institutions (including Harvard, Yale, MIT, Columbia, Stanford, and organisations like McKinsey - see McKinsey Quarterly, 2010) demonstrates that unconscious bias and subconscious processes have a significant effect on our everyday decision-making abilities in the workplace.

Indeed, in 1995, Dr Anthony Greenwald and Mahzarin Banji both theorized that it was possible that our social behaviour was not completely under our conscious control.

As with our in-built 'fight or flight instinct', bias helps us to detect danger, make decisions quickly and follow our 'gut reactions'. So, every day, even the most aware, fair and objective people group others into categories based on social characteristics in order to make sense of the world

## **Consequences of bias**

The following are all potential consequences of bias in the workplace; Morale is undermined, employers miss out on talent, creativity is limited, students go elsewhere, productivity is damaged, and staff complain. Workplace decisions based on bias (whether conscious or unconscious) are not rational or robust. And however, you personally weight the consequences – they are very serious.

Exploring and learning a little about our own bias helps us to understand how and why we interact with people the way we do. Are your behaviours and decisions dictated by bias? Do they provide subtle indicators of your personal beliefs and prejudices? Will those small bias-based actions and comments become perceptible to your colleagues, and in interactions with your business partners?

Becoming more aware of how our brains are wired can help us understand that ‘trusting our instincts’ can lead to poor decision-making. Once we acknowledge our bias, we can actively work to create an environment where diversity matters and where equality is taken seriously. We can consciously focus on being fair, make better business decisions and ensure that the University is a great place to work.

## **Stereotyping & prejudice**

Discrimination is not always intentional. Many people who discriminate would not consider their views and subsequent behaviour to be discriminatory. From an early age, we learn attitudes and beliefs and these form over a long period of time, sometimes from stereotypical views. Within the area of diversity and equal opportunities, beliefs and attitudes that we might consider to be 'common sense' can become unlawful discrimination to others.

### **What is stereotyping?**

Stereotyping involves identifying features that a group is supposed to have, making these features the dominant characteristic of the group, and suggesting that all members possess such features (e.g. ‘students can’t get out of bed in the morning’).

The particular danger with stereotyping is that it can become a socially sanctioned attitude. This can be seen in the way that certain newspapers portray asylum seekers.

To combat stereotypes, we should seek out relevant information to make a fair and unbiased decision, and never assume. In considering diversity, we must look at the individual and not the stereotype.

## What is prejudice?

Prejudice is an opinion or attitude formed beforehand without sufficient information or from misinformation, that unfavourably affects our thinking about a person or group of people - we feel 'less positive' about them. Discrimination can result where prejudice plus an unfavourable action occur together.

## How can prejudice be displayed?

Prejudice can be displayed through extreme negative behaviour such as hate crime but is also present in everyday actions such as humour, or attitudes such as pity. Justifications for prejudice can also be contradictory.

For example, research on prejudice conducted by Stonewall found that asylum seekers were commonly simultaneously described as stealing jobs and as not wanting to work.

## Bullying

Bullying is unacceptable in work environments and has no place at the University, where there is an expectation that everyone will be treated with dignity and respect.

Bullying is: 'coercion or intimidation, which serves to undermine the competence, effectiveness, confidence and integrity of another. The abuse of power, position or knowledge by one person to criticise or humiliate another, can cause the individual being bullied to feel vulnerable, humiliated and lacking in confidence.'

Bullying may be carried out by an individual against an individual (perhaps, but not always, by someone in a position of authority such as a manager or supervisor) or involve groups of people. It may be obvious, or it may be insidious. Whatever form it takes, it is unwarranted and unwelcome to the individual.

Bullying is not necessarily a face-to-face issue. It may also occur in written or electronic communications, by phone, or through imagery (for example, posters or drawings). Examples include:

- Instantaneous rages, often over trivial matters
- Personal insults and name-calling
- Persistent unwarranted criticism
- Public humiliation
- Cyberbullying (e.g., inappropriate use of texts or posting images online)
- Ignoring or excluding individuals
- Shouting at others in public and/or private



Bullying is often clear-cut, but sometimes people are unsure whether or not the way they are being treated is acceptable. If this applies to you, there are a number of things to consider:

- Has there been a change of management or organisational style to which you need time to adjust – perhaps a new manager or work requirements?
- Why not look at the Dignity at Work and Study Policy?
- Can you discuss your worries with your HR manager, your line manager/supervisor, union representative or colleagues, to see if they share your concerns?
- Can you agree changes to workload or ways of working or other aspects of your professional relationship that will clarify expectations and boundaries between you and the other person?

If you are sure you are being bullied, please speak to someone with whom you feel comfortable discussing the problem. This maybe your manager, or someone in HR. This way, appropriate steps can be taken to help you resolve the issues you are experiencing.

## **Challenging unacceptable behaviour**

You may be able to identify someone who behaves in a discriminatory manner or know an individual who is the victim of this treatment. The effects of this behaviour are very serious – so it's vital to understand what to do about it if it impacts you, or someone around you.

## **TAKE RESPONSIBILITY**

Unacceptable behaviour should be challenged at an early stage. Condoning it - by not challenging it - results in it becoming integrated within an organisation's culture. It is certainly not just the responsibility of the person who is directly affected.

If you witness inappropriate behaviour towards a colleague, it's important not to pass this off as someone else's responsibility: 'bystanders' can play an important part by supporting their colleagues, which can give the person confidence to take control and confront the situation.

However, it's a good idea to talk to the 'victim' before taking action yourself, to avoid unintended consequences.

## **INFORMAL APPROACH?**

In cases of discrimination and harassment, informal approaches can be very effective. The 'victim' informs the perpetrator of the effect of their actions and requests that the behaviour stops. This can be done face-to-face, in writing, or via an intermediary.

But this can be difficult in practice, especially if the person on the receiving end of the behaviour feels threatened or isolated. If this is the case, or if the behaviour is serious, a formal approach (e.g. to a manager/HR) may be more appropriate.

## **MANAGERIAL RESPONSIBILITIES**

Managers have a responsibility to take action if they are aware of tensions within their team, and the University expects them not to 'sweep issues under the carpet' or trivialise such situations. If managers are aware of inappropriate behaviour in their team, the University expects them to take swift action to resolve the situation. The sensitivity of approach and confidentiality are important, and managers will normally want to talk to all 'parties' to hear different perspectives.

## **WIDER ISSUES**

Those facing discrimination covered by legislation can make an application to an employment tribunal. This can be traumatic. It is more beneficial for all concerned if issues can be resolved at a local level within an inclusive environment.

The University aims to create an environment where someone can comfortably express their opinion on any remarks or behaviour they find unacceptable, and their colleagues make reasonable adjustments without any ill-feeling.

The University is committed to eliminating all types of unjustifiable discrimination through the implementation of its Equality and Diversity Policies, Schemes and Action Plans.

## Section 3: Equality and Legislation

Diversity and inclusion isn't just the right thing to do. In the UK, it's also a legal requirement, that higher education institutions and all of their staff must strive to meet. The Equality Act, plus the supporting legislation such as the Public Sector Equality Duty are there to protect everyone from unlawful discrimination. So, make sure you are familiar with the key requirements and understand the associated potential risks to university finances, our reputation, and staff engagement.

### The Equality Act 2010

The Equality Act 2010 is the key piece of equality legislation. In this Section, we will work through several scenarios covering the 'equality groups' protected by the UK Equality Act.

The Act brings together all previous equality law and expands some aspects. This legislation applies to both individual employees and the University. It covers what are called protected characteristics.

Also, the Public Sector Equality Duty requires all public authorities to take active steps to promote equality in everything they do. So, where the University does business with the public sector, we can expect to be asked to demonstrate our commitment to equality, and for information about our diversity 'credentials'.

### Age

Barry, a porter, is older than many of his co-workers, who often make jokes about him being 'past it' and 'clapped out'. His approach so far has been to 'grin and bear it', but for his 50th birthday, he gets a card from his colleagues addressed to 'an old fart.' Barry decides he's had enough and makes a complaint.

Barry's colleagues' comments could be defined as harassment if Barry finds them offensive or humiliating, and his workmates are certainly being ageist.

### Age discrimination

Age discrimination is covered by the Equality Act 2010 and is prohibited in many situations - but not all.

### WHAT IS PROHIBITED?

Age discrimination is prohibited under the Equality Act 2010 in employment and vocational training, which includes all programmes of study in further, higher and tertiary education.

The ban on age discrimination in the provision of goods and services came into force in 2012. However, there are several key exceptions where it will remain lawful to treat people differently on the basis of age, if:

- the circumstances fall under one of the exceptions to the Equality Act that allow organisations to provide different treatment in employment or services, based on age

- a service provider is making age-related concessions and benefits (e.g. a cinema can offer over-60s cheap tickets)
- the financial services sector (e.g. banks, building societies, insurers) uses age limits to decide what services to offer (e.g. banks offer 'silver saver' accounts for customers over 60). However, if they are using age to assess risk - e.g. only providing car insurance up to age 75 - they would need up-to-date, reliable evidence that older drivers are higher-risk

## **JUSTIFICATION**

Legally, the test for many potential cases of age discrimination is whether the discrimination can be said to be 'objectively justified'. Unlike other types of discrimination, justification can be used lawfully as a defence for direct age discrimination, as well as for indirect age discrimination.

However, employers do not have to justify differences in pay and benefits that have arisen from service of up to five years, and awards on the basis of five years or more service can be made if an employer reasonably believes that this meets a business need (for example encouraging loyalty or motivation).

## **RETIREMENT AGE**

The Government (through the Employment Equality Repeal of Retirement Age Provisions Regulation, 2011) began phasing out the DRA from 6 April 2011, with new legislation stopping employers from enforcing the previous retirement age of 65.

This means that employers can no longer issue a six-month notification of compulsory retirement. If employers still want to enforce the retirement of their staff, they now have to provide objectively justifiable reasons.

The best practice approach to retirement includes creating a workplace culture where senior employees choose to approach an employer to discuss retirement, and/or employers introducing a range of flexible working options that allow senior staff continuous working opportunities - should they choose to.

The main idea behind the abolishment of the DRA is to allow people the opportunity to work as long as they want to.

## **Ageism**

Ageism is often based on stereotypical views of older – and younger – people.

## **The Employers Forum on Age**

The Employers Forum on Age (EFA) offers this thought-provoking comment: "One of the reasons sexism and racism are taking so long to overcome is that many people have not personally suffered from sex or race discrimination. Everyone has an age, however."

The EFA predicts that the number of age discrimination claims will quickly overtake other discrimination claims, going by the overseas experience. Compensation for a successful claim is unlimited, so there are significant risks to getting it wrong.

### **Employment Tribunal example**

A former NHS manager who was discriminated against because of her age was awarded £39,000 damages. Linda Sturdy claimed that she was passed over for a job running breast screening services by her NHS Trust employer and that after having been told she was in line for the key position, it was then offered to a younger and less experienced colleague.

An Employment Tribunal ruled that she was turned down because she was nearing retirement age after it heard that a recruiting manager told Ms Sturdy that he didn't realise she was 'so old'.

### **Assumptions, stereotypes, prejudices and myths**

Ageism tends to occur when assumptions about people's ability and competence are made based on their age.

Ageist behaviour is often based on stereotypes, prejudices and myths, which can be positive as well as negative. For instance, "older workers are more loyal", "younger workers have more drive and energy".

### **Hard to recognise**

Because ageism is so deeply engrained in society, it can be harder to recognise than other forms of unfair discrimination. People are generally much more comfortable discussing and justifying, age stereotypes than stereotypes on other equality grounds.

What may seem like a meaningless remark to one person may be offensive to another. As a start, try translating a remark about someone's age into a similar remark about their race, gender, disability or some other personal characteristic. If it 'feels wrong', then it probably is.

### **Challenging behaviour**

You may need to challenge your own behaviour or behaviour of others. For example, do you know whether work colleagues appreciate being the butt of age-related jokes or comments? Do you know how they feel? These examples may be fairly innocent, but combined with other factors could lead to a claim of age discrimination.

## Disabilities

Rachel and Sarah are lecturers who are discussing the needs of Samhita, a new student who is blind.

It is very important not to make assumptions about the support that disabled staff or students require. Common stereotypes can negatively focus on disability rather than ability or underpin patronising attitudes towards disabled people by portraying them as needing pity or sympathy.

## Disability

The Equality Act 2010 makes it unlawful to discriminate against disabled people.

The legal definition of disability is: 'A physical or mental impairment which has a substantial and long-term adverse effect on a person's ability to carry out normal day-to-day activities.'

Disability does not just mean impaired mobility or sensory reduction, but can also mean conditions such as diabetes, cancer, lupus syndrome and conditions related to mental health, learning disabilities, and hidden disabilities. Long-term means lasting longer than 12 months, or for the rest of your life if this is expected to be shorter than 12 months.

- Discrimination arising from a disability is also unlawful under the Equality Act. This is where a disabled person is treated unfavourably not because they have a disability (which would be direct discrimination) but because of something that is connected with their disability, and the treatment cannot be justified.
- If an employee with dyslexia produces work with poor spelling and is consequently challenged on capability grounds, this could be unlawful because they are being treated unfavourably because of something connected with their disability.
- A student example would be where a learner with autism speaks out of turn during classes, which creates disruption, and because of this behaviour, the student is asked not to attend some sessions. This is likely to be discrimination arising from a disability if the student's behaviour is linked to his or her disability

Consult the following website for additional disability information:

[Disability Unit](#): The Disability Unit of the UK government.

## **Disability – reasonable adjustments**

In many circumstances, 'reasonable adjustments' are required under the Equality Act.

### **What are reasonable adjustments?**

As well as prohibiting disability discrimination, the Equality Act also says that failure to make 'reasonable adjustments' is unlawful. This is one of the key principles underpinning disability legislation, and the provisions do not apply to the other equality strands – they are unique to disability.

Reasonable adjustments aim to remove the disadvantage that a disabled person experiences because of their disability. The law says that this may involve changes to provisions, criteria or practices or physical features, or it could mean the provision of auxiliary aids.

### **What are examples of reasonable adjustments?**

Examples of reasonable adjustments for students might include:

- Flexibility about course requirements and deadlines, while maintaining academic standards
- A book fetch service in the library
- Special exam arrangements including the provision of question papers in alternative formats

### **Do education providers need to plan ahead?**

For students, the duty to make reasonable adjustments is anticipatory, which means that education providers must expect and plan for disabled students participating in all University activities.

Employers must make reasonable adjustments to working conditions or the workplace that would help accommodate a particular disabled person.

Examples of reasonable workplace adjustments could include providing equipment, reallocating duties within a team or allowing flexibility on work start times if this is helpful to the disabled member of staff.

### **Should people with disabilities be consulted?**

It is inappropriate to assume that a person with a disability may not be able to achieve the same performance as a non-disabled person.

Case law has shown that the individual should be asked what reasonable adjustments can be made in order for them to be able to meet the requirements of a job or course.

## Gender reassignment 1

Shaun is a tutor who has become aware that a mature student, Robert, is planning to undergo gender reassignment, and will start to live as a woman. Robert has signalled that he would like to discuss his situation with Shaun, but Shaun is unsure how to proceed. What may he need to talk about with Robert?

Whether it is appropriate for him to remain at the University as his life will change completely? There is no reason why someone who undergoes gender reassignment will not be a good student or employee afterwards – so there is no question that Robert should leave the University.

How to keep changes in his private life confidential? Confidentiality is important and protected in law for gender reassignment. Clear guidance should be available and reassurance, given that nothing would be disclosed without consent.

What the process will involve, the time frame for any key changes, and how the University can best support Robert? An individual plan should be discussed to ensure that an individual suffers no disadvantage, understands the process and has support in place.

Any concerns about harassment? Reassurance should be given that any harassment will not be tolerated and university procedures will be followed to deal with it.

## Drivers for change

The Gender Recognition Act 2004 allows trans people who have lived in their acquired gender for at least two years to apply for a Gender Recognition Certificate. Provided that they meet certain requirements, they are then able to change the sex originally recorded at birth. This means that they can marry in their new gender or form a civil partnership with someone of the same sex (or marry them, as covered by the Civil Partnership Act). The Public Sector Equality Duty ensures that public authorities in the exercise of their functions must have due regard to the need to:

1. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
2. Advance equality of opportunity between people who share a protected characteristic and those who do not
3. Foster good relations between people who share a protected characteristic and those who do not

The three duties related to the PSED are often called the 'three aims' or 'three arms' of the equality duty. These further explain that advancing equality of opportunity involves the following key things:

- Removing or minimising disadvantages suffered by people due to their protected characteristics
- Taking steps to meet the needs of people from protected groups where these are different from the needs of other people
- Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low



With regard to the legal framework, the Equality Act lists gender reassignment as a protected characteristic and therefore provides protection from discrimination, harassment and victimisation for transgender people.

For the purposes of the Act, a transgender person is someone who proposes to, starts, or has completed a process to change his or her gender. The person does not have to be under medical supervision to be legally protected.

More widely, 'transgender' is an inclusive, umbrella term used to describe the diversity of gender identity and expression. The term can be used to describe all people who do not conform to common ideas of gender roles. 'Trans' is an inclusive term for those who identify themselves as transgender. It can be used to refer to:

- People undergoing, or who have undergone gender transition (e.g. the process of transitioning from one gender to another)
- People who identify as someone with a different gender from that in which they were born, but who have decided not to undergo medical treatment
- People who choose to dress in the clothing typically worn by the other sex

Gender identity is different from sexual orientation, and trans people (like any other people) can be gay, lesbian, bisexual or heterosexual. There are currently estimated to be 300,000-500,000 trans people in the UK. Not all of these will transition, but in future 50,000-90,000 are expected to present themselves for medical assistance.

- The Equality Challenge Unit has produced a helpful [glossary of terms](#) associated with trans issues. Further information is also available from lobbying group [Press For Change](#)

### **Gender reassignment 3**

There is no reason why someone who undergoes gender reassignment, and who has been a good employee or student before the transition, will not continue to be a good (and perhaps better) employee or student afterwards.

### **How can trans staff be supported?**

For employees, the organisation may have made a substantial investment in the form of training and job experience; hence it is desirable to manage the person's transition so as to preserve good working relationships and continue to benefit from their work.

It is especially important to support trans people by fully respecting and recognising their acquired gender and ensuring that they are not victimised or harassed in any way.

## **What are the experiences of trans people in Education?**

A Stonewall [survey](#) in 2018 explored the experiences of trans staff and students in higher education, and found that there are still high levels of discrimination and prejudice on campus: 36% of trans students surveyed experienced negative comments or conduct from university staff, and 60% have experienced this from fellow students.

In addition, 39% of trans students interviewed would not feel confident reporting transphobic bullying. The survey also highlighted the importance of trans students being in an environment that allowed them to feel comfortable with their gender identity.

## **What particular challenges do trans staff face?**

Trans staff often face particular challenges with changing personal details on institutional records; being asked not to use toilets or changing facilities that are appropriate for their preferred/correct gender; and misunderstandings of the duties imposed on Universities by the presentation of a Gender Recognition Certificate. [Click here](#) to learn about the experiences of transgender academic Stephen Whittle.

## **What kinds of issues have to be handled?**

Although it is a relatively rare occurrence, should a member of staff or a student undergo gender reassignment, there are likely to be complex issues for the University to handle.

Concern often focuses on controversial or high profile aspects such as the use of toilet facilities, but there are several areas in which those supporting a student or member of staff in this position will need to take a sensitive and strategic approach to enable the transition to proceed as smoothly as possible for all concerned.

## **What should discussions cover?**

Discussions with the trans student or member of staff should cover the following issues:

- Assurances from the University regarding confidentiality
- The agreed timeline for transition, which takes account of the implications of possible surgery, and the potential need to defer studies
- Options for informing colleagues or peers and any other people in the University who need to know about the transition
- Plans to develop the awareness of trans issues among immediate colleagues or more widely
- Amending records and systems as necessary

## **Marriage and civil partnership**

Under the Equality Act 2010, marriage and civil partnership is a 'protected characteristic', so it is unlawful to discriminate directly or indirectly against someone because they are married or in a civil partnership.

### **EQUALITY ACT 2010: EXAMPLE**

- For example, it would be unlawful to have a policy of not employing married women or to refuse someone an overseas posting because they are married and would take their family abroad with them if this involved treating them less favourably than someone who was not married.
- People who are neither married nor in a civil partnership (though they might be co-habiting) are not covered under the 'protected characteristic' of 'marriage or civil partnership'. However, the Equality Act protects them under 'sex' and/or 'sexual orientation'.

### **CIVIL PARTNERSHIP ACT 2004**

The Civil Partnership Act 2004 enables same-sex couples to obtain legal recognition of their relationship, and 'civil partners' have equal treatment to married couples in terms of both rights and responsibilities, including:

- Tax (including inheritance tax)
- Employment benefits
- Most state and occupational pension benefits
- The duty to provide maintenance for civil partners and children

Care must be taken to ensure that workplace policies do not discriminate against same-sex couples in terms of entitlements or benefits, compared with married or heterosexual couples (for example, leave policies or policies that offer 'perks' to partners or family members).

### **Zohra's wedding**

Zohra is an efficient, well-respected and popular 30- year-old administrator who has just got married. It is generally known at work that she is keen to have children.

A promotion opportunity comes up within her current team. Zohra applies and is shortlisted. She is then interviewed by a panel that includes the head of the team - but she does not get the job. She asks for feedback and is told that she was not as enthusiastic about the role of the successful candidate, who is an older, divorced woman.

Although we can't be sure how Zohra performed at interview, it is possible that some element of marriage discrimination (either intentional or unintentional) crept in here in

relation to the selection decision.

It is important that selection panels do not fall into the trap of assuming that recently-married women will soon become pregnant, that they will be the key carer for their child, that they will be unreliable because they have family responsibilities, and that they will be less committed to their career. The best selection decisions are made objectively on the basis of matching candidates' skills, experience and qualifications to the job criteria.

## **Pregnancy and maternity**

Pregnancy and maternity are one of the protected characteristics under the Equality Act 2010, separate from the protected characteristic of 'sex'.

## **UNFAVOURABLE TREATMENT**

Direct discrimination during pregnancy and statutory maternity leave is unlawful, and the woman does not need to demonstrate that she has been treated less favourably in comparison with someone who is not pregnant - only that she has been treated 'unfavourably' because she is pregnant or on maternity leave.

## **WHO IS COVERED?**

The legislation covers women in the workplace, but also students who are pregnant or who have just had a child. It means that education providers are unable to refuse an applicant entry to a course because they are pregnant or ask that they leave a course because they become pregnant.

They will also need to ensure that arrangements do not mean that a woman is treated less favourably because she is breastfeeding. Universities should not penalise students who miss examinations or course work deadlines because of pregnancy and maternity (including pregnancy-related illness or appointments).

## **SCALE OF THE PROBLEM**

The Fawcett Society estimates that 30,000 women every year lose their jobs as a result of becoming pregnant, and many more face disadvantage and reduced opportunities in the workplace.

## **Lorna's pregnancy**

Lorna's manager was supportive throughout her pregnancy. However, during this time, she had two periods of absence from work due to back problems. This tipped Lorna over the 'trigger' number of sickness absence days, and she was given a warning in line with the University sickness absence procedure.

When she returned to work, Lorna's manager explained that duties had been reallocated across the team so she could focus on being a mother – and some of her previous tasks had been given to a new staff member. On what grounds do you think she could claim

pregnancy-related discrimination?

- Her pregnancy-related illness was potentially taken into account as part of normal sickness absence
- Lorna's manager made changes to her work responsibilities while she was on maternity leave
- Lorna's manager did not consult her about the changes

Lorna could potentially claim pregnancy-related discrimination based on all of these issues. If her back pain and absence was associated with her pregnancy, it should not have been taken into account as part of normal sickness absence.

Also, irrespective of the good intentions, it was discriminatory to assume that Lorna's work will become less important to her now that she has a baby, and she should not have been given less responsible work as a result. Women on maternity leave must always be consulted about changes to their work.

## **Race**

The Equality Act 2010 makes it unlawful to discriminate on the grounds of colour, race, nationality (including citizenship) or ethnic or national origins, in the areas of employment, education, and the provision of services. Under the legislation, discriminatory acts can include:

- Refusing to acknowledge the validity of a national's qualifications because they were achieved in their home country
- Refusing to provide a service to someone because of their colour
- Not employing a person on racial grounds because they would not 'fit in'
- In employment, demanding language skills which are not required as part of a job
- Refusing to consider an overseas student for work because they do not currently have a national insurance number

The key types of discrimination (direct, indirect, and discrimination by perception or association, plus harassment and victimisation) apply under this legislation. In certain circumstances, the Genuine Occupational Requirement provisions may apply.

## **Nwadike's lunch**

Nwadike, an overseas student, is ordering lunch in a canteen on campus. When he asks for his food, he just tells the catering assistant to 'give me some chips', and does not say 'please' or 'thank you'. She is very offended and refuses to serve him. What's your opinion of the situation?

These views of the situation could all potentially be valid. Which seems most accurate to you?

- The assistant is right to take offence and to refuse to serve Nwadike
- Nwadike may sound rude – but he comes from a different culture
- The assistant's reaction is influenced by negative racial or cultural stereotypes
- Nwadike is being rude and disrespectful because in his culture the catering assistant's job is not seen as important

This is a complicated situation, and it is all too easy to make assumptions based on preconceptions. The only safe things to say here are that Nwadike may sound rude to the assistant and that she has a right to be offended, but that cultural differences may be at play, and/or Nwadike may not understand the importance of 'please' and 'thank you' in English. On both 'sides', racial stereotyping, or judgements based on other factors, may also be occurring here. It is most likely, though, that Nwadike's attitude, through the language that he uses, has been misinterpreted by the assistant. Wherever possible, it pays to keep an open mind and to try to empathise with others.

## **Religion or Belief 1**

A selection panel is discussing who to hire for a middle management position. The strongest candidate is John, a Jewish applicant. However, there is a potential problem: he says he'll need to leave early every Friday, which is when the weekly departmental meeting has to be held. Which of these statements do you not agree with?

May: "He's the best candidate - let's just hire him and work around it".

Sara: "But the weekly meeting's vital - let's get back to him and ask him what he means by 'leaving early' - perhaps it won't be a problem".

Anil: "I agree - we should try to accommodate him, but the meeting's not optional."

Adam: "He's not going to be able to make the weekly meeting, so let's just hire someone else".

It's important to be flexible when it comes to accommodating religious practices amongst employees or candidates, but key work responsibilities must always be fulfilled.

However, making assumptions about things like religious observance, dress, and dietary requirements can cause unnecessary problems. So always try to check what the actual situation is with the person concerned.

## **Religion or belief 2**

The Equality Act 2010 bans discrimination on the grounds of religion or belief for workers and students and in the provision of goods, facilities and services.

### **What is belief?**

Belief is defined as including philosophical beliefs (e.g., Humanism or Paganism), but it is up to Employment Tribunals and other courts to decide whether particular religions or beliefs are covered by the law.

They may consider several factors, such as whether there are collective worship, a clear belief system, and a profound belief affecting a way of life or a view of the world. Case law has also established that a belief must be sincerely held, must be worthy of respect in a democratic society, and must not be incompatible with human rights.

The law also protects those without religious or philosophical beliefs from discrimination.

### **Do GORs apply?**

In certain circumstances, the Genuine Occupational Requirement provisions may apply. For example, it may be possible (because of the doctrines of a particular religion) to refuse to employ a man or a woman, a transsexual person, a person who is married or in a civil partnership, or a person of a particular sexual orientation.

These provisions should be applied proportionately, and the job concerned must be closely related to the organised religion's purposes.

### **What are the situations to be aware of?**

Prejudice and discrimination can occur or exist in all aspects of our work life. It is essential for individuals to recognise their personal beliefs and avoid discriminating on the basis of them, and for policies to take account of different religious traditions and practices wherever this is reasonable.

Situations to be aware of include recruitment interviews (students and staff), working with others, appraisal interviews, selecting development opportunities, and student teaching and assessment.

### **Must institutions provide time or facilities?**

The legislation does not say that institutions must provide time and facilities for religious observance in the workplace. However, if rules or procedures indirectly discriminate against either staff or students on the grounds of religion or belief, consideration should be given to what reasonable changes could be made.

For example, in the scheduling of examinations, while institutions are not required to plan their examination timetables around major religious holidays, in order to justify any clashes the institution must show that the timetabling meets a real business need, is necessary, and that there is no alternative.

Many institutions who have large populations of students from particular religious groups do try to accommodate their needs. Similarly, requests from staff for leave to celebrate a religious festival should be considered sympathetically and granted where possible.

### **Can religious staff request special breaks?**

Members of staff from particular religious groups may request time away from their duties to pray during the day and a quiet space for religious observance. These breaks can normally be accommodated within the regular schedule and do not involve additional time off. Flexibility should be offered wherever possible, and colleagues should be made aware that extra breaks are not being granted, to avoid misunderstandings or the risk of resentment. Where possible, it is good practice for employers to provide a quiet room for prayer or other contemplative activity.

### **What about dietary requirements?**

Issues may also arise in the workplace, and student accommodation with regard to dietary requirements, and some religions require extended periods of fasting. Separate storage or heating facilities may be requested.

Muslims will wish to ensure that their food is not in contact with pork, and Jewish staff or students will want to keep meat and dairy products separate. Institutions should accommodate requests where reasonable or find a mutually acceptable solution for the staff or students concerned.

Those organising events should also be aware of the unacceptability of alcohol to certain religions. In particular, some students from religions that prohibit alcohol may find socialising with their peers difficult if the only option is to go to the pub or the bar.

### **Gender**

Mary, the chair of an academic selection panel, is interviewing Clare, a female applicant. In her response to the warm-up question about an overview of her career history, Clare mentions her children, and Mary asks how old they are. Subsequently, when Clare is unsuccessful, she complains that the question about her children was inappropriate. Was it? What do you think about this situation?

Both men and women suffer from gender stereotyping, and assumptions can often be made about women taking responsibility for childcare, or care of the elderly. While we do not know Mary's intentions, this is possibly the case here, as some interviewers tend to ask mothers questions relating to childcare, when they would not ask the same questions of a father. Such questions could be unlawful discrimination and should always be avoided.



But the fact is that even if Mary is not being sexist, the perception that she might be, and that there has been bias in the interview process, has now been created, and Clare's complaint will certainly have to be investigated. If she can make a case that she has suffered sex discrimination, she could go to an Employment Tribunal.

## **Sex**

The Equality Act 2010 makes it unlawful to discriminate on the grounds of sex in the areas of employment, education and the provision of goods, facilities and services. Discriminatory acts can include:

- Refusing a mature female student, a place on a course because of her perceived family responsibilities
- Refusing to work with a person of the opposite sex because of their sex
- Advertising that certain unjustifiable physical characteristics, e.g. strength, height, are a requirement for a job
- A female manager sexually harassing a male member of staff

All the types of unlawful discrimination (e.g. direct, indirect and combined discrimination, harassment and victimisation) apply under the legislation.

In certain circumstances, the Genuine Occupational Requirement provisions may apply.

## **The Public Sector Equality Duty**

When the Equality Act came into force, it amalgamated the three Public Sector Equality Duties – Gender, Disability and Race – into one single Equality Duty covering all protected characteristics (see section 149 of the Equality Act, 2010).

The Duty (which was enacted on the 5th April 2011) requires that public bodies consider the needs of all individuals in their day-to day-work – in shaping policy, in delivering services, and in relation to their own employees. The new Equality Duty also supports good decision making and ensures the government delivers its strategic objectives and priorities for the public.

## PUBLIC AUTHORITIES

The Public Sector Equality Duty ensures that public authorities, in the exercise of their functions, must have due regard to the need to:

- Eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act
- Advance equality of opportunity between people who share a protected characteristic, and those who do not
- Foster good relations between people who share a protected characteristic, and those who do not

## THE SPECIFIC DUTIES

Public authorities have specific duties under the Equality Act to help them comply with the public sector equality duty.

Public authorities must:

- publish equality information at least once a year to show how they've complied with the general equality duty
- prepare and publish equality objectives at least every four years

Your information will usually fall into two main categories:

1. **Information to identify equality issues.** Examples of this include equality monitoring information about employees or service users, or information about the effect of your activities on people with different protected characteristics.
2. **Information about steps taken to have due regard** to the aims of the general equality duty. For example, any records you have about how you had due regard in making individual decisions, information that was considered in that decision-making (including engagement), consideration of steps to mitigate adverse impacts or details of policies to address equality concerns.

## PAY DISCRIMINATION

The Equality Act 2010 includes provisions on equal pay and conditions between men and women. It enables an employee to claim equal pay and conditions with a real or fictitious comparative person of the opposite sex, even where the work being done is different. This can be on the grounds that the work, although dissimilar, is of equal value.

The Equality Act also makes it unlawful to prevent or restrict employees from having a discussion to establish if differences in pay exist that are related to protected characteristics.

In relation to pay discrimination, one of the specific duties of the Public Sector Equality Duty requires public authorities to consider what steps they can take to address the causes of any gender pay gap that has been identified within the organisation.

## **Sexual orientation**

Imagine that you receive a form from HR asking you for certain personal information, such as your ethnic origin, and whether you consider yourself to be disabled. One question also asks you to identify your sexual orientation. What is your opinion of such a question?

Information about sexual orientation is indeed very personal, but there is a range of evidence of negative treatment of LGBT (lesbian, gay, bisexual and transgender) staff and students, and the systematic collection of data on sexual orientation is crucial to identify problems that need to be acted on.

Some discriminatory treatment is obvious (such as homophobic comments and jokes), but some are more subtle, such as the exclusion of LGBT people from social networks where work is discussed, (which can therefore affect career or research prospects), or discrimination in the promotions process.

## **LGBT issues**

The Equality Act bans discrimination on the grounds of sexual orientation against workers and students and in the provision of goods, facilities and services. The protected characteristic of sexual orientation is defined as being a person's sexual attraction towards people of the same sex as him or her, towards people of the opposite sex, or towards people of both sexes.

The legislation specifically prohibits all forms of discrimination (direct and indirect, by perception and by association), as well as harassment and victimisation due to sexual orientation. In certain circumstances, the Genuine Occupational Requirement provisions may apply.

## **Advance HE research**

An [Advance HE research](#) within higher education found that just over a third (38.6%) of LGBT staff are out to 'everyone' at work.

Some staff are concerned about being out because of employment security and discrimination; fears that students might respond in homophobic ways; and anxieties that an LGBT identity might compromise their research agenda.

## **Common forms of discrimination**

The Advance HE research revealed that the most common form of discrimination experienced by the LGB staff surveyed was banal homophobic remarks and that in the experience of those interviewed, these remarks were rarely considered unacceptable or challenged by others.

One survey respondent commented: 'I don't feel confident about being fully open within my department because there is banter.'

## **The last acceptable prejudice?**

Many people feel that homophobia is the 'last acceptable prejudice' and that it is not viewed as seriously or does not attract the same negative response as racism or prejudice against disabled people.

Often, homophobic banter and negative stereotyping of lesbian, gay and bisexual people are passed off as 'jokes' or 'humour', but we should all be aware that such comments cause offence and have no place within the work or study environments.

## **Further information**

- The Guardian website is updated daily, and this area focuses on [LGBT rights](#) - both in the workplace and outside of it
- [Stonewall](#) is a leading advocacy group working for legal equality and social justice for lesbians, gay men, bisexuals and transgender people

## **Legal case study**

Rob Whitfield lodged the first case under sexual orientation legislation.

He was awarded £35,000 compensation after he was nicknamed 'Sebastian' (after the camp character in 'Little Britain'), was portrayed as abnormal and was called queer, a queen and someone who liked handbags by his colleagues and directors at the company where he worked.

The Employment Tribunal found that Mr Whitfield had endured sustained abuse from executives and that this was deeply humiliating and offensive.

## **Section 4: An inclusive environment**

Managers have a key role and a personal responsibility to promote equality, diversity and inclusion. Managers also have a duty of care towards their staff, so diversity awareness is core to being an effective manager.

In today's workplace, it is likely that the team you manage won't just be made out of one type of person. So, you need to be prepared to manage people who might be very different from you and each other. But taking a one size fits all approach doesn't work. So, you need to be ready to treat people as individuals, whoever they may be.

### **Your responsibilities**

In this Section, we will explain how to create an inclusive working environment.

It is important to understand that discrimination can be present in everyday behaviour – so the University seeks to ensure that standards of behaviour promote diversity.

### **What are my basic responsibilities?**

Your responsibility as a member of staff is to appreciate diversity by treating colleagues and students with respect, and according to their needs.

### **What key questions should I ask myself?**

Ask yourself whether anyone is unwittingly excluded because of the way in which we (as an organisation) function. Also:

- Do you consider other people's perspectives before acting?
- Do you recruit people that have the subjective qualities that you personally like?
- Do you criticise some people and fail to praise them for good work?

### **How can I avoid problems?**

- It may be difficult to accept other people's personality traits – but you must do your best to do so
- Try to become aware of your behaviour and how it may be interpreted. By doing so, you will avoid being involved with a formal complaint or tribunal proceedings

### **What's my legal position?**

Individual employees and students can be held responsible for acts of unlawful discrimination as long as their institution can prove that they have equipped their employee or student to a reasonable level of ability in carrying out their responsibilities.

Remember, the University can be vicariously liable for your behaviour - be it intentional, or inadvertent.

## **Positive behaviours**

Positive behaviours helping to create an inclusive environment include:

- Offering to work on projects or presentations with colleagues, you might not have naturally approached previously.
- Making a point of talking to people with whom you do not usually have much contact.
- Praising colleagues when you think they have done well at something at work.
- Introducing colleagues, you know, but who do not know each other.
- Respecting an individual's personal space.
- Considering appropriate language in written and oral communications.
- Not indulging in banter, gossip, or stereotypical views.
- Devising alternative course material or methods of communication to accommodate different needs.
- Finding out about different cultures, religions, disabilities etc.
- Questioning unsubstantiated statements or opinions that appear prejudicial.
- Considering the diverse needs of individuals when planning events and meetings.

## **Diversity: organisational impacts**

Diversity legislation imposes several high-level requirements on the University as an organisation. To meet these, most organisations in the public and private sector pursue 'equality objectives' (having historically moved on from pursuing 'equality/diversity targets').

'Equality objectives' refer to specific and measurable goals that an organisation agrees in relation to its equality and diversity aspirations. Objectives are normally framed in terms of outcomes, for example, the representation of different minority groups within the workforce, or parity of treatment or experience for other groups.

An Equality Analysis (also called an Equality Assessment) is a way of considering the effects decisions and policies have on different groups protected from discrimination by the Equality Act.

It involves using equality information, and the results of engagement with protected groups and others, to understand the actual (or potential) effect of functions, policies or decisions. It can help to identify practical steps to tackle any negative effects or discrimination, to advance equality and to foster good relations.

In reality, an Equality Analysis is no different in method and style to the previously-favoured Equality Impact Assessment (EqIA) approach (aside from the fact that EqIAs had to be performed as a legislative requirement).

Some organisations incorporate the EqIA approach into their Equality Analysis to ensure evidence is widely collated and written down in terms of a record and plan of action.

Consultation is the process of dialogue (through an exchange of views and information) that leads to a decision. Consultation with stakeholders, and in particular with equality target groups, is an important principle and a legal requirement of the Public Sector Equality Duty.

The Public Sector Equality Duty also requires public sector organisations to involve disabled people when developing and implementing their work on disability equality. This requires more active engagement with stakeholders than the notion of 'consultation', and implies that the engagement is influential in terms of decisions that are taken.

Work to achieve equality objectives is likely to involve positive action initiatives. However, objectives must not be confused with quotas which imply that a certain representation or workforce profile will be achieved by preferential recruitment or promotion, rather than on individual merits (positive discrimination).

Quotas are unlawful under equality legislation.

Institutional discrimination occurs when accepted practices (typical ways of doing things) and norms (typical ways of thinking and behaving) come together to create a disadvantage for particular groups of people.

Institutional discrimination cannot be legally challenged as such, but the underlying aim of the Public Sector Equality Duty is to eliminate institutional discrimination.

The following websites may provide further useful information:

- ACAS: ACAS provides practical support and guidance to better manage equality and diversity in organisations.
- Equality and Human Rights Commission: The Equality and Human Rights Commission opened on 1 October 2007 to promote a fairer, more equal Britain. The commission is working to eliminate discrimination, reduce inequality, protect human rights and to build good relations, ensuring that everyone has a fair chance to participate in society.
- Government Equalities Office: Responsible for coordinating policy on women and gender equality issues in Government.

## **Diversity in the real world**

Diversity can sometimes be hard to handle, partly because there are potential 'diversity tensions' within the community and, by extension, in the workplace.

However, failing to confront discrimination effectively would have a profoundly negative effect on our working culture – something the University's policies are intended to prevent.

## **DIVERSITY TENSIONS**

Differences are valuable, but there may also be challenges and tensions within diverse communities (e.g. some people with religious beliefs disapprove of homosexuality). To make the most of the University and to meet the highest standards we set for ourselves, we must tolerate differences:

- Respect other people's freedom within the law, and the right of others to disagree
- Learn to understand others' beliefs, values and practices
- Do not behave in ways which cause needless offence
- Work to prevent disagreement from leading to conflict
- Do not misrepresent/disparage other people's beliefs and practices
- Avoid imposing yourself and your views

## **CONFRONTING DISCRIMINATION**

Discrimination has a negative and potentially very damaging effect on both individuals and organisational culture. If discrimination of any kind is allowed to exist in the University, those who are subject to it will suffer (as will the University as a whole). They may lose confidence, become defensive - and it is possible their performance might deteriorate. (It's estimated that the effects of workplace bullying cause between 33% and 50% of all stress-related illness).

If unfair treatment, discrimination, or bullying/harassment goes unchallenged, this implies it is condoned, and it may become 'normalised' within the University's culture. This is something which cannot be tolerated.

## **ORGANISATIONAL**

Our aim as an organisation must be to create an environment where people can comfortably express their opinions regarding the remarks or behaviours they find unacceptable, where we all make reasonable adjustments without any ill-feeling, and where mutual respect makes everyone feel valued and included.



## **Lawful approaches?**

Positive approaches to counter discrimination are almost always well-intentioned – but they must also be legal and appropriate.

Positive discrimination is unlawful in the UK and should not be confused with positive action which aims to create a 'level playing field' by addressing existing disadvantage, rather than by offering preferential treatment or advantage to a particular group.

However, it is also important to note that in recognition of the extent of barriers to participation in work and other activities, it is never unlawful to treat disabled staff or students more favourably than non-disabled staff or students.

## **Positive approaches**

In law, 'positive action' refers to voluntary practices or initiatives which seek to alleviate disadvantages experienced by groups of people who share a protected characteristic, to reduce under-representation or to meet particular needs.

## **POSITIVE ACTIONS**

Employers can take steps to encourage applications from under-represented groups in the workforce as a whole, or in particular occupations. It is also lawful to address any special protected characteristic-related educational, training or welfare needs identified for a specific group.

If the University is considering implementing a positive action initiative, we recommend that you study the legislation in greater detail to ensure that the action you propose to take is lawful.

## **CONFRONTING DISCRIMINATION**

Examples of lawful positive action are:

- Student widening participation activities (such as awareness or outreach days for groups under-represented in higher education)
- Offering vocational training opportunities to applicants or students who share a particular protected characteristic, where they are under-represented in the areas of work to which the vocational training relates
- Proportionately targeting support or additional tuition to students who share a protected characteristic, in circumstances where disadvantage or different needs have been identified
- Targeting recruitment advertising to encourage applications from people from groups currently under-represented within the workforce

## **GOR**

In certain circumstances, it is legal to recruit someone purely on the basis of one of the protected characteristics, where this is a Genuine Occupational Requirement (GOR) for the job.

A job warranting decency and privacy considerations, such as that of a female counsellor in a women's rape crisis centre, is one example that is covered by the GOR provisions.

## **Diversity on Campus**

Universities are melting pots of widely varying ideas, so academic debate needs to be rigorous. But we always need to balance this with talking to each other respectfully, because sometimes tensions can arise within such a diverse community.

Some people may be experiencing rich diversity for the first time. And it may not feel obvious, how to be sensitive to people who aren't in your in-group.

But being aware for the need for sensitivity and taking basic practical steps to embrace diversity on campus can make all the difference.

## **Diversity in Learning and Teaching**

We will now briefly consider some key issues relating to Diversity in Learning and Teaching (DILT). However, this content is optional – so feel free to skip ahead to the Conclusion.

What is DILT all about? More specifically, what elements shape a curriculum underpinned by equality and diversity principles?

A 'diversity curriculum' has four main aspects:

- Facilitating learner inclusion to fulfil potential
- Integrating equality and diversity into the curriculum area
- Encouraging learners to reflect on personal attitudes
- Teaching about equality and diversity rights and responsibilities

## Section 5: Diversity Scenarios

### Welcome

Diversity and inclusion is something that needs to be practical and embedded in day-to-day working life if it is going to make a difference. So here, we will look at three diversity scenarios focused on the areas of:

- Sexual identity
- Mental health challenges
- Pregnancy and maternity

For each scenario, you will be asked for your thoughts on what has happened - and what a positive approach might be. So, as you go through the content, please reflect on how you could apply the underlying principles to your own working environment.

### Sexual Identity

Laura, Seve and Jay are colleagues. They're having a coffee when a recent trip Laura has made to the theatre comes up in the conversation - which generates some challenging issues.

-Hi

-Hi

-How was the theatre?

-Oh, not great.

-It was set in Greenwich village in the seventies.

-That sounds interesting.

-Well. It was a good play; it was just very gay. If you know what I mean? And I didn't know when I bought the tickets.

-Oh, ...right.

-I mean, it was well-acted, but I just find the whole camp, quennie act gay people do a bit grating, and this was two hours of it.

-Sorry you didn't enjoy the play, Laura, but maybe you should consider your language.

-Oh no, I'm not being a homophobe, I have a lot of gay friends.

-But that's not the point. You are talking about a whole gay stereotype there.

-Well, ok maybe not all gay guys are like that, but the gay guys that I know can be quiet catty and bitchy and after a while, it just get on my nerves.

-Look, it's very important that we have an environment here that feels inclusive for

everyone, whatever their lifestyle and you're speaking in a hostile way about a whole group of people. If someone gay heard you saying things like that, it might make them feel uncomfortable.

-But, no one here is gay.

-And even if no one gay person's here, you still shouldn't be saying things like that to anyone anyway, because that is a stereotype and by talking like that you are helping perpetuate that stereotype.

-I didn't realise.

## **What would you do?**

Reflect back on what Laura had to say - and how Seve responded. What would you do in a similar situation?

- Report the conversation to HR?
- Document the incident immediately?
- Make clear that the remarks are unacceptable?

After making it clear that derogatory remarks are unacceptable, use your own personal judgment to consider whether the remark is a part of a pattern of behaviour that should be reported to Human Resources. Even if you do not believe Human Resources need to be contacted, document the incident immediately, so you can provide a report if the behaviour is repeated. The rationale for making a record is to provide a record of the event to aid the witness's memory as the incident could lead to an investigation for harassment or even a hate crime.

Your Human Resources department may have a plan of action in place for addressing this type of behaviour that includes personal conversations, group education, or other types of training.

## **Derogatory behaviour**

It is important to address this type of behaviour as it happens because when we allow fellow employees to make derogatory remarks about a group, we are fostering a hostile work environment.

A hostile work environment is unhealthy because it makes LGBT workers feel unsafe. This is clearly wrong - and it can also affect productivity. Every person in an organisation is entitled to work in an environment that is free of derogatory conversations.

You may not be able to change a person's way of thinking. However, as allies to the LGBT community, it is important that we make it clear that we believe derogatory conversations are socially unacceptable, and that we do not feel safe in a working environment where people share a hatred for marginalised groups.

If you encounter a derogatory conversation, you might approach the situation by saying:

“I overheard you talking about \*\*\*. Your comments make me uncomfortable. I’m sure they’d be hurtful if overheard. I hope we can stick to the matter at hand, instead.”

“Sorry to interrupt, but your remarks are inappropriate, and I felt I should say something. I bet a lot of the assumptions you’re making are wrong. I think we should be respectful of everyone, despite any assumptions about his/her/their personal life.”

Use words such as ‘we’ to avoid distancing yourself, or the co-worker who made the derogatory remark, from the LGBT community.

Derogatory comments can perpetuate and create an unsafe workplace for LGBT people, and we should all do our part to make sure our organisation is not hostile to people from different backgrounds.

Remember: the goal is to create a wonderful workplace for everyone.

## **Mental Health Challenges**

Clara and Seve are getting a room ready for a seminar - but Seve seems uncomfortable...

-Hi, we all set?

-Not really. Is everyone coming?

-Yes, I think so.

-Then we don’t have enough chairs.

-I think we’ll be ok.

-We won’t be ok because we don’t have enough chairs.

-Some of the students can stand if they need to.

-They can’t stand, because nobody will be able to get in and out.

-It’s not a problem. It’ll be ok.

-Ok, then fine, yeah, we are ready.

Following the seminar, Clara and Seve are tidying the room up...

-Well, that went well.

-Yeah.

-I noticed a few students trying to have a conversation with you, and you didn’t really respond. And a few people in the office said you’ve been quite difficult to talk to. It’s about having a more positive attitude.

-Fine.

-Is everything ok? You seem a bit stressed. Are you finding things hard at the moment?

-Yeah, I suppose.

-Does everything feel a bit much?

-I don't know.

-I don't want to pry if you don't want to talk about it.

-No, I'm fine to talk about it.

-Are you feeling down?

-Yeah.

-You can talk to me about this

-But you're always busy.

-Ok, sorry. But look, I'm not busy now.

## **Start a dialogue?**

Reflect for a moment on the scene with Seve and Clara. What could you do if you found yourself in a similar situation? What would be a good way to start a dialogue to discover someone's mental well-being?

- Ask how things are going; actively listen
- Then engage
- Do not make assumptions; be non-judgemental
- Share your own relevant experiences of mental health challenges
- Talk about managing stress; ask your colleague how they do it

These could all work, depending on the context, and also on how comfortable you are talking about your own personal situation. The key point here is that everyone has mental health, just like they have physical health. Challenges are normal, they can be treated - and being open makes a significant difference.

## **A supportive culture**

Sometimes, excessive work pressure, especially when combined with external events, can tip people into an insurmountable situation - leading to poor mental health. Too often, employers don't recognise mental health problems. This can lead to a reduced pool of employees, increased sick-leave, and lower productivity.

Mental health problems can affect anyone. The greater awareness levels are in the workplace, the more effectively these challenges can be met and managed for the benefit of everyone.

There is still work to do in breaking down the stigma attached to poor mental health and providing an open and supportive culture that enables staff to be honest with managers and colleagues, access support and enjoy a healthy working life.

Make your own contribution through a personal commitment to talking openly and positively about mental health challenges.

## **Pregnancy and Maternity**

Jay has just returned to work after having a baby, but a meeting with Farhad, her manager, contains an unwelcome surprise.

-How are you finding being back? A bit of a shock to the system?

-Actually, it feels really good to be back.

-Come on then, let's see the photo.

-Oh, yeah, sure.

-Ah, so cute.

-Thank you.

-So, who's looking after him now.

-My husband works three days a week, so he has him today. But I was wondering, can I speak to you about the University Enterprise committee? I've been taken off, and Rafa is on?

-Yes, well, we had to rearrange a few things while you were away on your maternity leave.

-But this decision was only made yesterday.

-Oh well, sometimes the group needs to work outside office hours, don't they? So, we thought that would be hard for you now.

-Being on the committee means liaising with the Council and the Senate. It could be really good for my career. Rafa will make connections now, and he is my assistant.

-You might find your priorities have changed now.

-You should have asked me first. My husband doesn't work in the evenings so I can make this work.

-Well, I was just trying to help you out here, Jay. To be honest, you were off work quite a

bit before maternity leave with your bad back. We don't want to burn you out.

-The two occasions with my bad back were pregnancy-related, not some long-standing health issue. It's not going to be a problem now.

## **Definition of 'inclusion'**

### **What does 'inclusion' actually mean?**

Here, Farhad is making assumptions both about Jay's private life - and how this may impact on her capability at work.

Instead, managers should always discuss issues openly and understand an employee's circumstances and work ambitions before taking action.

## **The law**

If a woman returning to work from maternity leave is treated unlawfully (e.g. being unfairly replaced by their maternity cover) there can be legal consequences, which could result in an Employment Tribunal.

### **What are women on maternity leave entitled to?**

The law says that women can take up to a maximum of 52 weeks maternity leave, following which they are entitled to return to work. It is unlawful for employers to treat women less favourably on the basis of pregnancy/maternity leave.

### **Must women always be offered exactly the same job when they return?**

If a woman takes 26 weeks of maternity leave (or less), then they must be offered the same job when they return to work.

If they take over 26 weeks of maternity leave, then there is usually an entitlement to the same (or a similar) job on a return unless there is a good reason for this not to happen (e.g. a genuine redundancy). If so, the employer must offer an appropriate and suitable alternative position.

### **What if the woman's position becomes redundant?**

If this happens, the female employee must be offered an appropriate alternative position. There should be no expectation of her having to apply for it or attend competitive interviews. An employee can only be made redundant if there is clear justification - for example, a part of the business closes, and everyone in that Section is made redundant.



## Conclusion

You have now completed the scenarios section of this learning resource.

Challenges relating to pregnancy and maternity, sex, and sexual identity are all present at work. We may not encounter them on a daily basis, but we need to ensure that we deal with them in a fair and inclusive way.

The next time you encounter one of these challenges, reflect on some of the issues we've covered. Could you take a more positive approach, based on what you've learned?

Remember, when it comes to diversity and inclusion, YOU can make a difference.

## Course End

Thank you for taking the time to complete this course, which has looked at the different ways discrimination can occur. It has also explored the possible legal implications, and the effects discrimination can have on individuals. Hopefully, you will appreciate that diversity is a key skill in the contemporary work environment. If there are any issues you would like to review, please refer to the course's appropriate pages.

For more information regarding our policies, please go to <https://www.ljmu.ac.uk/staff/edi/edi-policies>

When you have read through the module workbook, there is an expectation for all staff to complete a short quiz online within LJMU E-Learning modules. Go to <https://www.ljmu.ac.uk/staff/ldf/elearning-modules> for how to access the modules and further details.