Diversity Issues for Recruitment and Selection of Staff
This document provides a summary of the main equality and diversity related issues relevant to the University’s procedures. It includes some definitions, lists the legislation and provides some examples. The principles of good equality practice are embedded in the University’s procedures.

1. Introduction

UK Law
There is a specific act of parliament – The Equality Act 2010 - which makes it unlawful to treat people unfairly because of a protected characteristic: of race (racial group, colour, nationality, ethnic or national origin); sex; transgender; disability; sexual orientation; religion or belief; age; pregnancy and maternity; marriage and civil partnership. The Equality Act 2010 replaces all previous equality legislation. There is also legislation to protect people related to rehabilitated offenders and trade union/non-union membership.

The University’s Equal Opportunities Policy
This covers employment and states that individuals are to be selected and treated on the basis of their relevant merits and abilities and are to be given equal opportunities within the University. The aim is that no job applicant or employee should receive less favourable treatment on any grounds which are not relevant to good employment practice. The University is committed to a programme of action to make the policy fully effective. This definition is wider than the equalities legislation.

2. The protected characteristics
This section goes through each of the protected characteristics, says where this is relevant to recruitment and selection of staff and gives some examples.

Age
Where this is referred to, it refers to a person belonging to a particular age (e.g. 32 years old) or a range of ages (e.g. an age band of 34-45). Candidates’ ages have been removed from the main part of the application system and are now included in the equal opportunities monitoring section – which is not used for selection purposes. Candidates are not required to provide age or date of birth on their CVs.

In Job Descriptions and Person Specifications, care must be taken when specifying a requirement for previous experience. A statement that indirectly relates to age, such as asking for 10 years’ experience, should not be used unless it is justifiable in objective terms.

From April 2011 the default retirement age in the UK will be abolished. It will no longer be possible to lawfully discriminate against someone who is within 6 months of their 65th birthday.
Disability
A person has a disability if they have a physical or mental impairment which has a substantial and long-term adverse effect on that person’s ability to carry out normal day-to-day activities. Normal day to day activities include things that we all do in our normal lives such as using a telephone, using public transport, reading and writing – but not job specific activities.

The issues affecting disabled applicants can come up in their ability to apply, where we can provide materials in different formats. It is also relevant in their ability to attend for interview or other assessment that you might choose to use. We must make “reasonable adjustments” to the interview/assessment environment to enable people with a disability to participate effectively. This could be an accessible venue for wheelchair or other mobility access or additional time for candidates with dyslexia to complete a test.

The definition of disability may include people with long term health conditions such as heart disease, diabetes or epilepsy, severe facial disfigurement, depression, schizophrenia, dyslexia, cystic fibrosis or repetitive strain injury as well as mobility visual or hearing disabilities. It also includes cancer, multiple sclerosis and HIV from the point of diagnosis. People who have had a disability in the past are also protected under the law. Any “reasonable adjustments” needed will depend on the nature of the individual’s disability. To read more, please go to the Diversity website for “Manager’s Toolkit – Enabling disabled staff”
http://www.ncl.ac.uk/diversity/info/disability/managerstoolkit/index.html

There are also new rules related to asking about health, disability and absence form work in the recruitment process – see later in the document “Recruitment of staff and health questions”.

Trans Gender or Gender Reassignment
This is the process of transitioning from one gender to another. There is no need to be under medical supervision to be protected, only to live permanently in their chosen gender. There is additional guidance on the Diversity website. To “out” someone without their permission is a form of harassment and possibly a criminal offence and will be treated as such.
http://www.ncl.ac.uk/diversity/info/gender/trans/index.php

- In addition there is the Gender Recognition Act 2004
This act means that transgender people can gain a Certificate allowing them to obtain a birth certificate recognising their acquired gender, marry in their acquired gender and obtain benefits and a state pension like anyone else of that gender. To get this legal recognition, the trans person has to apply to the Gender Recognition Panel and demonstrate that they have a condition called “gender dysphoria, that they have lived for at least the previous two years in their acquired gender and that they intend to live this way until death.

Marriage and Civil Partnership
Marriage is defined as a “union between a man and a woman”. Same-sex couples can have their relationships legally recognised as “civil partnerships”. Civil partners
must be treated the same as married couples on a wide range of legal matters. People who are single, widow/er or divorced are not protected by this characteristic.

**Pregnancy and maternity**
Pregnancy is the condition of being pregnant and maternity refers to the period after the birth liked to maternity leave in the employment context. This characteristic only applies to women (not to the partner of the woman). If a father was treated less favourably because their partner was pregnant they might be able to claim sex discrimination.

**Race**
Race refers to a group of people defined by their colour, nationality (including citizenship), ethnic of national origins or a combination of these.

**Religion or Belief**
Religion has the meaning usually given to it, but includes religious and philosophical beliefs including lack of belief (e.g. atheism). Generally a belief should affect your life choices or the way you live, for it to be included in the definition. The factors to consider when deciding of a particular group would be included are: collective worship; a clear belief system and a profound belief affecting the way of life or view of the world.

**Sex**
This characteristic is a man or a woman.

**Sexual Orientation**
This is where a person's sexual attraction is towards their own sex (gay or lesbian), the opposite sex (heterosexual) or both sexes (bi-sexual).

### 3. Types of Discrimination

**Direct Discrimination**
This means treating people with a protected characteristic less favourably than you treat people who do not have that protected characteristic in similar circumstances.

- an employer refusing to appoint a woman to a managerial post because they think that she will probably not have the same leadership ability as a man.

**Associative discrimination (all except pregnancy and maternity/marriage and civil partnership)**
This is because the person being treated less favourably associates with someone with a protected characteristic.

- the carer of a disabled dependent
- a woman who shares a home with a lesbian who is not herself a lesbian.

**Perceptive discrimination (all except pregnancy and maternity/marriage and civil partnership)**
This is discrimination because the person treating them less favourably thinks that they have the protected characteristic when they do not.
Indirect discrimination (all except pregnancy and maternity)
This takes place when an employer treated all workers the same way, whatever their protected characteristic, but the result of the treatment is that workers of a particular group (protected characteristic) are disadvantaged.

The definition is: applying a provision, criterion or practice, which, although applied equally to all, means that in practice on a considerable smaller proportion of people with a protected characteristic can comply with it and it is to their detriment and it cannot be justified on objective, job related grounds.

- setting a level of English that is more than required for the safe and effective performance of the job
- insistence on British qualification without consideration of equivalents
- stating that 10 years experience is required without specifying any detail of this. It may exclude younger people who have not been able to accrue the service or people who have taken time out of work (e.g. maternity leave or to be a full-time carer)

It is worth noting that the majority of unlawful discrimination claims made to tribunals are a result of indirect rather than direct discrimination.

“Unwitting” and “institutional” racism or other discrimination
This was identified as an issue as a result of the inquiry into the murder of Stephen Lawrence in 1993, which contributed in part to importance changes in discrimination law since 2000.

Institutional racism was described as the collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin. The racism does not need to be the cause of the racism of particular individuals, though that might be present, but the cumulative effect of policies, practices and processes that may not have been designed with racism in mind, but which have the effect of disadvantaged certain racial groups.

As a result, the University and other public bodies are required to assess the impact of all policies, procedures and practices to make sure that there is no unfair or unjustifiable discrimination. This is also one of the reasons for having a structured process for recruitment and a system of training for selection panel members.

4. Recruitment of staff and health questions
Section 60 of the Equality Act 2010 prohibits asking about the health of an applicant before an offer of employment is made, except in certain specific circumstances. These were considered to be potentially discriminatory against disabled people.

We have:
- Removed the sickness absence question from e-recruitment
- Removed the sickness/attendance reason from the reasons for rejection
- Revised reference request forms as part of the routine recruitment process.
The exceptions are when we need:

- To establish whether the candidate can comply with an assessment or other test as part of the selection process with some kind of adjustment
  - There are routine questions in the invitation for interview/assessment asking if reasonable adjustments are needed

- To establish whether the candidate can carry out a function that is an intrinsic part of the job
  - For example: working at heights; handling food; driving vehicles; working with radiation; working with animals etc. (there are likely to be jobs in this category).

- To monitor the diversity of applicants
  - A question about disability is on a separate part of the application system (information not available to recruiting manager)

- To ensure that a guaranteed interview can be offered to a disabled candidate if that is the practice. (We do not provide this option)

- To fill the vacancy with a disabled candidate for an occupational reason (This is likely to be extremely rare)

If you would like to find out if your job meets any of these exceptions, please contact your Human Resources Manager.

5. Permitted arrangements

Occupational Requirement
This is the recruitment and selection on grounds of a protected characteristic in certain jobs because being a member of that group is necessary for the job.

- You could recruit a member of a religious group as school chaplain but not insist on this for the school caretaker.
- You could employ a female personal care assistant for an elderly woman in her own home
- You could recruit a lesbian health worker in a clinic for lesbian women but not insist on that for the administrator of the clinic.

Positive Action
Positive Action is permitted towards people with protected characteristics for the purpose of:

- Monitoring the impact of policies and analysing what we do
- Changing practice that is discriminatory by reviewing policies and procedures
- Attempts to counter balance under-representation of people with a protected characteristic by:
  - Encouragement with advertisements to apply for jobs
  - Training people with the protected characteristic to help them be ready to apply for jobs

Positive Action is NOT direct discrimination in favour of someone with a protected characteristic even if the intention is to try to redress discrimination in the past.
6. Other Legislation relevant to Recruitment and Selection of Staff

Rehabilitation of Offenders Act 1974
The rehabilitation of offenders act states that an individual who has been convicted of an offence may be rehabilitated after a given period of time. In order for the individual to be rehabilitated, the conviction has to become spent. This happened when the individual has not committed another offence within the period. In general terms this means that in most circumstances the person can regard the spent conviction as not to have happened and need not make any reference to it.

There are some exceptions to this rule designed to protect vulnerable members of the public. Exceptions in the areas of employment include posts where the individual is working with children, elderly people, the sick and people with disabilities. In such cases the offences do not become spent and may be taken into account regardless of when the offence was committed.

The Act places responsibility on any organisation to process the personal data that it holds in a fair and proper way. Failure to do so can ultimately lead to a criminal offence being committed.

The benchmark is to ensure that personal data recorded and retained following the interview can be justified as being relevant and necessary for the recruitment process or for defending any future challenge as to the reason for selection or non-selection.

Trade Union and Labour Relations (consolidation) Act 1992
This Act protects Trade Union members and Non-union employees from refusal of employment on these grounds.

7. And finally
The statutory basis for equal opportunities established that it is unlawful to discriminate against a person or persons (directly or indirectly) in the field of employment on specific grounds (race, sex etc...). The relevant Act does not accept an employer's claim “not to have intended to discriminate”.

In all aspects of implementing University policies and procedures we need to:
- Encourage a wide range of candidates
- Ensure our processes and practices are fair, thorough and free from unlawful discrimination
- Treat all candidates with dignity and respect, giving them the opportunity to present their skills and experience effectively

In wider terms the University’s Equal Opportunities Policy requires that no job applicant or employee should receive less favourable treatment on any grounds which are not relevant to good employment practice, which grounds may include characteristics other than those protected under UK law.
The Protected Characteristics

- Race
- Sex
- Age
- Trans Gender
- Religion or Belief
- Sexual Orientation
- Pregnancy and Maternity
- Disability
- Marriage and Civil Partnership

The Equality Act 2010
For Further Help or Advice

On operating the Recruitment and Selection of Staff procedures please contact the Human Resources Team for your area of the University.

If you would like to know more about the Equality and Diversity implications or this guidance, please contact members of the Equality and Diversity Team:

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<tr>
<th>Jan Halliburton</th>
<th>HR Policy &amp; Projects Admin Team</th>
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<tbody>
<tr>
<td>Human Resources Adviser (Policy &amp; Projects)</td>
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<tr>
<td>0191 222 3440</td>
<td>0191 222 8794</td>
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<td><a href="mailto:jan.halliburton@ncl.ac.uk">jan.halliburton@ncl.ac.uk</a></td>
<td><a href="mailto:diversity@ncl.ac.uk">diversity@ncl.ac.uk</a></td>
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Complaints of discrimination in recruitment and selection

Complaints from applicants for employment vacancies should be addressed to the Registrar, Newcastle University, Level 5, King’s Gate, Newcastle upon Tyne, NE1 7RU. The Registrar will ensure that they are investigated, that the complainant receives a written response, and where appropriate, that action is taken.