

GUIDANCE

# What equality law means for you as a student in further or higher education

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# Introduction

This guide is one of a series produced by the Equality and Human Rights Commission which explains your rights to equality from further and higher education providers under the Equality Act 2010. This Act combines established rights with new rights and makes equality law easier to understand and more effective.

Other guides cover your rights as an employee or as a user of services. These can be accessed at:

<http://www.equalityhumanrights.com/advice-and-guidance/service-users-guidance/>

Further and higher education providers have a separate guide, which explains their responsibilities to you, as a student, under equality law:

<http://www.equalityhumanrights.com/advice-and-guidance/further-and-higher-education-providers-guidance/>

## The legal status of this guidance

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This guidance applies to England, Scotland and Wales. Although this guidance is non-statutory, meaning courts are not obliged by law to consider these contents, reading it will help you to understand your rights under the Equality Act 2010.

This guide is based on equality law as it is at March 2014. You should check with the Equality and Human Rights Commission if it has been replaced by a more recent version. Any future changes in the law will be reflected in further editions which will be available on our website: [www.equalityhumanrights.com](http://www.equalityhumanrights.com).

# Section 1: Introduction

## 1.1 What does this guidance cover?

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This guidance explains your equality rights as a student in further or higher education. Further education (FE) and higher education (HE) institutions have legal obligations under the Equality Act 2010, which means that they cannot discriminate against, harass or victimise you if you are a student. This includes all students whether full-time, part-time, undergraduate, postgraduate, e-learners, international students as well as prospective students when applying to the institution and, in some limited circumstances, former students. The rights of former students are explained in more detail in [Section 2](#).

Further and higher education institutions also have obligations under the Equality Act 2010 as employers, and as bodies which carry out public functions and as service providers. These obligations are not covered in this guidance as this guidance is concerned with their obligations to students as listed above. Throughout this guidance the term 'student' is used to refer to all those with rights under the further and higher education institutions provisions of the Act.

## 1.2 Which further and higher education providers does this guidance cover?

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This guidance explains your equality rights when using further and higher education provided by:

- universities and higher education institutions
- further education colleges and institutions, including sixth form colleges
- 16-19 Academies, and
- designated institutions (in Scotland).

This guidance does not cover your equality rights when using education or training provided by other organisations even if they are offering the same course or qualifications as one of the education providers listed above. This is because only those providers listed above have obligations under the further and higher education

provisions of the Act. Other training organisations have separate responsibilities as providers of services to you and these are explained in the guidance for service users:

<http://www.equalityhumanrights.com/advice-and-guidance/service-users-guidance/>

It is the 'responsible body' of a further or higher education institution that is liable for any breaches of the Equality Act. The table in [Annex A](#) will tell you who is the responsible body for your type of institution.

### 1.3 Who is this guidance for?

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This guidance is for you if you are:

- applying for admission to an FE or HE institution
- studying at an FE or HE institution (including if you are absent or temporarily excluded)
- previously a student (in respect of conduct closely associated with your former relationship with an FE or HE institution)
- applying for, or holding qualifications as a disabled person who is not a student at the conferring institution.

### 1.4 Am I protected?

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The Act protects you from discrimination and harassment based on your 'protected characteristics'. The protected characteristics for the further and higher education institutions provisions are:

- Age
- Disability
- Gender reassignment
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

Although marriage and civil partnership is listed in the Act as a protected characteristic, the Act does not provide protection against discrimination because of marriage and civil partnership in the further and higher institutions provisions.

Protected characteristics are explained in more detail in [Annex B](#).

## 1.5 What actions are unlawful under the Act?

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Further and higher education institutions must not **discriminate** against you, **harass** you or **victimise** you.

### What is unlawful discrimination?

Unlawful discrimination can take a number of different forms. Your further or higher education institution must not:

- treat you worse than someone else because of your protected characteristic – this is called direct discrimination.
- do something to you such as making a decision, or applying a rule or way of doing things that, although it is applied in the same way to all students or a particular student group, has a worse impact on you and other people who share the particular protected characteristic, than on others without it. The disadvantage you experience might include denial of an opportunity or choice, rejection or exclusion. Unless your institution can show that what they have done is **objectively justified** – this is called indirect discrimination.
- discriminate against you because you are, or have been, pregnant, or have given birth in the last 26 weeks or are breastfeeding a baby who is 26 weeks or younger. This is called pregnancy and maternity discrimination. If you are discriminated against because of your pregnancy or maternity, or because you are breastfeeding, more than 26 weeks after giving birth then you are protected by the sex discrimination provisions.

If you are disabled, your further or higher education institution:

- must not treat you unfavourably because of something connected to your disability where they cannot show that what they are doing is objectively justified. This only applies if the organisation knew or could reasonably have been expected to know that you are a disabled person. An organisation does not have to **know** that a person meets the legal definition of 'a disabled person', *just that he or she has an impairment which is likely to meet the definition*.

This is called discrimination arising from disability.

- must make reasonable adjustments to ensure that you can use the education and other benefits, facilities and services provided as far as is reasonable to the same standard as non-disabled students.

Discrimination is explained in more detail in [Section 2](#).

### **What is harassment?**

Further or higher education providers must not engage in harassment – unwanted behaviour related to a protected characteristic, or which is of a sexual nature, that violates your dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for you.

Harassment is explained in detail in [Section 2](#).

### **What is victimisation?**

A further or higher education institution must not treat you badly because you have done a 'protected act' (or because the institution believes that you have or are going to do a protected act).

A 'protected act' is:

- making a claim or complaint of discrimination (under the Equality Act)
- helping someone else to make a claim by giving evidence or information
- making an allegation that the further or higher education institution or someone else has breached the Act
- doing anything else in connection with the Act.

Victimisation is explained in more detail in [Section 2](#).

## **1.6 Positive action**

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Some students are disadvantaged for social or economic reasons connected with their protected characteristic/s or for reasons to do with past or present discrimination.

The Act contains provisions that enable education providers to take action to tackle the particular disadvantage, meet different needs or address disproportionately low participation of a particular student group, provided certain conditions are met.



These are known as the positive action provisions and allow (but do not require) education providers to take proportionate action to remedy the disadvantage faced by particular groups of students. Such action could include targeting provision or resources or putting in place additional or bespoke provision to benefit a particular disadvantaged student group.

Positive action is not the same as positive discrimination which is unlawful with the following exceptions:

- It is never unlawful to treat disabled students more favourably than non-disabled students because of or in connection with their disability.
- It is also never unlawful to treat a female student more favourably because she is pregnant or has given birth in the last 26 weeks or is breastfeeding a baby that is less than 26 weeks old.

Positive action is explained in more detail in [Section 3](#).

## 1.7 Public sector equality duty

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Most further and higher education institutions are public authorities and will be subject to the public sector equality duty. This duty aims to integrate equality into exercising public functions, such as policy-making, service delivery and taking decisions. Implementing this duty properly will improve an institution's performance on equality, for example, by preventing discrimination before it arises. Complying with the equality duty will help institutions to meet their obligations to you under the further and higher education institutions provisions and vice versa.

The general public sector duties apply equally across Britain. The public sector specific duties are different in England, Scotland and in Wales.

Further information on the public sector equality duty can be found in [Annex C](#) and in detailed guidance at: <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/guidance-on-the-equality-duty/> and: <http://www.equalityhumanrights.com/scotland/public-sector-equality-duty-in-scotland/> and: <http://www.equalityhumanrights.com/wales/publications/guidance-on-the-equality-duty-for-the-welsh-public-sector/>

## 1.8 Are there any exceptions to the further and higher education institutions provisions?

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There are exceptions to enable single-sex institutions to admit only students of one sex and for a small number of designated sixth form colleges with a religious ethos to enable them to have admissions criteria which give preference to members of their own religion for courses which are not vocational. There are also exceptions in relation to courses with a genuine occupational requirement. These exceptions are explained in more detail in [Section 3.9](#).

## 1.9 What can I do if I think my institution has acted unlawfully?

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If you believe that you have been discriminated against, harassed or victimised by a further or higher education institution, you can make a claim under the Act.

In England and Wales you will need to bring your claim in a county court and in Scotland in a sheriff court.

Resolving disputes without the need for legal action and through the internal complaints procedures of your FE college or university is usually in everyone's best interests. Student support services and student unions available in most institutions will be able to advise you and may be able to help you to resolve the situation.

More information on informal and formal ways for making and resolving claims, and the remedies a court can order are explained in detail in [Section 5](#).

## Section 2: Key concepts

### 2.1 What is unlawful discrimination?

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This section describes the various types of discrimination and how they apply to the further and higher education institution provisions.

#### 2.1.1 Direct discrimination

Direct discrimination occurs when you are treated less favourably than your institution treats (or would treat) another student because of a protected characteristic.

**For example:** A university refuses to admit a student because of their race.

**This would be unlawful direct race discrimination.**

**For example:** A further education college rejects a male applicant's application to a childcare course as they do not think it is appropriate for a male to be working with children. This would be unlawful direct sex discrimination.

Direct discrimination generally cannot be justified. There are some exceptions to this:

- Where the Equality Act makes a specific exception, such as in relation to allowing single-sex institutions to only admit students of one gender.
- An institution can justify direct age discrimination if it is a proportionate means of achieving a legitimate aim. See [Section 2.1.2](#) below for an explanation of 'a proportionate means of achieving a legitimate aim'.
- In relation to the protected characteristic of disability, it is not unlawful direct discrimination to treat a disabled student more favourably than a non-disabled student because of their disability.

**For example:** A university decides that in order to encourage more disabled people to become artists it will reserve a certain percentage of places on its Art degree course for disabled applicants. This would not be unlawful direct discrimination.

**For example:** A college offers a bursary for disabled students only. This would not be unlawful direct discrimination.

In order for you to show that you have been directly discriminated against, you must compare what has happened to you to the treatment a person without your protected characteristic in the same or not materially different circumstances is receiving or would receive.

**For example:** A gay student cannot claim that excluding them for fighting is direct discrimination on grounds of sexual orientation, unless they can show that a heterosexual or bisexual student in the same or similar situation would not be excluded for fighting.

You do not need to find an actual person to compare your treatment with but can rely on a hypothetical person if you can show there is evidence that such a person would be treated differently in the same or materially similar situation.

If you are claiming direct discrimination because of racial segregation or pregnancy or maternity there is no need for you to find a person to compare yourself to. This is because:

- racial segregation (that is deliberately separating people by race or colour or ethnic or national origin) will always be unlawful direct discrimination.
- to claim pregnancy or maternity discrimination a female student only needs to show that she has been treated unfavourably because of her pregnancy or maternity and does not have to compare her treatment to the treatment of someone who was not pregnant or a new mother.

It is not direct discrimination against a male student for a further or higher education institution to offer a female student special treatment in connection with her pregnancy or childbirth. However, any special treatment in connection with pregnancy or childbirth cannot extend to favouring pregnant students or those who have given birth beyond what is reasonably necessary, that is, proportionate, to compensate them for the disadvantages occasioned by their condition (at least where the discrimination occurs broadly in the context of employment- or vocational-related education or training).

### **Discrimination by association**

Direct discrimination also occurs when you are treated less favourably because of your association with another person who has a protected characteristic (other than pregnancy and maternity).

This might occur when you are treated less favourably because your sibling, parent, carer or friend has a protected characteristic.

**For example:** Three Roma young people and a non-Roma local friend of theirs turn up to an open day at a further education college and try to enrol for the theatre course. They are told there are no more places. A few hours later they find out that some other non-Roma friends of theirs went to the open day after them and were accepted on the theatre course. It would appear that the college has directly discriminated against the Roma young people because of their race by not admitting them on the course and has also directly discriminated against their non-Roma local friend on the grounds of race because of his association with his Roma friends.

### **Discrimination by perception**

Direct discrimination also occurs when you are treated less favourably because your institution mistakenly thinks that you have a protected characteristic (other than pregnancy and maternity).

**For example:** A university accommodation officer decides not to offer a female student she assumes is gay a place in an all-female hall of residence as she thinks that the other female students will feel uncomfortable living with a lesbian. Even though the female student is not a lesbian she would still be protected by the sexual orientation provisions and this action would be unlawful direct sexual orientation discrimination.

### **Discrimination because of pregnancy and maternity**

A further or higher education institution must not discriminate against you because you are, or have been, pregnant, or have given birth in the last 26 weeks or are breastfeeding a baby who is 26 weeks or younger (this is known as pregnancy and maternity discrimination).

A further or higher education institution must not discriminate against you because you are breastfeeding a child who is more than 26 weeks old (this would be direct sex discrimination).

**For example:** A college student is told that she will have to defer for a year because she is pregnant. This would constitute pregnancy and maternity discrimination.

**For example:** A university has a policy of allowing students to defer for up to one year for medical or personal reasons. A pregnant student asks if she can defer for a year due to her pregnancy and is told by her course leader that he doesn't think she will return to the course after she has had her baby and so she must withdraw from the course and then re-apply at a later date. This would be unlawful pregnancy and maternity discrimination.

### 2.1.2 Indirect discrimination

A further or higher education institution may be indirectly discriminating against you if a provision, criterion or practice applied to all students (or a particular student group, such as postgraduate students), puts you and others who share your protected characteristic at a particular disadvantage and it cannot be objectively justified as 'a proportionate means of achieving a legitimate aim'. This is explained below.

It doesn't matter whether the institution intends to disadvantage you in this way. What does matter is whether the institution's action does, or would, disadvantage you compared with students who do not share that characteristic.

Disadvantage can take many different forms, such as denial of an opportunity or choice, deterrence, detriment, rejection or exclusion.

Indirect discrimination applies to all the protected characteristics other than pregnancy and maternity, although if you are pregnant or a new mother and disadvantaged in this way, this may amount to indirect sex discrimination.

'Provision', 'criterion' or 'practice' are not defined in the Act but should be interpreted widely and include:

- arrangements (for example, for deciding who to admit)
- the way that education, or access to any benefit, service or facility is offered or provided
- one-off or discretionary decisions
- proposals or directions to do something in a particular way
- formal and informal policies
- rules
- practices
- criteria and prerequisites.

These may or may not be written out formally.

**For example:** A further education college requires all applicants to pass a written English test before they can be admitted onto any course at the college. This practice is applied to all prospective students but is more likely to disadvantage those applicants for whom English is not their first language and therefore could result in indirect race discrimination unless it can be justified as a proportionate means of achieving a legitimate aim.

The position is somewhat different where the claim is one of indirect religion or belief discrimination. Where the Convention applies to a claim of indirect discrimination connected to religion or belief, it is not necessary to show that others are also put at a particular disadvantage by a provision, criterion or practice; rather the question is whether the limitation of an individual's right to manifest their religious beliefs is proportionate given the legitimate aims of the education provider<sup>1</sup>. This is because protection of the right to manifest religion under the Convention does not require 'group disadvantage' to be shown.<sup>2</sup>

### **What is a 'proportionate means of achieving a legitimate aim'?**

To be legitimate, the aim of the provision, criterion or practice must be legal and non-discriminatory and must relate to a reasonable need on the part of the education provider. In the context of further and higher education, examples of legitimate aims might include:

- maintaining academic and other standards
- ensuring the health and safety and welfare of students.

Even if the aim is legitimate, the means of achieving it must be proportionate. This means that the measure or actions taken to achieve the aim are appropriate and necessary. Whether something is proportionate in the circumstances will be a question of fact and involve weighing up the discriminatory impact of the action against the reasons for it, and asking if there is any other way of achieving the aim.

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<sup>1</sup> *Mba v Mayor & Burgesses of the London Borough of Merton* [2013] EWCA Civ 1562.

<sup>2</sup> *Mba v Mayor & Burgesses of the London Borough of Merton* [2013] EWCA Civ 1562 and *Eweida, Chaplin, Ladele & McFarlane v United Kingdom* (2013) applications numbers 48420/10, 59842/10, 51671/10 and 36516/1.

**For example:** In the example above, if the college can show that a certain level of written English is a necessary requirement for all of the courses then this would be a legitimate aim and the requirement to pass the written test would be a proportionate means of achieving that aim. However, there may be some courses where a certain standard of written English is not really required and then the college would not be able to justify its practice of requiring all applicants to pass the test.

In a case involving disability, if your institution has not complied with its duty to make reasonable adjustments, it will be difficult for it to show that the treatment was proportionate.

### 2.1.3 Discrimination arising from disability

If you are a disabled student, it will be discrimination arising from disability if a further or higher education institution treats you unfavourably because of something connected with (arising in consequence of) your disability and the treatment cannot be justified. There is no need for you to compare your treatment to that of anyone else and you do not need to show that any other disabled students have been treated unfavourably.

**For example:** A disabled student takes a number of days off their course for reasons arising from their impairment. The college does not record disability-related absences separately and simply notes their absence. The college then takes disciplinary action based on the fact that the student has exceeded the permitted number of days absences in a term. The reason for the disciplinary action is the disability-related absence so this would be discrimination arising from disability unless the college could justify the action.

Discrimination arising from disability will occur if the following three conditions are met:

- your institution treats you unfavourably, that is putting you at a disadvantage, even if this was not its intention, and
- this treatment is because of something connected with your disability (which could be the result, effect or outcome of that disability) such as an inability to walk unaided or disability-related behaviour, and
- it cannot justify the treatment by showing that it is 'a proportionate means of achieving a legitimate aim'. This is explained above.



**For example:** A student who is known to have autism often speaks out of turn during tutorials as a result of his disability which can create a disruptive atmosphere for the tutor and other students. Because of his behaviour, his tutor asks him not to attend tutorials. This is likely to be discrimination arising from disability unless the treatment can be justified.

### **Knowledge of disability**

If the institution can show that it:

- did not know that you had the disability in question, and
- could not reasonably have been expected to know that you had the disability,

then the unfavourable treatment does not amount to unlawful discrimination arising from disability. An organisation does not have to **know** that a person meets the legal definition of 'a disabled person', *just that he or she has an impairment which is likely to meet the definition.*

If any of the institution's employees or anyone else who works for it knows of your disability, it will not usually be able to claim that it did not know of your disability.

**For example:** A student tells his course leader that he is dyslexic. He then transfers onto another course at the same institution but does not mention his disability to any of the course staff. As one member of staff at the institution is aware of his disability, the institution will not be able to claim that it did not know that the student was disabled.

### **Relevance of reasonable adjustments**

If your institution fails to make an appropriate reasonable adjustment, it is likely to be very difficult for it to argue that the unfavourable treatment is justified.

**For example:** In the above example about the autistic student, the tutor did not consider whether any reasonable adjustments could be made to enable all students to participate in the tutorial and so it is unlikely that the treatment could be justified.

## 2.1.4 The duty to make reasonable adjustments

If you are a disabled student, the duty requires further and higher education institutions to take positive steps to ensure that you and disabled students generally can fully participate in the education and other benefits, facilities and services provided for students. This includes taking advance action, where it is reasonable, to anticipate disabled students' requirements so that it is then not difficult or too late to make adjustments when disabled students ask for them. This duty is owed to you, whether you are an existing student, an applicant or, in limited circumstances, if you are a former student. As explained below, this duty may require institutions to change the way they normally work, alter physical features of their buildings such as the siting of lecture rooms or access to them, and provide equipment such as assistive software or human assistance such as a scribe or British Sign Language (BSL) interpreter.

### What is the reasonable adjustments duty?

Further and higher education institutions are required to take reasonable steps to:

- avoid substantial disadvantage where a provision, criterion or practice puts you at a substantial disadvantage in comparison with non-disabled students
- avoid substantial disadvantage where a physical feature of the building or premises puts you at a substantial disadvantage in comparison with non-disabled students; this includes removing the physical feature in question, altering it or providing a reasonable means of avoiding it
- provide an auxiliary aid where, without one, you would be put at a substantial disadvantage in comparison with non-disabled students.

Where the reasonable adjustment you need concerns the provision of information, the steps it is reasonable to take include ensuring the information is provided in an accessible format.

An institution cannot justify a failure to make a reasonable adjustment; where the duty arises, the issue is whether or not the adjustment is 'reasonable'.

### What is meant by 'reasonable' steps?

What is reasonable for an institution to do will vary according to a number of factors including the effectiveness of the adjustment, the cost and practicability of the adjustment, the type of education, benefit, facility or service being provided and the relationship between the student and the institution. There is often more than one reasonable adjustment that could be made and the institution does not have to make

the one requested by you if another one could also overcome the substantial disadvantage.

You do not have to suggest adjustments but if you do, your institution should consider whether these suggestions would help to overcome the disadvantage and whether they are reasonable. It is good practice for your institution to work with you in determining what reasonable adjustments can be made.

### **What is a substantial disadvantage?**

The Act defines a 'substantial disadvantage' as one that is more than minor or trivial. The level of disadvantage created by a lack of reasonable adjustments is measured in comparison with what the position would be if you did not have a disability.

A further or higher education institution will need to take into account a number of factors when considering what a substantial disadvantage might be, such as:

- the time and effort that you might need to expend
- the inconvenience, indignity or discomfort you might suffer
- the loss of opportunity or the diminished progress you might make in comparison with your peers who are not disabled.

**For example:** A college has several sites and students are required to move between sites to attend consecutive classes. This is likely to place a student with mobility difficulties at a significant disadvantage compared to their peers who have no mobility difficulties as the student will find it hard to move between sites and will arrive late for classes as a result. Such a disadvantage is more than minor or trivial and is likely to satisfy the definition of a substantial disadvantage.

### **The duty to change a provision, criterion or practice**

These terms are not defined, but in general they relate to how the education and other benefits, facilities and services are provided and cover all of a further or higher education institution's arrangements, policies, procedures and activities.

Where a provision, criterion or practice places you at a substantial disadvantage in accessing education and any benefit, facility or service, the institution must take such steps as it is reasonable to take in all the circumstances to ensure the provision, criterion or practice no longer has such an effect.

**For example:** A college has a strict policy that states no drugs are allowed on the premises. A student with a heart condition carries medication related to her condition. The college allows her to bring her medication with her to college. This is likely to be a reasonable adjustment to the college drug policy.

A provision, criterion or practice does not include what is known as a ‘competence standard’ that is defined as an academic, medical or other standard for the purpose of determining whether or not a person has a particular level of competence or ability. There is no duty to make reasonable adjustments in relation to the application of a competence standard. However, the duty does apply to the process of demonstrating that a person meets the competence standard.

**For example:** The mark required to pass an exam would be a competence standard, so would not be subject to the duty to make reasonable adjustments. However, it might be a reasonable adjustment to give a disabled person a longer time in which to complete an exam if their disability causes them to write more slowly, or to provide a student with a visual impairment with his written exam in enlarged text. These would be examples of reasonable adjustments to help them demonstrate that they can meet the competence standard.

## **The duty related to physical features**

Physical features of a building or premises include:

- any feature arising from the design or construction of a building
- any feature on the premises, including any approach to, exit from, or access to a building
- any fixtures, fittings, furnishings, furniture, equipment or other moveable property in or on the premises, and
- any other physical element or quality.

All these features are covered by the duty, whether the feature in question is temporary or permanent.

## **The duty to provide auxiliary aids**

A further or higher education institution must take such steps as it is reasonable for it to take to provide auxiliary aids to avoid the substantial disadvantage you may experience because of a disability. An auxiliary aid includes an auxiliary service and covers anything which provides additional support or assistance to you. This could

range from the provision of a particular piece of equipment (which would not become your property) to extra staff assistance. It includes making information available in an accessible format.

**For example:** A university ensures Deaf students have access to BSL interpreters and palantypists. This is an example of an auxiliary service which addresses the substantial disadvantage faced by Deaf students.

If you are on a higher education course, you may be able to obtain the Disabled Students' Allowance, which helps provide for the cost of additional study support or equipment you require as a result of the effect of your disability. If a piece of equipment is purchased using this allowance, it will remain your property after you have finished your course. If you are on a further education course, your institution may be able to provide you with study support and equipment through Additional Learning Support funding.

### **Cost of providing reasonable adjustments**

A further or higher education institution is not allowed to charge you for the cost of making any reasonable adjustments for you.

## **2.2 Harassment**

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There are three types of harassment against you which are unlawful under the Equality Act:

- harassment related to a relevant protected characteristic
- sexual harassment
- treating you less favourably because you submit to or reject sexual harassment or harassment related to sex.

Pregnancy and maternity harassment is not protected directly under the harassment provisions, however, unwanted behaviour related to pregnancy and maternity (as described below) will amount to harassment related to sex.

### **2.2.1 Harassment related to a protected characteristic**

Harassment occurs when a further or higher education institution engages in unwanted behaviour which is related to a relevant protected characteristic and which has the purpose or effect of:

- violating your dignity, or

- creating an intimidating, hostile, degrading, humiliating or offensive environment for you.

The word 'unwanted' means 'unwelcome' or 'uninvited'. It is not necessary for you to say that you object to the behaviour for it to be unwanted.

**For example:** A college tutor repeatedly makes racist remarks about Gypsies and Travellers stating that they are unhygienic and dishonest and shouldn't be allowed to be students at the college. A student from a Traveller background is in the class and finds the tutor's behaviour degrading and offensive. This could be harassment related to the protected characteristic of race.

Whether or not the unwanted behaviour constitutes unlawful harassment depends on the purpose or effect of the behaviour. It does not matter what the intention behind the behaviour is if it creates the circumstances described above. In determining if the behaviour has had such an effect, it is necessary to take into account not only the perception of the student but also the other circumstances of the case including the relationship between the alleged harasser and the student and whether it is reasonable (judged objectively) for the behaviour to have that effect. This means that it is unlikely to be unlawful harassment if another reasonable person would not feel that their dignity had been violated or that the behaviour had created an intimidating, hostile, degrading, humiliating or offensive environment for the student.

In this context 'related to' has a broad meaning and includes situations where you do not have the protected characteristic yourself, provided there is a connection between the behaviour and a protected characteristic.

This would also include situations where you are associated with someone who has a protected characteristic or are wrongly perceived as having a particular protected characteristic.

### 2.2.2 Sexual harassment

Sexual harassment occurs when you are subjected to unwanted behaviour which is of a sexual nature by an employee or agent of your further or higher education institution, and which has the purpose or effect of:

- violating your dignity, or
- creating an intimidating, hostile, degrading, humiliating or offensive environment for you.

'Of a sexual nature' can cover verbal, non-verbal or physical conduct including unwelcome sexual advances, inappropriate touching, forms of sexual assault,

sexual jokes, displaying pornographic photographs or drawings, or sending emails with material of a sexual nature.

**For example:** A tutor walks up to a female student who has stayed behind to speak to him and puts his arms around her waist and kisses her and tells her she is 'very attractive'. The student pushes him away and tells him that he is behaving in an inappropriate manner. The tutor's behaviour would amount to sexual harassment.

Another tutor tries to kiss a student and although she is offended by his behaviour she doesn't push him away. The tutor's behaviour would be sexual harassment even though the student did not push him away.

### 2.2.3 Treating you less favourably because you submit to or reject sexual harassment or harassment related to sex

It is unlawful to treat you less favourably because you either submit to, or reject, sexual harassment or harassment related to your sex.

**For example:** In relation to the first example above, if the tutor then refuses to allow the student to go on a field trip, this would be less favourable treatment because the student had rejected sexual harassment.

In relation to the second example above, if the tutor then marks down her assignment this would be less favourable treatment because the student had submitted to sexual harassment.

## 2.3 Victimization

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Victimization is defined in the Act as:

Treating someone unfavourably (to their disadvantage or detriment) because they have done a 'protected act' (or because you believe that a person has done or is going to do a protected act).

A 'protected act' is:

- making a claim or complaint of discrimination (under the Equality Act)
- helping someone else to make a claim by giving evidence or information
- making an allegation that someone has breached the Act
- doing anything else in connection with the Act.

If a further or higher education institution treats you less favourably because you have taken such action then this will be unlawful victimisation. There must be a link between what you did and how the institution treats you.

The less favourable treatment does not need to be linked to a protected characteristic.

**For example:** A finance officer refuses to process a student's living cost grant application because she has supported another student's race discrimination claim. This would amount to victimisation.

### 2.3.1 Who is not protected?

If you give false information or evidence in bad faith (that is, you know that it is false) or make an allegation that is false and given in bad faith, you would not be protected against victimisation.

**For example:** A student with a grudge against his tutor knowingly gives false evidence in another student's discrimination claim against the university. He is subsequently excluded from the course for supporting the claim. This treatment could not amount to victimisation because his evidence was untrue and given in bad faith.

It doesn't matter whether the original complaint/claim is upheld as long as it was not made in bad faith.

## 2.4 Obligations to you as a former student

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Even after you have left your institution it must not discriminate against you, victimise or harass you. This only applies if the discrimination, victimisation or harassment arises out of and is closely connected to your previous relationship with the institution and would have been unlawful if you were still a student.

**For example:** If an ex-student asks for a reference from the college, it would be unlawful for the reference to be unfairly negative because of a protected characteristic of the ex-student.

If you are a disabled former student, this obligation to you would include the duty to make reasonable adjustments if you continue to be at a substantial disadvantage in comparison to former students without a disability. This obligation only applies if the substantial disadvantage arises out of and is closely connected with you having been a student.



**For example:** A college sends an annual newsletter to former students and one former student who has a visual impairment requests that it is sent to him by email rather than in hard copy. The college refuses to provide him with an electronic copy. This is likely to be an unlawful failure to make a reasonable adjustment.

If you believe that you are being discriminated against after you have stopped studying at the institution, you can take the same steps to have things put right as if you were still a student. These steps are explained in [Section 5](#).

## 2.5 When is a further or higher education institution responsible for what other people do?

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A further or higher education institution is legally responsible for acts of discrimination, harassment and victimisation carried out by its employees and agents in the course of their employment or agency, unless it can show it took 'all reasonable steps' to prevent such acts from taking place. In some circumstances an employee or agent of the institution may be personally liable for such acts.

**For example:** A lecturer racially discriminates against a student. The college is able to show that it took all reasonable steps to prevent the harassment including providing guidance and regular compulsory training for all staff on the Equality Act, and therefore was not liable. The student can still make a claim of discrimination against the lecturer.

Usually, a further or higher education institution will not be responsible for discrimination, harassment or victimisation by someone other than their employee or agent, however, case law indicates that it is possible that they could be found to be legally responsible for failing to take action where they have some degree of control over a situation where there is a continuing course of offensive conduct, but they do not take action to prevent its recurrence even though they are aware of it happening.

# Section 3: Admissions

## 3.1 Introduction

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A further or higher education institution must not discriminate against, harass or victimise you:

- in the arrangements it makes for deciding who to admit as a student
- in the terms on which it offers to admit you as a student
- by not admitting you as a student.

Everything that a further or higher education institution does in relation to deciding who is admitted to the institution and the way in which decisions are made about who is admitted must be non-discriminatory. This covers everything from course design and setting admission requirements to the information it provides to you and the application and admissions process.

## 3.2 Admissions arrangements

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All admissions information and application forms should be available in accessible formats to ensure that the institution complies with its reasonable adjustments duty to disabled people.

**For example:** A person with learning difficulties wishes to apply for a short course at a further education college. He orders the college prospectus but finds it very difficult to understand so contacts the college to see if they have an Easy Read version or if someone could talk him through the course options. He is told that the prospectus is only available in one format and that while he can talk to course tutors once he has decided which course he wants to apply for, there is no one who can talk to him about the range of different courses available. This is likely to be an unlawful failure to make a reasonable adjustment.

### 3.3 Marketing the course and positive action

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An institution should not generally advertise courses as only being available to people with certain protected characteristics and any marketing material should be non-discriminatory. However, the positive action provisions of the Act allow further and higher education institutions in their advertising to particularly target groups that they think are under-represented on a particular course and, in certain circumstances, to run courses for people with specific protected characteristics.

**For example:** A college notes that it has few male applicants for its health and social care course. In its marketing, it uses images of both male and female students and states clearly that it welcomes applications from men. It also offers a guaranteed interview for male applicants that meet the minimum criteria. This is likely to be lawful positive action.

Further and higher education institutions can use positive action measures to alleviate disadvantage experienced by people sharing a protected characteristic, reduce their under-representation in relation to particular activities or meet their particular needs.

Institutions can always lawfully advertise courses as open to disabled people only, as it is not unlawful to treat disabled people more favourably than non-disabled people because of or in connection with their disability.

### 3.4 Recruitment activities

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Many institutions will run a variety of events to attract applicants such as recruitment fairs, open days, mentoring schemes with local schools, campus tours, taster courses and summer schools. Such events should not exclude people with particular characteristics.

**For example:** A large university arranges all its open days on Saturdays. The practice of holding all open days on a Saturday instead of on a variety of different days places Jews who observe the Sabbath at a disadvantage and therefore could potentially lead to a successful complaint of unlawful indirect religion or belief discrimination.

However, a smaller institution running only a single event, might find after consideration that a Saturday was the only day which was suitable for the great majority of potential applicants, and was therefore objectively justified as a

proportionate means of achieving a legitimate aim.

### 3.5 The application process

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The application process is the means by which you access admission to a further or higher education institution and therefore it is vital that the process itself does not discriminate against you and other applicants.

If an institution uses assessment methods such as interviews and written tests, these should be applied to all applicants and not just those with particular protected characteristics.

**For example:** A university interviews all women who apply for a degree in engineering to try to ascertain if they are serious about a career in engineering before offering them a place. Men who apply for the engineering degree are offered places without an interview. This would be unlawful direct sex discrimination.

Your institution needs to ensure it makes reasonable adjustments to the application process and any assessment within that process for disabled people.

**For example:** An applicant with multiple sclerosis is invited to an assessment day for a university course. She contacts the university and explains that her disability means that she gets tired very quickly and asks if she can have rest breaks between the different stages of the day or have her assessment spread over several days. The university replies that she must be assessed in exactly the same circumstances as all other applicants and makes no adjustments for her. This is likely to be an unlawful failure to make reasonable adjustments.

### 3.6 Admission requirements

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Although the Act does not prevent further and higher education institutions from setting admission requirements, they should ensure that the criteria they use, and the way they apply them, do not unlawfully discriminate.

Criteria which exclude you on the grounds of your protected characteristic will result in direct discrimination. Direct discrimination is always unlawful, except in limited circumstances in relation to age where it can be justified as being a proportionate means of achieving a legitimate aim, that is if there is a genuine reason for having

concerns about the age of people on a course and imposing a particular age requirement is appropriate and necessary as a result.

**For example:** A university refuses admission to a 16-year-old applicant for a teaching course on the grounds that he would be unable to undertake the teaching practice elements of the course. This would be a proportionate means of achieving a legitimate aim and therefore lawful age discrimination.

Terms which indirectly discriminate against you because of your protected characteristic or, if you are a disabled applicant, result in discrimination arising from disability, will be unlawful unless the institution can show they are a proportionate means of achieving a legitimate aim.

Stating that you must have good health or fitness in order to be admitted to a course might result in disability discrimination. If you are disabled, an institution may need to make reasonable adjustments to enable you to demonstrate your ability to meet the course requirements.

Institutions will need to have arrangements in place to deal with the reasonable adjustment needs of disabled applicants generally (see earlier [paragraph 2.1.4](#)) and on an individual basis and it may need to make reasonable adjustments to enable you to demonstrate your ability to meet the course requirements.

Some institutions choose to accept students with learning difficulties onto courses even though they may not be able to complete the whole course or achieve the qualification. This is good practice and increases participation, but you are not entitled to require them to do so under the Act.

### 3.7 Professional and vocational courses

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Some of the courses that further and higher education institutions run may be validated by external bodies such as trade organisations and qualifications bodies, such as the General Medical Council or the British Floristry Association. These organisations may set entry requirements for these courses which further and higher education institutions may have no control over. Qualifications bodies and trade organisations have obligations under the Equality Act when awarding qualifications. These are explained in the F/HE Technical Guidance, which is available at: [http://www.equalityhumanrights.com/uploaded\\_files/EqualityAct/technical\\_guidance\\_on\\_further\\_and\\_higher\\_education.pdf](http://www.equalityhumanrights.com/uploaded_files/EqualityAct/technical_guidance_on_further_and_higher_education.pdf)

## 3.8 Fees

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The Equality Act provisions do not prevent further or higher education institutions from charging higher tuition fees for certain types of international students if this is authorised by other legislation. International students may also be subject to separate immigration requirements. Detailed information can be found at the website of the UK Council for International Student Affairs: [www.ukcisa.org.uk](http://www.ukcisa.org.uk).

There is an exception in the Equality Act for discrimination authorised by other statutes and linked to place of residence. This allows England, Scotland and Wales each to charge different admission fees to students dependent on whether they are resident in that country.

## 3.9 Exceptions

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### Single-sex institutions

Single-sex institutions are permitted to admit students of only one sex and this would not constitute sex discrimination. This also applies to single-sex institutions that admit students of the opposite sex on an exceptional basis or in comparatively small numbers and only to particular courses or classes.

**For example:** A women's college which admits only female students is not discriminating unlawfully against men. If the college admits a small number of men to make up the numbers on the Oriental languages course, it will still be regarded as a single-sex college and is not discriminating by refusing to admit men to other courses.

These exceptions only apply to admissions and do not apply to the provision of education, or access to any benefit, facility or service to you or to exclusions.

**For example:** In the above example the college does not allow the male students access to the college library. This would be unlawful sex discrimination.

### Occupational requirements

In certain circumstances, it is lawful for an employer to require a job applicant or worker to have a particular protected characteristic. This would only apply in extremely limited circumstances.

A further or higher education institution can refuse to admit you to a course which trains people only for a job where such requirements can lawfully apply if you do not have this particular protected characteristic.

**For example:** A Catholic theological college can refuse to admit women to a course which is only designed to prepare candidates for the Catholic priesthood as women cannot become Catholic priests. However, a Church of England college could not confine training for the priesthood to men since women may also become Anglican priests.

### **Designated institutions with a religious ethos**

This exception only applies to a very small number of Catholic sixth form colleges in England and Wales which have been specially listed in regulations. They can admit students that share their religion or belief over those that do not, but only for the purpose of preserving its religious ethos and only in relation to admissions to courses which do not constitute vocational training. Vocational training courses would include, for example, courses in childcare, plumbing, construction or hairdressing.

# Section 4: Your education and access to any benefit, service or facility and exclusions

## 4.1 Introduction

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A further or higher education institution must not act unlawfully by discriminating, harassing or victimising you:

- in the way it provides education
- in the way it gives you access to a benefit, facility or service
- by not providing education for you
- by not giving you access to any benefit, facility or service
- by excluding you
- by subjecting you to any other detriment.

A further or higher education institution's legal obligations to you covers all its services, facilities and benefits, both educational and non-educational, from teaching and learning to the physical environment, and any leisure and accommodation facilities.

You do not need to be studying full-time to be protected under the Act. All types of course are covered including undergraduate, postgraduate, part-time, distance learning, short, research, e-learning, informal and optional study skills courses.



## 4.2 Types of education, benefits, facilities and services that are covered

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### Induction

Further and higher education institutions should ensure that their induction procedures do not unlawfully discriminate against you.

**For example:** A university arranges induction events which all take place during the school summer holidays, making it difficult for women with childcare responsibilities to attend. As women are more likely than men to have childcare responsibilities this could result in unlawful indirect sex discrimination unless the university could justify their actions by, for example, showing that there was no other time they could hold the events.

**For example:** A university library holds a series of induction sessions for each course group on how to use the library services. A disabled student is unable to attend the session for her course group because of the scheduling of her personal care arrangements. She informs the relevant library staff of this, and asks if she could attend an alternative session, but is told that she must attend the session for her course group. This is likely to be an unlawful failure to make a reasonable adjustment.

### Flexibility in course provision

Many institutions will deliver courses in a flexible way which, whilst not explicitly required by the Act, is good practice that is likely to help the institution ensure that they are not discriminating against their students and to facilitate the widest participation.

### Curriculum delivery

Although the actual content of courses is not subject to the discrimination provisions, institutions must ensure that their courses are taught in a way that will not subject you or other students to discrimination.

**For example:** A lecturer covering apartheid in South Africa repeatedly uses unnecessary racist language when talking about black people. Many students find this offensive. This is likely to be unlawful harassment **related to the protected**

### **characteristic of race.**

**This is explained in more detail at [Section 4.3](#).**

## **Academic progression and transfer**

Your institution should not discriminate, harass or victimise you in the practical arrangements necessary to support your progression or transfer to a new course or higher level. If you are disabled they should make any necessary reasonable adjustments to help you transfer.

## **Field trips**

Your further or higher education institution should seek to ensure that field trips it arranges do not act unlawfully against you or any other students.

**For example:** On a trip involving an overnight stay in dormitory-style accommodation, a university refuses to take a student who is in the process of changing gender. This would be unlawful gender reassignment discrimination.

If you are a disabled student, your institution may be required to make reasonable adjustments to enable you to access field trips.

## **Libraries, study facilities and learning equipment**

The further and higher education provisions of the Act cover all teaching and learning facilities including libraries and ICT facilities.

**For example:** A university librarian asks a breastfeeding mother to feed the baby in the toilets instead of the open area as she is offending other students. This would be unlawful pregnancy and maternity discrimination (or sex discrimination if the baby is over six months old).

If you are a student with a disability, you may require a reasonable adjustment such as a low unit photocopier, priority workstations, books in alternative formats, help with reaching books on higher shelves and flexible loan periods.

## **The physical environment**

Whether an institution is campus or town based, multi or single site, its physical environment plays an important role in your student experience. It is good practice for an institution to manage its environment in such a way that it enhances rather than detracts from students' participation in college or university life. Under the reasonable adjustments duty this requires further and higher education institutions to take

reasonable positive steps to prevent disabled people from being disadvantaged by the physical environment of the institution.

### **Centrally provided services**

Further and higher education institutions will provide a range of support services for students such as careers advice, catering, health services and spiritual services. All of these services and any others that an institution provides for students are covered by the Act even if they are not educational. You should not be discriminated against when using any such services.

### **Residential accommodation and accommodation-finding services**

Some further and higher education institutions provide residential accommodation and/or accommodation-finding services for students. This should be provided in a way which does not discriminate against you or any other students. Examples of discriminatory practices might include providing a higher quality of accommodation for one sex than for the other, arranging accommodation in such a way that there is no suitable accommodation for students undergoing gender reassignment, or no single-sex accommodation for those students whose religion requires it.

### **Assessments and examinations**

Assessments and examinations are usually an essential part of most courses of further and higher education and may take many forms including written examinations, vivas, orals and presentations, practicals and performances, dissertations and coursework and work-based assessments. The way in which assessments and examinations are conducted must not discriminate against you or other students. If you think that you are being discriminated against in relation to assessments and examinations you should raise this with your institution.

### **Disabled students and assessments**

If you are a disabled student, your further or higher education institution is required to make reasonable adjustments, when this duty arises, to its assessment methods, although it does not have to lower the particular academic, medical or other standard it is applying to determine whether or not you have a particular level of competence or ability.

These reasonable adjustments might include providing readers, interpreters, rest breaks, extra time, assistants, flexible deadlines or alternative assessment methods. The Disabled Students Allowance for students in higher education and Additional Learning Support funding in further education can cover the funding of a helper or an

item of equipment for assessment or exams but it is your institution's responsibility to cover the cost of flexible assessment or exam arrangements and to provide materials in accessible formats. Discussion with you is vital to ensure the most appropriate adjustments are made, although you may not be aware of all the adjustments that could be put in place.

Such adjustments are not intended to compromise the qualification itself. Further and higher education institutions are entitled to differentiate between students when assessing or examining you. However, the method by which an institution judges performance must be a proportionate means of achieving a legitimate aim.

**For example:** A physics student whose disability affects her manual dexterity is allowed to use an assistant to set up and carry out experiments under her direction. Allowing the help of the assistant is a reasonable adjustment for her institution to make. The physics qualification itself is not compromised as the student's academic ability is judged on the basis of her ability to understand and direct the experiment.

Competence standards are explained in [Section 2.1.4](#).

## Work placements

Work placement providers have duties as employers under the Act towards you (see the Employment Guidance at: <http://www.equalityhumanrights.com/advice-and-guidance/guidance-for-workers/>) when you are on a work placement with them. Your institution must ensure that it does not discriminate in any of the arrangements that it makes with work placement providers and that, where relevant, these providers are made aware of your needs arising from your protected characteristic/s. If your institution is told that discrimination has occurred, it will need to work with the work placement provider to try and resolve the issue and your institution may need to find an alternative placement to ensure you are not discriminated against.

If you are a disabled student, your institution must also ensure that a work placement provider is aware of the need to make reasonable adjustments for you where required.

**For example:** A student with a visual impairment who requires all written material to be in large font is studying on a degree course with a work placement element. The university fails to advise the work placement provider of the student's reasonable adjustments needs and, as a result, the work placement provider fails to make the necessary reasonable adjustments.

## **Studying at another institution or abroad**

If you study at a British institution and at another institution or overseas for a period of time, your 'home' (British) institution is responsible for ensuring that it does not discriminate in any of the arrangements it makes and that it liaises with the other institution in relation to your particular needs to avoid discriminating against you. If it is made aware that you have been discriminated against whilst studying at another institution, it will need to work with that institution to try and resolve the issue and may need to arrange for you to study at an alternative institution.

If the other institution is in England, Scotland or Wales, they will have the same duties under the Act towards you as your 'home' institution. Northern Ireland FE and HE institutions are covered by separate equality legislation. If the institution is overseas, you may well also be protected by domestic or regional equality legislation covering that particular country. In some circumstances, the other institution may be considered to be acting for your 'home' institution therefore making your institution liable for their actions.

**For example:** A university has a study abroad programme but only for countries where women and lesbians, gay men and bisexuals have very restricted lives. The university should find equivalent placements for students with these protected characteristics in suitable alternative countries, because it is responsible for ensuring its students are not discriminated against even when abroad. It would not be a defence to argue that it has no control over the discriminatory practices in the overseas institutions.

## **Graduation and certificate ceremonies**

The further and higher education provisions of the Act cover these events and you should not be discriminated against by not being able to attend because of your protected characteristic. If you are a disabled person then you may require reasonable adjustments to enable you to participate in ceremonies in the same way as your non-disabled peers.

## 4.3 What is not covered?

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### Content of the curriculum

Your further or higher education institution's obligations do not apply to anything done in connection with the content of the curriculum. This means that it is not restricted in the range of issues, ideas and materials it covers in its syllabus and will have the academic freedom to expose you to a range of thoughts and ideas, however controversial. Even if the content of the curriculum causes offence to you, this will not make it unlawful unless it is delivered in a way which results in harassment or subjects you to discrimination or other detriment – see the third example in [Section 4.2](#).

**For example:** A man signs up for a course on gender studies but complains that the syllabus is dominated by feminist works and consideration of women's history, and does not focus sufficiently on disadvantage and victimhood experienced by men. This would not be unlawful sex discrimination or harassment.

### Students' unions

Although these are often thought of as educational provision, they are in fact service providers under the Act and their legal obligations towards you are covered by the services provisions of the Act accordingly (see the Services Guidance at: <http://www.equalityhumanrights.com/advice-and-guidance/guidance-for-service-users/>). This includes all clubs, activities and services run by student unions.

The NUS has produced helpful guidance: Equality Act 2010: Implications for students' unions at: <http://www.nusconnect.org.uk/goodgovernance/resources/>

**For example:** A university hockey club discriminates against a student because of their race. If the hockey club is run by the student union, any claim of discrimination should be brought against the student union rather than the university.

## 4.4 Qualifications

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If you are a disabled person whose qualification is conferred by a further and higher education institution at which you are not a student you are also covered by the higher and further education provisions of the Act.

**For example:** A dyslexic student studies at a community college for a degree

awarded by a University. She is entitled to ask the University for reasonable adjustments in terms of extra time for taking some tests to prevent her from being placed at a substantial disadvantage in comparison with people who are not disabled, in the same way as if she was registered as a student at the University.

## 4.5 Exclusions

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Further and higher education institutions should not act unlawfully by discriminating, harassing or victimising students by excluding them. Where there is indirect discrimination, direct age discrimination or discrimination arising from disability due to behaviour, suspension and exclusion policies adversely impacting on you because of your protected characteristic, the application of these policies would need to be justified as a proportionate means of achieving a legitimate aim.

**For example:** A student acquires a physical impairment during his further education course. The student is unable to attend some of his lessons, because the buildings are not accessible, and cannot hand in his assignments on time because he requires longer to complete them due to his disability. The college removes him from his course because of his poor attendance record and for not handing in assignments. This is likely to be unlawful discrimination arising from disability as the reason that he handed his assignments in late is connected to his disability so he is being punished for something arising from his disability.

If you are a disabled student you may require reasonable adjustments to be made.

**For example:** A student with autism shouts during a tutorial and uses inappropriate language. The college would usually consider suspension as a sanction for such behaviour. However, the college takes into account the fact that the tutor had missed a tutorial session and that this had distressed the student who finds it difficult to cope with unexpected changes to routine and to express himself when he is upset. As a result, on this occasion the college does not suspend the student. This is likely to be a reasonable adjustment to make in these circumstances.

## 4.6 Subjecting you to any other detriment

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The duty of further and higher education institutions not to act unlawfully by discriminating against you, harassing or victimising you, is not limited to the matters

considered above. It applies to any detriment. The denial of an opportunity or choice, or anything which a reasonable student would consider altered their position for the worse could result in unintentional discrimination. The detriment need not be physical, economic or disciplinary for example, but the fact that you have a sense of grievance alone would not be enough.

**For example:** A Somali student is required to re-sit a year of his degree course and claims that he has been subjected to race discrimination. He loses the case as the court accepts the university's explanation that the decision was the result of a valid reason unconnected to his race, namely his failure to meet the necessary standard for progression to the next year.

**For example:** A university regularly arranges for guest speakers to visit the university and deliver lectures to students. A university invites a particular speaker who agrees to attend to deliver a lecture on gender and religion. However, he states that he is only prepared to attend if female students are seated separately from male students because of his religious beliefs which demand that women are segregated from men in public spaces. This means that female students must decide not to attend the lecture at all and so miss the opportunity to hear the speaker and contribute to any debate that follows, or comply with an instruction to sit apart from the male students. This is likely to be unlawful discrimination. It will not matter that the seats selected for the female students have the same view of the speaker or that they are as comfortable and convenient as those allocated to the male students. The female students are denied the opportunity to sit wherever they choose, including with the male students, and this is likely to be a detriment and unlawful.

**Note:** Segregating along racial lines will always be unlawful unless it is subject to a specific exemption (for example, as a result of lawful positive action).

Gender segregation is permitted for a few specifically defined purposes. For example, there is an exemption permitting gender segregation in certain situations where it is necessary to preserve privacy and decency. However, unless a specific exemption applies, segregation connected to gender will be unlawful.



# Section 5: What to do if you think you've been unlawfully discriminated against, harassed or victimised

## 5.1 Introduction

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This section explains what action you can take if you think you've been unlawfully discriminated against, harassed or victimised by a further or higher education institution.

## 5.2 Resolving disputes

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There are several choices open to you.

It is usually in everyone's best interests to attempt to resolve disputes without the need for legal action and for you to attempt to resolve matters internally before commencing legal proceedings. Bringing a claim can be lengthy, expensive and draining for everyone involved. Further and higher education institutions will have complaints procedures which should be able to deal with complaints of discrimination, harassment and victimisation. Institutions are also likely to have student support services which could be approached before making a complaint as they may well be able to help you to resolve the situation. Most student unions will be able to provide you with advice and information on making a complaint.

Consider the information given in this guide. You may need to seek advice to enable you to make a realistic assessment about whether what your institution has done (or failed to do) amounts to discrimination, harassment or victimisation.

If you are a disabled student, your institution must make reasonable adjustments to any internal complaints procedures to prevent you from being placed at a substantial disadvantage in comparison with people who are not disabled. Failure to do so will itself amount to unlawful discrimination.

Although, as stated above, it is usually advisable to try to resolve disputes internally wherever possible, there are occasions where this will not be practical or appropriate, or where you want to pursue legal action rather than trying to resolve the dispute. There is no legal requirement for you to go through the complaints procedure first.

## **5.3 Conciliation/mediation**

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If the matter cannot be resolved through the institution's internal complaints procedure, then there are various mediation and conciliation services that might assist you in resolving the dispute.

### **5.3.1 Office of the Independent Adjudicator (OIA)**

If you are studying at a university or higher education institution in England or Wales, you can make a complaint that you have been discriminated against by your institution to the OIA. You will usually have to have exhausted the internal complaints procedure. There are several issues that the OIA cannot hear complaints about, such as questions of academic judgment, but they can hear complaints of discrimination although they cannot make a finding that the university has discriminated against you. You need to think carefully about whether this is the best option for you, especially if you are looking for a finding of unlawful discrimination and possibly other remedies that the OIA may not be in a position to provide.

If you make a complaint to the OIA within six months of the alleged discrimination, then the time limit for bringing an action in court is extended by three months to nine months.

Further information can be obtained from the OIA's website at: [www.oiahe.org.uk](http://www.oiahe.org.uk)

### **5.3.2 Students at universities or higher education institutions in Scotland**

If you are a student at a university or higher education institution in Scotland you can make a complaint to the Scottish Public Services Ombudsman if (usually) you have exhausted the institution's internal complaints procedure. However, making such a complaint does not extend the time limit for making a claim in the Sheriff Court.

### 5.3.3 Skills Funding Agency

If you are a student in England and have a complaint about:

- a further education college (but not a sixth-form college), or
- a learning provider delivering apprenticeships, or
- another learning provider delivering other education and training suitable for persons aged 19 or over and funded by the Skills Funding Agency (SFA),

you can make a complaint to the Skills Funding Agency. The Skills Funding Agency will not normally investigate complaints until the institution's complaint procedure has been exhausted. The Skills Funding Agency will not investigate complaints about equality and diversity issues where there is a more appropriate mechanism for dealing with the matter, such as a claim to the county court.

The Skills Funding Agency helps to facilitate resolution but does not decide on the merits of the case. Cases can be referred to the Parliamentary Ombudsman (PO) who can assess whether procedures have been followed correctly but, similarly, will not assess the merits of the case. You need to think carefully about whether this is the best option for you, especially if you are looking for a finding of unlawful discrimination and possibly other remedies that the SFA or PO may not be in a position to provide. Findings on the lawfulness or otherwise of alleged act(s) of discrimination are ultimately for the courts to determine.

## 5.4 Obtaining information ('the questions procedure')

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If you think you may have been discriminated against, harassed or victimised because of a protected characteristic, you can obtain information from your institution to help you decide if you have a valid claim or not.

Where the claim is about events that took place before 6 April 2014, there is a specified questions procedure with a set questionnaire form to support the process. The form does not need to be used, provided the same questions are asked. If your institution does not respond to the questionnaire within eight weeks, then the court or tribunal can take that into account when making a judgment. The court or tribunal can also take into account answers which are evasive or unclear, except where other responses might prejudice a criminal matter.

The questionnaire is available online at the link below:

<https://www.gov.uk/government/publications/discrimination-and-other-prohibited-conduct-complaints-questionnaire>

The set questions procedure and the questionnaire were abolished on 6 April 2014 though they will continue to apply to complaints about events which took place before that date.

For claims about events which took place on or after 6 April 2014 it will remain good practice for those who think that they may have experienced unlawful discrimination, harassment or victimisation contrary to equality law to seek relevant information before issuing a formal claim and for an institution to respond as fully as it feels able. This may prevent the complaint escalating to a formal claim.

The Government Equalities Office has issued a good practice guide on asking and responding to questions about discrimination in the provision of services and public functions including education services. This can be found at:

<https://www.gov.uk/government/publications/asking-and-responding-to-questions-of-discrimination-in-the-provision-of-goods-and-services-and-public-functions>

That guidance makes it clear that an institution should treat any questions seriously and promptly and not ignore them. The questions and answers can form part of the evidence in a case brought under the Equality Act 2010.

## **5.5 Claims brought in the county courts and sheriff court**

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You can find more information about procedures in the county court at: [www.hmcourts-service.gov.uk](http://www.hmcourts-service.gov.uk) and about procedures in the sheriff court at: [www.scotcourts.gov.uk/sheriff/index.asp](http://www.scotcourts.gov.uk/sheriff/index.asp)

### **5.5.1 Who can make a claim?**

In England and Wales a person who does not have mental capacity, or who is under 18 will have to make a claim through a 'litigation friend' who is an adult appointed to conduct the claim on their behalf (often, but not always, their parent).

In Scotland, you are presumed to have capacity to instruct a solicitor at age 12 and can bring a claim in your own right from that age. If a student lacks the mental capacity to bring their own claim, a parent or a guardian (if the student is under 16), can conduct a claim on their behalf.

### 5.5.2 Time limits

A claim must normally be started (and, in Scotland, served on the institution) within six months of the alleged act of discrimination. Where there has been a continuing process of discrimination taking place over a period of time, the six months begins at the date of the last discriminatory act. Courts have the discretion to consider a claim brought outside the six-month period if they consider that it is fair to do so.

The time for bringing a claim is extended to nine months of the alleged conduct taking place where a complaint has been made to the OIA (for England and Wales).

### 5.5.3 What can the court award?

A county or sheriff court can:

- declare that you have been unlawfully discriminated against, harassed or victimised or declare that no unlawful discrimination, harassment or victimisation has taken place
- impose an injunction (in England and Wales) or interdict (in Scotland) requiring the institution to do something (such as to admit you as a student) or to prevent it from repeating any discriminatory act in the future
- order the institution to pay you compensation including compensation for injury to feelings
- order the institution to pay you interest on any compensation
- order either you or the institution to pay litigation costs.

# Annex A: Responsible bodies for further and higher education institutions

Type of institution	Responsible body
University	The governing body
Higher education institution	The governing body
Further education institution	The governing body
Sixth form Colleges	The governing body
A 16-19 Academy	The proprietor
Further education college under the management of a board of management	The board of management
Further education college without a board of management	Any board of governors of the college or any person responsible for the management of the college, whether or not formally constituted as a governing body or board of governors

## Annex B: Protected characteristics

The protected characteristics for the further and higher education institution provisions are:

- Age
- Disability
- Gender reassignment
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

Being married or in a civil partnership is **not** a protected characteristic for the further and higher education institution provisions.

### Age

The Act defines age by reference to your age group and when it refers to people who share the protected characteristic of age, it means they are in the same age group.

An age group can:

- mean people of the same age or a range of ages
- be wide, such as 'people under 50'
- be narrow such as 'people in their mid-50s' or people born in a particular year
- be relative, such as 'older than me' or 'older than us'
- be linked to actual or assumed physical appearance which may bear little relation to chronological age such as 'the grey workforce'.

You could therefore belong to various age groups: if you were a 19-year-old you could, for example, belong to groups that include 'young adults', 'teenagers', 'under 50s', 'under 25s' or '19-year-olds'.

## Disability

You are a disabled person (someone who has the protected characteristic of disability) under the definition of the Act if you have a physical and/or mental impairment which has what the law calls 'a substantial and long-term adverse effect on your ability to carry out normal day-to-day activities'.

There is no need for you to have a medically diagnosed cause for your impairment; what matters is the effect of the impairment on you, not its cause.

In relation to physical impairment the definition includes (but is not limited to):

- Conditions that affect the body such as arthritis, hearing or sight impairment (unless this is correctable by glasses or contact lenses), diabetes, asthma, epilepsy, conditions such as HIV infection, cancer and multiple sclerosis, as well as loss of limbs or impaired use of limbs.
- HIV infection, cancer and multiple sclerosis are covered from the point of diagnosis.
- Severe disfigurement (such as scarring) is covered even if it has no physical impact on the person with the disfigurement, provided the long-term requirement is met (see below).
- People who are registered as blind or partially sighted, or who are certified as being blind or partially sighted by a consultant ophthalmologist, are automatically treated as disabled under the Act.

Mental impairment includes, but is not limited to, conditions such as dyslexia and autism as well as learning disabilities such as Down's syndrome and mental health conditions such as depression and schizophrenia.

The other tests to apply to determine if you have the protected characteristic of disability are:

- The length the effect of the condition has lasted or will continue: it must be long term. 'Long term' means that an impairment is likely to last for the rest of your life, or has lasted at least 12 months or where the total period for which it lasts is likely to be at least 12 months. If you no longer have the condition but it is likely to recur, you will be considered to be a disabled person.
- Whether the effect of the impairment is to make it more difficult and/or time-consuming for you to carry out an activity compared to someone who does not have your impairment, and this causes more than minor or trivial inconvenience.



- If the activities that are made more difficult are 'normal day-to-day activities' at work or at home.
- Whether the condition has this impact without taking into account the effect of any medication you are taking or any aids or assistance or adaptations you have, like a wheelchair, walking stick, assistance dog or special software on your computer. This is known as deduced effects. The exception to this is the wearing of glasses or contact lenses where it is the effect while you are wearing the glasses or contact lenses which is taken into account.

**For example:** Someone who has ADHD might be considered to have a disability even if their medication controls their condition so well that they rarely experience any symptoms, if without the medication the ADHD would have long-term adverse effects.

Progressive conditions and those with fluctuating or recurring effects are included, such as depression, provided they meet the test of having a substantial and long-term adverse effect on your ability to carry out normal day-to-day activities.

Past disabilities also fall within this protected characteristic.

Statutory guidance explaining the Equality Act 2010 definition of disability in further detail, produced by the government's Office for Disability Issues (ODI), can be found via this link:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/85038/disability-definition.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/85038/disability-definition.pdf)

## Gender reassignment

Gender reassignment is a personal process (rather than a medical process) which involves a person expressing their gender in a way that differs from or is inconsistent with the physical sex they were born with.

This personal process may include undergoing medical procedures or it may simply include choosing to dress in a different way as part of the personal process of reassigning one's sex. Simply choosing to dress differently, on its own and unconnected to the personal process of change is not sufficient to fall within this protected characteristic.

There is no obligation to inform the further or higher education institution about your gender reassignment in order to be protected under this characteristic.

You will be protected because of gender reassignment in any of the following situations:

- when you make your intention known to someone – it does not matter who this is, whether it is someone at college or university or at home or someone like a doctor
- once you have proposed to undergo gender reassignment you are protected, even if you take no further steps or you decide to stop later on
- as soon as you have manifested the intention to undergo gender reassignment you are protected even though you have not reached an irrevocable decision to do so
- when you start or continue to dress, behave or live (full-time or part-time) according to the gender you identify with as a person
- when you undergo treatment related to gender reassignment, such as surgery or hormone therapy
- when you have received gender recognition under the Gender Recognition Act 2004.

It does not matter which of these applies to you for you to be protected because of the characteristic of gender reassignment.

This guidance uses the term 'transsexual person' to refer to someone who has the protected characteristic of gender reassignment. A person who has gender dysphoria or a gender identity disorder may also have the protected characteristic of disability.

## **Pregnancy and maternity**

The Act lists pregnancy and maternity as a protected characteristic. This covers discrimination because you are, or have been pregnant, or have given birth in the last 26 weeks or are breastfeeding a baby who is 26 weeks or younger (this is known as pregnancy and maternity discrimination).

Where you are breastfeeding a child who is more than 26 weeks old, this would be covered by the sex discrimination provisions.

## **Race**

Race means your:

- colour, and/or
- nationality (including citizenship), and/or

- ethnic or national origin

and a racial group is composed of people who have or share a colour, nationality or ethnic or national origins.

You have the protected characteristic of race if you belong to a particular racial group, such as 'British people', and can also include being defined as non-British.

Racial groups can comprise two or more racial groups such as 'British Asians'.

## Religion or belief

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

A religion need not be mainstream or well known to gain protection as a religion.

It must, though, be identifiable and have a clear structure and belief system.

Denominations or sects within religions may be considered a religion. Cults and new religious movements may also be considered religions or beliefs.

Belief means any religious or philosophical belief and includes a lack of belief.

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

A belief which is not a religious belief may be a philosophical belief, such as humanism or atheism.

A belief need not include faith or worship of a god or gods but might be based, for example, on science or a political philosophy. It must, however, affect how you live at least some aspects of your life or how you perceive the world.

For a belief to be protected by the Equality Act:

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

## **Sex**

Your sex refers to the fact that you are male or female. In relation to a group of people, it refers to either men or women or to either boys or girls.

## **Sexual orientation**

Sexual orientation means the attraction you feel towards one sex or another (or both), which determines who you form intimate relationships with or are attracted to.

Some people are only attracted to those of the same sex (lesbian women and gay men).

Some people are attracted to people of both sexes (bisexual people).

Some people are only attracted to the opposite sex (heterosexual people).

Everyone is protected from being treated worse because of sexual orientation, whether they are bisexual, gay, lesbian or heterosexual.

Sexual orientation discrimination also covers discrimination connected with manifestations of that sexual orientation.

## Annex C: Public sector equality duty

All further and higher education institutions covered by the education provisions of the Act are defined in Schedule 11 of the Act as public authorities that are subject to the public sector equality duty, which gives public bodies legal responsibilities to demonstrate that they are taking action on equality in policymaking, in the delivery of services and in public sector employment.

The purpose of the equality duty is not to be process driven and bureaucratic but rather to offer an outcome-based method of ensuring that institutions are best meeting the needs of all their students.

This duty aims to integrate equality into exercising public functions, such as policy-making, service delivery and taking decisions. Implementing this duty properly will improve an institution's performance on equality, for example, by preventing discrimination before it arises.

The duty provides a framework to help institutions tackle persistent and long-standing issues of disadvantage, such as gender stereotyping in subject choice, attainment gaps between white and black and minority ethnic students and low participation rates of disabled people. It also provides a strategic and systematic means of tackling major entrenched disadvantage across the sector.

### **The new single public sector equality duty**

The Equality Act harmonises the former duties relating to race, gender and disability into one new duty, which covers all the protected characteristics covered by the further and higher education institution provisions of the Act.

The new duty comprises a general duty on all those public bodies listed in Schedule 19 of the Act and on those organisations that exercise public functions in relation to those functions. It also comprises specific duties. These duties vary in England, Scotland and in Wales. Each country has introduced specific duty regulations which cover those public bodies which are listed within the regulations which include the majority of those public bodies listed in Schedule 19.

The majority of further and higher education institutions in England, Wales and Scotland are subject to the general equality duty which came into force on 5 April 2011. These institutions are also subject to the specific duties which are different between the three nations.

In summary, those subject to the equality duty must, in the exercise of their functions, have due regard to the need to:

- Eliminate unlawful discrimination, harassment and 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 equality duties in England came into force on 10 September 2011. Guidance and information on the legal requirements of the duties can be found on the Commission's website at: <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/guidance-on-the-equality-duty/>

The Welsh specific duties came into force on 6 April 2011. More information can be found at: <http://www.equalityhumanrights.com/wales/publications/guidance-on-the-equality-duty-for-the-welsh-public-sector/>

The Scottish specific duties came into force on 27 May 2012. See: <http://www.equalityhumanrights.com/scotland/public-sector-equality-duty-in-scotland/> and: <http://www.scotland.gov.uk/Topics/People/Equality/PublicEqualityDuties>.

# Contacts

## **[www.equalityhumanrights.com](http://www.equalityhumanrights.com)**

The Commission's publications are available to download on our website: [www.equalityhumanrights.com](http://www.equalityhumanrights.com). If you are an organisation and would like to discuss the option of accessing a publication in an alternative format or language please contact [correspondence@equalityhumanrights.com](mailto:correspondence@equalityhumanrights.com). If you are an individual please contact the Equality Advisory and Support Service (EASS) using the contact methods below.

## **Equality Advisory and Support Service (EASS)**

The Equality Advisory Support Service has replaced the Equality and Human Rights Commission Helpline. It gives free advice, information and guidance to individuals on equality, discrimination and human rights issues.

Telephone: 0808 800 0082

Textphone: 0808 800 0084

### **Opening hours:**

09:00 to 20:00 Monday to Friday

10:00 to 14:00 Saturday

Website: [www.equalityadvisoryservice.com](http://www.equalityadvisoryservice.com)

Post: FREEPOST Equality Advisory Support Service FPN4431

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