

Dignity at Study Policy and Procedures

1. Introduction

- 1.1 Newman University is an inclusive learning community whose Catholic ethos emphasises the Christian practice of hospitality, recognising and celebrating the diverse nature and traditions represented by both its staff and students.
- 1.2 The University is committed to eliminating discrimination, harassment and victimisation; advancing equality of opportunity; and fostering good relations in accordance with the provisions outlined in the Equality Act 2010, as outlined in Appendix 1.
- 1.2 This policy is underpinned by the University's values of inclusiveness and respectful dialogue which is articulated through its mission and ethos. It is steadfast in its pledge to develop a culture in which treating colleagues, students and others with dignity, courtesy and respect is standard practise. This will be achieved by fostering a supportive working and learning environment which is free from unlawful discrimination, harassment, bullying and victimisation (hereinafter referred to as unacceptable behaviour). It will be realised when staff and students are confident that, should such unacceptable behaviour occur, it is identified and dealt with fairly, effectively and in a timely manner.
- 1.4 Copies of this Policy are available on the University website or in hard copy format from the Vice Chancellor's Office, Human Resources, Registry, Student Services and the Students Union. The Policy should be read in conjunction with the Employee Grievance and Disciplinary procedures and the Student Disciplinary Policy and is accessible in large print and other formats on SharePoint.

2. Purpose and Scope

- 2.1 The policy and procedures apply to all students of Newman University. This includes all those engaged in the business of the University whether it is on or off the University campus, including collaboration with partner organisations. It states that we regard discrimination, harassment and victimisation in any form including social networks as unacceptable behaviour which will not be tolerated in the course of work and study.
- 2.2 This policy outlines the University's approach to dignity and respect at work and sets out procedures for addressing issues of unacceptable behaviour to be followed where students feel they are being harassed or bullied in the course of their study with the University. These include study related settings outside the study place, for example study placements, trips and study related social events.
- 2.3 All students are expected to uphold the principles set out in this policy and to support and promote the creation of a harassment-free working and learning environment. Line managers in particular are required to set professional standards of behaviour and to take appropriate action with regards to other students who exhibit unacceptable behaviour. This policy outlines the expectations placed on individuals in relation to their responsibilities with respect to unacceptable behaviour.

- 2.4 The policy and procedures should be read in conjunction with other associated student procedures, including the student disciplinary procedures and the university complaints process.

3. Aims and principles

- 3.1 The University is committed to eliminating discrimination, harassment and victimisation; advancing equality of opportunity; and fostering good relations in accordance with the provisions outlined in the Equality Act 2010 (stated in 1.3 above). It will endeavour to accomplish this through the promotion of equality and diversity by embedding good practice and embracing a culture of mutual respect and dignity free from harassment and discriminatory practices.
- 3.2 The University aims to promote a working and learning environment and culture in which differences are respected, unacceptable behaviour is addressed and where individuals have the confidence to deal with harassment and bullying; being supported in that endeavour without fear of reprisals or victimisation.
- 3.3 The University will treat seriously all complaints of harassment and bullying made within the framework of this policy in a sensitive and fair manner with due regard for the confidentiality of all involved. Specifically, no one will be considered 'at fault' until an investigation has been fully conducted.
- 3.4 All members of the Newman community are expected to treat student colleagues, staff, visitors and any other stakeholders of the University with dignity and respect. Unacceptable behaviour by any member of its community will not be tolerated.
- 3.4 Provide information and training in the operation of this policy and procedure for those who support students.
- 3.5 Encourage and support an informal resolution of difficulties in the first instance and wherever possible; informal discussions may be an effective means of resolving behaviour which is unwitting or insensitive by alerting the perpetrator to the impact of their behaviour. Informal resolution can often be the quickest and most effective way to deal with unacceptable behaviour. However, where a formal complaint is made, every effort will be made to ensure it is dealt expeditiously.
- 3.6 Provide trained Harassment Contacts and other support mechanisms.
- 3.7 Use the disciplinary procedure to take action against those found responsible for discrimination, harassment, bullying and victimisation or those whose allegations are deemed vexatious.
- 3.8 Amend the policy and procedures in the light of effectiveness and changes in legislation.

4. Roles and responsibilities

4.1 Students will:

- Be expected to challenge unacceptable behaviour;
- Inform their manager/tutor or other appropriate colleagues when incidents occur that cause concern;
- Be mindful of confidentiality at all times;
- Not to victimise a complainant or alleged harasser; and
- Treat student colleagues, staff, visitors and all users of our services fairly and with dignity, courtesy, and respect at all times.

4.2 Managers responsibilities will:

- Treat incidents of unacceptable behaviour as serious;
- Take responsibility for informing and enforcing the requirements of this policy within their respective areas. They are expected to lead by example and take positive steps in maintaining an environment which is free from unacceptable behaviour. This includes identifying unacceptable behaviour in themselves and others when it happens, developing and implementing action plans to promote equality and diversity practices and outcomes.
- Ensure that any allegation of unacceptable behaviour is investigated in a timely manner;
- Take action to raise awareness of all employees about issues to do with their behaviour at work and ensure they are fully informed and aware of their personal role responsibilities; and
- As appropriate, in partnership with the Students' Union, take action to raise the awareness of all students about their behaviour, and ensure that they are fully aware of their personal responsibilities.

4.3 Human Resources will:

- Ensure that this policy and procedures are accessible, reviewed and amended as necessary;
- Advise on the fair and consistent application and effective implementation of the policy;
- Facilitate staff support, and health and wellbeing, arrangements and monitor their effectiveness;
- Monitor the incidence of unacceptable behaviour and analyse the results and develop actions in conjunction with line managers to improve staff experience in the University

- Provide appropriate staff development on the application of this policy and procedures; and
- Provide mediation where appropriate between parties in support of conflict resolution

5. Definitions of unacceptable behaviour

5.1 The Equality Act 2010 defines unacceptable behaviour as prohibited conduct in terms of:

- Direct discrimination
- Indirect discrimination
- Harassment
- Victimisation

See Appendix 1 of this policy (below) for further information on the legislative framework and guidance on these and other definitions.

5.2 The Act protects individuals and groups against unlawful and prohibited conduct. The 'Protected Characteristics' (PC) are the grounds upon which discrimination is deemed unlawful. The PC's are:

- Age
- Disability(physical or mental)
- Sex
- Sexual Orientation
- Gender Reassignment
- Race (including ethnic and national origins, colour and nationality)
- Religion or Belief (including lack of belief)
- Pregnancy and Maternity
- Marriage and Civil Partnership (in respect to the requirement to have due regard to the need to eliminate unlawful discrimination in employment)

There is also protection against discrimination where someone is perceived to have one of the protected characteristics or where they are associated with someone who has a protected characteristic.

5.3 Harassment is defined as:

- "unwanted conduct that has the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the complainant, or violating the complainant's dignity" (Equality Act 2010: section 26 (para. 1-5))
- Unwanted conduct of a sexual nature (sexual harassment);
- Treating a person less favourably than another person because they have either submitted to, or did not submit to, sexual harassment or harassment related to sex or gender reassignment"

5.4 Harassment may be related to age, disability, race (including ethnic origin, nationality and colour), religion or belief, gender, sexual orientation, gender reassignment, marital or civil partnership status, and pregnancy or maternity status. It may also relate but not limited to political belief, trade union membership, or any personal characteristic of the individual.

It may be persistent or an isolated incident. The key is that the actions or comments are viewed as demeaning and unacceptable to the recipient and that it is reasonable for the recipient to feel this way, or perceive the actions in this way.

5.5 Bullying is defined as:

Bullying can be characterised as unwanted 'offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient.' (1)

(1) ACAS, *Bullying and harassment at work: a guide for managers and employers* London: Acas, 2014, page 1.

Typically, bullying is one person against another, or a group of people against an individual. Bullying can also occur in less obvious scenarios and outside of traditional power relationships, for example, a member of staff may be bullied by a student or a manager by a member of staff.

5.4 Victimisation occurs:

Where one person treats another less favourably because he or she has asserted their legal rights in line with the Act, has helped someone else to do so, or is suspected of doing so or intending to do so.

6. Support mechanisms

6.1 Students are encouraged to speak to their course tutor, Academic Professional Tutor (APT), Senior Academic Support Tutor (SAST), a member of the Student Services Team, or their Student Union representative. This is not an exhaustive list and further information is available through the Student Union.

7. Implementation and review

7.1 The University fully supports the implementation of this policy. The policy will be reviewed three years after its implementation or if earlier by giving three months' notice of its termination.

Dealing with Unacceptable Behaviour: A Procedure for Students

1. Introduction

- 1.1 The University will maintain a culture of treating seriously any allegations made by students of unacceptable behaviour. This section of the Dignity at Work and Study policy provides a guide for students in how to seek action from the University to deal with issues they may have.

2 Overview

- 2.1 The Catholic ethos means that members of the university community respect and encourage the individual integrity of everyone who is a part of life at Newman University and students must be free to seek knowledge and development in a safe environment.
- 2.2 The range and gravity of unacceptable behaviour which may affect the dignity of students is potentially wide. In many cases matters may be resolved informally and locally. In other circumstances, intervention may be required by the University where, in extreme cases, proven serious allegations may lead to dismissal for staff members or expulsion for students. The University aims to protect all staff and students and will not assume the guilt of any party until the matter has been investigated fully. If allegations are substantiated through the normal disciplinary processes, the matter will be resolved in a fair and proportionate way.
- 2.3 As required by the disciplinary process, every effort will be made to keep the matter confidential to those directly involved. Breaches of confidentiality may result in disciplinary action being taken.
- 2.4 False or unsubstantiated allegations with malicious intent can also lead to disciplinary action being taken.

3 Serious Incidents

- 3.1 In the event of physical and sexual assault, or where you feel your personal safety is at risk, you should not delay in taking immediate action. You should report such incidents as soon as you are able to the Security Lodge on ext. 2358. In cases of emergency you should contact them on ext. 3333 or alternatively 999 for the Emergency Services. Physical and sexual assault is a criminal offence, and your case may be taken up by the police and dealt with in the Criminal Courts. Whether or not this is the case, we will give you appropriate advice and support. We will normally suspend the alleged offender(s), in line with the conditions of the Staff and Student Disciplinary Procedures.
- 3.2 Members of the Student Support team and/or the Students' Union will offer support to students if it is required.

4 Other incidents

- 4.1 Where a person's behaviour does not involve physical threat but a student still finds it offensive, there are a number of ways to deal with the matter. Students should consider the options carefully before deciding which action to take and match the action to the seriousness of the issue. Perceptions of what is acceptable behaviour at work and study will differ and further guidance aims to clarify what the University regards as unacceptable behaviour.

5 Taking action informally

- 5.1 If a student feels able, a personal approach to the person whose behaviour is causing offence may be all that is necessary to stop the behaviour. Talking confidentially to a friend, an officer of the Students' Union or another member of the University staff will be able to help you decide what action is appropriate. Most members of the Newman community would not wish to give offence and an approach can be made in person or by letter which may be very effective.
- 5.2 If this action is not appropriate, then a student should contact the relevant Dean of School or the Director of Student Support who can speak to the person involved see a resolution.

6 Providing a Case

- 6.1 Although in cases of discrimination, harassment, bullying and victimisation, the victim's feelings are critical, it is still important that any allegation is supported by evidence. The member of staff or student accused has the right to know the case against them and to respond. Where students are experiencing unacceptable behaviour, it is important to keep a note of the details and dates of any incidents that are causing distress. The following information is useful:

- Date of the incident
- Location
- Time
- Nature of the incident
- Your response
- Your feelings at the time
- Any action taken by you
- Name of any witnesses
- Any relevant emails, notes etc.

7 Taking formal action

- 7.1 If the student does not wish or cannot resolve the situation informally or, if the severity of the situation warrants, the University can be asked formally to deal with the situation. If the person involved is a member of staff, the Complaint Procedure should be used. If the complaint is about another student, the Student Disciplinary Procedure will be appropriate. Both procedures can be found on MyNewman and can be initiated by

contacting the University Secretary and Registrar. Once again, Student Support or the Students' Union can advise and assist.

- 7.2 Once either procedure is activated, the University will consider how best to deal with the complaint having taken into account all the available facts. The case that a student has put together is very important and should be submitted as part of the allegation.
- 7.3 After considering the seriousness of the case and the available evidence, the University will reach a view on what further action should be taken. Possibilities include:
 - Taking no action if the facts of the case suggest the complaint cannot be proved, felt to be justified or the evidence is not sufficiently clear.
 - Organising some kind of conciliation process
 - Referring the case to the Dean of School or a Director of Service to deal with at the local level.
 - Referring the case to a full disciplinary panel which may include suspending the member of staff or student while action is pending
- 7.4 Where formal disciplinary action is taken, the processes are explained in detail in the relevant documents. The precise steps may differ depending whether the accusation has been made against a member of staff or a students. In both processes, however, complainants will be asked to give a full account of the behaviour and should be aware that the staff member or student accused has the right to know who is making the accusation and to see the case and all evidence against them. Evidence can be submitted in writing only and/or be given in person in front of the accused to any disciplinary panel. In the latter case, both the Panel and the accused may wish to ask questions of the complainant.
- 7.5 While a complainant may find this situation challenging, they may be accompanied at any hearing by a supporting 'friend' and the Chair of the Panel should ensure that proceedings are conducted in a calm and respectful manner. In addition, any resulting victimisation or retaliation by the offender would be a serious matter and should be reported to the University authorities as soon as possible.

8. Special Circumstances

8.1 Within the University:

The formative focus of an education at Newman University is the development of the whole person through transformative learning. In some degree programmes, there are modules which will encourage students to explore equality and diversity issues with the aim of using communication to moderate and mature those views. Speech or conduct which occurs in the specific context of research or teaching and academic debate must therefore be judged by what is reasonable in those specific contexts. When judging whether speech or conduct created a hostile, intimidating, offensive or humiliating environment, it is necessary to take into account the essential characteristics of universities as communities in which a central place must be given to critical thinking, vigorous debate, the free exploration and exchange of ideas and opinions (including those which are controversial), and the respect and tolerance of diverging or opposing values, thoughts and beliefs within the law.

This approach is also relevant where there are 'clashes' of protected characteristics, such as conflict between opposing religious beliefs, or between faith-based and secular positions (for example regarding the value of religious belief, the role of women in society, sexual orientation and religious morality, and abortion). The views and opinions expressed on either side of these debates may be considered 'offensive' by those on the other side of the argument, but that does not of itself amount to unlawful harassment. The question is whether a hostile, intimidating, offensive or humiliating environment is created and, while line between what is lawful and unlawful may not always be easy to predict, the basic yardstick is to assess whether, judged in context, the speech or conduct goes beyond what is reasonable in either its content or impact. It will often be the manner and form in which views are expressed, rather than the opinions themselves, which take the relevant speech or conduct into the area of unlawful harassment.

8.2 During Work Placements:

All students undertaking work placements outside the University should be treated with dignity and respect. If a student experiences unacceptable behaviour within the work placement, this should be brought to the attention of the University placement officer or other member of staff at Newman and to the supervising manager of the external organisation. The University will use its best endeavours to resolve matters at the work place and actions may include discussions with the supervising manager, a letter of complaint or removal of the student from the placement (with no penalty). Work placements are usually undertaken in independent organisations and the policies of those organisations will apply but the University will support its students in whatever way is considered appropriate or possible.

Appendix 1: Discrimination, Harassment, bullying and victimisation

Equality Act 2010

The majority of the provisions contained in the Equality Act 2010 ("the Act") became law on 1st October 2010. Others come into force in April 2011, including the public sector equality duty. This secondary layer of provisions relate to the 'specific duties' placed on public sector authorities and also include higher education institutions such as the University. (1)

The Act is the single largest piece of discrimination legislation in the UK. It draws together all the strands of discrimination legislation which had been introduced in a piecemeal basis since the early 1970's and latterly the Equality Act 2006. Its overall aim has been to simplify, replace and harmonise the legislation that had gone before it.

The Act protects the same groups that were protected by the former discrimination laws. These have now been given a new name and have become known as the 'Protected Characteristics' ("PC"). The PC's are the grounds on which discrimination will be deemed unlawful. The following are PC's:

- Age
- Disability(physical or mental)
- Sex
- Sexual Orientation
- Gender Reassignment
- Race (including ethnic and national origins, colour and nationality)
- Religion or Belief (including lack of belief)
- Pregnancy and Maternity
- Marriage and Civil Partnership (in respect to the requirement to have due regard to the need to eliminate unlawful discrimination in employment)

There is also protection against discrimination where someone is perceived to have one of the protected characteristics or where they are associated with someone who has a protected characteristic.

The Equality and Human Rights Commission (EHRC) is responsible for assessing compliance with and enforcing the equality duty.

The general duty

The "**general duty**" has three aims and Higher Education Institutions are required to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010; and
- Advance equality of opportunity between people from different groups. This involves considering the need to:
 - (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
 - (b) Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it; and
 - (c) Encourage persons who share a relevant protected characteristic to participate in public life or any other activity in which participation by such persons is disproportionately low.
- Foster good relations between people from different groups. This involves tackling prejudice and promoting understanding between people from different groups

(1) The Public Sector Equality Duty: Specific duties for England, *Equality Challenge Unit* (2010)

The specific duties

Section 153 of the Equality Act 2010 gives Ministers the power to impose specific duties through regulations. The specific duties are legal requirements designed to help public bodies meet the general duty. Public sector bodies are required to publish information relating to their performance against the general equality duty. This information will provide:

- data on the protected characteristics of employees;
- impact assessments of policies and practices and how they impact on, and further the general duty;
- details of engagement with interested persons

Equality Objectives: all higher education institutions are required to prepare and publish one or more specific and measurable objective(s) that it thinks it should achieve to meet any of the three aims of the equality duty. These are commonly referred to as the Public Sector Equality Duty (PSED).

Types of unlawful behaviour

The fundamental principles of the old legislation remain in place. The core types of unlawful behaviour and prohibited conduct have been retained in the Equality Act and generally apply in the same way. These are:

- Direct discrimination
- Indirect discrimination
- Harassment
- Victimisation

Direct discrimination

Section 13 of the Equality Act 2010 defines direct discrimination to be when a person treats one person less favourably than they would another **'because of'** a protected characteristic. The Equality Act standardises the terminology used for the offences of direct discrimination and harassment across the protected characteristics. It remains the case that, save for the age discrimination, there is no justification defence for direct discrimination.

Direct discrimination may occur if, for example:

- = an institution's students' union or association decides not to interview a Muslim applicant for a job because it assumes, on the basis of their religion or belief, that he or she will not be prepared to work in a bar
- = an institution only shortlists male job applicants for an interview because they assume women will not fit in
- = an institution refuses to let a student go on a residential trip because they are a wheelchair-user
- = an institution does not offer a training opportunity to an older member of staff because they assume that they would not be interested, and the opportunity is given to a younger worker

Regarding age, different treatment can be justified if it is a proportionate means of meeting a legitimate aim. However, this can be a difficult test to meet. For example, it is unlikely that an institution would be able to justify rejecting a candidate for a frontline student services role on the basis that they are 'too old to identify with students'. The organisation would have to use objective evidence to justify that the role could only be undertaken by someone of a particular age group, and that this is proportionate to achieving the aim of providing services to students. This justification is likely to be difficult to meet in most scenarios in higher education across England, Wales and Scotland and in further education in Scotland.

The changes in the definitions for direct discrimination and harassment are intended to ensure that perceptive and associate discrimination are covered:

- **Perceptive discrimination or harassment** arises where a person is less favourably treated or harassed because he or she is thought or believed to have a particular protected characteristic, even if that perception is mistaken. For example:
 - = an institution's students' union or association decides not to interview a Muslim applicant for a job because it assumes, on the basis of their religion or belief, that he or she will not be prepared to work in a bar; or
 - = if an individual is less favourably treated because he or she is perceived to have a mental illness amounting to a disability, that will be unlawful even if the individual does not actually have such a condition
- **Associative discrimination or harassment** arises where an individual is less favourably treated or harassed because of the protected characteristics of a person with whom he or she is connected or associated. For example: if an individual is less favourably treated because he or she has a gay brother or a black partner that will be covered. For example:
 - = a student, whose child has attention deficit hyperactivity disorder, is refused access to a graduation ceremony because of fears about the child's behaviour
 - = an employee is overlooked for promotion because their partner has undergone gender reassignment

Combined discrimination: dual characteristics

Currently, people may only bring discrimination claims relating to one protected characteristic. At the time of writing, the government announced that commencement of the dual discrimination provision would be delayed until at least 2015. If it commences, the combined discrimination section (The Equality Act 2010: section 14) will protect people who experience direct discrimination because of a combination of two protected characteristics (marriage and civil partnership and pregnancy and maternity are not included in these provisions).

This provision will mean, for example, that a black female member of staff who is discriminated against because she is a black woman – as opposed to a black man or a white woman – could bring a single claim for combined race and sex discrimination. However, if she feels she is being discriminated against because she is black or because she is a woman, she could also bring a claim for race or sex discrimination on its own. The complainant would need to show that he or she had been less favourably treated than someone who did not share either of the characteristics.

Discrimination arising from disability

The provision for disability in the Act creates a new type of discrimination – discrimination arising from disability. This replaces disability-related discrimination as was found in the former Disability Discrimination Act 1995 (DDA). This is in addition to direct and indirect discrimination, harassment and victimisation provisions relating to disability.

Section 15 of the Equality Act states, it is discriminatory to treat a disabled person in a particular way that, because of their disability, amounts to treating them unfavourably when the treatment cannot be shown to be justified. For this type of discrimination to occur, the employer, or other person, must know, or could reasonably be expected to know, that the person has a disability.

Discrimination arising from disability can occur if, for example, a student with diabetes, wishing to take food into an exam hall in case of low blood sugar is not allowed to do so as it is against policy allowing

food into exam halls – the institution may be discriminating against the student unless the treatment can be justified.

Failure to make reasonable adjustments

The Act continues the previous duty upon institutions to make reasonable adjustments in relation to staff, students and services. These adjustments apply where a disabled person is placed at a substantial disadvantage in comparison to non-disabled people. These provisions do not apply to the other protected characteristics, and are unique to disability. Section 20 defines what is meant by the duty to make reasonable adjustments. The three requirements of the duty are in relation to:

- = provision, criteria or practice
- = physical features
- = auxiliary aids

The first requirement obliges institutions to consider the way in which they do things. For example, showing due regard to changing a practice of providing lecture handouts only in paper format. The institution would need to consider an adjustment to this practice, and provide the handouts in alternative formats.

The second requirement relates to the making of changes to the built environment, such as providing inclusive access to lecture theatres.

The third requirement requires institutions to show due regard to the provision of auxiliary aids and services, for example providing computer screen-reading software for students with a visual impairment. The extent of the duty to make adjustments will differ slightly depending on the context. Most significantly, there is no anticipatory duty in the employment field (as exists in relation to education).

In the provision of goods and services the duty will normally extend to staff, students and disabled people in general.

Indirect discrimination

The Equality Act 2010: section 19 applies the European definition of indirect discrimination and replaced previous domestic definitions to ensure uniformity of protection across all the protected characteristics (except for pregnancy and maternity). In substance, the Act reproduces previous provisions and also for the first time explicitly extends the concept of indirect discrimination to disability.

Indirect discrimination occurs when a provision, criterion or practice is neutral on the face of it, but its impact particularly disadvantages people with a protected characteristic, unless the person applying the provision can justify it as a proportionate means of achieving a legitimate aim. Ultimately, if tested, it will be for a court of law or tribunal to determine what is justifiable.

Indirect discrimination may occur if, for example:

- = an employer who requires staff to commit to working from 8pm to 11pm every evening indirectly discriminates against women, who are more likely to be primary carers of children, unless this can be objectively justified as above.

Indirect discrimination can also occur when a policy would put a person at a disadvantage if it were applied. This provision means, for example, that where a person is deterred from doing something, such as applying for a job at an institution, because a policy which would be applied would result in their disadvantage, this may also be indirect discrimination.

Victimisation

Victimisation (Equality Act 2010: section 27) takes place where one person treats another less favourably because he or she has asserted their legal rights in line with the Act, has helped someone else to do so, or is suspected of doing so or intending to do so. For example, victimisation may occur where:

= a student alleges that they have encountered racism from a tutor, and as a result they are ostracized by other staff members.

= a manager brands an employee as a 'troublemaker' because they raise a lack of job-share opportunities as being potentially discriminatory

Other examples of victimisation may include refusing to advance an employee academically or professionally, refusal to provide a reference once the working or learning relationship has ended, or to treat them in any way less favourably as a result of their actions.

Third party harassment

An employer may be liable for the harassment of its employees by third parties (e.g. students, contractors, visitors etc.) –someone other than the employers and its employees. This will be the case where the employer knows that the employee has been harassed on at least two previous occasions and has failed to take reasonably practicable steps to prevent it happening again. It does not need to be the same third party on each occasion and the harassment need not relate to the same protected characteristic.

This raises various management issues on the way staff are managed or perceived to be managed, and how confidentiality is handled, fairly when they report themselves subject to harassment.

Objective Justification

Employers can defend themselves against claims of unlawful behaviour if they can demonstrate their behaviour has been a **"proportionate means of achieving a legitimate aim"**
Proportionate means 'appropriate and necessary' where there is no reasonable alternative and or the discriminatory effect is outweighed by the legitimate aim.

This could also include what is termed a **"genuine occupational requirement"** (GRR) and this definition remains unchanged

Caution is urged when applying a test of objective justification. The employer must have the evidence and or reason to demonstrate the grounds on which they claim their behaviour is justified.

Harassment shall mean discrimination, harassment, bullying or victimisation as defined in this Policy.

Complainant shall mean the person or group who make an allegation of Harassment

Alleged Harasser shall mean the person or group who are the subject of allegations of Harassment

What is Harassment?

Harassment is any behaviour that is unwelcome and affects the dignity of those subjected to it. For the purposes of this policy, the University will use and apply the following definition of Harassment as being:

Unwanted conduct related to a protected characteristic which has the purpose or effect of:

- violating a person's dignity; or

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

Harassment may take place for any number of reasons. A person may be subjected to Harassment because they are perceived as being 'different to the norm' in some way or are in a less powerful position than the Alleged Harasser. For this reason, people who are in a minority position – be it numerical or hierarchical – may be more vulnerable to being harassed. It is important to recognise however, that Harassment can occur in less obvious scenarios and outside of traditional power relationships. For example a staff member could be harassed by a student or a manager by a member of staff. In addition, an individual may feel harassed even if the behaviour is not directed at them (harassment because of association) or it is directed at them but they do not have the protected characteristic but are perceived to have it (harassment because of perception).

What behaviour constitutes Harassment?

As the definition of Harassment makes clear, any behaviour that is unwanted and could reasonably be considered as violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them is potentially harassment. Typically, for behaviour to be considered harassment, it must be persistent and continue or develop over a period of time. However, a one-off incident that is particularly serious can in itself constitute harassment. Harassment can be communicated verbally, be physical in nature, or be expressed through other means of communication, such as letters, emails, text messages and graffiti. It may be expressed directly to the Complainant, occur in their presence or be communicated about them to a third party. Often harassment is targeted at a particular individual. However, a prevailing workplace or learning culture, where, for example, the telling of racist jokes or homophobic comments is tolerated, can also constitute harassment.

Behaviour amounting to Harassment may include:

- Insults, name-calling and offensive language and gestures
- Inappropriate jokes
- Ridiculing and undermining behaviour
- Inappropriate or unnecessary physical contact
- Physical assault or threats of physical assault
- Intimidating, coercive or threatening actions and behaviour
- Unwelcome sexual advances
- Isolation, non-cooperation or deliberate exclusion
- Inappropriate comments about a person's appearance, intrusive questions or comments about a person's private life and malicious gossip
- Offensive images and literature
- Pestering, spying or stalking
- Trolling, creeping (via social media)

These examples are not intended to be exhaustive. They are, however, indicative of behaviour that would be considered unacceptable conduct by the University.

Reasonableness

On occasion, individual perceptions of behaviour may differ - perhaps due to differences in attitude, experience or culture - and what one person would consider acceptable behaviour may be unacceptable to another. The defining factor in determining if behaviour amounts to Harassment is that the behaviour is unacceptable to the recipient and could 'reasonably be considered' to amount to Harassment. The intention of the person engaging in the behaviour – whether or not they meant to harass – is not a primary factor in determining if Harassment has taken place.

When considering allegations of Harassment, the University will therefore apply a test of 'reasonableness' to determine if Harassment has taken place. That is, with due regard to the circumstances, including in

particular the perception of the Complainant, could the behaviour in question 'reasonably be considered' to cause Harassment, e.g. could it reasonably be considered to:

- violate the Complainant's dignity, or
- create an intimidating, hostile, degrading, humiliating or offensive environment for them.

The University recognises Harassment as distinct from vigorous academic debate, which is characterised as being respectful, encouraging a variety of viewpoints and having the effect of stimulating and encouraging thought and discussion. Whilst staff and students will clearly hold a range of views on a variety of issues, they would be expected to treat all members of the University community with dignity and respect and ensure that the expression of their views is not manifested in such a way that creates an environment that is intimidating, hostile, degrading, humiliating or offensive to others.

What is Bullying?

Bullying can be defined as unwanted 'offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient.' Typically, bullying is one person against another or a group of people against an individual. Bullying can also occur in less obvious scenarios and outside of traditional power relationships, e.g. a member of staff may be bullied by a student or a manager by a member of staff.

What behaviour constitutes Bullying?

Behaviour generally accepted as amounting to bullying includes:

- Ridiculing a person or group of people
- Shouting or screaming at a person
- Setting someone up to fail, e.g. withholding necessary information or deliberate work overload
- Unwarranted or invalid criticism and criticism which lacks the necessary constructive support to help the recipient improve their performance
- Persistently 'singling out' a person without good reason or deliberately excluding, isolating or ignoring an individual
- Making threats or comments about job security or academic success or failure without foundation

The above examples are not exhaustive. They are, however, indicative of behaviour that would be considered unacceptable conduct by the University.

When considering allegations of bullying, the University will apply the test of 'reasonableness' to determine if bullying has taken place. The test will be applied as outlined in above with due regard in particular to the perception of the Complainant and whether the behaviour in question could reasonably be considered to undermine, humiliate, denigrate or injure the Complainant.

Bullying is distinct from vigorous academic debate, or the actions of a supervisor or manager making reasonable (if unpopular) requests. It is also distinct from techniques used to manage and improve performance, the distinguishing factor being that these have the effect of supporting and developing potential or promoting desired work performance, whereas bullying has the effect of undermining, humiliating, denigrating or injuring the recipient.

Electronic bullying and the use of Social Media (Blogs, Wikis, Forums, Email etc.)

Electronic bullying is a term used to refer to bullying through electronic media. In sending emails all staff and students should consider the content, language and appropriateness of such communications.

The use of Social Media for appropriate purposes has grown considerably over the last few years. The *General Conditions of Use of Computing and Network Facilities* must be followed and is accessible at: <http://www.newman.ac.uk>

The following guidance is also relevant for both staff and students:

- avoid using language which would be deemed to be offensive to others in a face-to-face setting as the impact on an individual will be much the same
- avoid forming or joining an online group that isolates or victimises students or colleagues
- ensure that you never use such sites to access or share illegal content

If instances of what might be online discrimination, harassment, bullying and victimisation are reported they will be dealt with in the same way as if they had taken place in a face-to-face setting.

Hate Crimes

The University accepts the following definition of hate crime and intolerance, put forward by Universities UK and the Equality Challenge Unit:

'Crimes or behaviour motivated by prejudice, hatred or intolerance that intentionally demean individuals and groups defined by their ethnicity, race, religion and belief, sexuality, gender, conscience, disability, age or lawful working practices and which give rise to an environment in which people will experience, or could reasonably, fear harassment, intimidation or violence.'

The University reaffirms its belief that the diversity of its staff and students is a source of strength. Accordingly, it will actively seek to protect its community from prejudice, hatred or intolerance. Any hate crime will be treated as a form of harassment under this Policy and the University reserves the right to report to the Police any incident which it believes may constitute a criminal offence.

Good Faith

If, at any time, there is evidence that allegations of discrimination, harassment, bullying and victimisation have been made vexatious or malicious, that false information has been provided or that the complainant has otherwise acted in bad faith, disciplinary action may be taken. Any investigation based upon those allegations may be terminated.

References:

CIPD: various fact sheets and guidance
Equality Act 2010, London: HMSO, 2010.
Equality Act: Implications for colleges and HEI's (revised August 2012), London, Equality Challenge Unit, 2012
The Public Sector Equality Duty: Specific duties for England, London, Equality Challenge Unit, 2010
Non-statutory guidance for the Equality Act 2010, London, Equality and Human Rights Commission, 2010
The essential Guide to The Public Sector Equality Duty (revised July 2014), London, The Equality and Human Rights Commission, 2014
Code of practice on employment, The Equality and Human Rights Commission, London, 2011.
ACAS, *Bullying and harassment at work: a guide for managers and employers* London: Acas, 2014.
ACAS, *Religion or belief and the workplace: a guide for employers and employees*. London: Acas, 2014.
ACAS, *Asking and responding to questions of discrimination in the workplace*. London, Acas, 2014.
Employers: preventing discrimination guidance, GOV.UK, 2014

Appendix 3: GLOSSARY

Advancing equality: The Equality Act 2010 states that this involves having due regard to the need to remove or minimise disadvantages suffered by persons who share a relevant protected characteristic; meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it; and encourage persons who share a relevant protected characteristic to participate in public or in any other activity in which participation by such persons is disproportionately low.

Age: This refers to a person having a particular age (for example, 32 year olds) or being within an age group (for example, 18-30 year olds). This includes all ages, including children and young people.

Assessing impact on equality: This involves looking at your equality information and the outcomes of any engagement in order to understand the impact or potential impact of your decisions on people with different protected characteristics.

Civil partnership: Legal recognition of a same-sex couple's relationship. Civil partners must be treated the same as married couples on a range of legal matters.

Confidentiality: Complaints of discrimination, harassment, bullying and victimisation will be treated sensitively and confidentiality will be maintained to the maximum extent possible. Employers and employees have a common law general duty of care towards others who may be affected by their actions. The application of discretion in dealing with such matters is subject to the requirement that the discretion is exercised in accordance with the implied term of mutual trust and confidence.

Investigation into allegations will normally require limited disclosure on a "need to know" basis. For example, your identity and the nature of the allegations should be revealed to the person you are complaining about, in order that they are able to respond to the allegations. Some details may also have to be given to potential witnesses but the importance of confidentiality will be emphasised to them. If the complaint is upheld, and a person who has been found to have harassed you is kept in the organisation's employment, managers may need to be given some information where this is necessary for them to manage the risk of further harassment by that person against you or others.

Direct discrimination: This refers to less favourable treatment because of a person's protected characteristic (see Appendix 1).

Disability: A person has a disability if he or she has a physical or mental impairment which has a substantial and long-term adverse effect on that person's ability to carry out normal day-to-day activities. Certain medical conditions are automatically classed as being a disability – for example, cancer, HIV infection, multiple sclerosis.

Engagement: A broad term, intended to cover the whole range of ways in which public authorities interact with their service users, employees and other stakeholders, over and above what they do in providing services or within a formal employment relationship.

Equality Act 2006: This legislation made provision for the establishment of the Equality and Human Rights Commission and the dissolution of the three legacy commissions for Disability, Race and Gender Equality. It sets out the Commission's powers and responsibilities (these were not repealed by the Equality Act 2010).

Equality Act 2010: This brings together the majority of existing equality legislation into one place so that it is easier to use.

Equality information: The information that you hold (or will collect) about people with protected characteristics, and the impact of your decisions and policies on them.

Equality objectives: A requirement to prepare, set and publish objectives is one of the specific duties set out under the equality duty.

Equality outcome: The results that individuals or groups actually achieve and are able to benefit from. For example, equal pay between men and women.

Fostering good relations: The Equality Act 2010 states that having due regard to the need to fostering good relations involves having due regard, in particular, to the need to tackle prejudice and promote understanding between people who share a protected characteristic and those who do not.

Function: The full range of a public authority's activities, duties and powers.

Gender: The wider social roles and relationships that structure men's and women's lives. These change over time and vary between cultures.

Gender reassignment: The process of changing or transitioning from one gender to another. The Equality Act prohibits discrimination against a person who is proposing to undergo, is undergoing or has undergone a process, or part of a process, for the purpose of reassigning their sex. See also transsexual person.

Gender recognition certificate: A certificate issued under the Gender Recognition Act to a transsexual person who seeks such a certificate and who has, or has had gender dysphoria, has lived in the acquired gender throughout the preceding two years, and intends to continue to live in the acquired gender until death.

General equality duty: The requirement to 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; and foster good relations between people who share a protected characteristic and those who do not.

Harassment: Unwanted conduct related to a protected characteristic that has the purpose or effect of violating a person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment (see Appendix 1).

Indirect discrimination: This is when a provision, criterion or practice is applied in a way that creates disproportionate disadvantage for a person with a protected characteristic as compared to those who do not share that characteristic, and is not a proportionate means of achieving a legitimate aim (see Appendix 1).

Intervention: The Equality and Human Rights Commission can intervene in legal proceedings in matters that are relevant to its functions by providing the Court with expert advice to help the Court reach its decision.

Judicial review: A claim to the High Court asking the Court to review the way a public authority or other body carrying out public functions made a decision.

Marriage and civil partnership: In England and Wales marriage is no longer restricted to a union between a man and a woman but now includes a marriage between two people of the same sex.¹ This will also be true in Scotland when the relevant legislation is brought into force.² Same-sex couples can also have their relationships legally recognised as 'civil partnerships'. Civil partners must not be treated less favourably than married couples (except where permitted by the Equality Act).

¹ Section 1, Marriage (Same Sex Couples) Act 2013.

² Marriage and Civil Partnership (Scotland) Act 2014.

Maternity: The period after giving birth. It is linked to maternity leave in the employment context. In the non-work context, protection against maternity discrimination is for 26 weeks after giving birth, including as a result of breastfeeding.

Mediation: Mediation is the most common form of conflict resolution. It involves an independent, impartial person helping two individuals or groups reach a solution that is acceptable to all parties. Mediation is not prescriptive. It helps the parties involved to make progress in resolving their differences. It does not make judgements or determine outcomes.

Mitigation: This is when measures are put in place that lessen the negative effects of a policy or policies on protected groups.

Objective justification: See objectively justified.

Objectively justified: When something can be shown to be a proportionate means of achieving a legitimate aim – that is, the way of achieving the aim is appropriate and necessary. See also proportionality.

Positive action: Lawful actions that seeks to overcome or minimise disadvantages that people who share a protected characteristic have experienced, or to meet their different needs (for example, providing mentoring to encourage staff from under-represented groups to apply for promotion).

Pregnancy: The condition of being pregnant.

Procurement: The term used in relation to the range of goods and services a public body or authority commissions and delivers. It includes sourcing and appointment of a service provider and the subsequent management of the goods and services being provided.

Proportionality: The weight given to equality should be proportionate to its relevance to a particular function. This may mean giving greater consideration and resources to functions or policies that have the most effect on the public or on employees.

Protected characteristics: The public sector equality duty covers age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. It also covers marriage and civil partnerships, but not for all aspects of the duty.

Public authority: The general equality duty applies to public authorities. For this purpose, a public authority is a body that is named (listed) or described in Schedule 19 of the Equality Act. It also applies to all other organisations who exercise public functions. In this guidance we use 'public authority' to mean both bodies listed in Schedule 19 and bodies not listed but subject to the general equality duty because they carry out public functions.

Public functions: The Equality Act 2010 defines a public function as a function that is of a public nature for the purposes of the Human Rights Act 1998.

Race: This is the protected characteristic of race. It refers to a group of people defined by their colour, nationality (including citizenship), ethnic or national origins.

Reasonable adjustment: Public authorities making adjustments to the way in which they carry out their functions so that disabled people are not disadvantaged by the way in which those functions are carried out.

Relevance: How far a function or policy affects people, as members of the public, and as employees of the authority. Some functions may be more relevant to people with certain protected characteristics than to others, and to one or more of the three aims of the general equality duty.

Religion or belief: Religion means any religion, including a reference to a lack of religion. Belief includes religious and philosophical beliefs including lack of belief (for example, Atheism).

Section 23 agreement: The Equality and Human Rights Commission can enter into a formal agreement with an organisation under section 23 of the Equality Act 2006 if it believes the organisation has committed an unlawful act or failed to comply with the general equality duty.

Section 31 assessment: Under section 31 of the Equality Act 2006 the Equality and Human Rights Commission can carry out a formal assessment to establish to what extent, or the manner in which, a public authority has complied with the equality duty.

Sex: Someone being a man or a woman.

Sexual orientation: This is whether a person's sexual attraction is towards their own sex, the opposite sex or to both sexes.

Specific duties: Certain public authorities named or described (listed) in Schedule 1 or 2 of the Equality Act 2010 (Statutory Duties) Regulations 2011 are required to comply with certain specific duties. These duties are intended to assist authorities in complying with the general equality duty. The specific duties are different in England, Scotland and Wales.

Stakeholders: People with an interest in a subject or an issue.

Trans: The terms 'trans people' and 'transgender people' are both often used as umbrella terms for people whose gender identity and/or gender expression differs from their birth sex, including transsexual people, transvestite/cross-dressing people androgyne/polygender people, and others who define as gender variant.

Transgender: An umbrella term for people whose gender identity and/or gender expression differs from their birth sex. They may or may not seek to undergo gender reassignment hormonal treatment/surgery. Often used interchangeably with trans.

Transsexual person: Refers to a person who has the protected characteristic of gender reassignment. This may be a woman who has transitioned or is transitioning to be a man, or a man who has transitioned or is transitioning to be a woman. The law does not require a person to undergo a medical procedure to be recognised as a transsexual person. Once a transsexual person has acquired a gender recognition certificate, it is probably the case that they should be treated entirely as their acquired gender.

Victimisation: Takes place where one person treats another less favourably because he or she has asserted their legal rights in line with the Act, has helped someone else to do so, or is suspected of doing so or intending to do so (see Appendix 1).