



## SPA Equality Briefing:

### Positive action in admissions

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Admissions staff should always be vigilant to avoid discrimination against applicants. However, there may be circumstances when positive steps to overcome the disadvantage shared by a protected group may be justified, and this is known as taking positive action. Positive action is distinct from positive discrimination, in that it is legitimised under the [Equality Act 2010](#), whereas positive discrimination is unlawful. The characteristics protected from discrimination under the Equality Act are:

- age
- disability
- gender reassignment
- marriage and civil partnership<sup>1</sup>
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

The boundaries between legal positive action and illegal positive discrimination towards those within these groups may be difficult to identify, especially where a wide range of staff are involved in the development of marketing, recruitment, widening participation and admission activities. It should always be borne in mind that favouring one group within a characteristic (e.g. men) will in effect result in treating others within that protected characteristic (e.g. women) less favourably, so higher education (HE) providers will want to ensure themselves and others that any such favourable treatment is legitimate. Disability is an exception: the Equality Act imposes a duty on HE providers to make reasonable adjustments to support disabled applicants, which may include more favourable treatment over those who do not share that protected characteristic.

The following information is intended as an outline for higher education providers to understand and check intended initiatives for encouraging underrepresented groups into higher education.

Section 158 of the Equality Act allows for, but does not require, positive action measures to be taken to help people sharing a protected characteristic if a HE provider reasonably considers, based on evidence, any of the below conditions exist:

- a) they suffer a disadvantage connected to the characteristic
- b) they have needs that are different from the needs of persons who do not share it
- c) participation in an activity by those sharing that protected characteristic is disproportionately low.

Any action taken must be a proportionate means of achieving the aim of meeting that group's needs, overcoming their disadvantage or enabling their participation.

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<sup>1</sup> Section 90 of the Equality Act excludes the protected characteristic of marriage and civil partnership from additional requirements expected of further and higher education.

This will require evidence of the causes of a particular disadvantage or barrier to access, as well as careful consideration of the range of options to redress the disadvantage and awareness of the potential impact of any measures on others. Proportionality of any action may prove complicated to assess and will require HE providers to be satisfied the intended action is the most effective way to address the need, disadvantage or underrepresentation. Any action should also be time-limited and reviewed, based on impartial and transparent criteria, to ensure it has the intended effect, does not result in unintended consequences and does not continue beyond the period when it would no longer be deemed proportionate. Decisions affecting the terms or arrangements for entry would need to be made on an individual, case-by-case basis, rather than applied as a blanket policy to one group. Generally, any action that creates disproportionate disadvantage for other protected characteristic groups or individuals and which isn't otherwise mitigated, is unlikely to be considered legal.

**The legislation concerning positive action for the recruitment of staff and students is not the same. Although there is separate provision under the Equality Act to permit positive action in taking a protected characteristic into consideration when selecting between individual staff candidates of equal merit, selecting students is not covered under that provision.**

Examples of positive action for groups with a proven disadvantage gaining admission to higher education may include:

- targeted marketing and recruitment activity
- dedicated support for completing the application
- alternative assessment methods and additional support in preparing for assessments such as interviews, portfolios or tests
- specific scholarships or bursaries.

However, it may need to be demonstrated that any action is relevant to addressing the reasons for disadvantage. For example, providing alternative assessment methods for white males would only be deemed positive action if their low participation was due to the existing assessment methods.

[The Equality Challenge Unit \(ECU\) has further information on positive action on its website](#), including a guide on positive action through bursaries, scholarships and prizes, and may be able to offer additional advice on positive action measures.

SPA would be interested in any developments within individual HE providers that could be beneficial to developing new good practice guidance on this topic. Please forward on any updates, or feel free to contact us with any queries – [enquiries@spa.ac.uk](mailto:enquiries@spa.ac.uk).

Well-targeted positive action can be a major asset in tackling disadvantage and compensating for underrepresentation of groups sharing a protected characteristic. However, given the delicate nature of interpreting positive action, plus the potential for challenge from others, SPA strongly recommends any HE provider considering positive action measures in admissions discusses it thoroughly internally and with appropriate external bodies, ensuring that the evidence to justify measures are proportionate is available.

SPA  
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## Case study example: The University of Manchester

The University of Manchester's admissions good practice guide for staff highlights positive action within its context for fair selection. It states:

Positive action is used to describe *encouragement* given to certain groups to apply for training or employment positions, and is generally lawful where those groups are underrepresented in a particular discipline or institution. Positive action is the deliberate introduction of measures to eliminate or reduce discrimination or its effects. It is about the fair treatment of all people and not about special treatment for any one particular group. It is not the same as positive discrimination which is unlawful.

Examples of positive action would include:

- Encourage particular groups to apply for courses that have been traditionally underrepresented and or providing training so that they can compete equally with other applicants
- Target recruitment adverts in specific (but not exclusive) media which would reach large numbers of under-represented groups
- Use positive action statements on recruitment adverts
- Run specific mentoring programmes for under-represented groups
- Offer interview and assessment skills training
- Support networks
- Attend career fairs
- Hold Open days
- Use information leaflets

In order to take a positive action, or to establish an activity that falls within the concept of the positive action, statistical evidence or data that demonstrates the need for action need to be collected. Any positive action initiative needs to be clearly communicated and the purpose and need for such an initiative should be explained.

Similarly, it is essential to be aware that selection process may discriminate against individuals and/or particular applicant groups, either directly or indirectly, if they are carried out without consideration.