



UNIVERSITY OF THE  
WITWATERSRAND,  
JOHANNESBURG

## POLICY DOCUMENT

# Policy on the Workplace Inclusion of Employees with Disabilities

Version No. 2.0

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<b>Policy Title</b>	Policy on the Workplace Inclusion of Employees with Disabilities
<b>Policy Officer</b>	Head of Disability Rights Unit
<b>Date Approved</b>	06 November 2013
<b>Date Effective From</b>	07 November 2013
<b>Last updated</b>	9 May 2016

## 1. CONTEXT / BACKGROUND

- 1.1. The University acknowledges and subordinate itself to the dictates of the Bill of Rights as enshrined in the Constitution of South Africa and the United Nations Conventions on the Rights of Persons with Disabilities to which South Africa is a signatory country.
- 1.2. The University recognises the historical marginalisation of persons with disabilities in South Africa and affirms the need to implement appropriate measures to redress the inequalities and disadvantages created by prejudice and discrimination, thereby contributing to a democratic vision of respecting the human rights of all employees.
- 1.3. It is acknowledged that the employment of persons with disabilities will affirm their human rights to fair labour practice, open, inclusive and accessible work environments, equality and dignity, as well as contribute immensely to the enrichment of workforce diversity and enhancement of a culture of inclusivity within the University.
- 1.4. The increased presence and visibility of persons with disabilities will enhance awareness and understanding of disability issues among employees and students, as well as assist in knowledge production and research output in the field of disability.
- 1.5. Given these imperatives, the University had implemented a Policy on the Employment and Advancement of Persons with Disabilities for the progressive realisation of the ideals espoused in the South African Constitution, legislation promulgated thereunder and the UN Conventions relating to equality of treatment, open and accessible work environments, and upholding of human rights.
- 1.6. The University commits to upholding the principles contained in this Policy in the process of continuously reviewing its policies and procedures.

## 2. DEFINITIONS

Words that appear in bold have a specific meaning or definition as explained below:

- 2.1. “**Disability**” is as defined according to the Employment Equity (EE) Act and the Code of Good Practice on Employment of Persons with Disabilities (“the Code”). An employee with a Disability must meet all the criteria below:
  - Having an impairment;
  - Which is long term or recurring; and
  - Which substantially limits their prospects of accessing or advancing

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employment and/or their ability to perform the inherent requirements of their job without any form of reasonable accommodation.

- 2.2. **"Affirmative Action Measures"** are measures designed to ensure that suitably qualified persons including persons with disabilities have equal employment opportunities, open access to the University environments and are equitably represented across occupational categories and levels in the University's workforce;
- 2.3. **"Employees"** include applicants for the job and refer to the various categories of employees as applied throughout Wits, namely full-time continuous, full-time fixed period, part-time continuous, part-time fixed period.
- 2.4. **"Employees with disabilities"** is defined in the Employment Equity Act, 55 of 1998, as amended, as persons who have a long-term or recurring physical or mental impairment, which substantially limits their prospects of entry into, or advancement in employment. For purposes of applying this Policy, all types of disability shall be included.
- 2.5. **"Reasonable accommodation"** is defined in the Employment Equity Act, 55 of 1998, as amended, to be any modification or adjustment to a job or the working environment that will enable a person from a designated group (i.e. employees with disabilities) to have access to or to participate or advance in employment. Every effort will be made to ensure that these measures are implemented to be to the mutual benefit of both the employee and the University;
- 2.6. **"Technical Assistance Guidelines (TAG)"** refer to the guidelines on the employment of persons with disabilities published under the Employment Equity Act, 55 of 1998, as amended;
- 2.7. **"Unjustifiable hardship"** is an action that requires significant or considerable difficulty or expense. This involves, *inter alia*, considering the effectiveness of the reasonable accommodation and the extent to which it would seriously disrupt the operation or result in unsustainable costs for the University.

### 3. PURPOSE

Considerate of the broader precepts and aspects of disability while also contextually driven, this policy aims to promote a socially inclusive, open, and accessible workplace in the best interests of safeguarding the human rights and dignity of persons with disabilities by:

- 3.1. providing, as far as possible, an enabling, favourable and barrier-free environment for employees with disabilities, including anti-discrimination and awareness programmes to all employees;
- 3.2. ensuring equal opportunities for employees with disabilities to perform at their optimum levels and to realise their full potential throughout their employment cycle;
- 3.3. determining and implementing reasonable accommodation measures, which are mutually beneficial to the employees with disabilities and the University.
- 3.4. observing prescripts of the national and international law, including the Code and Conventions aimed at upholding the human rights of employees who experience disability in the course of employment.

#### 4. SCOPE

- 4.1. This Policy shall apply to all categories of employees of the University as defined in paragraph 2.3 above;
- 4.2. The Policy shall inform the implementation and review of all HR Policies of the University, and shall be implemented in conjunction therewith;
- 4.3. The scope of application of this policy does not extend to joint staff, unless the University pays their remuneration; and
- 4.4. The policy is not applicable to sessional, honorary and visiting staff.

#### 5. LEGISLATIVE AND POLICY FRAMEWORK

This policy must be read in conjunction with other relevant Wits HR policies, including the Anti-Discrimination Policy and Procedure, and the relevant provisions of the following legislation, code and convention:

- 5.1. The Constitution of the Republic of South Africa, 1996, which enshrines the rights of all people in the country and affirms the democratic values of human dignity, equality and freedom. In upholding these rights to achieve an equal and just society, the Constitution prohibits unfair discrimination on the basis of, *inter alia*, disability.
- 5.2. Employment Equity Act, 1998 (EEA), as amended, which prohibits unfair discrimination and directs employers to implement affirmative action measures to ensure workplace diversity and inclusion, with due regard for unjustifiable hardship.
- 5.3. Code of Good Practice on Persons with Disabilities in the Workplace, promulgated under the EEA to guide employers and employees on promoting equal opportunities and fair treatment of people with disabilities.
- 5.4. Technical Assistance Guidelines on the Employment of People with Disabilities, which provide guidelines on the elimination of unfair discrimination and implementation of affirmative action measures in the workplace
- 5.5. Protection of Personal Information Act 2013 (POPIA), which gives effect to the Constitutional Right to Privacy by safeguarding personal information when collected, shared and destroyed by a responsible party.
- 5.6. Article 27 of the United Nations Convention on the Rights of Persons with Disability, which provides for the recognition of the right of persons with disabilities to:
  - a) work on an equal basis with others,
  - b) enjoy the opportunity to gain a living by work freely chosen or accepted in a labour market and
  - c) a work environment that is open, inclusive and accessible.

#### 6. PRINCIPLES

- 6.1. **Confidentiality** of profile records and disclosure of documentation shall be

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protected and maintained as per the prescripts of the POPIA. A person's disability status may be disclosed to third parties only with the written informed consent of the person with the disability. The employee must reconfirm throughout or may voluntarily withdraw such consent at any stage of the medical and functional assessments as may be performed in the context of this policy.

- 6.2. **Consultation** - The process of identifying and implementing reasonable accommodation measures should involve consultation with different role players, including the person seeking reasonable accommodation in an effort to reach a mutually beneficial solution.
- 6.3. **Preferential treatment** – Consideration must be given to affirmative action measures and numerical goals/targets when recruiting employees for vacant positions and managing their career incidents. The University gives preference to persons with disabilities in accordance with its Employment Equity Policy and Employment Equity Plan.

## 7. POLICY STATEMENT

7.1. The University commits to:

- 7.1.1. The democratic values of human dignity, equality and fair labour practice as enshrined in the Constitution of South Africa.
- 7.1.2. Valuing the diversity of its community and creating equal opportunities for all, inculcating a culture that fosters and encourages positive and unprejudiced attitudes towards employees with disabilities throughout their employment cycle.
- 7.1.3. Being respectful of the ethics and rights related to self-identification of disability and accessibility of its environment.

### **Self-identification or Voluntary disclosure**

- 7.2. The University acknowledges and shall uphold the right of employees not to disclose their disability status. In the event of an employee voluntarily disclosing the status, the University commits to invest every effort to provide reasonable accommodation to the mutual benefit of the employee and itself.
- 7.3. Given that some disabilities may not be self-evident, the University encourages employees to disclose voluntarily their disability status on the EEA1 form.
- 7.4. Once disclosed, the University commits to protect the privacy and confidentiality of an employee's disability status and undertakes to use the information only for purposes of compliance with the Employment Equity Act and to implement reasonable accommodation in the workplace.
- 7.5. Information disclosed by the employee may be shared only with authorised practitioners appointed by the University with the employee's written informed consent, subject to the applicable provisions of the Protection of Personal Information Act (POPIA), Act No. 4 of 2013 as amended.
- 7.6. In order to ensure that disability disclosure is optimised and appropriate support is provided to the employee with disabilities, the University shall invest in anti-discriminatory programmes for all employees and line managers, in partnership with relevant internal professionals or recognised service providers.

- 7.7. Unless the disability is self-evident, the University shall not be held liable for any failure to comply with the provisions of this Policy in the event of a person with a disability failing to disclose their status.
- 7.8. Notwithstanding the implication of paragraph 7.7 of this Policy, the University shall meet its obligation to ensure universal accessibility of employees with disabilities.

### **Affirmative Action measures**

- 7.9. In order to optimise equal opportunities for employees with disabilities, the University shall implement affirmative action measures, focusing on efforts to reasonably accommodate employees with disabilities.
- 7.10. As part of EE planning processes, the University shall set numerical goals and implement preferential treatment in order to achieve the equitable representation of employees with disabilities across the occupational categories and levels.
- 7.11. The University will consider Affirmative action measures for employees with disabilities throughout their employment cycle, i.e. from recruitment, selection, placement, development and promotion, to job retention.
- 7.12. In considering these measures, the screening or selection committee must first assess whether the employee is appointable or promotable using the inherent job requirements as per the advertisement, job description or conditions of service.
- 7.13. Through its Property Infrastructure and Maintenance Division (PIMD) and the Campus Protection Services, the University shall ensure that the work environment is open and accessible for employees with disability, as well as ensure that the allocation of parking spaces is practical.

### **Reasonable accommodation measures**

- 7.14. All efforts to implement reasonable accommodation measures aimed at ensuring day-to-day functioning of employees with disabilities shall be invested as follows:
- throughout the employment cycle including the recruitment process (deciding to or not to employ),
  - when deciding on career progression and training,
  - in communicating to employees with disabilities,
  - for purposes of occupational health and safety decisions, including the demarcation of parking spaces, providing access to privately-arranged transportation and progressively making the campus accessible; and
  - as a means to avoid employment termination such as incapacity and/or boarding decisions.

### **Temporary and degenerative disabilities**

- 7.15. In the event of an employee acquiring a temporary disability while employed by it, the University commits to retain their accumulated expertise and experience by:
- considering early return-to-work measures, guided by a registered

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medical practitioner or functional expert, aimed at ensuring job security for the individual.

- developing and implementing a functional rehabilitation programme for the employee, with the assistance of a registered medical and/or functional expert(s) to be appointed and paid by the University following its procurement processes. The line manager, assisted by the relevant HR Office and the DRU, will be responsible for the development and implementation of such a programme in consultation with the employee thereon;
  - consulting with employees who acquire a temporary disability in the process of assessing appropriate and mutually beneficial reasonable accommodation measures.
- 7.16. In the event of employees whose temporary disability status progressively impacts on their ability to perform work or who have been assessed as having a permanent disability through medical and functional assessment processes, the University shall consult employees to assess any additional or amended reasonable accommodation measures that could be appropriate to promote skills retention.
- 7.17. The University recognises that some disabilities may result in incapacity, which shall be managed through appropriate procedures as defined in the Labour Relations Act, 66 of 1995 as amended.

## **8. PROCEDURE**

### **Self-Identification or Voluntary disclosure**

- 8.1 The employee, who intends disclosing their disability status for purposes of either statistical compliance or reasonable accommodation, should complete an EEA1 form and submit it to the relevant HR Office.
- 8.2 Disclosure of disability status documents will be confidentially kept together with general personnel records and will be used only for statutory reporting and/or in efforts to implement beneficially mutual reasonable accommodation measures.
- 8.3 At its own costs, the University may seek an independent medical or functional expert opinion on any disclosures made by employees who are seeking reasonable accommodation and/or who are undergoing incapacity processes. The University will consult with employees as appropriate.

### **Reasonable Accommodation**

- 8.4 Employees with disabilities requesting reasonable accommodation must complete and submit 'A request for Reasonable Accommodation form' via the relevant HR office to the DRU's Academic and Facilities Access coordinator. The form is available online through the University's Intranet portal or at:

[https://www.wits.ac.za/media/wits-university/students/disability-unit/documents/Disclosure-of-Staff-with-Disabilities-Form-\(with-EEA1\).pdf](https://www.wits.ac.za/media/wits-university/students/disability-unit/documents/Disclosure-of-Staff-with-Disabilities-Form-(with-EEA1).pdf)



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- a) The request must be accompanied by the following documents:
- A jointly consulted motivation of the employee and the line manager citing the extent to which the measure requested would enable the employee to optimise performance of assigned duties. Such motivation must be supported by preliminary medical reports on the employee.
  - Written informed consent from the employee for the University to conduct a medical or functional assessment by medical and/or functional experts, appointed and paid by the University. Such consent must be re-confirmed or may be withdrawn as the assessment process unfolds.
  - In the event that an employee withdraws a consent, the assessment process shall be terminated and no further consideration of reasonable accommodation measures shall ensue.
- b) Upon receiving these documents, the DRU shall approach the appointed medical or functional experts to review the reasonable accommodation request. The purpose of such a review would be to determine the needs of the employee and the University, including consultation by way of interviews with the individual concerned and the line manager.
- c) In providing reasonable accommodation, the following actions shall be performed by the line manager, assisted by the relevant HR Office, Transformation and Employment Equity Office and the DRU:
- removal of the barriers to performing the essential function of the job for a person who is otherwise qualified;
  - reducing the impact of a person's impairment on his/her capacity to perform the allocated responsibilities;
  - ensuring that the employee with a disability will enjoy equal access to benefits and opportunities in employment;
  - facilitating an open and accessible work environment, as well as practical parking arrangements and permission for access onto campus by privately-arranged transportation of employees with disabilities;
  - supporting employees with temporary or permanent disabilities by providing additional leave or providing information as might be required by the University assurers.
- d) The type of reasonable accommodation required would depend on the needs of the employee, the University, and the nature of the work environment. Reasonable accommodation measures may include:
- Flexi-time arrangements, in consultation with line manager
  - Remote Working as per the Remote Working Policy of the University
  - Additional Sick Leave as per the relevant provisions of the Leave Policy
  - Temporary redeployment as per the Temporary Redeployment Policy

- Amendment of the employee's contract time by mutual agreement with line manager. For example, a reduction of time from a 100% contract to a 50% contract.
- Modifications of the workspace or the built environment to promote access to the workplace
- Once confirmed by the medical or functional assessments, a staff member may be provided assistive equipment/devices for work-related purposes, through the operational budget of the relevant department/school, even if they are working from home.

## **Recruitment**

- 8.5 HR departments shall assist recruiting managers and search committees to determine inherent requirements for vacant positions before these are advertised. These requirements must include the skills and capabilities required for applicants to be considered for appointment.
- 8.6 In order to ensure accessibility of advertisements and in addition to placing these on the University website, arrangements will be made with all disability organisations to receive and publicise these on accessible platforms.

## **Selection**

- 8.7 At all times, selection committees must use objective criteria to determine suitability and appointability of candidates for vacant positions or *ad hominem* promotion.
- 8.8 As part of the selection process, the University may require candidates for the position to undergo medical or functional assessments to determine needs for reasonable accommodation, at its own expense.
- 8.9 HR must consult with the applicant and the Disability Rights Unit for the performance of medical and functional assessments, which will assist in determining:
- a) reasonable accommodation measures required by the applicant to perform functions of the job;
  - b) the effectiveness of the reasonable accommodation measure in relation to the job to be performed;
  - c) the extent to which such measures would be beneficial to both the employee and the University.

## **Appointment and Placement**

- 8.10 In the event that the medical and functional assessments establish a *prima facie* case for the applicant being able to perform the functions of the job, whether with reasonable accommodation measures in place or not, an offer is made and the relevant probationary conditions shall apply.
- 8.11 An appointment of an employee with disability may not be made if the medical and functional assessments find that the reasonable accommodation measure would not be beneficial to both the employee and the University.

## **Training and Development**

- 8.12 As per the established University practice, all newly appointed employees shall undergo orientation and induction training, which must be accessible to all.
- 8.13 In order to ensure mutual understanding of job expectations between colleagues, line managers and employees with disability, the Disability Rights Unit (DRU) will, in collaboration with the Transformation and Employment Equity Office, develop and implement anti-discrimination programme for all staff of the University.
- 8.14 Such programme will be incorporated into the menu of the Human Resources Development Unit (HRDU) skills development offerings, including line manager workshops, workshops with colleagues and webinars on updates on the subject matter.
- 8.15 In specifying objectives for probation and performance, parties shall agree on those objectives that take into account the needs for the employee for reasonable accommodation, including but not limited to the following:
- a) restructuring of the job to ensure non-essential functions are re-assigned
  - b) adjusting conditions of employment, e.g. flexible working arrangements or working from home provisions
  - c) facilitating appropriate supervision, training and support for competent performance

**Benefit administration and job retention**

- 8.16 The Disability Rights Unit, assisted by Employee Relations and Occupational Safety, Health and Environment Office, will consult with the employee who sustains injury on duty regarding the benefits available and the type of reasonable accommodation measures that may be implemented.
- 8.17 In the event of an employee sustaining an injury in a private capacity (off duty), the Disability Rights Unit, assisted by Employee Relations, will consult with the employee on the benefits available and the type of reasonable accommodation measures that could be implemented for optimal job performance and free movement in the workplace.
- 8.18 In consultation with the University-appointed assurer, the Disability Rights Unit, assisted by Employee Relations and Employee Benefits Office, will consult with the employee whose temporary disability status progressively degenerates following guidelines stipulated in paragraph 8.4 of this Policy.
- 8.19 An independent medical and/or functional assessment shall be performed to determine the extent to which the employee is able to perform the job functions and freely navigate the built environment, at the University's expense on written consent of the employee. While these assessments are underway, the employee may be considered for additional sick leave as per the University's policy.
- 8.20 In the event that an employee does not consent to the medical and functional assessment, and his or her job performance is consistently assessed as below standard, an incapacity procedure of the University shall be invoked.
- 8.21 In the event of injury on duty impacting on the employee's ability to perform the job functions, the reporting requirements and advice as per the Compensation for Occupational Injuries and Diseases Act, shall be observed.
- 8.22 Based on the medical or functional assessment outcomes and recommendations of the relevant expert, the line manager, in consultation with the employee, shall determine an alternative work that the employee could comfortably perform.
- 8.23 The University may also consider an early return to work, in the event of an employee being assessed for temporary disability. Such return-to-work shall be on conditions specified in the report by the medical or functional expert. This means that the job shall not be filled until the final assessment has been performed, provided that such a process shall not be longer than a year.

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## Termination of Employment

- 8.24 In terminating employment, the University shall only follow the procedures for dismissal based on reasons recognised in law.
- 8.25 The University shall facilitate termination counselling with the employee's financial advisor of own choice and the assurer, through which an employee shall be advised of compensation and benefits available upon termination of employment, including Unemployment Insurance.

## Monitoring and Evaluation

- 8.26 The Senior Executive Team (SET) shall record the implementation of this Policy as an objective on the Institutional Score Card, which the University Council shall assess on annually.

## 9. ROLES AND RESPONSIBILITIES

- 9.1 The Vice Chancellor will be the first point of accountability for the implementation of this Policy.
- 9.2 The Senior Director: Human Resources, assisted by the DRU, will be responsible for the development and implementation of processes, procedures and practices across the human resources responsibility areas, which give effect to the provisions of this policy.
- 9.3 Faculty and Division Heads/Managers will be-
- responsible for annually reviewing representation of employees with disability in occupational categories and levels pertaining to their respective areas of responsibility and where underrepresentation has been identified, address it as part of the faculty or divisional EE plan.
  - required to include steps to address underrepresentation in their annual operational plans and reports. These steps will include, *inter alia*, the implementation of an anti-discrimination programme, assisted by the relevant HR Office, DRU, Transformation and Employment Equity Office (TEEO), and in consultation with the employee.
- 9.4 The Director: Property and Infrastructure Management Division (PIMD), in consultation with the Director: Occupational Health, Safety and Environment and the Campus Protection Services, will be responsible for:
- the development and implementation of accessibility compliance mechanisms throughout the University;
  - continuously conducting universal accessibility audits and demarcation of disability parking spaces, as well as authorisation for access of privately-arranged transportation onto campus;
  - making appropriate budget provision and progressively removing all physical barriers and accessibility hazards.

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- 9.5 All Human Resources managers and practitioners will be responsible for:
- a) ensuring that the provisions of this policy are adhered to at all times throughout the human resources value chain, including assisting line managers in implementing anti-discrimination programmes for employees in consultation with the TEEO; and
  - b) that employees are referred to applicable mental health interventions as determined and provided by the University through service provider agreements.
- 9.6 The Disability Rights Unit will –
- 9.6.1 Provide support, guidance and advice to Faculties, Divisions and all employees in relation to the provisions of this policy;
  - 9.6.2 Facilitate referrals and motivate for authorisation of reasonable accommodation requests from employees to the relevant experts or departments, and the resolution of any queries concerning this Policy;
  - 9.6.3 Develop and implement disability advocacy programmes, including anti-discrimination programmes, in consultation with the TEEO; and
  - 9.6.4 Facilitate funding requests for reasonable accommodation of employees, as per advice obtained from experts in the medical or functional assessment processes specified in this policy.
- 9.7 When an employee needs reasonable accommodation, they are responsible for:
- 9.7.1 providing notice of the need for reasonable accommodation to their line manager, the DRU and HR manager. The exact nature of the disability requiring reasonable accommodation must be specified.
  - 9.7.2 providing enough relevant documentation including medical or functional capacity reports or other supporting documentation and/or consents as are required to verify the need for appropriate reasonable accommodation measures beneficial to and for identifying their specific their accommodation needs.
  - 9.7.3 cooperating in identifying and implementing a reasonable accommodation measures, including making suggestions and recommendations to meet their needs.
- 9.8 The solution implemented may be a compromise solution between the University and the employee. The reasonable accommodation measure recommended by experts may not be exactly as envisaged by the employee, but must be effective and functional and achieve the objective of reasonable accommodation in the workplace.
- 9.9 The Senior Executive Team must consider requests for which the operational budgets of department/schools are unable to accommodate the reasonable accommodation needs of employees, based on the medical and functional assessments specified in this policy.

## **10. DISPUTE RESOLUTION**

- 10.1 Decisions taken in terms of this Policy are subject to the dispute resolution

processes described herein.

- 10.2 In the event of a dispute arising in respect of any decision on reasonable accommodation taken in terms of this Policy, the employee represented by a fellow employee if desired, and the Deputy Vice-Chancellor responsible for Human Resources will meet to resolve the dispute. This meeting must take place within 10 (ten) days of the Deputy Vice-Chancellor being informed of the dispute in writing.
- 10.3 Should the parties fail to reach agreement on the matter referred for resolution within a period of 7 (seven) days from the meeting, the employee may escalate the matter to the Vice-Chancellor in an attempt to resolve the dispute within a further 14 (fourteen) day period.
- 10.4 The Vice-Chancellor and the Deputy Vice-Chancellor as appropriate may request the assistance of the Senior Director: Human Resources and/or the Disability Rights Unit and may request relevant documentation and/or medical reports in attempting to resolve the matter.
- 10.5 In the event that the parties are unable to resolve the dispute within the prescribed periods, the employee shall be entitled to pursue external legal remedies, including the Commission for Conciliation, Mediation and Arbitration (CCMA).

## 11. REVIEW OF THE POLICY

The Disability Rights Unit, in collaboration with HR, will be responsible for reviewing and updating this policy **every three** years.

### VERSION HISTORY

Version	Date	Summary	Approved by
2	22 September 2021	The title and contents of the Policy on the Employment and Advancement of Persons with Disabilities, are being amended to ensure that reasonable and mutually beneficial efforts are invested towards the inclusion of people with disability within the University structures and environment.	Council