

Positive Discrimination vs Positive Action (what the law allows)

In discussions about PGR scholarships, it is common for “positive discrimination” and “positive action” to be conflated, yet they carry very different legal and practical implications. Positive discrimination, the act of selecting a candidate solely because they hold a protected characteristic, is generally unlawful in the UK ([Simmons & Simmons](#)). This distinction is particularly important when considering the case study of PGR applicants: some consortia have observed that, even with apparently open competition, outcomes skew towards white and more privileged applicants. While the instinct may be to reserve awards directly for minoritised students, this approach would not withstand legal scrutiny.

By contrast, **positive action** is lawful where there is clear evidence of disadvantage or under-representation, and the intervention is proportionate. Within the context of PGR programmes, three key routes have been applied:

1. **General measures (s.158 Equality Act 2010)** – These include outreach events, preparatory workshops, mentoring, and removal of administrative barriers. For example, some Doctoral Training Partnerships (DTPs) now run bespoke applicant days targeting under-represented groups.
2. **Tie-break provisions (s.159)** – Where two candidates are of demonstrably equal merit, a protected characteristic can lawfully be used to decide between them. This must be guided by pre-set criteria and robust documentation ([GOV.UK Bar Council - Practice & Ethics](#)).
3. **Charities exception (s.193)** – In some cases, ring-fenced scholarships can be delivered by or through a charity, provided that the restriction to a particular group is written into governing documents and objectively justified. The University of Oxford's *Black Academic Futures* programme illustrates this route in practice, combining philanthropic support with a clear EDI rationale ([Equality and Human Rights Commission+1GOV.UKGOV.UK](#)).

Exemplars from the Sector

Other scholarship providers have begun to normalise these approaches. UKRI, through its Councils and DTPs, requires funded centres to maintain EDI strategies and encourages the use of evidence-based positive action to broaden access. Wellcome Trust has pioneered the use of positive action at the shortlisting stage, ensuring that applications from under-represented groups are added where evidence of disadvantage exists; this is accompanied by strict privacy controls and transparent reporting. Oxford's charitable ring-fenced schemes provide another model, explicitly remedying the historic under-representation of Black UK students.

Across CDTs and DTPs, common good practice includes:

- Systematic monitoring of EDI data at every stage (application, interview, award).
- Training of panels in unconscious bias and lawful positive action.
- Recruitment of diverse supervisory teams.
- The use of standardised rubrics that value research potential over pedigree.

What comparable programmes and funders are doing (exemplars)

- **UKRI** (and Councils/DTPs): encourages *evidence-based positive action* in PGR recruitment; requires DTPs to maintain EDI strategies and monitor outcomes. [UK Research and Innovation+2](#)[UK Research and Innovation+2](#)
- **Wellcome**: uses **positive action at shortlisting**—adding applications from under-represented groups to shortlists where under-representation is evidenced and criteria met; applies robust privacy/monitoring controls. [Wellcome+1](#)
- **University of Oxford (Academic/Black Academic Futures)**: philanthropic/charitable scholarships explicitly addressing under-representation of Black UK students (example of the **charities exception** route in practice). Programme intent and framing emphasise remedying under-representation. (Universities take legal advice for governance here.) [University of Oxford sbs.ox.ac.uk one young world.com](#)
- **Good practice in CDT/DTP operations**: systematic EDI monitoring at each selection stage, trained panels, diverse supervisory teams, and standardised rubrics. [School of Informatics NEON](#)

Practical Framework for technē / DLA Consortium

Drawing on these examples, a four-stage framework is immediately applicable:

1. **Evidence the need**
 - Collect and analyse demographic data across the selection pipeline with appropriate privacy notices.
 - Use the evidence to identify under-representation and justify proportionate interventions.
2. **Choose the lawful intervention**
 - *Positive action (s.158)*: targeted outreach, preparatory workshops, and fee waivers.
 - *Tie-break (s.159)*: introduce a formal tie-break policy where candidates score equally on pre-set criteria.

- *Charities exception (s.193)*: where ring-fenced scholarships are desired, partner with a charity and obtain legal sign-off.

3. Make selection fair and transparent

- Standardise weightings to prioritise research potential over educational background.
- Blind or partially anonymise parts of applications where feasible.
- Diversify and train panels to reduce unconscious bias.

4. Monitor, report, improve

- Track outcomes of positive action measures and publish high-level findings.
- Use annual reporting to refine interventions, following the transparency model set by Wellcome.

Risk Controls & Governance

Any adoption of positive action must be underpinned by rigorous governance:

- Cite the relevant Equality Act provisions (s.158, s.159, s.193) and document proportionality.
- Maintain decision logs, conflict-of-interest registers, and legal notes for audit purposes.
- Provide applicants with transparent notices explaining how their EDI data is used.

Quick Menu of Lawful Measures

- Targeted outreach and preparation events for under-represented groups (s.158).
- Application fee waivers or micro-grants to reduce financial barriers (s.158).
- Positive-action shortlisting models (Wellcome) where under-representation is evidenced.
- Tie-break policies for equal-merit cases with an auditable trail (s.159).
- Charitable ring-fenced scholarships (Oxford's Black Academic Futures) with governance under s.193.