

Discrimination and prejudice in selection

(Taken from the Recruitment and Selection Toolkit, Brighton and Hove County Council)

Good recruitment is based on following legislation, policies and procedures, and best practice which helps protect people and organisations.

Employers must be aware that poor recruitment practice can result in organisations facing legal challenge resulting in fines and loss of reputation.

A job applicant can take a business to an Employment Tribunal, even though they have not become an employee, if they believe that the reason they were not successful in their application for a role was due to discriminatory reasons.

Organisations will find it difficult in defending a challenged recruitment decision if it uses poor selection methods.

Organisations can be found guilty of either directly or indirectly discriminating against applicants and claims of ignorance or lack of intention offer no protection. Best practice is for organisations to recruit openly and fairly to get the right person.

Organisations that work with vulnerable adults and children will also need to consider safer recruitment practice and the requirements regarding disclosures from applicants and required reporting by organisations where barred applicants apply to work with vulnerable groups.

Vanessa George, a nursery assistant from Plymouth, was jailed for abusing children. Using her mobile phone, she photographed children in her care as she abused them and shared the images with her accomplices.

The serious case review found that there was no clear staff recruitment and selection policy and the nursery manager had not attended safer recruitment training. The manager, in her role as school governor, knew of George as a classroom assistant and had recruited her through word of mouth.

There are no records of an advertisement, formal interview or references for her post, though there was a cleared CRB check (now known as a Disclosure & Barring Service check).

Equality and recruitment

Employers need to carefully consider potential discrimination claims that can result from the language in the advert, questions and statements on the application form or in interview and decisions to employ relating to the nine protected characteristics under the Equality Act 2010.

Under the Equality Act it's unlawful to discriminate against a person on the basis of:

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race
- religion and belief
- sex (gender)
- sexual orientation.

Unlawful discrimination in recruitment can take a number of forms

Type of discrimination	Example of discrimination
Direct discrimination – treating an applicant with a protected characteristic differently from someone who doesn't have that characteristic	Not offering a man a care worker a job because most service users prefer female care workers.
Indirect discrimination - applying a criteria that disproportionately affects a person with a protected characteristic in comparison to people who don't share that characteristic	A job advert requiring a particular number of years of experience, ruling out younger people who have the skills required.
Discrimination by association – directly or indirectly discriminating against a person who has an association with a person who has a protected characteristic	Refusing to employ a person who is a carer for a person with a disability as concerned would not be able to travel for role.

Discrimination by perception - directly or indirectly discriminating against a person who it is believed has a protected characteristic	Not employing someone who you think has a particular religion because of their name as you believe they will find it difficult to fit in with the culture of the team.
Discrimination by victimisation – directly or indirectly discriminating against a person who has previously complained about discrimination, supported someone else who has complained of discrimination or sought to uphold their equality rights	Refusing to offer a person an internal development opportunity as they have previously made a complaint of discrimination against their employer.
Discrimination by harassment - unwanted conduct related to a protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual'	Telling jokes about an applicant's religion or belief at interview making them feel humiliated.

Employers should consider the questions that they ask at interview are not interpreted as discriminatory.

Question	Notes
What is your age?	Only if inherent requirement of the job: e.g. serving alcohol in licenced premises (otherwise may raise issues of age discrimination).
Do you have any children?	Potential discrimination relating to gender/or associative if carer. Employer needs to consider how this is relevant to the role.
Do you have any upcoming commitments that would require extensive time away from work?	This is an open question that does not presupposes any commitments that the applicant may have.

Where were you born?	Potential discrimination race – how relevant to the role – have pre-employment checks to establish right to work.
Does your family situation stop you from being able to travel?	Potential discrimination gender/ carer – explain job involves travel would you be able to fulfil this – travel should be in person specification.
Are any of your references or qualifications under another name?	This avoids a question about marital/civil partnership.
Have you ever been arrested?	Arrest is not the same as convictions – and unless relevant to job – convictions may be spent- DBS provides information including soft information such as arrests if relevant to the role.
How much longer do you plan to work before you retire?	Potential age discrimination – could ask about career goals/development.
How would you feel about managing a young team?	Potential age discrimination – better to ask “tell me about your experience of managing a team” or “Tell me about the leadership qualities you feel you could bring to the team”.
That’s an interesting surname where does it originate from?	On the surface this may be intended as a rapport building question but potentially could be challenged as race discrimination.

Disability and recruitment

As a general rule, the Equality Act 2010 makes it unlawful for employers to ask about employee’s health or disability when considering whether or not to offer employment to a potential applicant.

Section 60 of the Equality Act 2010 makes it generally unlawful to make queries about health.

The purpose of Section 60 is to prevent disability or health information being used to shift out job applicants without first giving them the opportunity to show they have the skills to do the job.

However the Equalities Act does allow an employer to ask about disability in very limited circumstances.

1. To check if person is able to take part in an assessment as part of the selection process.
2. If it's necessary to carry out an intrinsic part of the job. Employers should consider if that part of the job can be assigned to another person or changed as a reasonable adjustment.
3. If disability a genuine occupational requirement of the job. For example an autism engagement worker role would require someone diagnosed with autism in the role.

When asking about a person's disability or health employees should think about how they ask a question and if that part of the job can be assigned to another person or changed as a reasonable adjustment.

Employers can make a job offer that is conditional on medical checks and then ask health-related questions without being in breach of Section 60.

Unconscious bias

A 2009 DWP study found that when sending fake CVs with identical qualifications and experiences the applicant with the white British sounding name had to send 9 before gaining an interview where the applicants with ethnic minority names had to send an average of 16 applications to gain an interview.

In 2012 Policy Exchange sent out 1000 identical CVs for bar and personal assistant jobs. Half claimed to be from 25 year-olds, half 51 year-olds. The 25 year olds were 2.25 times as likely to receive a response

Unconscious bias refers to biases that influence our thoughts and behaviours without our awareness.

These biases can influence our decision making automatically and are often triggered by our brain making quick judgments and assessments of people and situations, without all of the relevant information and instead are informed by our background, cultural environment and personal experiences.

Unconscious bias occurs when these untested messages are accepted as truth.

Employers need to consider ways in which bias could be embedded in their organisations recruitment and selection processes alongside ways to avoid bias.

- **Bias within the selection process**

The selection process can be a useful way of assessing an applicant's skills and abilities. However bias can exist within tests that are used to select applicants for example in relation to language. Bias can also exist in assessing what is to be measured for example a role that seeks 'physically fitness' or 'highly articulate' may discriminate against disabled applicants.

- **Falling into the 'mini-me' trap**

First impressions count. Interviewers form opinions about applicants within the first few minutes of meeting them leading to bias in decision-making. We are more inclined to like people who we judge to be like us.

- **Organisational fit and recruitment filtering**

Organisational fit occurs when recruiters look for individuals who not only have the skills and abilities to do the job role, but also consider the whether the individual will fit into the culture of the organisation. ('their like us')

- **Informal networks and word of mouth recruitment**

Networks can act as a way of excluding some social groups from taking advantage of possible recruitment opportunities. The 'it's not what you know, but who you know' can exist both in the working environment and social activities outside of work.

- **Sector based stereotyping**

Excluding individuals from employment opportunities because of sector norms and stereotypical perceptions only exaggerates ingrained bias, for example women and older people make better carers.

Tips to avoid bias in recruitment and selection

- **Review person specifications**

Review the person specification and job description ensuring it is free from bias – remove all unnecessary requirements that simply act as job filters or ways of narrowing the talent pool.

- **Review recruitment images**

Employ images and text applicants from a wide range of backgrounds that will appeal to a broad range of possible applicants. Research shows that minority groups respond to adverts that reflect their social identity also consider where adverts are placed.

- **Set diversity targets for recruitment agencies**

Requests from clients will ensure recruitment agencies are motivated to look for a wide range of talented applicants.

- **Remove bias within selection tests**

Ensure that the types of case studies used as part of any selection tests do not favour any particular group. Similarly, ensure that you use psychometric tests that are free from bias.

- **Be aware of the ‘halo affect’**

The halo effect operates at an unconscious level and allows applicants to pass through a ‘favourable filter’, by sending unconscious codes about who they are and their relationship to the interviewers. Equally the horns effect means previous negative experiences of an individual or group can mean applicants pass through a negative filter.

- **Sufficient time**

Ensure there is sufficient time to make recruitment decisions. When people are rushed they are more likely to fall back on biases

- **Train assessors/recruiters in unconscious bias**

It is important to raise awareness of unconscious bias and how it affects decision making

- **Clear assessment criteria**

Unclear assessment criteria can lead to confusion which allows bias to flourish as people start to use intuition to make decisions. Be clear about the minimum criteria to select someone in to a pool of potential applicants and applied consistently. Assessment criteria needs to be clearly construed and clearly state the factual evidence that will show the criteria is met.

- **Shift blind**

Remove any information from application forms or CV’s that could trigger bias whenever possible (names, age, gender etc.) so assessors focus solely on the skills, knowledge and experience of the applicants.

- **Challenge assessors**

It is good recruitment practice to have more than one assessor at all stages of selection. Assessors should challenge each other on the relevance of information that is used to support their decision making e.g. it is not enough to say “they worked on a major project”, ask what was it they did, its impact and how it is relevant to the post the person is being interviewed for.

- **Challenge language**

The negative and positive language used about different groups can identify bias which can be challenged by reframing, for examples certain behaviours can be described positively in groups of males such as assertive and focussed on success’ are described negatively when attributed to women “pushy and self-interested’.