

HOW TO PREVENT UNCONSCIOUS BIAS WHEN RECRUITING

By Ellis Whittam, NAFD partner in the NAFD Legal Advisory Service

Whether we realise it or not, our life experiences, upbringing, background and culture all shape our personal outlook and views of other people. In employment, these innate biases can unwittingly influence recruitment decisions.

Unconscious bias is a real and insidious issue that affects not only employees and job seekers but employers, too. It can cause organisations to miss out on hiring or promoting talented people who will bring new ideas and perspectives to the table and, if left unchecked, can lead to a less diverse workforce and stunted organisational growth. Of course, there is also the risk of unlawful discrimination claims - something any employer would hope to avoid in order to preserve its reputation and bottom line.

What is unconscious bias?

The term 'unconscious bias' refers to attitudes or perceptions towards certain groups of people which are so deeply ingrained that they exist outside of our conscious awareness.

Unconscious biases are often learned stereotypes that we absorb throughout our lives and, in many cases, they are at odds with our conscious values. In other words, they are unintentional and automatic and don't always reflect what we really think or feel.

Nevertheless, these unconscious biases can have a powerful influence on our

actions and behaviours. It is, therefore, important to be able to recognise them so that we can challenge potentially discriminatory beliefs and prevent biased outcomes.

What does the law say?

The general principle is that work opportunities should be available to everyone.

Employers cannot discriminate, either directly or indirectly, on the basis of any of the 'protected characteristics' outlined in the Equality Act 2010. These protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

With regard to recruitment, although you are not yet their employer, discrimination claims can still be brought in the pre-employment period. As such, if you decide not to offer an applicant a role based on any of the protected characteristics mentioned above, you leave yourself vulnerable to employment tribunal claims.

What's more, in addition to prohibiting direct and indirect discrimination, the Equality Act also outlaws discrimination by association and perception. For example, if you reject an application from a white British female because you assume she is black based on her name, you may also be at risk of claims. Similarly, if you reject

a candidate because you find out they have a disabled child, this would also provide grounds for legal action.

Is discrimination in recruitment ever justified?

In certain limited circumstances, employers can require an applicant to possess a particular protected characteristic if it is truly necessary for the particular job. This is known as a genuine occupational requirement. Roles where specifying a particular characteristic may be appropriate include those that involve physical contact or where issues of decency or privacy arise, for example a nurse or fitting room assistant. However, it is essential that employers can justify the reason for imposing such a requirement. More specifically, the law states that in order for discrimination to be justified, employers must be able to demonstrate that applying the provision, criterion or practice is a proportionate means of achieving a legitimate aim.

In addition, employers may be justified in taking positive action to encourage applications from people with certain characteristics that are underrepresented or who are at a particular disadvantage in the workplace or at certain job levels. For instance, you may be justified in offering a guaranteed interview scheme to disabled applicants who meet the job role's requirements.

So what's the solution to unconscious bias?

Thankfully, there are a number of practical steps employers and HR professionals can take to reduce the likelihood of unconscious bias seeping into the recruitment process and resulting in unlawful discrimination.

1. Get the job advert right

You will want to target as wide a pool of candidates as possible in order to get a diverse and talented group of applicants applying for the role. As such, it's important that you don't restrict who will apply through a badly drafted job advert. In particular:-



- be careful using gender-specific terms. For example, 'waiter' is often seen as a neutral term but may discourage female applicants, so air on the side of caution and use both ('waiter or waitress');
- only use phrases such as 'recent graduate' or 'mature' if they are actual requirements for the job role. These types of phrases may violate the Equality Act because they exclude some people on the basis of their age;
- if the role requires the person to speak a particular language, this should be clearly set out as a skill. Rather than advertising for a 'Spanish sales assistant', you should use the term 'Spanish-speaking sales assistant' to avoid any suggestion of race discrimination;
- don't be overly restrictive with where you place the advert. Simply putting the job advert in men's magazines, for example, may alienate perfectly

qualified female candidates and may be discriminatory.

2. Consider 'name blind' recruitment

You could consider practising 'name blind' recruitment to reduce the likelihood of unconscious bias occurring. This involves removing applicants' names so that preconceptions about a person's race, age or gender don't influence your decision making.

Back in 2015, David Cameron announced that he would be introducing 'name blind' recruitment to the civil service. Other big employers in both the private and public sector, such as HSBC, Deloitte and the BBC, have since followed suit. In fact, some employers have decided to omit more information than just applicants' names to eradicate certain biases - for example, removing their gender, age and even university.

3. Provide regular training

Make sure that all staff involved in the recruitment and interview process are trained so they not only understand the importance of the Equality Act, but are able to identify their own biases and take steps to minimise them influencing their decisions.

4. Get multiple people involved

If possible, try to have more than one person involved in reviewing applications and selecting candidates for interviews. Using multiple interviewers will also make it less likely that the final decision is based on one person's unconscious bias.

5. Give some thought to your interview questions

To ensure everyone is assessed on an equal footing, it is a good idea to present the same set of questions to all candidates. As well as helping to make the process as fair as possible, this

will also enable you to more evenly compare candidates' education, experience, skills, knowledge, etc.

It's important not lose sight of the end goal of an interview, which is to assess a candidate's suitability for the role. You should focus and explore areas set out in the job description, person specification and application form and avoid any questions that are simply not relevant to the job's requirements.

Be mindful to avoid any questions that may be perceived as discriminatory, for example

"When do you plan on retiring?" or "Are you planning to have children?" If they provide this information without you asking, you must make sure that it does not influence your decision.

6. Apply a fair scoring system

It's beneficial to have a clear and objective scoring system, where candidates are scored according to the criteria set out in the job and person specifications.

You will need to decide how marks will be allocated for each requirement. For example,

'essential' criteria will receive higher marks than 'desirable' ones. Make sure that you score each applicant in the same way.

7. Don't rush into a decision

An ill-thought-out recruitment can be costly. Taking your time and tuning in to your unconscious biases will not only reduce the risk of discrimination claims, but will ensure the person you select is the right fit for your organisation and hopefully prevent you from having to re-advertise the role in six months' time.

Ellis Whittam Back to Business Premium Hub

Now that the Government has begun to ease lockdown restrictions, businesses across the UK are beginning to make preparations for the 'new normal'.

Ensuring that funeral firms are compliant from both an employment law and health & safety perspective is NAFD's partner in the NAFD Legal Advisory Service - a key benefit of NAFD membership - Ellis Whittam's top priority, and this will be absolutely crucial in creating a safe working environment and achieving a smooth transition back to business.

The Back to Business Premium Hub is an exclusive platform designed to help NAFD members approach their return-to-work

plans confidently by providing all the guidance and documentation they need in a structured, easy-to-follow format.

This additional upgrade to what is included in the NAFD Legal Advisory service expands on what is available through Ellis Whittam's free-version Hub to give you peace of mind and help you to tackle your workforce and workplace challenges promptly, compliantly and safely in the coming weeks and months.

If you would like to discuss one-to-one assistance, please contact nafd@elliswhittam.com or call us on 0330 024 1004.

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0845 3519 935

enquiries@eulogica.com

www.eulogica.com