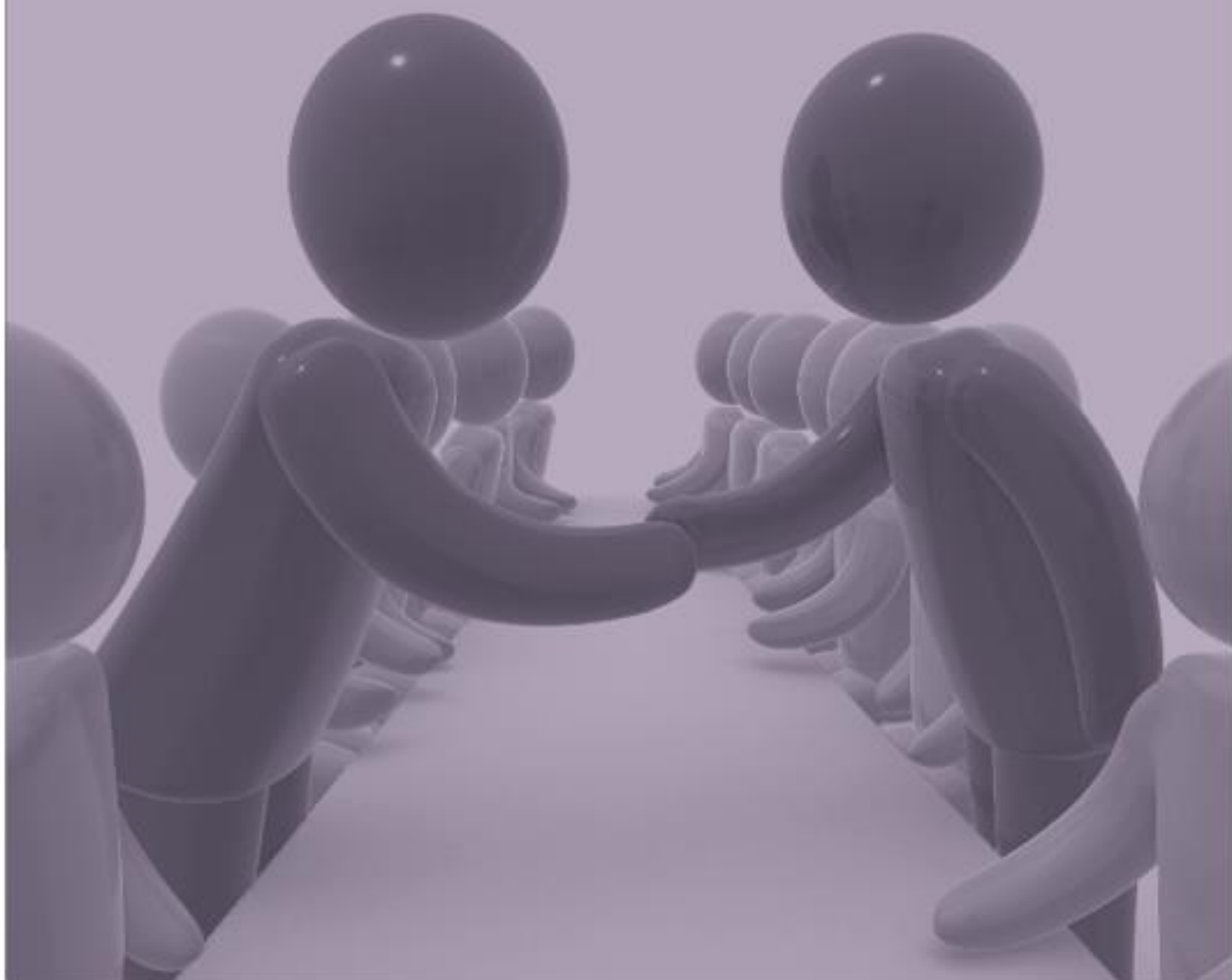


# Negotiating fair recruitment and selection procedures



**Bargaining Support Group**

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## Why it's important for UNISON reps and branches to negotiate a fair recruitment and selection procedure with the employer

- Recruitment and selection procedures affect all workers and all members.
- They play a crucial role in ensuring equality and diversity within the workforce. But the statutory requirements covering these procedures are limited and insufficient to ensure all potential applicants are treated fairly. This makes it a crucial bargaining issue for branches and reps.
- Too many of our members, whether they are women, Black members, disabled members, young members or LGBT+ members continue to experience unfair treatment and discrimination during employers' recruitment or selection procedures. By agreeing good recruitment and selection policies, the number of cases requiring steward representation could be reduced, freeing up steward time.
- Unfair recruitment and selection procedures contribute to the continuing gender, ethnicity and disability employment gaps. Improving recruitment policies could be seen as a valuable part of any equality action plan.
- Negotiating a good recruitment and selection policy will highlight how UNISON values its members and recognises the particular challenges and unfair treatment that many workers face. Ultimately this could result in an increase in your branch's activist base.
- Agreeing successful policies for a wide range of workers can be a useful recruitment and retention tool for our union, advertising the benefits of joining UNISON for all, as well as how UNISON reps have expert negotiation skills when dealing with employers.

If negotiators have any comments on this guidance or any experience of negotiations that could be usefully incorporated in the guidance, please contact Bargaining Support at [bsg@unison.co.uk](mailto:bsg@unison.co.uk)

Further guidance is available from bargaining support for branches and workplace reps [www.unison.org.uk/bargaining](http://www.unison.org.uk/bargaining)

Contact your regional education teams and / or LAOS to find out what training and resources are available to assist you with negotiating with your employer or promoting the issues in this guide with your members <https://learning.unison.org.uk>

## Why it's important for employers to make sure the recruitment and selection procedure is fair

- Recruiting from a wide range of backgrounds and cultures, mean employers can gain access to a wide variety of viewpoints and perspectives, and can get to consider new ways of doing things and fresh ideas.
- Research<sup>1</sup> has shown that organisations with staff from a broad range of backgrounds have been found to outperform those with a less diverse workforce.
- Getting diversity in the workforce right can lead to improved team performance, morale and retention as employees will feel confident to be themselves.
- Employers say diversity encourages creative and innovative thinking, with a wider pool of ideas to come up with solutions quicker. It helps introduce staff with unique and wide-ranging skills into the workforce.
- Recruiting a diverse workforce is important so that the employer's workforce can reflect the community they serve.
- The organisation will be better equipped to respond to the needs of their service users, and to deliver high quality, culturally sensitive and appropriate service.
- A fair recruitment and selection procedure will make all staff feel their potential is recognised, nurtured and supported at work. In turn they are likely to be more engaged at work leading to better productivity and reduce employee turnover.
- It will help ensure that employers comply with equality legislation and do not discriminate against job applicants and potential employees.
- The organisation will also have a better reputation in the wider world. Employers committed to recruiting a diverse workforce are seen as socially responsible and operating ethically.

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<sup>1</sup> [www.mckinsey.com/business-functions/people-and-organizational-performance/our-insights/why-diversity-matters](http://www.mckinsey.com/business-functions/people-and-organizational-performance/our-insights/why-diversity-matters)

## What are the basic rights of a job applicant

The Equality Act 2010<sup>2</sup> is clear. As explained in the Equality & Human Rights Commission 'Employment: Statutory Code of Practice':

“Employers must not discriminate against or victimise job applicants in:

- the arrangements they make for deciding who should be offered employment;
- in the terms on which they offer employment [including such things as pay, bonuses and other benefits]; or
- by not offering employment to the applicant.

Arrangements refer to the policies, criteria and practices used in the recruitment process including the decision making process...

Arrangements include such things as advertisements for jobs, the application process and the interview stage...

Employers' obligations to job applicants extend to them not making enquiries about disability or health before the offer of a job is made.”

### More information:

Equality and Human Rights Commission (EHRC)

See Chapter 13 of the 'Employment Statutory Code of Practice'

[www.equalityhumanrights.com/en/publication-download/employment-statutory-code-practice](http://www.equalityhumanrights.com/en/publication-download/employment-statutory-code-practice)

EHRC's 'What equality law means for you as an employer: when you recruit someone to work for you'

<https://equalityhumanrights.com/en/publication-download/what-equality-law-means-you-employer-when-you-recruit-someone-work-you>

Equality Commission for Northern Ireland guidance

[www.equalityni.org/Recruitment-Redundancy](http://www.equalityni.org/Recruitment-Redundancy)

Acas also warn employers:

“When hiring, it's obviously important to find the best person for the job. But you should also check you're following the law on discrimination. It's usually

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<sup>2</sup> In Northern Ireland the relevant legislation includes: the Disability Discrimination Act (DDA) 1995 and subsequent amendments and supplementary laws, Employment Equality (Age) Regulations (NI) 2006 and subsequent amendments, Equal Pay Act (NI) 1970, Sex Discrimination (NI) Order 1976 and subsequent amendments, Maternity and Parental Leave etc. Regulations (NI) 1999, Race Relations

against the law to discriminate against a job applicant based on... 'protected characteristics'...

It's against the law to treat someone unfavourably based on whether they are, or are not, a trade union member.”

The protected characteristics are:

- age
- disability (a disabled person being defined as someone who has a mental or physical impairment that has a substantial and long-term adverse effect on the person's ability to carry out normal day-to-day activities)
- gender reassignment (covering all people considering or undergoing or who have undergone gender reassignment whether or not they have medical treatment)
- marriage or civil partnership
- pregnancy and maternity
- race (including colour, nationality, and ethnic or national origins)
- religion or belief
- sex
- sexual orientation.

In Northern Ireland, legislation prohibits discrimination on the grounds of:

- age
- disability
- gender reassignment
- political opinion
- pregnancy and maternity
- race
- religious or similar philosophical belief
- sex
- sexual orientation.

It is also unlawful to discriminate because a person is a member or non-member of a trade union, or because they are a part-time worker or on a fixed-term contract.

**Direct discrimination** is when you treat someone less favourably than others because of someone's protected characteristic.

**Discrimination by perception** is when a person is directly discriminated against because someone thinks the person has a protected characteristic. This is whether

or not the employee actually possesses that protected characteristic.

**Discrimination by association** is when a person is directly discriminated against because of their association with someone else who has a protected characteristic.

Perceptive discrimination and discrimination by association do not cover the characteristic of marriage and civil partnership. However it may be possible to link the discriminatory behaviour to other protected characteristics (for example, sex or sexual orientation).

**Examples of discrimination** are not employing someone because they are Black (direct discrimination), incorrectly assumed to be gay (perceptive discrimination) or because they are a carer for a disabled person (discrimination by association).

Only direct age discrimination is capable of justification. It may be justified if the employer can show that the less favourable treatment is a proportionate (in other words appropriate and necessary) means of achieving a legitimate aim.

An example provided by the Equality and Human Rights Commission is a building company not employing under-18s on its more hazardous building sites. The aim behind this policy is to protect young people from health and safety risks associated with their lack of experience and less developed physical strength. This aim is supported by accident statistics for younger workers on building sites and is likely to be a legitimate one. Imposing an age threshold of 18 would probably be a proportionate means of achieving the aim if this is supported by the evidence. Had the threshold been set at 25, the proportionality test would not necessarily have been met.

**Indirect discrimination** is when an employer has a condition, rule, policy or practice that applies to everyone but which particularly disadvantages people with a protected characteristic and which cannot be justified. In other words, it can't be shown to be a 'proportionate means of achieving a legitimate aim'.

For example, requiring all applicants for a particular post to have a driving licence may stop some disabled people applying if they cannot drive, although they could use other forms of transport to get from one place to another for the role.

**Detriment arising from disability** is when an employer treats an employee unfavourably because of something arising in consequence of the employee's disability, and it cannot be justified in relation to the job.

For example, telling a blind person with an assistance dog they are unsuitable for the job because dogs are not normally allowed in the building.

Where an employer's provision, criterion or practice puts a disabled person at a substantial disadvantage in comparison with a non-disabled person, the employer has a **duty to make reasonable adjustments**. In other words, this means taking reasonable steps to avoid the disadvantage, such as making changes to physical features, providing aids or flexible working arrangements.

**Harassment** can be recognised as a free standing form of discrimination. Different types of harassment are set out in the Equality Act:

- related to relevant protected characteristics (age, disability, gender reassignment, race, religion or belief, sex, sexual orientation)
- sexual harassment (when a person engages in unwanted conduct that is of a sexual nature, whether verbal, non-verbal or physical)
- less favourable treatment of a worker because they submit to, or reject, sexual harassment or harassment related to sex or gender reassignment.

Bullying could be a form of harassment. It is only possible to make a direct complaint to an employment tribunal if the bullying is related to a protected characteristic.

Employees can complain of harassing behaviour that they find offensive even if it is not directed at them.

**Victimisation:** If an employee makes a complaint, raises a grievance or supports a complaint or grievance by giving evidence or information or is believed to be supporting the complaint or grievance under the Equality Act, the employee is also protected from victimisation under the legislation. The employee should not be subjected to a detriment, such as being denied a promotion or other benefits because of their involvement.

**Equal pay:** The right to equal pay for equal work between men and women is also found in the Equality Act. Employers must give men and women equal treatment in the terms and conditions of their employment contract if they are employed to do:

- 'like work' - work that is the same or broadly similar
- work rated as equivalent under a job evaluation study
- work found to be of equal value in terms of effort, skill or decision making.

### **Public sector equality duty**

The Public Sector Equality Duty came into force with the Equality Act 2010, and deals with gender, pregnancy and maternity, disability, race, sexual orientation, gender reassignment, age, and religion or belief. The main aim of the legislation is to eliminate unlawful discrimination and promote equal opportunities.

Public-sector bodies are required 'to have due regard' to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act 2010. This also applies to the protected characteristics of marriage and civil partnerships, as well as to the other eight areas listed above.

The specific duties for England (and non-devolved public authorities in Scotland and Wales) also includes a requirement for public authorities to publish information to demonstrate their compliance with the equality duty, at least annually, including relating to the employees (unless they have fewer than 150 staff).

In Northern Ireland, duties in relation to not discriminating on such grounds are



addressed in individual pieces of legislation including the Northern Ireland Act 1998 and the Disability Discrimination Act 1995 (as amended).

**More information:**

UNISON'S 'Bargaining for equality and diversity: a trade union priority'  
[www.unison.org.uk/content/uploads/2020/03/Bargaining-for-equality-and-diversity-guide-and-model-policy.pdf](http://www.unison.org.uk/content/uploads/2020/03/Bargaining-for-equality-and-diversity-guide-and-model-policy.pdf)

## What could you ask the employer to do to help ensure the procedure is made more fair?

### Is the recruitment policy and procedure equality proofed?

Any existing recruitment policy and procedure should be properly equality assessed by the employer.

**An equality impact assessment (EIA)** is one tool to make sure the employer promotes equality in a recruitment and selection procedure. EIAs help make sure that a decision does not have an unintended negative impact on particular groups of people.

Equality impact assessments address two key questions:

1. How effective will this initiative be in promoting equality?
2. Could it affect different equality groups in different ways?

As mentioned above, equality groups are set out in the Equality Act 2010<sup>3</sup> as nine 'protected characteristics':

- age
- disability (a disabled person being defined as someone who has a mental or physical impairment that has a substantial and long-term adverse effect on the person's ability to carry out normal day-to-day activities)
- gender reassignment (covering all people considering or undergoing or who have undergone gender reassignment whether or not they have medical treatment)
- marriage or civil partnership
- pregnancy and maternity
- race (including colour, nationality, and ethnic or national origins)
- religion or belief
- sex
- sexual orientation.

The EIA process involves gathering information and consulting people who have been, or could be affected by the recruitment policy in order to answer the two key questions.

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<sup>3</sup> As footnote 2

### More information:

UNISON's model equality impact assessment flowchart

[www.unison.org.uk/unisoneia-guidance-and-flowchart-jan-2022/](http://www.unison.org.uk/unisoneia-guidance-and-flowchart-jan-2022/)

If issues are identified when carrying out recruitment exercises based on consultation, feedback, monitoring and input into the assessment, then decisions should be made on what action should be taken to address the issues, who will take it and when they will do it.

For every recruitment exercise, the employer should be finding out if diverse people are being initially reached, shortlisted, and ultimately hired.

Should the organisation use a recruitment agency, it is imperative that they similarly comply with their equality-proofed recruitment policy and procedure.

The importance of considering **the practice of recruitment agencies** is highlighted in the Equality and Human Rights Commission research report '[Recruitment of workers into low-paid occupations and industries: an evidence review](#)'.

This review found that there was evidence of discriminatory behaviour by recruitment agencies on the basis of age, disability, nationality and pregnancy. This included evidence of agencies facilitating employers' requests only to shortlist certain applicants for interview; of unconscious bias, such as focusing on softer skills in interviews and making assumptions by filtering out applications on the basis of physical capability and mobility; of direct discrimination during applicant shortlisting, with correspondence studies identifying unequal outcomes on the basis of age, disability, ethnicity, religion and sexual orientation, as well as for women during pregnancy, maternity and when returning to work after time out for caring.

## Is the employer committed to developing cultural awareness within the organisation?

Cultures develop through personal experiences, upbringing, ethnic background, religion and belief, as well as the communities with whom individuals associate, and much more.

Cultural awareness means recognising cultural differences and similarities non-judgementally, without attributing any particular positive or negative values. It means accepting that different cultures may approach situations in different ways, and being able to adapt and respond positively to people from different cultures.

As part of any equality audit or action plan, employers should be encouraged to look for evidence of any cultural barriers in the way they are currently working.

The promotion of equality should be an explicit part of everyone's job within the organisation, and included as an essential criteria for all roles.

Employers could also be encouraged to hold events to meet local communities and faith groups to show that they are wanting to recruit a more diverse workforce and to

highlight their intention to be an inclusive organisation. It can also improve understanding from the potential service users, as well as the employer and workforce.

It is key that the employer does not make assumptions about the needs of groups but instead consults them to ensure that the recruitment procedure does not impact adversely on any particular group even unintentionally.

## Is the employer willing to address unconscious bias?

[Acas](#) explains how we think can depend on our life experiences and sometimes we have beliefs and views about other people that might not be right or reasonable. This is known as 'unconscious bias' or 'implicit bias' and includes when a person thinks:

- better of someone because they believe they're alike
- less of someone because that person is different to them, for example, they might be of a different race, religion or age.

This means we can make a decision influenced by false beliefs or assumptions. Sometimes it's also called 'stereotyping'.

"If you have a brain, you have bias. We all have unconscious bias; it doesn't make us bad people. Our brain wants to make sense of the world and the people around us. Categorizing and labeling people and situations is your brain's way of speeding up your decision-making process. It's tied to your survival.

Yet that tendency for our brains to make snap judgements and assumptions about other people that aren't always accurate has a real-world impact. For example, the research shows that even when resumés are identical, those with white-sounding names, such as John Smith, are 50% more likely to get a job interview than ethnic-sounding names like Jamal, Venkat or Xuan."

**From 'Your Brain On Bias: 5 Steps To Keep Unconscious Bias In Check' Forbes Magazine, January 2022**

Unfortunately, people can be biased against or in favour of something or someone or a particular group. Prejudices may be a conscious decision but sometimes they can also be held unconsciously, created by unknowingly making quick judgements and assessments of people influenced by our background, culture, upbringing and personal experiences. This means we may not be fully aware we hold them, however open-minded and objective we believe ourselves to be.

It is crucial that we all become aware of any unconscious stereotypes and prejudices we may hold, so that any decisions we make are not unfair and discriminatory.

It is particularly important for employers to recognise the role unconscious bias may play in the recruitment and selection process, and be committed to addressing it.

Unconscious bias can influence all stages of recruitment, from selecting where a job

is advertised, shortlisting of candidates, through to appointment.

#### **More information:**

Acas' 'Dealing with unconscious bias'

[www.acas.org.uk/improving-equality-diversity-and-inclusion/unconscious-bias](http://www.acas.org.uk/improving-equality-diversity-and-inclusion/unconscious-bias)

Inclusive Employers' 'A beginner's guide to unconscious bias'

[www.inclusiveemployers.co.uk/blog/a-beginners-guide-to-unconscious-bias/](http://www.inclusiveemployers.co.uk/blog/a-beginners-guide-to-unconscious-bias/)

The Employers' Network for Equality & Inclusion's short video 'What is unconscious bias?'

[www.youtube.com/watch?v=rbe5D3Yh43o](http://www.youtube.com/watch?v=rbe5D3Yh43o)

### **Is equality training mandatory?**

Equality training should be mandatory for all staff who are involved in the recruitment and selection process to ensure awareness of their legal responsibilities of employment and equality law at each stage. In addition, it can highlight to everyone within the workforce already or those considering joining the workforce, the employer's commitment and approach to equality.

"Training should include:

- The law covering all the protected characteristics and what behaviour is and is not acceptable.
- The risk of ignoring or seeming to approve inappropriate behaviour and personal liability.
- How discrimination can affect the way an employer functions and the impact that generalisations, stereotypes, bias, inappropriate language in day-to-day operations can have on people's chances of obtaining work, promotion, recognition and respect.
- Monitoring.
- Your equality policy, if you have one, why it has been introduced and how it will be put into practice."

**From the Equality and Human Rights Commission guidance 'Good equality practice for employers: equality policies, equality training and monitoring'**

Anti-bias training or [unconscious bias](#) training is also important so that any assumptions made about the suitability of a candidate based on factors that are not related to the role such as age, gender or background, are avoided.

Unconscious bias training aims to increase awareness of both conscious/explicit and unconscious bias and their impact on people who belong to groups having 'protected characteristics' under the Equality Act 2010 (age, race, sex, disability, religion or

belief, gender reassignment, sexual orientation, marriage and civil partnership, pregnancy and maternity).

It also aims to change behaviour to be more aware and active in promoting equality and diversity.

## **Does the employer understand the profile of their current workforce?**

It will be important for the employer to understand the profile or demographics of the current workforce to assess the effectiveness of their recruitment policy.

Demographics show how a group of people is structured, broken down into criteria such as age, gender and ethnicity.

Collecting this sort of information about their workforce, of recent applicants, shortlisted candidates, newly-appointed staff, promoted staff, staff attending training, and those taking out grievances, being disciplined and leaving the organisation will not only provide the employer with a measure for progress, but can indicate where barriers exist and therefore where action needs to be taken.

“It might be useful for you to identify the proportions of people with different shared protected characteristics within your organisation. This can be further subdivided by examining this data in relation to:

- working hours
- grade
- length of service
- rates of promotion
- resignation rates and patterns
- contractors versus ‘in house’ staff.

This will tell you if people with a particular protected characteristic or characteristics are over- or under-represented and if you need to make changes to sort out any potential discrimination, which may well be unintended. You can use your equality policy and action plan to do this.”

**From the Equality and Human Rights Commission guidance ‘[Good equality practice for employers: equality policies, equality training and monitoring](#)’**

Therefore, employers should be regularly collecting information on the diversity of the workforce.

Whilst providing personal information is voluntary, employees will need to be encouraged to provide details and reassured on confidentiality and how the information will be used and stored.

Information collected can then be used to compare the demographics within the local community, region and country. It may show up particular patterns or trends, such as whether all the people the employer recruits are very similar to one another. Under-represented groups can be more easily identified and action taken to target them for recruitment.

“In order properly to fulfil their public sector equality duty and (in the case of those public authorities to whom they apply) the specific equality duties, public authority employers may be required to monitor matters such as recruitment, promotion, training, pay, grievances and disciplinary action by reference to the protected characteristics of their workers.

Currently, there is no legal requirement on most organisations (including private sector businesses, smaller public bodies, voluntary and community sector organisations) to monitor and report on their staff profile. Nevertheless, doing so can help an employer to assess whether, for example, they are recruiting employees who are disadvantaged or under-represented...

You can monitor information about:

- How many people with a particular protected characteristic apply for each job, are shortlisted and are recruited or promoted.
- How many people in the workforce have a particular protected characteristic and the levels within the organisation that they are employed at.
- The satisfaction levels of staff with a particular protected characteristic.
- Whether disciplinary action is disproportionately taken against workers with a particular protected characteristic.”

**From the Equality and Human Rights Commission guidance ‘[Good equality practice for employers: equality policies, equality training and monitoring](#)’**

Employers can also get a greater understanding of any barriers encountered during recruitment or selection exercises, through staff surveys. This may be something that the rep or branch could initiate themselves amongst members.

Similarly, the information collected for gender pay gap reporting and other pay gap initiatives can help identify where progress has fallen short and where barriers to recruitment, development and progression need to be removed.

### **Is the employer committed to tackling employment gaps for those with protected characteristics?**

If analysis of the data collected about the current workforce identifies that a specific group are under-represented, ask the employer to consider how they plan to encourage and support a more diverse group of people to apply for jobs and progress within the organisation.

## The impact of insecure work

Whilst groups with particular characteristics may be encouraged to apply for jobs and to progress within an organisation if various barriers are identified and appropriate adjustments made, it should be remembered that one key barrier to many workers is the type of contract offered.

For some staff, a permanent job on full time hours is not suitable for their personal and family circumstances. And of course, there may be situations where permanent employment is genuinely not feasible for the employer, such as for maternity leave or sickness absence cover, or to cover brief, unplanned periods of increased workload within the organisation.

However, for many workers, different forms of working relationships are agreed to, out of necessity rather than choice.

Many job seekers find themselves working for fewer hours than they would like, for a shorter duration than they would like, and with much worse terms and conditions.

For some, the option to apply for job vacancies that are temporary or fixed-term posts, or are on casual or zero hours contracts, is just not feasible.

These forms of less secure work will tend to mean:

- lower income, (for example, the typical worker on a zero hours contract is on an hourly rate a third lower than the average employee)
- less certainty over income and the ability to meet expenses or withstand shocks to their income
- less certainty over hours creating greater disruption to personal lives, often with shifts offered or cancelled at short notice (TUC polling shows that over half of zero hours workers have had shifts cancelled at less than a day's notice)
- a reduced tendency to assert employment rights out of fear of having hours cut or non-renewal of contracts (for example, low-paid care workers on insecure contracts were forced to go to work without the protective kit they felt they needed during the height of the COVID-19 pandemic)
- fewer opportunities to progress and develop at work, with little investment in training and development by employers for those on insecure contracts
- it deters whistleblowing about poor organisational practice (including crucial health and safety issues) because workers fear that they will be victimised by employers failing to renew contracts or offer hours.

The [Work Foundation](#) point out that “some groups of workers are consistently trapped in the most severe category of in-work insecurity over the last twenty years, which has affected 20-25% of workers every year on average and an estimated 6.2 million workers just last year:



- Young workers who are two and half times more likely to be in severely insecure work than those in the middle of their working lives (43% of 16-24-year-olds versus 17% of 25-65-year-olds)
- Women who are 10 percentage points more likely to be in severely insecure work than men (25% compared to 15%)
- Ethnic minority workers are more likely to be in severely insecure work than white workers (24% versus 19%). Men from ethnic minority backgrounds are 10 percentage points more likely to experience severely insecure work compared to white men (23% versus 13%)
- Disabled workers who are 6 percentage points more likely to experience severely insecure work, compared to non-disabled workers (25% compared to 19%).”

However, it is also clear that employers who only offer various forms of insecure work to new job applicants, may face numerous problems:

- a reduction in the ability to attract and retain high quality staff
- a loss of experienced and skilled staff
- a higher turnover leading to increased recruitment and training costs
- a higher sickness absence resulting from the anxiety and stress of insecure employment
- a lower productivity as a result of lower job satisfaction
- a reduction in the continuity and quality of services provided.

#### **More information:**

UNISON’s ‘Bargaining on types of employment contracts’

[www.unison.org.uk/guide-to-bargaining-on-contract-types](http://www.unison.org.uk/guide-to-bargaining-on-contract-types)

TUC’s ‘Insecure work - Why employment rights need an overhaul’

[www.tuc.org.uk/research-analysis/reports/insecure-work-why-employment-rights-need-overhaul](http://www.tuc.org.uk/research-analysis/reports/insecure-work-why-employment-rights-need-overhaul)

Work Foundation’s ‘The UK Insecure Work Index: two decades of insecurity’

[www.lancaster.ac.uk/work-foundation/publications/the-uk-insecure-work-index](http://www.lancaster.ac.uk/work-foundation/publications/the-uk-insecure-work-index)

#### **Gender employment gap**

As identified by the [International Labor Organization or ILO](#), finding a job is much tougher for women than it is for men all around the world.

When women are employed, they tend to work in low-quality jobs in vulnerable conditions, and there is little improvement forecast in the near future.

Research from Ofsted has shown that from an early age and throughout school, girls

and boys are socialised to have conventionally stereotypical and limiting views about jobs for men and women.

And the Equality and Human Rights Commission's '[Fair opportunities for all](#)' report gives multiple sources of evidence for its assertion that "girls do not get the same range of choices over potential professions as boys".

The biggest barrier for women in paid work is the struggle to balance it with family responsibilities, with the lack of affordable care for children or family members creating a further obstacle for women.

### **Gender pay gap**

Under the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 covering private and voluntary sector organisations with 250 or more employees, and the Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 covering public sector organisations with 250 or more employees, employers must publicly publish prescribed gender pay gap information on an annual basis, comparing the pay of men and women within their organisation.

The requirement (under The Employment Act (Northern Ireland) 2016) has not yet been put into effect in Northern Ireland.

Whilst gender pay gap reporting within an organisation may seem a separate concern from the gender employment gap, a further analysis of the data collected can highlight the wider issues and barriers faced by women in gaining and keeping employment.

Gender pay gaps are too often caused by forms of discrimination in recruitment, training and progression that results in more men filling higher paid roles. Men may also be staying in the full-time workforce for longer than women and so progressing up the pay scale further.

A strong contributing factor is that women may leave work to bring up children and care for other family members. On return to work, women frequently have to take on part-time work to balance with caring responsibilities and these are too often low-skill, low-paid jobs with little opportunity for progression.

UNISON research has highlighted the importance of a good carers policy in supporting women to stay in, and crucially, to progress in work recognising both child-care responsibilities and caring for adults.

In addition to a good flexible working policy, specific support for carers can include:

- Introducing paid carers leave that can be taken in single or even half days
- Recognition that caring responsibilities sometimes require flexibility but may also require access to set work patterns so staff can plan around inflexible caring responsibilities
- Providing a subsidised workplace nursery, making childcare both affordable and (for those who live locally) more convenient

- Childcare vouchers or a childcare subsidy/allowance through payroll
- Local childcare deals, through partnerships with local providers.

#### **More information:**

UNISON's 'Bridge the Gender Pay Gap: bargaining guide

[www.unison.org.uk/content/uploads/2021/10/26580.pdf](http://www.unison.org.uk/content/uploads/2021/10/26580.pdf)

UNISON'S guidance on bargaining over carers' policies along with a model policy

[www.unison.org.uk/carers-policies-guide/](http://www.unison.org.uk/carers-policies-guide/)

UNISON's 'Flexible working: making it work'

[www.unison.org.uk/content/uploads/2014/09/On-line-Catalogue225422.pdf](http://www.unison.org.uk/content/uploads/2014/09/On-line-Catalogue225422.pdf)

Women members in UNISON equality pages

[www.unison.org.uk/about/what-we-do/fairness-equality/women/](http://www.unison.org.uk/about/what-we-do/fairness-equality/women/)

#### **Ethnicity employment gap**

Pre-COVID employment figures recorded by the [Office for National Statistics](#) showed that, in 2019, 78% of white people were employed, compared with 66% of people from all other ethnic groups combined, with the lowest employment rate in the combined Pakistani and Bangladeshi ethnic group (56%).

Since 2019, the unemployment gap between white and Black people has continued to widen.

"While the headline unemployment rate among all workers has returned to pre-pandemic levels, this isn't true for Black and minority ethnic (BME) workers.

BME workers faced a higher unemployment rate before the pandemic, were hit harder during the pandemic itself, and are now seeing a slower recovery than white workers. The pandemic has widened the gap in unemployment rates between white and BME workers to the widest it's been since 2008.

The TUC is calling on employers to:

- Work with trade unions to establish a comprehensive ethnic monitoring system covering ethnicity pay-gap reporting, recruitment, retention, promotion, pay and grading, access to training, performance management and discipline and grievance procedures.
- Analyse, evaluate and publish their monitoring data.
- Work with trade unions and workforce representatives to develop action plans that address racial disparities in their workplaces."

**From the TUC's research: '[Jobs monitor - the impact of the pandemic on BME employment](#)'**

Whilst lack of flexibility offered by employers has been shown to particularly impact on working women with caring responsibilities, research from Business in the

Community (BITC) entitled ‘Who Cares?’ has shown that “Black, Asian, Mixed Race and other ethnically diverse” people were significantly more likely than others not to have applied for a job or promotion, or to have considered leaving or actually left a job, because of challenges combining paid work and care.

One in three Black workers were found to have left or have considered leaving a job due to a lack of flexibility from their employer, compared with one in five white people.

#### **More information:**

UNISON’S guidance on bargaining over carers’ policies along with a model policy [www.unison.org.uk/carers-policies-guide/](http://www.unison.org.uk/carers-policies-guide/)

UNISON’s ‘Flexible working: making it work’ [www.unison.org.uk/content/uploads/2014/09/On-line-Catalogue225422.pdf](http://www.unison.org.uk/content/uploads/2014/09/On-line-Catalogue225422.pdf)

UNISON’s ethnicity pay gap campaign [www.unison.org.uk/black-members-news/2022/06/ethnicity-pay-gap-campaign/](http://www.unison.org.uk/black-members-news/2022/06/ethnicity-pay-gap-campaign/)

UNISON Black members equality pages [www.unison.org.uk/about/what-we-do/fairness-equality/black-members/](http://www.unison.org.uk/about/what-we-do/fairness-equality/black-members/)

UNISON health care sector’s ‘Race for Equality’ campaign including ‘Recruitment, career progression and race – a briefing for reps’ [www.unison.org.uk/at-work/health-care/big-issues/race-for-equality/](http://www.unison.org.uk/at-work/health-care/big-issues/race-for-equality/)

#### **Disability employment gap**

According to the disability charity Scope, the employment rate of disabled people is 53%, compared to 82% of non-disabled people. Disabled people are almost twice as likely to be unemployed as non-disabled people, and 3 times as likely to be economically inactive.

The disability employment gap, (measuring the difference between the employment rate of disabled people, compared to that of non-disabled people) is 29%.

Whilst disabled people want to work, too often they fear they will be discriminated against in the recruitment process, particularly if they require reasonable adjustments to be made. However, for employers, it means they are losing out on a huge pool of talent.

Yet the BBC reports that in the UK, [17% of disabled adults](#) have said they had a job offer withdrawn as a result of their impairment, and 30% said that they felt they were not taken seriously as a candidate as a result of their impairment.

Lack of reasonable adjustments being made for disabled workers continues to keep many disabled people out of the workforce. Many employers are unaware of the existence of the [Access to Work programme](http://www.nidirect.gov.uk/articles/access-work-practical-help-work) administered through Jobcentre Plus ([www.nidirect.gov.uk/articles/access-work-practical-help-work](http://www.nidirect.gov.uk/articles/access-work-practical-help-work) for workers in Northern Ireland) which may provide grants towards the cost of various adjustments

including adapting or purchasing equipment.

Respondents to UNISON's 2019 survey of disabled members ('Let's be reasonable – disability equality in the workplace') reported that employers frequently don't respond to requests for reasonable adjustments. Where they do respond they often give no reason for a refusal. Where adjustments are agreed there is often an unreasonable waiting time or the adjustments just never happen.

Lack of reasonable adjustments are not only the problem encountered by disabled workers wanting to progress in their career. UNISON's 2019 survey found that 23% of respondents said they did not have equal access to training and 32% said they did not have equal access to promotion.

A considerable number felt that their route to promotion had been blocked due to their sickness record. Some respondents said that having a mental health condition was a particular barrier to advancement at work, with employers still reluctant to promote those who have experienced spells of sickness related to depression or other mental health problems

Another very significant issue for respondents was part-time working. Significant numbers reported that more senior roles only seemed to be open to full time staff and their disability-related part-time working therefore meant they were unlikely to be considered.

Many other respondents felt that an often unnecessary requirement to drive or travel meant that they had been turned down for promotion.

There were also comments from some in relation to lack of adjustments to the interview process. Neurodiverse respondents particularly stressed this.

Finally, there were respondents who felt that gender, race and particularly age discrimination were more of a factor in how they were treated in relation to promotion, emphasising the importance of bringing an intersectional approach to understanding the issues disabled people face in the workplace.

#### **More information:**

Disabled members in UNISON equality pages

[www.unison.org.uk/about/what-we-do/fairness-equality/disabled-members/](http://www.unison.org.uk/about/what-we-do/fairness-equality/disabled-members/)

Year of disabled workers 2022

[www.unison.org.uk/about/what-we-do/fairness-equality/disabled-members/year-of-disabled-workers-2022/](http://www.unison.org.uk/about/what-we-do/fairness-equality/disabled-members/year-of-disabled-workers-2022/)

UNISON's 'Let's be reasonable – disability equality in the workplace report'

[www.unison.org.uk/content/uploads/2020/12/26261.pdf](http://www.unison.org.uk/content/uploads/2020/12/26261.pdf)

UNISON is one of six founding member organisations which launched the [Disability Employment Charter](#), calling on the government to do much more to improve the working lives of disabled people. The charter proposes a set of vital measures that,

if implemented in a concerted manner, would level up disabled people's employment opportunities, increase disabled people's job satisfaction, and reduce disability pay gaps, but it will also benefit the taxpayer and support the UK's post-pandemic recovery by providing employers with the widest possible talent pool and addressing skills shortages.

The charter includes calls for mandatory disability pay gap reporting and time off for trade union equality reps. It also calls for a two-week deadline for employers to respond to requests for reasonable adjustments.

**More information:**

UNISON's news item 'UNISON helps found Disability Employment Charter'  
[www.unison.org.uk/news/2021/10/unison-helps-found-disability-employment-charter](http://www.unison.org.uk/news/2021/10/unison-helps-found-disability-employment-charter)

Disability employment charter  
[www.disabilityemploymentcharter.org/](http://www.disabilityemploymentcharter.org/)

**LGBT+ employment gap**

As reported by the BBC, research found that in recruitment situations, gay or lesbian applicants in the UK are 5% less likely to be invited to an interview than heterosexual male or female applicants.

"The overall picture a number of studies paint is that LGBTQ+ workers often, consciously or unconsciously, steer clear of some occupations and workplaces they perceive they may not fit into or won't be welcoming to them."

From the BBC's: 'The big LGBTQ+ wage gap problem'  
[www.bbc.com/worklife/article/20220603-the-big-lgbtq-wage-gap-problem](http://www.bbc.com/worklife/article/20220603-the-big-lgbtq-wage-gap-problem)

Stonewall's 'LGBT in Britain: Work Report of 2018' confirms that LGBT+ staff looking for work, often face discrimination when applying for jobs. In their survey, almost one in five LGBT people (18%) who were looking for work said they were discriminated against because of their sexual orientation or gender identity while trying to get a job.

More than a third of LGBT people (35%) looking for work were worried about being discriminated against or harassed at work due to their sexual orientation or gender identity.

One in ten LGBT employees (10%) said they didn't get a promotion they were up for at work in the past year because they are LGBT. This number rises to 24% of trans people, compared to 7% of LGB people who aren't trans. Black LGBT staff are also more likely (by 19%) to not get a promotion, as are LGBT disabled people (by 16%).

**More information:**

LGBT+ members in UNISON equality pages  
[www.unison.org.uk/about/what-we-do/fairness-equality/lgbt/](http://www.unison.org.uk/about/what-we-do/fairness-equality/lgbt/)



## Does the employee deal fairly with internships and apprenticeships?

### Internships

Private and voluntary sector employers sometimes offer short-term internships for those who want to gain work experience. But too many employers in the past have exploited the practice, using internships as cheap ways of filling gaps in their workforce. Many employers have only provided unpaid internships to young workers, not even covering expenses. Inevitably this will exclude those who simply cannot afford this option, such as those from lower socio-economic backgrounds or those with caring responsibilities.

All interns must be paid at least the national minimum wage but ideally the real Living Wage. They are likely to have worker or employee status and should receive a contract of employment. They should have reasonable working hours and conditions.

Recruitment of interns should be fair and open to all, so that there is genuine diverse uptake of this opportunity that, in many circumstances, could lead to permanent employment within the organisation.

And the opportunity advertised should provide genuine skills development with access to feedback, progression and a reference so that the experience is of real benefit to the individual.

### More information

From the UK government:

[www.gov.uk/employment-rights-for-interns](http://www.gov.uk/employment-rights-for-interns)

### Apprenticeships

More and more young people are joining many of the workplaces where UNISON organise, alongside existing staff, whilst improving their skills and gaining qualifications by enrolling on apprenticeship programmes.

Apprenticeships provide the chance to 'earn and learn' in a wide range of jobs, giving apprentices the chance to develop skills, experience and qualifications.

They take between one and four years to complete, depending on the level of apprenticeship and the industry sector. However, successful apprenticeships need to be well-funded, provide training and lead to a meaningful job. Apprentices should not be used as cheap labour and need the protection of a union around them.

As UNISON guidance, '[Supporting apprentices in the workplace](#)' highlights, our branches can help improve equality and diversity in apprenticeships by working closely with their employers to ensure advertising, recruitment and selection processes do not create barriers to women, Black people and disabled people, and other groups with protected characteristics.

The numbers demonstrate that we need to do more to promote greater equality and diversity on apprenticeships.

For instance, [UK government statistics](#) show that, while there are similar numbers of female and male apprentices in England (48.2% of those starting in the 2021/22 academic year), female apprentices remain significantly under-represented in better paid industries and over-represented in poorer paid sectors such as early years care.

In addition, Black people are still not fairly represented on apprenticeship programmes with only 13.9% starting apprenticeships in 2020/21.

And while the proportion of starts by disabled apprentices has been steadily increasing, they only account for 13.8% in 2021/22.

Successful apprenticeship programmes can help employers attract new, more diverse talent that may not have come through via traditional education routes.

### **More information**

UNISON information on apprenticeships

[www.unison.org.uk/about/what-we-do/fairness-equality/young-members/key-issues/apprenticeships](http://www.unison.org.uk/about/what-we-do/fairness-equality/young-members/key-issues/apprenticeships)

UNISON's 'Supporting apprentices in your workplace'

[www.unison.org.uk/content/uploads/2019/08/Supporting-apprentices-in-your-workplace.pdf](http://www.unison.org.uk/content/uploads/2019/08/Supporting-apprentices-in-your-workplace.pdf)

UNISON's Apprenticeship Charter 2022

[www.unison.org.uk/content/uploads/2022/01/26686.pdf](http://www.unison.org.uk/content/uploads/2022/01/26686.pdf)

### **Is the employer willing to consider positive action?**

Under employment legislation, employers cannot positively discriminate in favour of some groups, even if they have a protected characteristic and are under-represented in the workforce.

The only exception to this is in relation to disabled people. The Equality Act 2010 allows some employers (but not local authorities under the Local Government and Housing Act 1989) to treat a disabled person more favourably than a non-disabled person, such as guaranteed interviews for disabled candidates meeting the minimum criteria. In Northern Ireland, this exception is included in the Disability Discrimination Act 1995.

However, positive action for members of other groups with protected characteristics is allowed. It means taking specific steps to improve equality in the workplace, by meeting the particular needs of a group who share a protected characteristic, lessening a disadvantage they might experience or increasing their participation in a particular activity.

It should only be taken if no other remedy is likely to address the inequality and disadvantage. The action must be related to the level of disadvantage that exists, not



simply to favour one group of people over another.

In recruitment, positive action can take place before or at the application stage such as particularly encouraging people from under-represented groups or who are disadvantaged and face additional barriers, to apply for jobs.

Six examples of positive action suggested by the [Equality and Human Rights Commission](#) are:

- placing job adverts to target particular groups, to increase the number of applicants from that group
- including statements in job adverts to encourage applications from under-represented groups, such as ‘we welcome female applicants’
- offering training or internships to help certain groups get opportunities or progress at work
- offering shadowing or mentoring to groups with particular needs
- hosting an open day specifically for under-represented groups to encourage them to get into a particular field
- favouring the job candidate from an under-represented group, where two candidates are ‘as qualified as’ each other.

The [Equality and Human Rights Commission](#) explain that the phrase ‘as qualified as’ is not defined by the law, but that employers should give it a broad meaning. Employers “should do a full and objective assessment of each applicant’s suitability, skills, qualifications (professional and academic), competence and professional performance, matched against a set of objective criteria for the job.”

However, employers “must not have a general policy of treating people with the relevant protected characteristic more favourably in connection with recruitment.”

Large employers could also hold open recruitment days to highlight the job opportunities within the organisation, and provide an informal chance for people to find out more about the work and how to apply.

Additionally, to encourage internal promotion and development from underrepresented groups with protected characteristics, employers could encourage the take-up of training opportunities by these groups. They could make sure they are aware of the training opportunities, provide them with support to complete applications for training or for promotions, introduce mentoring or coaching including interview skills coaching, as well as to provide detailed feedback when staff are not successful, and targeted support to apply again.

### **More information**

Equality and Human Rights Commission ‘What is positive action in the workplace?’  
[www.equalityhumanrights.com/en/advice-and-guidance/employers-what-positive-action-workplace](http://www.equalityhumanrights.com/en/advice-and-guidance/employers-what-positive-action-workplace)

## **Genuine occupational requirements**

In very rare situations, an employer may need the post-holder of a specific job to have a particular protected characteristic.

Some examples provided by [Acas](#) include

- a refuge for women who've experienced domestic violence advertises for a female support worker, as the residents would feel safer if the worker is female
- the Catholic church advertises for a priest who's Catholic
- a television company advertises for an actor who's black and male to play a specific role
- an organisation supporting deaf British Sign Language (BSL) users advertises for a counsellor who's a deaf BSL user.

However, there is no definitive list of what is a Genuine Occupational Requirement. In all cases, the employer will need to be able to justify the requirement showing that it is genuinely needed in order to undertake the job role. If the post is re-advertised, the employer will need to check again that the requirement can be similarly objectively justified and remains within the law.

### **More information**

Equality and Human Rights Commission

See Chapter 13 of the 'Employment Statutory Code of Practice'

[www.equalityhumanrights.com/en/publication-download/employment-statutory-code-practice](http://www.equalityhumanrights.com/en/publication-download/employment-statutory-code-practice)

Equality Commission for Northern Ireland

[www.equalityni.org/Employers-Service-Providers/Large-Business/Hiring-staff-Factors/Job-descriptions](http://www.equalityni.org/Employers-Service-Providers/Large-Business/Hiring-staff-Factors/Job-descriptions)

## Checklist

- Has the recruitment policy and procedure been equality proofed? Is the trade union involved in the equality impact assessment?
- Does it fully accommodate the different needs of job applicants? Does it impact adversely on any particular group even unintentionally?
- Is the employer promoting cultural awareness and celebrating diversity within all its activities?
- Does the employer promote themselves amongst the wider community as an employer of choice? Do they make assumptions about the needs of groups or do they consult them?
- Do all staff undertake equality training? Is it part of induction for all new staff?
- Do all staff involved in the recruitment process receive anti-bias or unconscious bias training?
- Have all staff involved in the recruitment process been trained to operate the recruitment policy fairly and non-discriminately? Is this training mandatory?
- Is promoting equality listed as an essential criteria in all job descriptions and an important aspect of all job roles?
- If the employer uses a recruitment agency, are they confident that they also comply fully with the equality laws and the employer's equality and diversity policies and procedures?
- Does the employer collect monitoring information about their workforce and are they aware of any gaps or under-represented groups within their staff? How do they plan to address this?
- What is the proportion of women among job applicants and successful applicants? Of Black people? Of disabled people? Of LGBT+ people? Of older or younger people? Are they employed across all grades or disproportionately at lower grades or on more insecure contracts?
- Does the composition of the workforce reflect the local population?
- Is the use of temporary and fixed-term contracts restricted to occasions where the organisational need is clear and justifiable, such as for maternity leave and long-term sickness absence cover? Do they recognise the barriers they produce for job seekers, and are they aware of the potential problems for their organisation created by offering temporary contracts?
- Will the employer agree to avoid the use of all forms of casual work and zero-hours contracts? Do they recognise the barriers they produce for job seekers, and are they aware of the potential problems for their organisation created by offering insecure work?

- Have staff been surveyed to find out about any barriers they may have experienced during a recruitment or selection exercise?
- Are requests from disabled workers for reasonable adjustments acted upon promptly and positively?
- How is the gender pay gap reporting information analysed and used? Does it highlight any particular barriers experienced by women in recruitment and progression? Does the employer recognise that some jobs may traditionally be occupied by a section of the community undervalued within the organisation such as a caring job, traditionally more likely to be held by a woman?
- Will the employer review flexible working policies and practices and policies for carers to encourage more women to apply for work, remain in work and progress?
- Similarly, is information collected and analysed in relation to Black staff, disabled staff, LGBT+ staff, older or younger staff?
- Ask your employer to support the [Disability Employment Charter](#).
- How are training opportunities advertised to staff? Is it open access? Is the training and development programme truly accessible to all employees equally?
- How are promotions, secondments or acting up opportunities made known to staff? Is it open access or does it depend on who you know?
- Is there a specific policy for career progression and does it set out how equity for those with protected characteristics will be achieved?
- When considering fair recruitment and selection procedures, does the employer include internships and apprenticeships?
- If a particular group sharing a protected character is shown to experience disadvantage during recruitment exercises and continues to be under-represented in the workforce in spite of measures undertaken, will the employer consider positive action in the recruitment and selection process?
- If the employer states that a post has a genuine occupational requirement and wants to restrict recruitment to only those with a particular protected characteristic, can they objectively justify it?

## Specific issues within the recruitment and selection process

### Job descriptions and person specifications

A **job description** should list all the things a person is expected to do in a job, who is their line manager or supervisor, and who they are responsible for or manage.

It should also list those people that the post holder is expected to communicate with, and their place within the organisation's structure.

The job description will describe working conditions such as the physical environment (e.g. office-based, remote working etc), the social environment (e.g. lone working or with a team), the usual time of work or flexibility in hours, salary and benefits.

Working out someone's pay in a way that is fair and transparent, taking account of all that the post-holder will have to do and all that they need to bring to the job, as well as taking into account what other people are paid in the same workplace or in other similar workplaces, is a complicated business.

**Job evaluation schemes** have therefore been designed to provide a mechanism to help make decisions about pay that is fair and transparent, based on the comparison of roles.

The aim of using an agreed job evaluation scheme is to ensure that individuals are not evaluated for more or less pay through whim, favouritism or prejudice, or indeed a misunderstanding or misrepresentation of what a job entails. This is particularly important when considering issues of discrimination, including the consideration of equal pay for work of equal value.

Involvement of the union is an obvious necessity when these decisions are made, to help ensure that the schemes are non-discriminatory, based on sound principles and consistent with past practice.

### More information:

UNISON's 'Negotiating job evaluation schemes'

[www.unison.org.uk/content/uploads/2019/12/Job-evaluation-schemes.pdf](http://www.unison.org.uk/content/uploads/2019/12/Job-evaluation-schemes.pdf)

The **person specification** should describe the ideal candidate's abilities, skills and knowledge that the employer has identified to carry out the job. Whilst there may be technical or 'hard' skills essential for the role, the emphasis should be on the fact that these can be learnt and will vary with importance over time.

Once the employer has listed all the things a person is supposed to do in a job, they can then list the type of knowledge, experiences, skills and qualifications relevant and essential for the worker to have in order to carry out the job.

It should take account of how some skills needed can be acquired through training

and mentoring, with an emphasis too on transferable skills.

Specifying a minimum number of years' experience will rule out younger applicants who may have the necessary skills. It may also disadvantage women who have had to take career breaks to raise their family.

Education requirements should only be listed if absolutely essential, and should not exclude non-UK qualifications.

Ideally, there should be a limited number of criteria (preferably 10 or less) listed so as not to be too daunting for potential applicants. Some talented applicants may instantly rule themselves out if they do not feel they can show evidence of all the listed criteria for a job.

The job description and person specification should of course use non-discriminatory wording, and for this also to be reflected in the advertisement for the vacant role.

[Acas](#) gives the following examples of potentially discriminatory language:

- terms like 'recent graduate' or 'highly experienced' – these can discriminate against age (you must be able to prove you have a good reason for any job requirement in your advert)
- terms like 'barmaid' or 'handyman' – these can discriminate against someone's sex
- language requirements – 'German sales rep' could discriminate against race, so 'German-speaking sales rep' would be more appropriate
- clothing requirements, for example wearing a hairnet in a kitchen could discriminate against someone who for religious reasons covers their head in other ways.

With language or communication skills, employers should also avoid using terms like 'fluent' as it could exclude people who stammer as well as people whose first language isn't English. It may be better to state something like: 'excellent oral and written communication skills'.

#### **More information:**

UNISON's factsheet 'Talking equality – language in UNISON'

[www.unison.org.uk/content/uploads/2021/08/Talking-Equality-language-in-UNISON-factsheet.docx](http://www.unison.org.uk/content/uploads/2021/08/Talking-Equality-language-in-UNISON-factsheet.docx)

UNISON's factsheet 'Why pronouns are important'

[www.unison.org.uk/content/uploads/2021/08/2022-Why-pronouns-are-important.docx](http://www.unison.org.uk/content/uploads/2021/08/2022-Why-pronouns-are-important.docx)

Putting 'must have a valid driving licence' in the job role similarly may exclude many potential applicants when what is really needed is someone who can travel, not necessarily drive.

The Equality and Human Rights Commission highlighted this issue in relation to disabled people in their article [‘Driving away candidates? Advertising an intention to discriminate’](#):

“The Commission has received a number of complaints about the recruitment of various professionals required to hold a driving licence. In one example a screening question within the on-line application form prevented an applicant without a driving licence from proceeding with the rest of the application. Other examples have commonly listed a driving licence amongst the essential requirements of the job.

Some disabled applicants may be prevented from driving, or may be ineligible for a driving licence as a consequence of a disability, in which case the requirement may act as a deterrent. Whilst the driving licence requirements in question apply to all potential candidates, they may put some disabled candidates at a particular disadvantage. Unless the requirement can be objectively justified, the practice may amount to discrimination arising from disability or indirect discrimination. The requirement may be seen as indicative that the employer is unwilling to make reasonable adjustments for disabled people.”

### Checklist

- Has the job description been reviewed to check that it is appropriate and up-to-date?
- Are the knowledge, experiences, skills and qualifications listed in the person specification absolutely relevant, essential and appropriate to the job?
- Does the person specification potentially indirectly discriminate against some candidates with a protected characteristic, by asking for experience that only one particular group could (or be more likely) to meet?
- Does the person specification unnecessarily ask for specific qualifications? For example, requiring GCSE Maths may in practice mean an ability to enter budget data accurately into a spreadsheet, an ability that may not actually need a qualification.
- Does the person specification ask about a specific number of years’ experience and can the employer fully justify it?
- Does it also allow for experience gained outside of work?
- Does the person specification only list the essential criteria? Desirable criteria may exclude candidates who do not fit a post’s traditional profile.
- Does the person specification appropriately distinguish between an essential skill needed for the job (i.e. proven ability to do something) and ability (having the capability of doing something)? Ideally, there should be an emphasis on ability so as not to rule out people with less formal work experience.

- Are the requirements sufficiently specific and clear? For example, rather than 'excellent communication skills' can the employer be more specific such as 'ability to design information leaflets and online resources'.
- Is a driving licence essential? Or just an ability to travel?
- Does the job description and person specification list personality traits such as 'bubbly personality' or 'mature outlook' that may be inappropriate or discriminate?
- Does the job description and person specification include references to equality and diversity?
- Has the job role been properly evaluated through a job evaluation scheme?



## Application Forms

It can be much fairer for employers to provide an application form for recruitment, rather than allowing people to send in CVs and/or letters of application. It makes sure that employers receive the information they want to receive, applicants answer the same questions in the same format and makes it easier to compare one application to another.

Asking for personal data in the application form should only be specifically relevant to the role. It may be valuable to undertake equality and diversity monitoring of applicants, but this information should be provided anonymously, and should be an option (more information in '[Monitoring](#)' below).

It is important that the employer does ask candidates if they are disabled, not only for monitoring purposes but to identify reasonable adjustments that may be needed to remove barriers during the interview process. However, this should only be asked *after* a candidate has been selected for interview or as part of the guaranteed interview arrangement, for example under the [Disability Confident](#) scheme.

Personal details such as name and address should be separated from the bulk of the application, and this will be easier to do if an application form is used rather than a CV or letter or application (more information in '[Shortlisting of job applicants](#)' below).

NatCen's 2010 research for the Department for Work and Pensions, '[A test for racial discrimination in recruitment practice in British cities](#)' found that the level of name-based racial discrimination was found to be high across all ethnic groups. This is consistent with the high levels of discrimination found in studies in other countries in recent years.

- To secure a job interview, the researchers had to send out 74% more applications for ethnic minority candidates compared to white candidates.
- Discrimination affected all minority ethnic groups. Differences between the minority ethnic groups included in the study (black African, black Caribbean, Chinese, Indian, Pakistani/Bangladeshi) were not significant.
- Discrimination was not limited to particular regions or occupations. Although the numbers in the sample were small, there was evidence of similar levels of discrimination in all the cities and it was present across all the occupations included in the study.
- There was essentially no net discrimination where the process of applying for the job required the use of the employer's own form; there was more discrimination where application was via a CV. Employer forms are often designed so that the section containing personal details (including name) can be detached before the sifting process.

However, as with all aspects of recruitment, the requirements of application forms should be checked carefully to ensure they too do not discriminate and are

appropriately designed. For example, using a standard application form may not be appropriate for all posts from chief executive through to catering and cleaning and admin staff.

[Acas](#) also provides an example where an application form may disadvantage some applicants:

“Stating that the applicant must fill out the job application form in their own handwriting may discriminate against people with dyslexia, if handwritten English is not crucial to the job.”

The employer should also consider other accessibility issues, for example, for the design of the forms to take account of the requirements of screen readers used by some disabled people, to supply information in other languages, or available in large print or braille, or on coloured paper that enable dyslexic people to read easily.

The employer might also accept a video or recorded application rather than a written one. But if they are willing to offer or accept materials in different formats, it is important that they make this clear to potential applicants.

### **Checklist**

- Does the employer use an application form rather than accept CVs or letters of application?
- Is the application form appropriately adapted as necessary for the level and type of role on offer?
- Are requests for personal details kept to a minimum?
- Can personal information such as name and address be easily removed from application material so that it does not consciously or subconsciously influence the selection process?
- Are instructions clear so that applicants know what information is expected from them to show how they fit the person specification?
- Is it available in a variety of formats and is this made clear to potential applicants?
- Similarly, are applicants able to apply in a variety of formats?
- Are applicants clear about how criteria will be assessed in the application, and interview and practical exercises?

## Monitoring

**Equality and diversity monitoring** may help identify possible barriers for some job applicants. It can contribute to measuring the effectiveness of equality and diversity policies and enable the employer to see how successful they are at recruiting from all sections of the community.

Identifying how many people who share protected characteristics apply, get interviewed and are successful at interview could help the employer to ensure they are recruiting without discriminating.

As part of this monitoring, job applicants may be asked sensitive personal information about themselves such as racial or ethnic origin, or sexual orientation. These details should be kept separately and anonymous from any applications so that they cannot be traced to a single individual. This is important so that it cannot influence the selection process. They should not be passed on to recruitment panels, and form no part in influencing who is appointed.

This anonymity should also be made clear to applicants. Applicants may be reassured if they are told that the information provided will be detached from the application form and not seen by the recruitment panel.

Even so, applicants should be free to decide whether they want to provide this information or not, without being adversely affected.

Certain sensitive personal data such as racial or ethnic origin data is 'special category' under the UK GDPR so requires a specific lawful basis for processing.

Employers may also want to collect some **health information** from workers. Employers may argue that a specific job role may require a certain level of fitness, but this should be intrinsic to the role and absolutely essential. Nonetheless, an employer has no right to ask a job applicant about their physical health *before* offering them a position. Health information should not be part of the application form.

However, an employer may keep information provided about a disabled candidate's impairment, in order to make appropriate reasonable adjustments. As with all equality and diversity monitoring information, this should be kept strictly separate from the selection process, so that the information cannot influence the selection panel whether consciously or subconsciously.

Under the UK GDPR, "personal data related to the physical or mental health of a natural person... which reveal information about his or her health status" is 'special category personal data' whatever the reason for collecting it.

Whenever '**special category personal data**' is collected, applicants and employees should be informed of what that information is to be used for, and employers should destroy the data when it is no longer needed.

Unless there is a clear business reason for doing so, the employer should not keep

recruitment records (whether, application forms, monitoring information, interview notes etc) for unsuccessful applicants beyond the statutory period in which a claim arising from the recruitment process may be brought. In general, this means **destroying the information six months after the recruitment process** has been completed (to cover the time limit for discrimination claims and taking account of any potential extensions).

### Checklist

- Is the recruitment policy clear about what personal information is collected from applicants, candidates and newly appointed staff members and why this information is needed?
- Is all personal information kept separate from application details during the selection process so that it cannot influence decisions whether consciously or subconsciously?
- Are job applicants told that equality and diversity monitoring information collected is separated from any personal information and is kept anonymous, and is this always done?
- Does the recruitment policy make appropriate reference to the UK General Data Protection Regulation (GDPR) and relevant workplace policies on data protection and equality?
- Has the employer carried out a data impact assessment covering recruitment practices? If the employer uses a recruitment agency, do they also comply fully with these data protection laws and policies?
- Are job applicants provided with a privacy policy containing information on the purposes for which all the data they provide will be processed and by whom, the legal basis for processing (i.e. legitimately needed for the recruitment exercise) and how long the data will be kept?
- Does the employer have a data retention policy? Is it clear about how long the personal information is kept and how it is safely destroyed? Is it clear about how the personal information is stored and that it is kept secure?
- How is the monitoring information analysed? Is the trade union involved in its review?

## Flexible working

Offering flexible working for all posts can be one way to encourage applications from some groups of people that may be under-represented in the workplace.

The TUC outline the benefits of offering flexible working as a default for jobs:

- It is invaluable in helping people achieve a balance between work and home life and is also associated with improved wellbeing.
- It would promote greater gender equality. The majority of unpaid care is still being done by women. A lack of good flexible working opportunities forces women into accepting often poorly paid, part-time jobs in order to manage their caring responsibilities, exacerbating the gender pay gap.
- It would help to address some of the barriers disabled workers, those experiencing domestic abuse, carers and women experiencing the menopause face in the workplace.
- Flexible work, for example, phased retirement, would also allow older workers to stay in the workforce for longer.
- Remote working has the potential to help address geographic inequality by opening up higher paid office-based jobs, disproportionately located in London and the South East, to workers across the country.

Currently, the statutory right is that all qualifying employees who have worked continuously for their present employer for 26 weeks, can apply to work flexibly.

### More information

UNISON's 'Flexible working: making it work'

[www.unison.org.uk/content/uploads/2014/09/On-line-Catalogue225422.pdf](http://www.unison.org.uk/content/uploads/2014/09/On-line-Catalogue225422.pdf)

TUC's 'Flexible working - a reps' guide'

[www.tuc.org.uk/resource/flexible-working-reps-guide](http://www.tuc.org.uk/resource/flexible-working-reps-guide)

Flexible working could include:

- job sharing, whereby two people share responsibilities, pay and all the other benefits of a full-time job
- remote working, homeworking or hybrid working (a mixture of working in the workplace and at home)
- flexitime allowing employees to vary their start and finish times
- compressed hours when the week's work is compressed into a shorter time span
- part-time working - the government's definition of a part-time worker is someone who works fewer than 30 hours per week
- term-time working allowing employees to work their agreed contractual hours

over term times only

- annualised hours where the employee works less time during quiet periods and then makes up the time when it is very busy
- shift-swapping
- voluntary reduced time or v-time, where a voluntary and temporary dip in hours is requested – usually to accommodate a particular period of time where more time will be required for non-work-related activities.

The TUC wants the UK government to introduce a duty on employers to publish flexible working options in job adverts and give workers the right to take up the advertised flexibility from day one.

Research by [Timewise Jobs in 2021](#) found how important it is for employers:

“to offer flexibility during the recruitment process, and to clearly define the specific type of flex involved. For many candidates, flexible work is a life-changing preference, rather than simply ‘nice to have’...”

Part-time was the most preferred type of flexible working arrangement amongst respondents: 80% want to work 4-days a week or fewer. However, over half of these part-time jobseekers would consider a full-time job that offers substantial homeworking; so hybrid working is a possible compromise for them...

70% of all workers want flex, so it needs to be positioned clearly as part of an organisation’s culture.”

Offering flexible working may attract a wider range of applicants including those with caring responsibilities. Enabling more employees to work flexibly or part-time may allow staff of all levels and pay grades, both men and women to take on the responsibilities of childcare. Along with this, it can be seen as part of an employer’s commitment to tackle gender inequality within their workforce.

Recommendations from the 2016 TUC/IPPR research findings ‘[The Motherhood Pay Penalty](#)’ include “better quality part-time and flexible job opportunities... This would maintain mothers’ attachment to the labour market, improve their chances of progressing at work and could facilitate a return to full-time work when children are older. Part-time work is still associated with low pay and mothers working part-time tend to get stuck in low-paid roles.”

Offering flexible working such as homeworking, may also attract more disabled workers. A key finding from UNISON’s survey highlighted in the report ‘[Covid 19 and disabled workers – time for a homeworking revolution?](#)’ was that a number of disabled workers reported taking less sickness absence as they were able to manage their condition better when working from home.

The survey also found that almost three quarters of disabled workers said they were

more productive or just as productive. Reasons for increased productivity included reduced impact on pain and fatigue due to less commuting and an ability to work more flexibly with additional breaks or later start times. Some disabled workers also commented that their homes were better set up to manage their impairments, including in terms of access to toilet facilities.

Additionally, disabled workers cited the fewer distractions whilst working from home as helping to increase their productivity. For many disabled workers, the distractions they refer to were not simply colleagues asking questions but included the distractions of noise and lighting in busy open plan offices that do not make adjustments for disabled workers.

Neurodivergent workers and those with hearing impairments or mental health problems particularly reported that homeworking had allowed them to address these issues.

Generally, working from home gave disabled workers more control over the pattern of their working day and allowed them to manage their impairments better without the rigidity of the work environment.

The Institute for Employment Studies report '[Working from Home under COVID-19 lockdown: Transitions and Tensions – January 2021](#)' similarly found that working from home offered positives in terms of enabling some people with long-term health conditions to remain in work which would have been impossible in an office.

UNISON believes that disabled workers should always have the option for flexible working including to work from home if they want to as it may reduce barriers significantly, as long as there is a prompt provision of reasonable adjustments necessary, whether in the workplace or working from home.

### **More information**

UNISON's 'Reasonable adjustments: bargaining guide, model policy and accessibility passport'

[www.unison.org.uk/content/uploads/2019/10/25875\\_reasonableadjustments.pdf](http://www.unison.org.uk/content/uploads/2019/10/25875_reasonableadjustments.pdf)

The UK government's consultation on reforms to the Flexible Working Regulations 2014, included extending the right to request for employees from day one of their employment. As yet, no date has been announced for implementing the change.

### **Checklist**

- Does the employer advertise roles as open to flexible working?
- Are there a range of flexible working options on offer, including part-time working, job-share, flexi-hours, hybrid working and homeworking?
- Are employers focusing solely on working from home and neglecting other flexible working options that can enhance recruitment?

- Will employers consider flexible working including homeworking as a potential reasonable adjustment for disabled workers? This should also take account of any equipment needed to eliminate any workplace barriers a disabled worker might encounter when working from home or in the workplace.
- Are employers putting pressure on disabled people to work from home just to get out of providing reasonable adjustments in the workplace?



## Advertising

The advertisement for any job vacancy may be the first introduction potential applicants have to the organisation, its purpose and values. So how the job is presented will undoubtedly influence people in considering whether they are suitable to apply or would 'fit in'.

First off, any images used in the advert should be inclusive and representative of the work. They need to be positive and representative of both men and women, a multi-ethnic mix, different ages etc., and should avoid showing images of men and women doing stereotypical/traditional roles.

The language used in the advert should be accessible and without jargon. It should be clear and precise about the essential requirements of the post, the hours and where it will be based, as well as pay and benefits.

[Acas](#) states that employers "should also provide information that tells applicants about anything else you'll need from them, such as:

- proof that they have the right to work in the UK
- whether they'll need a reference
- whether the person who gets the job will need a health check before they start work."

Job adverts should avoid language that have been shown to be subconsciously more off-putting for women. For example, employers should use:

- 'create' rather than 'build',
- 'develop' rather than 'manage'
- 'goal-oriented' rather than 'assertive' or 'driven'
- 'motivated' rather than 'competitive'
- 'exceptional' rather than 'champion' or 'fearless'.

There are a number of free websites available such as [Gender Decoder](#) that can help with identifying any subtle biases of the language used.

Other descriptions might also deter other groups of people. For example, asking for someone who is 'energetic' or 'dynamic' may suggest that you are only looking for someone young. Asking for someone 'mature' might do the opposite.

Job titles may similarly reflect assumptions that undervalue work performed predominantly by women, or overvalue work performed predominantly by men.

The Equality and Human Rights Commission gives the examples below of this tendency:

<b>Male job title</b>	<b>Female job title</b>
Technician	Operator
Office manager	Office supervisor
Tailor	Seamstress
Personal assistant	Secretary
Administrator	Secretary
Chef	Cook

Instead, language can be used to target people who are under-represented in the organisation and that particular role.

Ideally the job advert will include:

- some sort of equality and diversity and inclusion statement highlighting how important these are to the employer
- core values and organisation ethos – this gives potential applicants a better idea of what the employer cares about and what sort of working environment to expect
- a statement confirming that the employer offers flexible working
- a statement about actively encouraging applications from diverse groups of people or that welcomes applications from certain underrepresented groups, such as disabled people, Black people, LGBT+ people or women.

It could also display the ‘[Disability Confident](#)’ logo if the employer has joined the scheme. Run by the UK government, it aims to encourage employers to recruit and retrain disabled people and those with long-term health conditions.

There are many other diversity and inclusion schemes that employers may want to join and highlight in their adverts – such as the [Inclusive Employers Standard](#), [Employers Network on Equality and Inclusion](#), [Stonewall’s Diversity Champions Programme](#), [Race at Work Charter](#), and [Investors in Diversity](#) – as long as their use is backed up with meaningful action.

The UK government announced a [pay transparency pilot scheme](#) in March 2022, where participating employers listed salary details on job adverts and stopped asking about salary history during recruitment. Evidence shows that listing a salary range on a job advert, and not asking about salary history, gives women a firmer and more confident footing in pay negotiations.

Jemima Olchawski, Fawcett Society, Chief Executive has said that they “are pleased that the government is encouraging employers to remove embedded bias from recruitment practices and supporting our call to [End Salary History](#). Asking salary history questions keeps women on lower salaries and contributes to the UK’s gender pay gap – and can mean that past pay discrimination follows women and other groups throughout their career.”

## More information

Fawcett Society's campaign 'End Salary History'

<https://www.endsalaryhistory.co.uk/>

To attract a diverse workforce, the employer's website needs to be user-friendly taking account of screen readers (that can struggle with tables for example) and all documents should be available in accessible formats (e.g. people with dyslexia might find some fonts and colours difficult to process, other disabled applicants may wish for an audio alternative).

It is important that the employer checks where and how advertisements are placed, particularly to ensure that they are not reaching a predominantly male audience for higher paid roles and a predominantly female audience for lower paid roles.

Where specific groups have been identified as being under-represented in the workforce, targeted advertising may help such as including sites or press aimed specifically at people from Black communities, women, disabled people or the LGBT+ community.

Advertising should be wide and in different formats - through the press, via websites, through internet mailing lists, social media, local radio and community radio, at community recruitment events and open days, at the local university and college etc. Employers will also need to advertise for long enough for the widest number of people to see the advertisement.

However, the Equality and Human Rights Commission research report '[Recruitment of workers into low-paid occupations and industries: an evidence review](#)' found that there was a significant reliance on informal recruitment methods across the UK labour market, with word of mouth being the most commonly used recruitment method. But the review suggests that informal recruitment methods and word of mouth can result in discrimination. This is often because they disadvantage people with smaller social and / or work networks, and entrench existing workforce demographics resulting in labour market marginalisation, particularly for migrant and ethnic minority groups.

The findings of the [review](#) also suggest that discrimination can occur via online recruitment methods. This is mainly due to issues around accessibility, particularly for older and disabled people, as well as employers' use of social media in potentially discriminatory ways (see also '[shortlisting of job applicants](#)' below).

## Checklist

- Has the employer carefully assessed the images and language used in their job adverts to ensure they do not subconsciously deter certain groups of people from applying or perpetuate a stereotypical image of the type of work?
- Is the information presented in an accessible format or made available in alternative formats?

- Is the advert clear about the essential criteria needed for the job role?
- Is the advert clear about the hours of the job and where it will be based, as well as the pay and benefits on offer?
- Does the advert list anything else the employer will need from potential applicants, such as proof that they have the right to work in the UK?
- Does it include an equality and diversity and inclusion statement highlighting how important these are to the employer as part of their core values?
- Does it include a statement confirming that the employer offers flexible working?
- Does it include a statement actively encouraging applications from diverse groups of people or that welcomes applications from certain under-represented groups, such as disabled people, Black people, LGBT+ people or women?
- Does the employer list salary details on job adverts and have they stopped asking about salary history during recruitment, such as in the application form?
- Does the employer advertise roles as widely as possible? If they choose only one advertising opportunity it will clearly limit the type of people that can apply.
- Does the employer target advertising to particularly reach those groups of people who are under-represented in the workforce?
- For how long are vacant posts advertised?

## Internal appointments and progression

Ideally, the organisation should have a specific policy regarding internal appointments and progression. It is important that all staff feel fairly treated at work and able to progress and develop.

The employer will need to find out if diverse people are being promoted, and that those who manage to 'get on' are not hand-picked by managers.

If any vacancy arises within the organisation, there are a variety of possible policies employers may use to provide opportunities for existing staff to apply. They could give internal applicants a first chance by having an internal process prior to advertising publicly. They could have a policy that guarantees all internal candidates an interview. Or they may decide to have a policy that requires internal candidates to apply for posts in the same way as external candidates.

In some situations, the last option may be the fairest solution, as the other ways may inadvertently discriminate if the existing employment pool is mostly from one ethnic background, gender, age etc.

Therefore, it's important that any internal appointment policy is periodically reviewed with the trade union to check that it is appropriate and fair, and that it is being applied consistently.

It is particularly important for the employer to consider whether any worker being made redundant could be redeployed to a vacant post, rather than immediately advertising externally. Employers have a legal obligation to consider alternative employment and not make redundancies if they do not have to. It is therefore important to check if there is any suitable alternative work within the organisation for people facing redundancy.

Other issues may also impact on in-work progression, so all decisions about the availability of training and networking opportunities, the status given to part-time roles and the availability of flexible working for higher paid roles, should be carefully equality impact assessed.

For example, in their report '[Untapped talent: Single parents and in-work progression – the national picture](#)', the charity, Gingerbread highlighted the problems for single parents: "A lack of flexibility forces many single parents to work fixed hours in order to balance work and childcare commitments. This lack of flexibility means single parents are not only unable to work additional hours, but they are also blocked from training and the socialising aspect of some jobs – key factors associated with limiting opportunities for progression..."

Often assumed to be incompatible with higher paid roles, working part-time means that single parents are frequently forced to work below their skill level to achieve the flexibility they need...

A lack of affordable childcare prevents many single parents from seeking better paid

roles and blocks in-work progression.”

### **Checklist**

- Is there a special policy regarding internal candidates for vacant job roles and is it regularly reviewed?
- Is it used consistently across the whole organisation?
- Is everyone in the organisation given opportunities to access training and development?
- How are those who have been trained able to use the opportunity?
- In general, do people feel like they are being treated fairly whilst at work, from across the range of different staff, at varying grades, part-time workers etc?  
Could the employer undertake a survey of staff?

## The recruitment panel

If a diverse workforce are to be appointed, it is important that the employer commits to making sure a wide range of people are involved in the selection process.

The recruitment policy may specify who can be on the panel and its remit, such as whether they always need to include a member of senior management, representatives of HR or an external stakeholder. The structure of interview panels should always be reviewed to ensure that there is a gender balance in the composition of the panel and a mix of ethnicity.

Ensuring there is a diverse representation on the interview panel helps to make sure that decisions will be less influenced by cultural bias, unconscious bias, other forms of bias or by a limited set of characteristics, for example, by an all-white and male panel.

Panels should have a minimum of two people, and preferably no more than three to avoid candidates feeling intimidated. Whilst it may be necessary to have more people on the panel, it is always important for candidates to know what to expect.

The basic principle is that one person should not be doing all the recruitment on their own. If the panel is too small the principles of equality, diversity and inclusion could become undermined, with individual personal preferences outweighing objective analysis.

It is crucial that all the members of the panel have undertaken mandatory equality training. They should have appropriate interviewing skills and experience, and there should be at least one person who has a good understanding of the job on offer.

### Checklist

- Has the recruitment panel participated in mandatory equality training?
- Is the recruitment panel trained in interviewing and selection of job applicants?
- Is there a diverse representation on the interview panel? Does it include a mix of gender and ethnicity, and at least one person who has a clear understanding of the needs of the job advertised?
- Is the panel too small? Too large?

## Short listing of job applicants

**Employee assessment software** is increasingly being used to assess prospective candidates. Data can be drawn from psychological profiling, where people live, their social media use, their personal relationships, and even which web browser they use. Data can also be purchased from third-party data brokers.

The aim is to use the data to create a 'picture' of the candidate and to decide whether they would be a good fit for the organisation. But clearly there are potential issues not only with data protection but with equality legislation should the criteria for assessment not be objective and fully justifiable for the post, and the process transparent.

More employers are also known to review **job applicants' digital 'footprints'** such as checking on social media sites for public postings and images, and using this information to screen possible candidates.

Although websites like Facebook and Instagram are in the public domain, basing employment decisions on material uncovered on such sites may not only be unfair but potentially discriminatory.

In some circumstances it could also lead to victimisation, for example if it influenced the employer's decision in relation to what it revealed about, for example, a candidate's ethnicity, sexual orientation, trade union membership, or religion or philosophical belief.

[Acas](#) recruitment guidance warns employers to

“avoid using information that's on someone's social media profile to decide whether you interview or hire them. You might be breaking the law, particularly if either of the following points apply:

- they did not agree to you using the information in this way
- you looked at some applicants' social media profiles, but not others.

Example:

While using Facebook you discover the profile of someone who has applied to you for a job as a personal assistant. You notice a picture of her with 2 toddlers in a pushchair and think she looks too young to be a mum.

You've now already started making a judgement – even if you did not intend to – about whether she's the best applicant for the job.

If you then decide not to interview her and she discovered you'd seen her profile, she could argue that your decision discriminated against her because of her sex or age.”

The fairest approach for shortlisting is to operate an anonymised process whereby all personal details are removed from the applications by someone not on the shortlisting panel, so that shortlisters can only focus on the selection criteria.



Application forms and personal details can be marked with a number so that they can be matched up once shortlisting has been completed.

In addition, to avoid unconscious bias, the answers to application questions could be viewed in isolation and in different orders, so that no particular candidate is marked up or down because the shortlister feels strongly about their previous answers or because they have got more tired in their scrutiny of a pile of applications.

Viewing candidates' answers without any contextual data, such as where they have previously worked, gaps in service or details of their education, means that the shortlister just focuses on attributes in relation to the selection criteria.

The selection criteria should be the essential criteria listed in the person specification and therefore based on the actual requirements of the job, not related to educational attainment and background. Some may be assessed by reading the application form whilst others may need further assessment at the interview and through practical exercises.

Ideally, the selection criteria will be scored and the scoring system will be consistently used. It is crucial that one applicant is not compared against another – each applicant should be compared against the selection criteria based on indicators or evidence within the application. It should be remembered that good evidence of achieving the criteria might come from lived experience and volunteering as well as previous paid employment.

One fair approach is using 'horizontal' scoring, where all of the application forms are scored for one section (eg qualifications), before the next section is considered.

The panel should have decided in advance what the minimum selection criteria are for the shortlist. Ideally all disabled applicants who meet the minimum selection criteria will be invited to interview for the role, as under the [Disability Confident](#) scheme. Other information not relevant to the selection criteria, should be ignored such as the dates of education. These could identify the age of the candidate and may affect shortlisting judgement.

Ideally more than one person should undertake the shortlisting process, and preferably from a diverse mix of people. Each shortlister should undertake the process independently. They should then meet to discuss their selection and make a final decision on who should be invited for interview. Each member of the panel should be able to defend every decision for eliminating or advancing a candidate based on evidence.

Importantly, the process cannot be hurried and sufficient time to shortlist fairly should be provided. Unconscious bias may impact decisions more when time pressure or other distractions exist.

## Checklist

Is all personal information removed from applications before shortlisting? Are

answers viewed away from any personal context such as education, previous employers, gaps in service etc?

- Are the selection criteria clear and based solely on the essential criteria of the person specification? Has this been made clear to applicants?
- Is there an agreed minimum of selection criteria for candidates eligible for interview?
- Are all disabled candidates with the minimum of the selection criteria guaranteed an interview?
- Is there an agreed system for shortlisting applicants for interview, using a consistent scoring system? Who does this?
- Does more than one person undertake the shortlisting process? Is there a diverse shortlisting panel?
- Do the panel undertake shortlisting independently and come together to decide on who should be invited to interview?
- Does the recruitment panel record why an applicant did or did not make the shortlist?
- Is sufficient time allowed for the shortlisting process?
- If any other information is used to assess potential candidates for a post, such as details available on social media, can it be objectively justified? Does collection and use of such information comply with UK data protection laws? Has a data protection impact assessment been undertaken? Might any decisions based on such information be potentially discriminatory?

## Interviewing candidates

The same panel that shortlisted should also interview, to ensure fairness and consistency.

Whilst it can be tricky to find time that works for all members of the recruitment panel to be available for interviews, being too rigid on timeslots for candidates may mean that talented applicants are excluded from interviewing. That is why there needs to be sufficient time for planning and preparing for the recruitment process if it is going to be a fair and open procedure.

If possible, the interview dates can be included in the advertisement for the vacant post and in all application details so that potential candidates are warned well in advance.

The dates should be checked so that they do not clash with any major religious holidays or bank holidays.

All candidates should be asked well in advance of the interview if they need any reasonable adjustments such as additional time for tests or step-free access or a British Sign Language interpreter. They should be given information and resources to provide background information and help them prepare for their application and interview.

The interviews should have a structured format that asks exactly the same questions of all candidates in a predetermined order and format, although questions of course can be repeated or rephrased or supplementary questions asked to amplify and clarify a candidate's answer.

The questions should avoid colloquialisms and jargon, and should be relevant to the job, relating to the person specification. The panel should grade the responses using pre-specified, standardised criteria, and ideally there will be scoring grids.

If every candidate is asked the same questions, familiarity — based on similarities in backgrounds between panel member and interviewee — cannot unfairly influence the process.

As with shortlisting, all members of the panel should have an equal voice in the decision-making process and be able to share their opinions. If interviews are unstructured they are more likely to be prone to bias straying away from the specific competencies of the role, or to unfairly advantage some candidates.

Wherever possible, assessment should include more than one means of assessing, not just an interview where some people who are nervous, less confident, more modest may not fare so well. Multiple forms of assessment can enable candidates to demonstrate their skills in different ways

Additionally, the employer may have decided in advance to take positive action to address diversity gaps in your organisation (see '[Is the employer willing to consider positive action?](#)' above).

The interview panel should also allow time in an interview for a candidate to ask questions. There may be things they wish to know about the job, the organisation, or the terms and conditions that will help make their mind up about whether they want the job. However, the questions they ask should not form part of the selection process.

Employers may also wish to test a particular aptitude for the job, such as the ability to make a presentation, or to test the candidates' knowledge of specific issues. It is better to run these tests before the actual interview, otherwise the person being interviewed may be overly worried about the forthcoming test which prevents them from performing well in an interview.

Interview notes and scoring should be kept as candidates have the right to access their notes.

Applicants for a post wishing to job share should be interviewed individually through the normal selection procedure. Their suitability for the complete post should be assessed on the basis of their individual merits, according to the selection criteria applied to all other candidates for the post.

If a single job-sharer is appointed, whether through a separate or joint application, the remaining hours of the post can be advertised in the normal way.

### **Remote interviews and use of AI**

Particularly with the restrictions over meeting in person during the COVID-19 pandemic, employers' use of AI in the interview process itself has accelerated, with the use of the many commercially available video interviewing platforms.

For examples, recruiters may use 'chatbots' (software that simulates human conversation through voice commands or online text chats or both) to conduct interviews. Algorithms that analyse biometric data such as appearance, presentation and voice may score interview candidates.

### **Research**

A [Gartner survey](#) of 334 employers in 2020 revealed that 86% had used virtual technology to interview candidates to overcome recruitment challenges in the COVID-19 pandemic.

[Job Description Library](#) found that prior to the pandemic only 22% of employers were conducting video interviews whilst by early 2022, this had increased by 57%. Applicants reported many concerns to Job Description Library about their experiences of video interviewing, including finding it difficult to build rapport over video, worrying about internet connection dropping out, worrying about being judged on the condition of their home, experiencing technology problems, or being interrupted by someone they live with.

Research from the University of Sussex Business School in '[Artificial Intelligence \(AI\) in the job interview process](#)' found that candidates reflecting on their experiences of

AVIs (asynchronous video interviews in which applicants film themselves answering a predetermined set of questions, with no human interviewer present. The recordings are then evaluated later), expressed discomfort compared to when they were interviewed by people. These included feelings of diminished humanity, believing they had to behave like robots, not knowing how they were going to be assessed, and finding it emotionally and cognitively exhausting.

It is also important to remember that AI (artificial intelligence), ADM (automatic decision making) and profiling can discriminate. The decisions made may well be biased, so transparency must be guaranteed.

Employers need to remember that the algorithms used have been trained using a set of decisions made by humans, and some of their biases may creep into the technology. But whereas an interview candidate can ask questions or challenge the decisions made by interviewers, it can be so much harder to do this when the decisions are made by algorithms.

### Checklist

- Has the timing of interviews been considered in advance and potential impact on candidates?
- Are questions worked out in advance, using the person specification as a guide?
- Is each candidate asked the same questions?
- Are the questions asked relevant to the job?
- Are candidates allowed time to ask the interview panel questions?
- Are there any tests and presentations requested of candidates as part of the interview process and do they take place before the interview?
- Has the employer given full consideration to access issues? What adjustments are reasonable for them to make to ensure they can employ disabled people?
- Will the employer provide a BSL interpreter for an interview? It may mean re-arranging the interview date to be able to provide this. Will the interview panel allow more time to meet with a Deaf candidate as interpreting takes up additional time? Have the interview panel been briefed on how best to communicate with a Deaf candidate and their interpreter?
- Is the panel able to provide evidence that they have appointed the best person for the job and not the person with whom they had the most in common?
- Are all of the decisions evidence-based and can they be supported by factual feedback based on interview performance and the job criteria?
- If the employer has a recruitment policy, does it make appropriate reference to the UK General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018, and relevant workplace policies on data protection and equality? Is the employer clear that any technology used as part of the selection process

supports their equality, diversity and inclusion priorities?

- Do job applicants understand how any technology used works? And about what personal information is collected and why this information is needed?
- Does the use of the technology assume every candidate is digitally savvy or has reliable technology?
- Is any data to be collected really needed by the employer? Could the process mean that additional personal data that is not required by the employer is also collected?
- Are job applicants provided with a privacy policy containing information on the purposes for which all the data they provide will be processed and by whom, the legal basis for processing (i.e. legitimately needed for the recruitment exercise) and how long the data will be kept?

## Appointment

Once the recruitment panel has decided on who they want to appoint, they will have to offer the job to the successful candidate subject to receipt of references (see [‘References and other checks’](#) below), and give them a chance to consider the offer (if they need the time) and to give notice to their existing employer.

Sometimes it happens that none of the candidates meet the employer’s requirements, in which case there is little alternative but to repeat the recruitment process from the start.

Sometimes there may be more than one candidate suitable to offer the job to, and it is important if this occurs that the panel review their interview scores, and make an objective decision, not based on any discriminatory factor.

However, it is lawful to take positive action (see section above, headed [‘Is the employer willing to consider positive action?’](#)) to prefer a person with a particular protected characteristics if there are two candidates who are equally qualified for the role. The employer must have already identified that people with the protected characteristic/s are under-represented in their workforce or suffer an unfair disadvantage because of it. The employer should still appoint the best person for the job, even if the best person does not have the particular protected characteristic that they are targeting.

As well as this exception, equality law allows you to treat a disabled person better – or more favourably – than a non-disabled person. This recognises that disabled people face a lot of barriers to participating in work and other activities.

[Acas](#) highlights how a job offer can be made verbally, but it’s better in writing to avoid misunderstandings later on. They also state that a job offer letter should include:

- the job title
- confirmation you’ve offered the successful candidate the job
- any conditions, for example that the offer depends on suitable references or a health check (this is known as a conditional job offer)
- the terms – including salary, hours, benefits, pension arrangements, holiday entitlement and the location of work
- start date and any probationary period
- what they need to do to accept the offer or to decline it
- the name of the person to contact, with their contact details, in case of any questions.

For unsuccessful interviewees, it would also be good practice to provide written feedback and for these to be regularly reviewed and quality assured.

## Checklist

- Is there more than one equally qualified candidate for the vacancy? Is the recruitment panel considering positive action in a tie-breaker situation, and does one of the candidates have protected characteristics? Has the employer already identified that people with protected characteristics are under-represented in their workforce?
- In other tie-breaker situations, do the recruitment panel review their scores to make an objective decision?
- Are verbal offers of appointment followed up with an offer letter?
- Is it made clear to the successful candidate, that offers are subject to references and other checks?
- Are unsuccessful candidates provided with written feedback? Is the feedback regularly reviewed and quality assured?



## References and other checks

Before workers start a job, they may be asked for personal details and for **references** to be checked.

References are normally obtained from an old employer and/or other appropriate person. Usually, applicants will give the employer details of who to contact for these references on their application form. Overseas references could be contacted by email, through LinkedIn and other networking sites.

When collecting references, it is standard for the employer to write to the applicant's referees giving them details of the job they are applying for, and request details that will help reassure them that they have appointed the correct person.

Often the employer may want to query an applicant's sickness and reliability record. But the employer should remember that it is unlawful under the Equality Act 2010 to ask health-related questions about an applicant before a job offer is made (unless the question is to establish whether the person can carry out some intrinsic function of the job or to find out if the applicant is disabled and what reasonable adjustments are required to assist them during the recruitment process).

It is important that the employer does not ask anything that may potentially discriminate.

Those writing a reference should be extremely careful about offering a negative opinion – what they should be giving you is factual information. A reference should be true, accurate and fair. It does not have to be full and comprehensive but overall it must not give a misleading impression.

The employer may also check the successful candidate's **criminal background in certain circumstances**, for example if the job involves working with children or vulnerable adults. For most roles, an employer is only entitled to ask about unspent convictions and to carry out a basic Disclosure and Barring Service check, but even then, there is no legal obligation to ask, and the employer should only ask if it is necessary.

Workers have a statutory right to conceal a spent conviction under the Rehabilitation of Offenders Act 1974. It is illegal for an employer to discriminate against somebody with a spent conviction. Where the conviction is unspent, it is generally up to the discretion of the employer whether or not they employ the person.

### More information

UNISON's guide 'The disclosure and barring scheme: checking on a worker's criminal record'

[www.unison.org.uk/the-disclosure-and-barring-scheme](http://www.unison.org.uk/the-disclosure-and-barring-scheme)

The employer will also need to check someone's **eligibility to work in the UK** by checking their passport or the appropriate immigration certificates and work permits etc. The Home Office produces lists of acceptable documents for the purposes of

checking an individual's right to work in the UK.

All the staff that are employed must have a legal right to work in the UK. The law says it is the responsibility of the employer to check that people they have recruited have the appropriate rights.

The UK government has also produced [a code of practice](#) to provide practical guidance on what employers should or should not do, to avoid unlawful discrimination when complying with their duty as an employer to conduct 'right to work' checks. The code applies to all employment commencing on or after 6 April 2022. It also applies where a repeat check on an existing worker is required to be carried out on or after 6 April 2022 to retain a statutory excuse. It covers all employers in England, Scotland, Wales and Northern Ireland.

Examples of direct discrimination provided by the UK government where there is no statutory exception are:

- rejecting all job applicants because they do not have British nationality or another specified nationality
- refusing to consider any non-British /Irish job applicants.
- where the assumption is made that people from certain nationalities or ethnic groups cannot work as a team
- where individuals are intentionally only recruited from one nationality or ethnic group
- where it is assumed without foundation that overseas qualifications and experience are inferior.

In the context of right to work checks, examples of direct discrimination might include:

- not interviewing someone from a certain nationality or ethnic group because it is assumed that they will not have the right to work in the UK
- carrying out right to work checks for a Black employee but not for his white colleague.

An example of indirect discrimination:

- to require that an employee has been resident in the UK for over 5 years prior to starting employment is likely to be indirectly discriminatory since some migrants who have the right to work will not have been resident in the UK for that period of time.

Employers should:

- be consistent in how they conduct right to work checks on all prospective employees, including British citizens
- ensure job selections are made on the basis of suitability for the post

- ensure that no prospective job applicants are discouraged or excluded, either directly or indirectly, because of known or perceived protected characteristics.

Employers should not:

- discriminate when conducting right to work checks
- only check the status of those who appear to the employer likely to be migrants
- make assumptions about a person's right to work in the UK or their immigration status on the basis of their colour, nationality, ethnic or national origins, accent, surname or the length of time they have been resident in the UK.

### More information

UK government's 'Right to work checks: employer guidance'

[www.gov.uk/government/collections/right-to-work-checks-employer-guidance](https://www.gov.uk/government/collections/right-to-work-checks-employer-guidance)

and 'Checking a job applicant's right to work'

[www.gov.uk/check-job-applicant-right-to-work](https://www.gov.uk/check-job-applicant-right-to-work)

and 'Code of practice for employers: avoiding unlawful discrimination while preventing illegal working: 6 April 2022'

[www.gov.uk/government/publications/right-to-work-checks-code-of-practice-on-avoiding-discrimination/code-of-practice-for-employers-avoiding-unlawful-discrimination-while-preventing-illegal-working-in-force-from-6-april-2022-accessible-version](https://www.gov.uk/government/publications/right-to-work-checks-code-of-practice-on-avoiding-discrimination/code-of-practice-for-employers-avoiding-unlawful-discrimination-while-preventing-illegal-working-in-force-from-6-april-2022-accessible-version)

All these type of checks (references, criminal records, eligibility to work in the UK) are known as **pre-employment vetting** and are different from standard data collection because employers may be asking third parties for 'special category personal data' and 'criminal offence data' about individuals. The UK GDPR recognises this type of data is more sensitive, and so needs more protection.

There may be occasions where the employer decides to **withdraw their offer of appointment**, perhaps because of these pre-employment checks. Ideally the employer will be clear about the reason for withdrawing the offer, and the reason must be legitimate and non-discriminatory. Any job offers should be made clear that they are conditional on suitable references or checks.

If the job offer is unconditional, then withdrawing it could be mean a breach of contract. As [Acas](#) explain: "By law an employment contract could begin as soon as someone accepts a job offer, even if they only accepted it verbally. So an employer should not withdraw the offer without also ending the contract."

In addition, the employer may also undertake **online and social media checks** at this stage in the recruitment process. If decisions are made on this information as to whether or not to confirm an individual in their job, great care should be taken by the

employer, in particular if it is found to have been influenced in what it revealed about the successful candidate's family situation, ethnicity, sexual orientation, trade union membership, and religion or philosophical belief etc.

For example, one [pre-employment screening consultancy](#) offers employers “activism checks to identify potential hires with a history of extreme activist views that may conflict with the interest of your business.”

As the [Equality and Human Rights Commission explain](#), activist views or beliefs must be “worthy of respect in a democratic society and not affect other people’s fundamental rights” for the individual to be protected under the Equality Act 2010. However, for example, an environmental activist’s belief about “man-made climate change” might be protected if it is genuinely held, more than an opinion, cogent, serious and apply to an important aspect of human life or behaviour.

(See also issues covered under ‘digital footprints’ in ‘[short listing of job applicants](#)’ above.)

### Checklist

- Does the employer have a recruitment policy?
- Does it make appropriate reference to the UK General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018, and relevant workplace policies on data protection and equality?
- Has the employer carried out a data impact assessment and an equality impact assessment covering recruitment practices?
- Is the recruitment policy clear for applicants, candidates and newly appointed staff members about what personal information is collected and why this information is needed?
- Is any data to be collected really needed by the employer? Could the process mean that additional personal data that is not required by the employer is also collected?
- Are job applicants provided with a privacy policy containing information on the purposes for which all the data they provide will be processed and by whom, the legal basis for processing and how long the data will be kept?
- Does the employer treat all candidates in the same way with regard to checking on eligibility to work in the UK? Do they ask everyone they are considering employing to provide them with eligibility documents? They should not assume that someone does not have the right to work in the UK based on their colour, nationality, ethnic or national origins, accent or length of time spent living in the UK.
- Is it clear to successful applicants that any job offered is conditional, subject to checks required? If the job offer is withdrawn, has there potentially been a

breach of an employment contract? Has a reason been given for withdrawing the offer that is fair?

- If any other information is used to further assess the successful candidate for a post, such as details available on social media, can it be objectively justified? Does collection and use of such information comply with UK data protection laws? Has a data protection impact assessment been undertaken? May any decisions based on such information be potentially discriminatory?

## After appointment

Once an employee or worker has been appointed, they must receive a **written statement of employment particulars** on or before their first day of work which will outline the basic terms of the job.

The following must all be included in the same document (the 'principal statement'):

- the employer's name
- the employee or worker's name
- the start date (the day the employee or worker starts work)
- the date that 'continuous employment' (working for the same employer without a significant break) started for an employee
- job title, or a brief description of the job
- the employer's address
- the places or addresses where the employee or worker will work
- pay, including how often and when
- working hours, including which days the employee or worker must work and if and how their hours or days can change
- holiday and holiday pay, including an explanation of how it is calculated if the employee or worker leaves
- the amount of sick leave and pay (if this information is not included in the document, the employer must state where to find it)
- any other paid leave (if this information is not included in the document, the employer must state where to find it)
- any other benefits, including non-contractual benefits such as childcare vouchers or company car schemes
- the notice period either side must give when employment ends
- how long the job is expected to last (if it is temporary or fixed term)
- any probation period, including its conditions and how long it is
- if the employee will work abroad, and any terms that apply
- training that must be completed by the employee or worker, including training the employer does not pay for.

If further details are held in a policy (such as in a separate probation or annual leave policy), then the statement must clearly say this, and where the policy can be found.

In addition, the employer must provide the employee or worker with itemised pay statements. There are other details that the employer can provide later but within two months of the employee starting the job:

- pension arrangements
- any collective agreements
- details of any training provided by the employer that is not compulsory
- disciplinary rules and disciplinary and grievance procedures.

### More information

From Acas on the written statement of employment particulars and employment contracts

[www.acas.org.uk/what-must-be-written-in-an-employment-contract](http://www.acas.org.uk/what-must-be-written-in-an-employment-contract)

When someone starts their new job, the employer will need to help them learn about the job and different aspects of the organisation they have joined through **induction training**. The worker should also be provided with copies of all the organisation's policies and procedures: for example, the health & safety policy, equality and diversity policy etc.

Ideally someone will be made available to help the new worker - to answer questions about how the organisation functions, and to show them around, pointing out useful and practical information.

The first few months (usually three to six) of a workers' employment are often called the **probationary period**. During this time there should be regular supervision and support for the new worker.

### More information

UNISON's bargaining guide 'Negotiating probation policies'

[www.unison.org.uk/negotiating-probation-policies/](http://www.unison.org.uk/negotiating-probation-policies/)

A probationary period can only apply if it is specifically mentioned in the individual's contract of employment. It cannot affect an individual's statutory employment rights.

Although it is in effect a trial period for both the employer and employee, the emphasis is mostly on the employer checking on whether they consider their new recruit is actually up to the job. But employers should only use it to objectively assess the new employee's potential capability, performance and conduct, not as a means of seeing if the worker is generally liked or 'fits in' with a team.

It is important for the trade union rep to be watchful that the employer takes account of the individual needs of new employees, for example those who are disabled and need reasonable adjustments, or those who are new to the world of work or have been out of the workplace for some time.

### Checklist

- Is the probation policy mentioned in the contract of employment? Does it specify how long the probationary period will last? If there are any conditions to the

probationary period such as reduced notice period, are these clearly specified in the contract of employment?

- Is there an agreed induction process for all new staff?
- Are new staff members made fully aware of the requirements of their job, expectations and standards? Are any problems identified early and promptly by their line manager?
- Have they received a written statement of particulars either before or on their first day of employment? These details may be contained within the full contract of employment.
- Do new members of staff receive additional support such as training opportunities, a mentor or workplace 'buddy'?
- Are new members of staff encouraged to raise queries with their line manager and ask for guidance and support?
- Are reasonable adjustments provided for disabled workers and flexible working allowed for workers with caring responsibilities?
- Do new staff members receive an itemised pay statement whenever they are paid?
- If an employee is to be dismissed during the probationary period, is a fair procedure followed? Is the correct notice period given? Have they been paid any outstanding wages or holiday pay due?