

AVOIDING UNLAWFUL DISCRIMINATION



DISCRIMINATION

We discriminate in the selection process by selecting one person over another, but discrimination on merit is not an issue; the concern in this context is unlawful discrimination which covers a number of protected characteristics under the Equality Act (2010), namely:

- **Age**
- **Disability**
- **Gender reassignment**
- **Marriage and civil partnership**
- **Pregnancy and maternity**
- **Race**
- **Religion or belief**
- **Sex**
- **Sexual orientation**

It is already mandatory for all UEA employees to complete training regarding Diversity in the Workplace, so all panel members should have passed this module in the 24 months prior to interviews taking place.

It is also recommended that all panel members should complete training in avoiding Unconscious Bias prior to shortlisting.

A summary of the elements relevant to the recruitment process can be found on the next page.



WITHIN THE LAW THERE ARE FOUR TYPES OF DISCRIMINATION:

Direct discrimination:

Where someone is treated less favourably because of a protected characteristic (e.g. not appointing a woman to a post because she is pregnant, not renting a property to someone because they are black).

Direct discrimination also covers:

- **Discrimination by Association**

Direct discrimination against someone because others think they possess a protected characteristic.

- **Discrimination by Perception**

Direct discrimination against someone because they associate with another person who possesses a protected characteristic.

Victimisation:

Where a person is subjected to less favourable treatment because they have brought an action with reference to an act of discrimination. For example someone complains to their manager that they are being racially abused. The complaint is not dealt with properly and the individual is subsequently ignored by their

Indirect discrimination:

Where a general, apparently neutral, provision, criteria or practice is applied to all, but disproportionately disadvantages a group of people who fall within one of the protected characteristics AND which cannot be justified as a legitimate aim or criteria.

Harrassment:

Where an individual is subjected to unwanted physical or verbal actions which result in violating that person's dignity or creates a hostile, degrading, humiliating or offensive environment for them. This includes sexual harrassment. For example a female working in a primarily male environment where posters of topless women are on display; a workplace where banter and jokes about peoples sexuality are commonplace; a male boss who leers at his female subordinate (or vice versa).

At employment tribunal there is no ceiling on awards given for findings of unlawful discrimination, and awards for injury to feelings and potential impact vary, i.e. if an individual is not selected for a post with a high salary on unlawful discriminatory grounds there is a greater impact on potential earnings so this may invoke a higher award.

While an organisation has vicarious liability for the acts of its employees if it can be shown to have taken all reasonable steps to prevent discrimination and it still happens because of the actions of an individual, the individual may be personally liable.

Further information can be found in the Dignity and Respect in the Workplace Policy.

Burden of Proof applied to claims of illegal discrimination

Two levels:

1. Appellant (employee) to show prima facie case – i.e. on the surface it appears as if discrimination has taken place.
2. If 1) is met, respondent (employer) has to prove, on balance of probabilities, that treatment was in no sense whatsoever based on grounds of discrimination, i.e. they did not commit an unlawful act of discrimination.

Key areas of discrimination relating to recruitment:

- Direct and indirect discrimination.
- Positive duty to promote equality as a public body.
- Duty to make adjustments for disabled candidates.
- Don't need to be an employee to make a claim.
- Positive discrimination is illegal, e.g. selecting someone on the basis of their race, gender, age, etc., to balance the mix in the workplace.
- Positive action is not illegal, e.g. the inclusion of a positive action statement to encourage/support applications from an under-represented group(s) with a particular protected characteristic(s) which can be substantiated with robust data. Shortlisting/Interviews are then conducted on merit.

Disability:

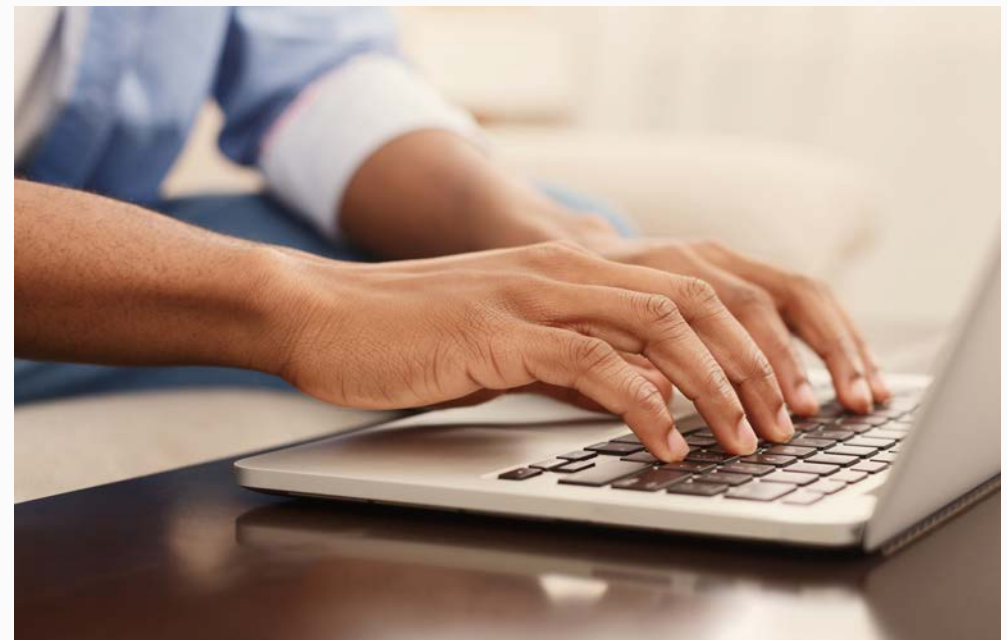
- Must make reasonable adjustments for interview (legal requirement) (e.g. location on ground floor, signer, amplifier, Braille documents).
- Interview takes place in the same way (allowing for adjustments).
- After main body of interview concluded, can discuss disability if appropriate to establish individual's view on reasonable adjustments that may be necessary.
- Choose candidate on merit.
- If disabled candidate is first choice, and needs reasonable adjustments, consider these in conjunction with the HR Business Partner, before an offer is made if necessary (legal requirement). It may be appropriate to make a referral to Occupational Health for recommendations to be made.
- If disabled candidate accepts post, ensure adjustments are carried out before start date and are monitored throughout employment (legal requirement).



Note taking:

Remember: all interview documentation (for example shortlisting forms, records of interview and notes recording discussion) are potentially disclosable under the Data Protection Act 2018 if an applicant requests sight of them, and if an Employment Tribunal results then ALL related documentation is disclosable, such as emails between panel members, hand written notes on CVs/references, etc.

It is an offence if documents are destroyed after they are requested.



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An internationally renowned university, UEA is ranked 26th in the UK (Complete University Guide 2026) and is in the UK Top 25 for research quality (Times Higher Education Rankings 2026) reflecting the international excellence of its research environment. We are in the World Top 60 (QS World Rankings for Sustainability 2025) and the World Top 13th for reduced inequalities (Times Higher Education Impact Rankings 2025). The University holds UK Teaching Excellence Framework Silver status.

