Equality and Diversity Considerations in Staff Recruitment and Selection

Introduction

Birkbeck values diversity and is committed to eliminating unlawful and unfair discrimination, victimisation and harassment at all stages and in all aspects of the employment relationship. The College aims to recruit the best person for each vacancy through fair, systematic, effective recruitment and selection procedures. No job applicant or employee should receive less favourable treatment on any grounds which are not relevant to good employment practice.

Whilst most instances of discrimination during recruitment may be unintentional, the law does not accept an employer’s claim not to have intended to discriminate. The cost of compensation payments for successful discrimination claims can be in the tens of thousands of pounds; with the cost of defending the claim in addition to this. The reputational cost may be greater; the cost of a lack of diversity in the workforce, greater still. Ensuring a fair and transparent recruitment process can help the College create a workforce that better reflects the diversity of its students, brings a greater mix of talents, creativity and ideas, and increases employee satisfaction and well-being – all of which will help the College to fulfil its purpose as a provider of high quality teaching and research.

This document explains what the law says about discrimination and looks at how to avoid it at each stage of the process to fill a vacant post.

What is discrimination?

It is unlawful to discriminate against job applicants because of a protected characteristic. The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

Direct discrimination in recruitment exists where individuals with a particular protected characteristic are excluded from applying, or are not selected, on the basis of the characteristic - for example, stating that no-one over 40 years of age may apply.

Associative discrimination is direct discrimination against someone because they associate with another person who possesses a protected characteristic - for example, not offering a job because the candidate discloses that their partner is disabled.

Discrimination by perception is direct discrimination against someone because the other person thinks that they possess a particular protected characteristic (whether or not they do) - for example, not employing someone because the employer thinks that they are gay.
**Indirect discrimination** describes situations which occur when an employer puts in place a particular provision, criterion or practice, which appears to treat everyone equally, but which in practice leads to people from a particular protected group being treated less favourably than others.

Examples of indirect discrimination in recruitment could include using job criteria that asks for a specific number of years’ experience – which is more likely to exclude applicants below a certain age and those who have taken time out of work with caring responsibilities (who are more likely to be women); asking for a good level of English – which is more likely to impact on individuals who are not British; and asking for a degree – which is more likely to impact on older applicants (because a lower proportion of older individuals have degrees due to changes in education policy).

Unlike direct discrimination, indirect discrimination may be deemed lawful if the provision, criterion or practice can be justified. The legal test for justification essentially looks at whether there is a good enough reason for it. The aim of the provision, criterion or practice must be real and objective (for example ensuring the health and safety of others), it must be proportionate (i.e. the aim must outweigh any discriminatory effect) and there must be no alternative measures available that would meet the aim without too much difficulty.

As indirect discrimination is often not obvious, it helps to consider whether a measure may impact disproportionately on a protected group, through carrying out an equality assessment. Additional information, advice and guidance are available from Human Resources.

The law defines **harassment** as 'unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual.' It can include behaviour that individuals find offensive, even if it is not directed at them, and even if they do not have the relevant protected characteristics themselves – for example, at a job interview an offensive remark is made about a particular religious group or race, even though the candidate is not a member of that group or race.

**Victimisation** refers to adverse treatment directed towards someone who has made, or is believed to have made or supported, a complaint under the Equality Act – for example, the withdrawal of a job offer, or extended probationary period, because a reference indicates that the candidate brought a discrimination claim against a former employer.

In some very limited circumstances, set out below, the law permits employers to operate an exception to the general principle of equality and apply to a post a requirement to have a particular protected characteristic.

➢ You may be able to state that being of a particular sex, race, religion/belief, age or sexual orientation is an **occupational requirement** for the job, although the circumstances in which an employer can rely on an occupational requirement are narrowly defined. The requirement must be crucial to the post, not just preferable and not just one of several important factors. Examples of situations where you may be able to rely on the occupational requirement exception include where:

* the job involves working with people from a particular ethnic group and the post holder needs to be from the same ethnic background and speak the same language;
• the job is to work as a counsellor for a particular group, such as deaf people whose first language is BSL and the you wants to employ a deaf person who speaks BSL;
• the job requires someone of a particular sex for reasons of privacy and decency - for example, a job working in a single sex changing room.

➢ You can **treat disabled people more favourably** by advertising a job as being open only to disabled applicants. In relation to disability discrimination, the Equality Act only **protects** disabled people, so it is not discrimination to treat a disabled person more favourably than a non-disabled person.

➢ It is permissible to **target recruitment towards under-represented or disadvantaged groups**. Where a particular characteristic is under-represented within the employer’s workforce, it is lawful to include a statement encouraging applications from under-represented groups. This is a form of positive action. Ultimately, you should always base your decision on who is the best candidate for the job. If there are two candidates with the same skills and qualifications, you are then able to make a decision based on positive action. For instance, if one candidate is older than the other and you want to increase diversity within a predominantly young team, you are able to choose the older candidate. You should be mindful that the College would need to prove that both candidates had been assessed as having the same skill levels and qualifications before it made the decision based on positive action.

**Reasonable adjustments**

The Equality Act also places a duty on employers to make reasonable adjustments for disabled applicants at all stages of the recruitment process. This is to remove the barriers faced by the disability, so the individual can work and apply for jobs in the same way as someone who is not disabled.

The College must make reasonable adjustments to the recruitment process if the job applicant has indicated a disability in the application, the College becomes aware of it or the candidate asks for reasonable adjustments.

Before offering a job the employer must only ask a disabled applicant what reasonable adjustments are needed:

• for any part of the recruitment process and, once those are in place, whether they are suitable; and/or
• to determine whether the applicant could carry out a function essential/intrinsic to the role with the reasonable adjustment in place (see ‘Health questions in recruitment’ below).

*If you think that either of the above may apply to the role to which you are recruiting please contact your HR Business Partner for advice.*

**Health questions in recruitment**

Section 60 of the Equality Act 2010 prohibits the College from asking about the health of an applicant before an offer of employment is made, except in certain specific circumstances.
The circumstances are:

- to establish whether the candidate can comply with an assessment or other test as part of the selection process with a reasonable adjustment;
- to establish whether the candidate can carry out a function that is an intrinsic part of the job - for example, working at heights, handling food, driving vehicles, and working with radiation;
- to ensure that a guaranteed interview can be offered to a disabled candidate if they meet the essential criteria of the post and opt in to the scheme, subject to any limits on the overall number of interviews (this is part of the College’s commitment as a Disability Confident Employer);
- to monitor the diversity of applicants. A question about disability is on a separate part of the application form, which is retained by Human Resources, and is not shared with the panel (though if the candidate has opted in to the guaranteed interview under Disability Confident, or if they have requested a reasonable adjustment for the assessment, the panel chair will be told); and
- to fill the vacancy with a disabled candidate for an occupational reason (this is likely to be extremely rare).

**Defining a job**

**Job descriptions** should be kept under review to ensure that they do not contain tasks or duties that the post holder will not, in practice, need to perform. They should also avoid overstating marginal or occasional requirements. One rule of thumb is to leave out any requirements that make up less than 5% of the job overall. Inclusion of non-essential tasks or duties could discourage appropriately qualified people from applying. It could lead to discrimination claims, if the tasks and duties are ones that some people are less likely to be able to fulfil because of a protected characteristic.

**Example**

A requirement for a driving licence will indirectly discriminate against some disabled applicants, if they are unable to drive due to their condition. If the requirement to drive is overstated or unnecessary, and the applicant either does not need to travel, or could travel by public transport, it is unlikely to be deemed justifiable, and so is likely to constitute unlawful indirect discrimination.

Where there are different ways of performing a task, the job description should focus on the outcome, and not say how the task should be carried out. This allows for different working styles, as well as helping to avoid discrimination – for example, insisting that someone communicate by email when the telephone would be as effective in the role, could indirectly discriminate against a person with dyslexia.

Recruiting managers should consider whether any post must to be filled on a full-time basis, or whether a more flexible working pattern can be offered (such as job share, part-time or term time only working). The working hours and pattern should be made clear to the applicant. At Birkbeck it is included in the job advertisement and in the further information section within the job pack. Bear in mind that restricting applicants in terms of their working patterns is likely to restrict the pool of applicants and could lead to a claim of indirect discrimination, if it cannot be justified.
Example
As a greater proportion of women than men work part-time or flexible hours, in order to accommodate childcare responsibilities, a woman could be put at disadvantage when a post is advertised as full-time. If the requirement to work full-time in any particular post cannot be objectively justified, a woman could potentially bring a successful indirect sex discrimination claim.

Job titles should not show a bias for any particular characteristic e.g. Office Junior, Shop Girl, waiter/waitress.

**Person specifications** set out the skills, qualifications, abilities and experience that the College will be assessing in the recruitment and selection process. The criteria you decide on should relate directly to the duties of the job description, be capable of being tested objectively and contain the minimum requirements essential to do the job effectively.

As with the job description, it is important to avoid including language and requirements that are subjective, and may discriminate on the grounds of one or more protected characteristics, either directly or indirectly. To avoid age discrimination it is advisable not to use such phrases as ‘young and dynamic’ or ‘would suit someone who has just qualified’, unless the criterion or statement can be justified by the genuine needs of the job. Words such as ‘energetic’ could be considered to favour both younger and more physically able candidates. If you are in doubt about being able to justify this, it would be better not to include or apply the criterion or statement.

Example
State the role requires ‘someone effective at networking’, not ‘you must be upbeat and sociable’, which relies on personality, not ability. It could also indirectly discriminate against someone with a mental health condition such as depression.

Avoid over-specifying the level or type of qualifications required, as this could be indirectly discriminatory (see indirect discrimination, above). It is advisable to make reference to ‘equivalent qualifications’ or to ‘equivalent levels of skill or knowledge’ (remembering to make sure you know what qualifications you consider equivalent). Equally, the job specification should not state that the successful candidate needs good written English, unless it is essential for the job.

Specifying a minimum number of years’ experience could amount to indirect discrimination on the basis of age (younger applicants) or sex (as women are more likely to have had time out of the workplace due to childcare or other caring commitments), unless there is an objectively justifiable reason for doing so. A requirement for continuous experience is especially problematic for people who have had time out of the workforce.

Including criteria relating to health, fitness or physical characteristics, including sickness record, may amount to indirect discrimination against disabled candidates, unless there is an objectively justifiable reason.

Example
Specifying that all candidates must be over a certain height, may indirectly discriminate against women, some disabled people and people from certain racial groups.
Advertising a job

It is important to avoid discrimination in both the content of a job advertisement and where and how the job is advertised.

Jobs should be advertised externally, unless there is good reason not to. Where the workforce is predominantly male or female, or comprised of, for example, a particular racial group, informal recruitment methods such as word-of-mouth or personal recommendation could perpetuate the existing imbalance and restrict the choice of applicants. This can constitute indirect discrimination against the sex or race that is under-represented in the workplace.

At the same time, existing employees should be made aware of available posts. This should include staff that are absent from work, such as those on maternity and other long-term leave. A lack of internal advertisement could lead to a discrimination claim if an employee considers that it was with a view to discouraging them from applying, and that this was related to their sex, race, disability or another protected characteristic. At Birkbeck current vacancies are circulated to current staff by email once a week.

Birkbeck’s ‘Guidance notes for applicants’ states, “We do not give preference to internal candidates unless there is a specific management need to do so”. The College Recruitment and Selection Policy states that posts of six months or more will be advertised but also explains some potential exceptions, where they may not be.

As with job descriptions and person specifications, the content of job adverts should accurately reflect the requirements of the job and must not include any wording that suggests the College may directly or indirectly discriminate against candidates with any of the protected characteristics. Research has found that people are less likely to respond to ads that have words biased in favour of the opposite gender. So, for example, some words that research has found to be more male gendered, such as ‘active’, ‘decisive’, ‘confident’ are generally more likely to attract men, whilst words found to be more female gendered, such as ‘honest’, ‘co-operative’ and ‘committed’ are more likely to attract women. To attract the widest pool possible, care and attention should be paid to the way in which positions are advertised and depicted, so that applicants do not self-select out of the process from the start.

It is lawful to advertise for a person with a particular protected characteristic in the situations set out in section 2. (above), i.e. due to an occupational requirement, to treat disabled people more favourably or to target recruitment towards under-represented or disadvantaged groups.

The application process

An application process should be standardised and enable the employer to assess each applicant objectively and consistently against the selection criteria listed in the person specification.

Reasonable adjustments must be made for applicants with a disability, including ensuring that application forms are available in formats that are appropriate for candidates who are visually impaired: this might include large print, Braille or audio. Employers should also consider allowing candidates not to use the application form, but to present the required information in a different way, for example by recording verbal information.
Personal information requested for monitoring purposes as part of the application process should not be revealed to those who are shortlisting or interviewing. If an applicant’s protected characteristic(s) are suggested by information in an application form, those who are short-listing must not use this information to discriminate against the applicant.

**Shortlisting applicants**

To maximise the chances of a fair and non-discriminatory shortlisting process, the following good practice should be followed.

- At least two members of staff should be involved in the shortlisting process, to reduce the risk of personal bias.
- All members of a recruitment and interview panel should have attended the College recruitment and selection course and undertaken the Unconscious Bias (online) and Equality and Diversity (online) training.
- The panels should score the information provided in the application against the selection criteria listed in the person specification. Not all criteria will necessarily carry equal weight or importance, but where weighting is applied, the panel should agree this before short listing begins.
- The essential requirements should be used as the first short listing criteria. If large numbers of applicants meet the essential criteria, the desirable factors can be used as a secondary filter.
- Each member of the panel should carry out the process on an individual basis, to ensure objectivity, and subsequently compare their scores for each candidate by holding a shortlisting meeting.
- The College should retain records of the panel's decisions and the reasons for them, along with the original application form, for 12 months (see ‘Recruitment record keeping’, below).

The reasons for not interviewing must relate to the requirements listed in the person specification and must be entirely relevant to the job. They must be justifiable in the event of challenge. ‘Too experienced’ and ‘over qualified’ should be avoided as reasons for not short listing. Using these reasons could unfairly discriminate against older or disabled candidates seeking work of a different kind to fit their current circumstances.

As part of our commitment to being a Disability Confident Employer, the College guarantees to interview all disabled applicants, provided they meet the essential criteria for the job and opt-in to this arrangement, subject to any limits on the overall number of interviews. Please see the Guidance on Staff Disability at Birkbeck (Incorporating Code of Practice) for further information.

**Selecting from a shortlist**

**Interviews**

Job interviews should be constructed in a structured and systematic way. The interview panel members should meet prior to the interview stage to agree and set:

- selection criteria and relative weightings, which are objectively justifiable and which directly and clearly correspond to the criteria described in the job description and personnel specification
• suitable interview questions which directly and clearly correspond to the criteria described in the job description and the personnel specification
• standardised system of scoring for use throughout the process

At the interview stage, panel members need to be especially careful to avoid making judgements about applicants on the basis of subjective impressions and bias. They must ensure that decisions about the suitability of candidates are based solely on how well they match the criteria for the job as set out in the person specification.

Where possible, consideration should be given to including a mix of individuals with different protected characteristics on interview panels. Only staff who have completed the College’s recruitment and selection, Unconscious Bias (online) and Equality and Diversity (online) training, should be on the panel.

Interview questions should remain focused on the behaviours, skills and experience listed in the person specification. Interviewers should not imply discrimination by asking questions about personal circumstances which are unrelated to the job. If the discussion strays off course or starts to elicit unwanted information, particularly about protected characteristics - for example a candidate’s religion, marital status, sexuality, plans to have children, etc. - panel members should bring the discussion quickly back on topic by asking another job-related question. Any information around protected characteristics that is volunteered should not be taken into account in deciding the candidate’s suitability for the job.

It is important to remember that, in the recruitment scenario, panel members are brand ambassadors. Questions that imply discriminatory attitudes are likely to negatively impact an applicant’s view of the organisation. Remember too, that any inappropriate comments about protected characteristics, whether or not the applicant has the characteristic, could constitute harassment.

Selection tests
An employer should only administer selection tests that can reasonably be considered to provide relevant, reliable and valid assessments of the applicants’ abilities to perform the duties of the job.

All candidates should undertake the same test, unless there is a health and safety reason why they cannot do so, or unless a reasonable adjustment is required, for example, by giving an applicant who is disabled due to dyslexia more time to complete it.

Test should have no discriminatory impact on any of the protected characteristics. For example, a test that assumes knowledge of British history may discriminate on the grounds of race; one that includes a scenario based around a more male-dominated sport, such as football or rugby, may disadvantage women.

You should take care not to test knowledge specific to the operation of the College, which it is not essential the candidate knows prior to starting in post. This would create bias in favour of internal applicants, thereby perpetuating any existing imbalance in the workforce.

Job offers and feedback to unsuccessful applicants
You must not discriminate against job applicants in the terms on which they offer employment - for example extending a probation period for a disabled candidate.

When rejecting candidates, you should give reasons that are based purely on the job requirements.

References

Think carefully about how you deal with references, both when drafting them and in relying on them during the recruitment process. If a reference indicates that a candidate has taken a discrimination case against a former employer and you are rejecting the candidate, you should document your reasons, which must be unrelated to the claim.

Recruitment record-keeping

The College must always be able to justify its decision to recruit a particular person. Should the College be faced with a claim of unlawful discrimination, it will need to be used of evidence of a fair recruitment process. Records will be kept on all stages of the recruitment and selection process and retained by the Human Resources team for a period of 12 months and then disposed of securely.

Birkbeck policies and procedures relating to equality in staff recruitment and selection (listed below) can be found on the College’s HR pages: http://www.bbk.ac.uk/hr/policies_services/policies_az

- Recruitment and Selection Policy
- Equal opportunities policy statement
- Disability definition and guidance
- Code of practice on disability in employment
- Disability Confident
- Obtaining and verifying references for candidates
- Right to Work

The College ‘Guidance notes for applicants’ document is available on the Birkbeck recruitment website (under ‘Menu’, at the top right of the screen).