

# Selection & Recruitment

By Chloe Pereira

outset.insight

01622 759 900 [www.outsetuk.com](http://www.outsetuk.com)



# An Insight into Selection & Recruitment

---

## The Discrimination trap

There are several opportunities along the lifetime of the recruitment process to fall foul of discrimination law, including:

- **Job advert** – carefully consider the wording. Asking for a “youthful” candidate could constitute age discrimination, and stating the job title as “waitress” suggests only women need apply.
- **Job description** – consideration of the language used doesn’t stop at the job advert. Avoid phrases like “vibrant”, “able” and requirements that aren’t in fact strictly necessary (e.g. holding a driving licence).
- **Selection for interview** – ensure that no one is excluded from being offered an interview on the basis of anything other than merit (e.g. their name, or estimated age from looking at dates on the CV).
- **Interviewing** – prepare questions in advance and ensure the interviewer is aware of topics they should not raise and questions that should not be asked, for example: Do you have children?/ Are you thinking of having children?/ How many children do you have?
- **Selecting the candidate** – avoid The Apprentice “you’re fired” approach and adopt a more sensitive way of notifying unlucky candidates that they didn’t secure the role. Make sure that the reasons they were not selected are well documented and do not include anything which could lead to an inference of discrimination. Apply the same selection criteria and method to each candidate.

# An Insight into Selection & Recruitment

## Personal Data issues

Obtaining information about applicants for a role involves processing their personal data, so steps should be taken to ensure you're complying with GDPR requirements as enshrined in the Data Protection Act 2018. Some key considerations are:

- Ensure you have a privacy notice tailored for job applicants and that it is made available to them.
- Consider what you will do with the data once the process is over, especially for unsuccessful applicants (you may need to keep hold of it – important to defend any allegations of discrimination).
- Are you asking for any medical assessments? Resulting information is sensitive personal data and subject to a higher level of scrutiny.



# An Insight into Selection & Recruitment

## Protect yourself

To help ward off claims of discrimination or data protection complaints, it's important to know what you're doing at each stage before you begin. Think about documents such as the job advert carefully and have them checked by at least two people. Provide training to those who will be carrying out interviews. Ensure there are at least two people present at an interview – it's helpful to have a witness in case allegations are later made by the interviewee.

Keeping a good paper trail is always key to helping defend any later allegations.



# An Insight into Selection & Recruitment

---

## The Consequences

If you discriminate against a job applicant they will be entitled to bring a claim in the Employment Tribunal. In fact, even someone who has been put off from applying for a role because of a discriminatory job advert could bring a claim.

In reality this is a difficult claim for an individual to pursue and obtain meaningful compensation for, as they usually have to show that if it hadn't been for the alleged discrimination, they would have been offered the job. You can understand in that context why it's so important to have a good paper trail, and use clear, objective criteria to select candidates.

If there is a successful claim, compensation is calculated on the usual basis for discrimination claims (see *Outtakes of Sex Discrimination*).

When it comes to compensation for actual/future loss, the Tribunal will look to attach a number to the loss of a valuable chance to obtain work. How this works in practice will depend on the facts in question.

### EXAMPLE

In a case where B was discriminated against and not offered a job by Merseyside Immigration Unit she had to stay with her existing employer. Her salary there was lower than the Merseyside role and she was eventually dismissed by that employer. The Tribunal awarded her the difference in her pay up to the date she was dismissed, plus another three months of full salary (at the level on offer in the Merseyside role). (*Bernard v Merseyside Immigration Advice Unit* ET Case No.8127/94).

If you would like more advice regarding selection and recruitment, get in touch for a friendly and informal chat today.

Chloe Pereira  
Senior Employment Lawyer

Call **01622 759 900** or  
email [Chloe.Pereira@outsetuk.com](mailto:Chloe.Pereira@outsetuk.com)

