

# Employers Guide to Recruitment

How to Get the Right Man (or Woman) for the Job

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# **Employer's Guide to Recruitment**

How to Get the Right Man (or Woman) for the Job

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Employer's Guide to Recruitment: How to Get the Right Man (or Woman) for the Job  
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# Preface

If you hire in haste, you will almost certainly dismiss at length. This book will help you to recruit effectively, avoiding the common pitfalls. It sets out the legal requirements applicable during the recruitment process as well as best practice and some useful hints and tips to help you recruit the right person for the job, saving you time, money and effort.

Getting it wrong can be both expensive and frustrating. These sobering statistics give us a clue:

- Accuracy of recruiting when using interviews alone is approximately 33 per cent.
- The direct cost of recruitment is approximately £2k per person for a straightforward job. It will be more for complex and more senior roles.
- Advertising costs can be steep. They range from about £400 in local papers to £25k in Sunday broadsheets.

If you have the wrong people in place, your business will under-perform. You need good people with the right skills to look after your customers and/or make your products.

# About the author

Kate Russell, BA, barrister, MA is the Managing Director of Russell HR Consulting and the author of this publication. As Metro's HR columnist, she became known to thousands, with her brand of down-to-earth, tactical HR. Kate is a regular guest on Five Live and her articles and opinions have been sought by publications as diverse as The Sunday Times, Real Business and The Washington Post, as well as every major British HR magazine and her HR blog has been rated third best in the UK. She is the author of several practical employment handbooks and e-books, the highly acclaimed audio update service Law on the Move, as well as a monthly e-newsletter, the latter document neatly combining the useful, topical and the frivolous.

Russell HR Consulting Ltd delivers HR solutions and practical employment law training to a wide variety of industries and occupations across the UK. Our team of skilled and experienced HR professionals has developed a reputation for being knowledgeable, robust and commercially aware. We are especially well versed in the tackling and resolving of tough discipline and grievance matters.

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# Miscellaneous notes

## Statutory limits

Today's statutory limits have not been specified in this book as they go out of date so quickly. You can email [pm@russellhrconsulting.co.uk](mailto:pm@russellhrconsulting.co.uk) for an up-to-date copy of statutory limits. Please cite BookBoon-Recruitment when you do so.

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## Disclaimer

Whilst every effort has been made to ensure that the contents of the book are accurate and up to date, no responsibility will be accepted for any inaccuracies found.

This book should not be taken as a definitive guide or as a stand-alone document on all aspects of employment law. You should therefore seek legal advice where appropriate.

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## Gender description

For convenience and brevity I have referred to 'he' and 'him' throughout the book. It is intended to refer to both male and female employees.

# 1 Overview of the Ebook

## 1.1 Introduction

People are vital to the success of any organisation. It has been shown repeatedly that poor recruitment practices result in high labour turnover and absenteeism, with a consequent increase in costs. If the right people are recruited in the first place, they are likely to stay, fit into your organisation and work to optimum effect.

If the wrong people are recruited, they will either leave or engage in unsatisfactory behaviours or conduct, which means that you will have to manage them out of the business. This is time consuming and in itself carries risks.

## 1.2 Do you really need to recruit?

When someone resigns or retires or leaves a post for some other reason, it's a good opportunity to assess whether the vacancy still serves a purpose. If, after a good look at the job, you decide you do need to recruit, the next stage is to define what you are looking for by formulating a job description and a person specification.

## 1.3 Getting the process right

You need to be really rigorous about your recruitment practices. There are a lot of bounty hunters who make it their business to trip up careless recruiters. By this I mean, for example, that it is easy to submit two apparently identical CVs, with one material difference, such as a disability. If you call in the person without the disability for interview but not the person with a disability, it looks as though you are operating a barrier against people with a disability.

## 1.4 Job descriptions and person specifications

The job description defines the duties in the role the employee will be expected to undertake. The person specification defines the attributes and skills of the person needed to perform those duties. Between them, these two documents can help you objectively analyse the criteria for the job. You can use the job description and person specification to help you write your advertisement, the shortlist and even your interview questions.

## 1.5 Advertising

If you decide that you need to fill a vacancy, you will have to carry out a broad trawl of available candidates. There is no legal requirement to advertise and sometimes there will be an internal candidate who has already been identified as a suitable person for the job. However, you should show that it is your normal practice to give a range of suitable applicants the opportunity to register their interest with you.

## 1.6 Genuine occupational requirements

In very limited circumstances an employer can ask for a person of a particular type, but only if it is a necessity for the job holder to be of that particular type. These are known as genuine occupational requirements but such exceptions are narrowly applied.

## 1.7 Positive action

In some organisations, certain groups are under-represented. One well known example is the police, which has a predominantly white, male profile. In order to increase applications from an under-represented group, it is open to an employer to take what is called 'positive action'. This means that it will advertise in publications or environments that tend to be read or used by the group whose membership they are seeking to increase.

## 1.8 Collecting data

Decide how you want candidates to supply their information. There is an increasing range of choices, including CV format on paper or on-line applications with additional supporting documentation. You may decide that you want to use tests as part of the selection process and you need to consider what will be appropriate.

## 1.9 Criminal records and vetting

If employers work with or provide services to vulnerable persons, checks have to be made to ensure that the candidate who is eventually appointed will work in a safe and satisfactory way. There are a number of different processes for carrying out checks.

## 1.10 Health screening

The Equality Act 2010 has substantially reduced the circumstances in which pre-employment health screening can be used. The law now says that an employer must not ask about the health of a candidate before offering work to the candidate; or where the employer is not in a position to offer work, before including the candidate in a pool of applicants from whom the employer intends (when in a position to do so) to select a person to whom to offer work.

## 1.11 Equal opportunity monitoring

Many organisations collect equal opportunity information during the recruitment process.

There is no legal requirement to issue equal opportunity questionnaires, but without monitoring, an organisation won't know whether it is truly operating in a lawful and non-discriminatory way.

## 1.12 Data Protection Act 1998

Make sure that you only collect data that is relevant. You may require different data at different times. For example, it will be appropriate to ask about skills, qualifications and experience prior to interview because you need the information to assess whether a candidate can do the job. In most cases you can't gather any data about a candidate's family circumstances, for example, in relation to pension benefits, until after a job offer has been made.

## 1.13 Eligibility to work in the UK

As an employer, you have to ensure that the candidate is eligible to work in the UK. Using List A or B, you have to check original documents to determine eligibility. Documents provided from List A establish that the person has a continuing entitlement to work in the UK; documents from List B indicate that the applicant or employee has restrictions on their entitlement to be in the UK.

## 1.14 The interview

In order to ensure that you acquire all the relevant information to determine a candidate's ability to do a job, structure the interview so that you have a logical, fair and through process.

## 1.15 Interview questions

Before the interview, prepare a checklist of questions to ask each candidate. Keep questions relevant, in other words make them relevant to the job. It's a good idea to prepare competency-based questions that explore each applicant's background and experience

## 1.16 Testing

Many employers use tests to assess skills and aptitudes. This can be very useful for gaining additional information about candidates. However, use appropriate tests and ensure that they are relevant to the job. Where you use psychometric tests, they must be administered and interpreted by a qualified person.

## 1.17 Assessment centres

An assessment centre is a process in which candidates undertake a range of different activities, all designed to allow them to demonstrate their skills while being observed. This enables the recruiting company to amass information in much more depth than an interview alone could provide.

## 1.18 References

If you are recruiting, always take up references. They're a useful way of checking information given in a candidate's CV or application form and can give you advance warning of potential problems.

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# 2 Do you really need to recruit?

## 2.1 Introduction

When someone resigns, retires or leaves a post for some other reason, it's a good opportunity to assess whether the vacancy still serves a purpose and ask yourself if you need to recruit a replacement or whether the work can be dealt with differently.

## 2.2 Reasons to recruit

Here are the most frequent reasons for recruitment.

- More help and or expertise are needed in sales.
- More administrative support is needed to enable managers to spend more time on developing the business;
- The workload has increased and people are being overstretched, so there is need to reorganise and bring in another person;
- A new market is being targeted and someone with specific expertise and experience in that market is needed.

## 2.3 Alternatives to recruitment

Don't assume that recruitment is the only option. Before taking any steps, review how you organise your business and yourself and ask the following questions:

- Can systems be improved so that more effective use is made of staff time?
- Can the team work more effectively within the existing system by identifying and concentrating on priorities?
- Could outsourcing be a more cost-effective solution to taking on the fixed cost of a new member of staff?
- Was the previous person fully occupied?
- Is this an ideal chance to reorganise job roles?
- Is it the right time to promote somebody into the vacant position?
- Will anyone be needed in this post in the future; does it fit in with future plans?
- Could the job be split and allocated to present employees without overloading them?
- Was the job the previous person doing really necessary?
- Is it right to keep the tasks the previous employee was doing as one person's job?
- Were you getting value for money out of someone doing that job?

## 2.4 Going ahead with recruitment

If, after a good look at the job, you decide you do need to recruit, even if the job has been redefined and the content has changed, the next stage is to define clearly what you are looking for by formulating a job description and a person specification. These are discussed in Chapter 4.

# 3 Getting the process right

## 3.1 Introduction

You need to be really rigorous about your recruitment practices. Poor planning and attention to detail can result in the selection of someone who cannot do the job or is a poor cultural fit.

## 3.2 Planning a successful recruitment process

Start by confirming the need for the role and drawing up a person and job specification.

Gather information about the nature of the job. The following areas form the basis of a job description and person specification.

- Job content.
- The job's purpose.
- The tasks and outputs required of the job holder.
- How the role fits into the organisation's structure.
- The skills and attributes needed to perform the role effectively.

Chapter 4 deals with job descriptions and person specifications in more detail.

## 3.3 Identify the most appropriate search procedure

The most usual method of searching for candidates is by advertising, for example, by placing an advertisement on an online job board or in the trade or local press. Other methods of searching are by networking or holding open days.

It's also useful to consider internal methods of search for example, staff referrals or secondments.

## 3.4 Plan the recruitment process, interviewers and timescales

Decide on the process you want to follow. You may wish to carry out pre-interview testing or telephone screening interviews before inviting candidates in for a face to face meeting.

Make sure that the interviewers are fully briefed and trained.

It's good practice to have a closing date on your job advertisement and to give an indication of timescales for the recruitment process in the information pack you provide to candidates. This will enable candidates to plan their diaries.

## 3.5 Request information on experience, skills and qualifications

Make sure that your data gathering process gathers all the relevant information and that you have processes where it is considered and checked, either by careful questioning or by some form of testing.

Once you have done all this, you will be able to make an informed decision based upon the facts you have gathered.

# 4 Job descriptions and person specifications

## 4.1 Introduction

The job description defines the duties in the role the employee will be expected to undertake. The person specification defines the attributes and skills of the person needed to perform those duties. Between them, these two documents can help you objectively analyse the criteria for the job. You can use the job description and person specification to help you write your advertisement, the shortlist and even your interview questions.

## 4.2 What should be included in a job description?

A job description describes the tasks and responsibilities that make up the job. It doesn't have to be lengthy or complex (although this will depend on the nature of the job).

It would normally include the following:

- job title;
- department;
- summary and purpose of main job role;
- main tasks.

Always make sure that the job description includes a catch-all phrase stating that the job holder is required to carry out any other reasonable request by management. While there is an implied duty upon every employee to carry out reasonable management requests, it makes life much easier if you spell it out.

The job description also provides a basis for drawing up a specification of the type of person best suited to carry out the work. This is known as a person specification.

### 4.3 What should be included in a person specification?

A person specification defines the qualifications, skills, knowledge, experience and qualities of the ideal jobholder. It describes the person needed to fulfil the duties in the job description and the drawing-up of a person specification is recommended in the discrimination codes of practice.

The sorts of things to consider are listed below. Obviously, they will not all apply in every case.

- physical attributes;
- education;
- general intelligence;
- special aptitudes;
- interests;
- personality;
- circumstances.

Decide what sort of person, in terms of personality, would be ideal for the job role. If, for example, the job is working on a production line, you would want someone who prefers a reasonable level of repetition and is comfortable with routine. Someone with the opposite preferences – the type of person who enjoys lots of change and variety and likes to do things in new ways – would be unlikely to stay long in the job.

### 4.4 Essential v desirable criteria

Once you have decided what qualities the ideal candidate will bring to the job, consider what is essential and what is merely desirable. Many people make the mistake of including in the essential category attributes that are merely desirable. It is only essential if, without the ability to meet that criterion, the candidate simply would not be able to do the job.

You have to be able to justify your selection criteria in objective business terms. Setting unnecessary standards for qualifications, experience or personal qualities may be indirectly discriminatory. If you can't objectively justify criteria, you may face a claim for unlawful discrimination.

## Example

A construction company advertised for staff. The job entailed little more than digging holes in the ground. The person specification stated that the jobholder had to be able to read and write fluent English.

An applicant challenged this criterion successfully, arguing that it was indirectly discriminatory on grounds of race and couldn't be objectively justified: the jobholder did not need to be able to read and write fluent English.

Discrimination has almost become a dirty word in recent years, but it's important to keep a sense of perspective. All we mean by 'discrimination' is that we make choices; we are discerning. Do you discriminate when you recruit your staff? Yes! We all do. For example, if I want someone for a driving job, the successful applicant will have to show that he is qualified, legally and medically, to drive. These are reasonable and justifiable selection criteria. Not all discrimination is unlawful or even bad practice.

It is when the selection or exclusion of candidates is based on unlawful and unjustified criteria that we run into trouble. A person's right not to suffer unlawful discrimination extends from the advertising of a job and the ensuing recruitment process, all the way through employment (training, promotion, contractual terms) and even in the way in which employment ends (for example, selection for redundancy). Protection also extends beyond the termination of the employment contract. That said, most problems can easily be avoided with a mixture of common sense, tolerance, establishing good procedures and sticking to them.

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# 5 Advertising

## 5.1 Introduction

If you decide that you need to fill a vacancy, you will have to carry out a broad trawl of available candidates. There is no legal requirement to advertise and sometimes there will be an internal candidate who has already been identified as a suitable person for the job. However, you should show that it is your normal practice to give a range of suitable applicants the opportunity to register their interest with you. Most companies will do this by placing an advert.

## 5.2 Trawling the market

While some posts can be advertised free of charge at local Job Centres, this won't be appropriate in many cases. Traditional forms of advertising can be expensive (about £25,000 in a Sunday paper, £3,000 in a trade magazine or £400 in a local paper), so you should give thought as to where your advert will yield most responses from suitable candidates. Internet job boards are a popular alternative route and can be much more cost-effective.

It's also a good idea to measure the volume and quality of responses, so that you can make an informed decision about the methods that produce the biggest number and best quality of responses the next time you consider advertising.

If you advertise in a paper or magazine aimed at a particular group, ensure that you also advertise the vacancy in other places so that the wider community has the opportunity to find out about and respond to the advert. Advertising by one very limited method could mean that you indirectly discriminate.

### Example

A company based in Coventry had a mainly white staff, although Coventry is a multi-racial city. When vacancies arose in the company they used the bounty method to recruit, that is, by asking existing staff if they knew anyone who would be interested in the position. A predominantly white work force tends to have predominantly white friends and family, so this meant that it was very difficult for non-white prospective candidates to find out about and apply for jobs. This was found to be indirectly discriminatory on race grounds. If the company had used the bounty method and advertised in the local papers and/or the local job centre, it would have been quite acceptable.

## 5.3 What to include in a job advertisement

The more precise you are in your advertisement, the more likely you are to attract the right people. Typically an advertisement will include the following:

- job title;
- some information about the job;
- where it is based and whether there will be any travel;
- salary range;
- essential requirements of job-holder;
- how to apply;
- recruitment process to be used.

## 5.4 Attracting the right candidates

Think carefully about how job seekers will respond to what is in the advert. You want to ensure that the type of people you are looking for will be drawn to the advert, so describe the job in terms that will be attractive to the desired personality type.

If it is a production line job, for example, use words such as 'stable long-term employment offered'. You would not use terms such as 'as the successful candidate you must be able to think on your feet' or 'fast-changing environment', as this would attract people who like to do things differently, which is not good practice on a production line. Even the way people are asked to respond to the advert can be used to pre-select. If you are looking for a salesperson, you can carry out preliminary phone interviews. If this is outside someone's comfort zone, he is unlikely to be the kind of person who would succeed at sales.

## 5.5 Don't create opportunities for 'bounty hunters'

Avoid words such as 'youthful outlook', 'junior', 'mature', or 'senior', to indicate that you are looking for people in a particular age group. Saying something like 'this is a junior position in the division' or 'this is a senior position in the company' or using titles, such as 'Junior Sales Clerk' or 'Senior Officer', is probably acceptable because you are simply indicating the position's level in the hierarchy.

You should also avoid some types of descriptive words because it seems that these too may be associated with particular groups. For example, it has been successfully argued before employment tribunals that words like 'enthusiastic', 'energetic' and 'dynamic' are descriptions (allegedly) associated with younger applicants, while 'responsible', 'stable' and 'reliable' (again allegedly) may describe older workers. While commercial reality tells us it is quite nonsensical to consider age groups in that way, you must take into consideration that a description which has not been properly thought through may create a prima facie case of discrimination. If you cannot explain the requirement for an 'energetic' candidate to the satisfaction of an employment tribunal, it can lead to a successful claim being made against you. Remember that you can be taken to tribunal by someone you have never even met. Some people will seek to take advantage of any slips you might make. You need to think through and be able to justify all your requirements every step of the way.

### Example

Ms Keane is an experienced accountant in her early 50s. In 2007 she made around 21 online applications for jobs for which she was over-qualified. All the adverts were clearly aimed at recently qualified accountants, involving responsibilities for someone of comparatively limited experience. As soon as she knew that she was not being offered an interview, Ms Keane issued a statutory age questionnaire and then submitted age discrimination claims.

In each case, she had sent in identical CVs and covering letters (which included the same typing and spelling errors), did not follow up any of the applications by telephone, and on the one occasion where she was offered the chance to explore other opportunities, she turned it down. The tribunal concluded that she was not really interested in any of the jobs applied for. It was not satisfied that she had adequately explained why she had applied for jobs for which she was significantly over qualified.

Ms Keane appealed to the EAT on the basis that the age regulations do not state that a job applicant must be genuinely interested in accepting the job applied for. According to the EAT, this was self-evident and it dismissed the appeal.

Keane v Investigo [2010]

While Ms Keane was unsuccessful, this case serves to remind employers that there are some unscrupulous individuals around. If you receive applications from candidates who appear to be over-qualified for the post, ask additional questions to find out why they are applying for the job.

## 5.6 What about asking for experience?

It was once common to see advertisements specifying a number of years experience. With the advent of age discrimination, that has all but disappeared, as asking for a particular number of years of experience tends to favour older workers. If you do specify a number of years experience in a particular role, make sure that this number of years or amount of experience is reasonable and justifiable in all the circumstances for that particular job.

In most cases, it will be better to ask for a particular type of experience. For example, it might be better to ask that candidates can demonstrate a record of 'successful sales experience in a number of different settings' rather than '10 years' sales experience.'

The number of years someone has done a job is not a reliable indicator of success (there are plenty of people who have done jobs badly for many years). What you're interested in is the demonstration of relevant competence. Ask competency based questions and build some testing into the selection process to assess suitability and cross-check what candidates say at interview.

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**Example**

A lack of detail consciousness can cause very considerable problems for clients, so it's important to ensure that we take all reasonable steps to ensure that work is 100% correct.

Whenever I recruit HR consultants I ask each candidate to review a disciplinary procedure into which six mistakes have been inserted. The document is only five pages long, and has been printed out, which makes it easier to identify mistakes than reading on screen. Candidates are advised that there are six errors, only one of which is a technical HR mistake. The rest are typing and spelling errors, grammatical mistakes, omissions and repetitions. There's no time limit. You'd be surprised how many people say in the interview that they're detail conscious and diligently check their work, but then are not able to find all the mistakes out of a known number. In fact, the norm so far has been one correct identification.

The same approach applies to qualifications. Only make a qualification an essential requirement if you can show that the candidate would not be able to do that job without that particular qualification. In most cases where you ask for a qualification, you should make it clear that you will also consider applications from those without the qualification, but with equivalent experience.

# 6 Genuine occupational requirements

## 6.1 Introduction

The days when a company could advertise for a 'Girl Friday' and van drivers over the age of 25 have long gone. The introduction of anti-discrimination legislation makes it unlawful to select candidates taking into account their protected characteristics. Nevertheless, in very limited circumstances an employer can ask for a person of a particular type, but only if it is a necessity for the job holder to be of that particular type. These are known as genuine occupational requirements (GORs) but such exceptions are narrowly applied.

## 6.2 What are genuine occupational requirements?

The law allows employers to make limited exceptions to the principle of non-discrimination where the job has genuine occupational requirements. These requirements relate to characteristics which although protected are necessary for the job under consideration. For example, it would be directly discriminatory to say that a candidate must be 25 years old or more when advertising for a driving job. However, if the law requires the driver to be 25 before he can hold a particular type of licence, this will be an acceptable GOR.

### Example

It may be a requirement for a form teacher in a Catholic faith school to be a practising Christian in order to support the religious ethos of the school. It is unlikely that the school could require the caretaker at the same school to be a practising Christian because he would be too removed from the activity of the pupils.

These exceptions have been in place for some time and have been updated by the Equality Act 2010, which says that an employer will not act unlawfully where he makes it a requirement that the prospective employee has to have a particular protected characteristic.

## 6.3 When will an employer be able to assert that there is a GOR?

The employer must show that, having regard to the nature or context of the work:

- it is an occupational requirement;
- the application of the requirement is a proportionate means of achieving a legitimate aim, and
- the person to whom he applies the requirement does not meet it (or he has reasonable grounds for not being satisfied that the person meets it).

## 6.4 Examples of GORs

The GOR defence in the Equality Act applies equally to all protected characteristics and the specific exceptions set out in the earlier legislation have been dropped as the new general exception is intended to provide a defence in all instances previously covered in the sex and race discrimination acts. These are the original exceptions set out in the Sex Discrimination Act 1975.

- The nature of the job called for a person of a particular gender for reasons of physiology, other than physical strength or stamina, or for reasons of authenticity in dramatic performances.
- Decency or privacy was at issue because the work involved physical contact, or was done in sanitary facilities or in the presence of persons in a state of undress.
- The work to be done was in a private home with a degree of physical or social contact, or knowledge of intimate details of a person's life, where objection might reasonably be taken to the work being done by a person of the opposite gender.
- The nature or location of the establishment at which the work was to be done required the employee to live on the premises and there were no appropriately segregated sleeping and sanitary facilities.
- The work was to be done at a single sex hospital, prison or other establishment for persons requiring special care, supervision or attention.
- The work was the provision of personal services promoting welfare or education, which could most effectively be provided by a person of a particular sex.
- The work was likely to involve the performance of duties outside the United Kingdom in a country whose laws or customs were such that the duties could only effectively be performed by a man.
- The job was one of two to be held by a married or civilly partnered couple.

Similar exceptions applied under the Race Relations Act, where a person of a particular racial group was required for the purpose of authenticity in a dramatic performance, artistic work, in a public restaurant or for the purpose of providing personal welfare services.

When the Equality Act came into force, the Government considered that the earlier exceptions had been consolidated into the new GOR defence. If you want to rely on one of these make sure that you can justify it and that your reasoning is objective and proportionate.

# 7 Positive action

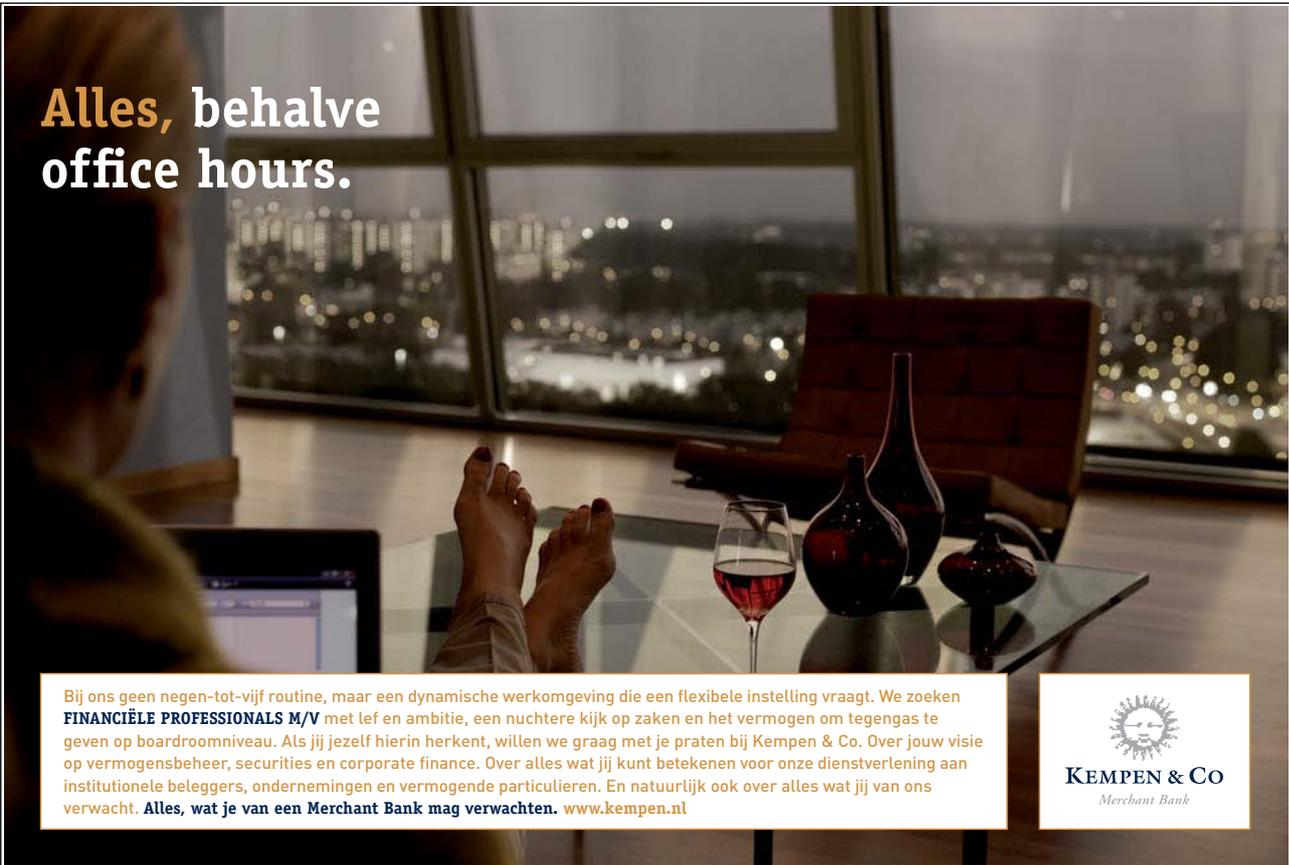
## 7.1 Introduction

In the best of all possible worlds, the make up of an employer's workforce will reflect the population from which it recruits from top to bottom of the organisation. If an employer employs its workforce from the local community, that community will have a mix of groups who have protected characteristics – gender, race, age etc. The anti-discrimination legislation encourages employers to use selection processes to enable all eligible candidates to be represented in the workplace roughly in the proportion in which each group appears in the community, from general operatives on the shop floor, through to management and director levels.

## 7.2 Attracting more applicants from under-represented groups

In some organisations, certain groups are under-represented. One well known example is the police, which has a predominantly white, male profile. In order to increase applications from the under-represented group, it is open to an employer to take what is called 'positive action'. This means that it will advertise in publications or environments that tend to be read or used by the group whose membership they are seeking to increase. This should be used in conjunction with the employer's usual recruitment methods, to ensure that the traditional groups of applicants still have the opportunity to find out about and apply for vacancies.

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**Example**

In the 1990s, London Underground had 2000 male drivers and 21 female drivers. Their traditional sources of staff were via adverts on the London Underground, the job centre and local newspapers. To increase applications from women, the company advertised in *Cosmopolitan* and the first advert brought a response of over 300 applications. They also continued to advertise using their usual routes. The best applicants (male and female) were then brought in for the selection process.

### 7.3 Positive discrimination

If an employer uses positive action, it should still ensure that it selects the best person for the job, not someone because of his gender, or other protected characteristic. Positive action should be distinguished from positive discrimination, which is largely unlawful in the UK. Positive discrimination means recruiting or promoting someone because of his protected characteristic. Unless the employer could demonstrate that there is a GOR, it would be unlawful to insert an advertisement specifically asking for women applicants, as this would directly discriminate against men.

### 7.4 Positive action under the Equality Act 2010

It has been possible to use positive action to create opportunities for under-represented groups in the workforce for some time. Until the Equality Act 2010 came into force, an employer could not make a decision to recruit (or train, promote etc) based upon the employee's protected characteristics. The outgoing Labour Government decided to widen the scope of positive action to the extent permitted by EU law and to introduce a new power enabling employers to take positive action when recruiting or selecting a person for promotion. In effect, where candidates are equally qualified and one comes from an under-represented group, the employer is able to choose him on the basis of his protected characteristic. Note that there is no requirement on the employer to do so. In reality, very, very few candidates are exactly equal. If you continue to refine the requirements and probe for information, one or other candidate will emerge as the best person for the job.

# 8 Collecting data

## 8.1 Introduction

Decide how you want candidates to supply their information. There is an increasing range of choices, including CV format on paper or on-line applications with additional supporting documentation. You may decide that you want to use tests or psychometric testing as part of the selection process and you need to consider what will be appropriate.

## 8.2 Application forms versus CVs

The recruitment process involves a good deal of data collection. Conventionally, this is submitted either via application forms or CVs.

Application forms can be designed to collect the exact data you require, so the form rather than the candidate determines what information is included. It is also much easier to compare information submitted by candidates when it is all in a standard format.

In the ideal world, a candidate will design and submit his CV around each individual job applied for. Needless to say this doesn't often happen. As a result, many CVs give far more information than is wanted, but do not necessarily include the information you need to make a decision about whether to keep the candidate in the selection process. Because the information is not presented in a standard format, you have to read CVs carefully to ensure that you find the relevant information and identify any areas for concern.

## 8.3 To interview or not to interview?

The interview process is one of the least reliable in predicting future success in a job (approximately 33 per cent!), but it continues to be the most widely-used method, because it's relatively cheap and quick.

You can improve your chances of recruiting the right person at interview by using additional methods of testing a candidate's suitability. Tests that relate directly to the type of work to be undertaken can increase your knowledge about a candidate's skills and abilities.

Psychometric testing will enable you to understand their personality better and to match it against your person specification.

You will find more information about testing in chapter 16.

When you invite candidates to come for an interview, make sure that you accommodate any special requirements they may have, where this is reasonably possible. Failure to do so may be a failure to make reasonable adjustments for someone with a disability.

**Example**

Ms Ridout applied for a job with TC. She told the company that she was disabled and suffered from photosensitive epilepsy. She took medication for her disability and was actively involved in a range of hobbies and interests.

She was selected for interview. The room in which the interview was held had fluorescent lighting, Venetian blinds and light coloured walls, all of which might predispose someone with epilepsy to an attack. At the beginning of the interview Ms Ridout indicated that she might be put at a disadvantage by the lighting and she may need to wear sunglasses to mitigate its effect. The interview proceeded without the use of sunglasses and without further mention of her disability.

TC did not offer the position to Ms Ridout. She complained to the employment tribunal that she had suffered unlawful discrimination on grounds of disability. Her claim failed because the employers could not be expected to know that the lighting arrangements at the interview would disadvantage her. She had a very rare form of epilepsy and no reasonable employer could be expected to know, without being specifically told by the job applicant, that the arrangements which were made for the interview might disadvantage her. She would have been able to use her sunglasses if she needed to so do; in the event, she did not. *Ridout v TC Group* [1998]

When selecting a candidate, always keep in mind that you may be asked for feedback. If you can't justify the reasons for having rejected a candidate to yourself, it will be far harder to do so to the unsuccessful candidate. Always bear in mind that if you haven't probed for information on a particular subject, you can't assume one way or another whether the candidate has a particular quality or skill.

As a right given by the Data Protection Act, candidates can ask to see your interview notes, so make sure your notes are accurate and objective.

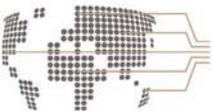
## 8.4 Shortlisting

When you short-list candidates for interview, use the job description and person specification to reach an objective conclusion. You may have to justify your decision. An applicant has three months within which to bring a claim to tribunal, so keep a record of your short-list decisions for at least four months.

### Example of a shortlist table

Selection criteria – evidence available?	Candidate 1	Candidate 2	Candidate 3
Able to read and write	yes	yes	yes
Manual dexterity	no	no evidence available	no
Ability to count	no	no	yes

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# 9 Criminal records and vetting

## 9.1 Introduction

If employers work with or provide services to vulnerable persons, checks have to be made to ensure that the candidate who is eventually appointed will work in a safe and satisfactory way. There are a number of different processes for carrying out checks.

## 9.2 Criminal Records Bureau

The Criminal Records Bureau provides a criminal record checking service to employers and voluntary groups and will carry out checks on individuals. The level of checking is determined by the nature of the duties involved in the job. There is a charge for this service.

## 9.3 Rehabilitation of Offenders Act 1974

The Rehabilitation of Offenders Act 1974 allows anyone who has been convicted of a criminal offence and who is not convicted of a further offence during a specified period to become a 'rehabilitated person' whose conviction will have become 'spent'. This means that the conviction does not have to be declared for most purposes, such as applying for a job. The rehabilitation period depends on the sentence and runs from the date of conviction. A conviction resulting in a prison sentence of more than 30 months and sex offences are never spent.

Sentence	Period
Serious offences – imprisonment for more than 30 months or sex offences	No rehabilitation period
Sentences of imprisonment, youth custody or corrective training for more than six months, but less than 30 months	10 years
A sentence of cashiering, discharge or dismissal with disgrace from Her Majesty's Service	10 years
Sentences of imprisonment, youth custody or corrective training for not more than six months	7 years
A sentence of dismissal from Her Majesty's Service	7 years
Any sentence of detention in respect of a conviction in service disciplinary proceedings	5 years
A fine or any other sentence subject to rehabilitation under the act	5 years
Conditional discharge or probation	5 years (persons over 18) or 2.5 (persons under 18)
Absolute discharge	6 months

Under the Act, a spent conviction, or failure to disclose a spent conviction or any circumstances connected with it, is not a proper ground for dismissing or excluding a person from any office, profession, occupation or employment or for prejudicing a person in any way in any occupation or employment. There are some exceptions to the Act, which tend to relate to work with children, the sick, the disabled and the administration of justice. Where an exception applies an individual must, if asked, disclose all convictions, including spent ones.

The Government intends to reduce the rehabilitation periods in the Act. The Legal Aid, Sentencing and Punishment of Offenders Bill is progressing through Parliament and includes a range of measures to reduce reoffending, improve the sentencing framework and reform the legal aid system. Rehabilitation periods will run from when the individual completes his or her sentence, rather than the date of conviction as at present. For example, a sentence of between six and 30 months, which, for an adult, currently has a rehabilitation period of 10 years from the date of conviction, will have a rehabilitation period of four years from the end of the sentence under the new provisions. An absolute discharge, which has a rehabilitation period of six months under the current provisions, will, in future have no rehabilitation period. However, convictions resulting in a custodial sentence of more than four years will remain unspent under the amendment.

Job applicants will continue to have to declare previous spent and unspent convictions for certain roles, for example those involving work with vulnerable people.

## 9.4 Vetting and Barring Scheme

The Vetting and Barring Scheme was established by the Independent Safeguarding Authority (ISA) as a result of the enquiry which followed the Soham Murders. The Scheme aims to prevent unsuitable individuals from working with children (or vulnerable adults) and to ensure that employers should be able to check that a person is not barred from working with children (or vulnerable adults).

A barred person will be committing an offence if he seeks employment or volunteering opportunity in regulated activity and it will be an offence for any person to commence regulated activity without first being ISA-registered.

An individual who wishes to work with children or vulnerable adults must apply for a check following the procedure required by the Act.

In recruitment terms it will be an offence for an employer to hire a person in regulated activity without first confirming his ISA registration. Employers, personnel suppliers and other statutory, business and public organisations all have a legal duty to refer appropriate information to the ISA.

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# 10 Health screening

## 10.1 Introduction

Pre-employment enquiries about health issues were thought to be one of the main reasons why disabled job applicants often failed to reach the interview stage. The Equality Act 2010 has substantially reduced the circumstances in which pre-employment health screening can be used. The law now says that an employer must not ask about the health of a candidate before offering work to the candidate; or where the employer is not in a position to offer work, before including the candidate in a pool of applicants from whom the employer intends (when in a position to do so) to select a person to whom to offer work.

## 10.2 Health checks after an offer has been made

The effect of the change means that any health screening should generally take place after an offer has been made (on a conditional or unconditional basis). This prohibition also applies to questions asked by an occupational health advisor on behalf of the company.

Once the job offer has been made, any questions should be appropriate and relevant to the job applied for and they should not be excessive in their probing. It would therefore be acceptable, for example, to ask about back and joint problems if a job involved some degree of lifting that could not be mechanised.

## 10.3 Reasonable adjustments

Where it becomes apparent that the candidate has a disability, the employer will have to consider taking such reasonable adjustments as it can to enable the employee to continue in work. A failure to do so may lead to a complaint that the employer has not made reasonable adjustments as required by the legislation.

If after the offer has been made the prospective employee is found to have poor attendance, but does not have an underlying medical condition or a disability, the employer will be able to withdraw the offer.

## 10.4 Exceptions

There are some exceptions to the general ban on pre-employment health screening. Prospective employers can ask health-related questions before short-listing or making a job offer if it is necessary for them to do so for one or more reasons permitted by the Act.

- The employer needs to establish whether the employee is fit to undergo an assessment, or whether the employer has a duty to make reasonable adjustments in connection with an assessment.
- The employer needs to establish whether the job applicant will be able to carry out a function that is intrinsic to the job concerned.
- The employer wishes to undertake diversity monitoring.
- The employer is considering taking positive action in relation to disabled persons; and it is a genuine requirement of the job that the employee has a particular disability.

A question that does not fall within one or more of these exceptions will be prohibited.

Information collected about health, both physical and mental, is covered by the Data Protection Act 1998 and express written permission must be given by the data subject to allow you to collect and process it.

# 11 Equal opportunity monitoring

## 11.1 Introduction

Many organisations collect equal opportunity information during the recruitment process. There is no legal requirement to issue equal opportunity questionnaires. Without monitoring, an organisation won't know whether it is truly operating in a lawful and non-discriminatory way, but candidates do not have to provide the information if they don't wish to do so.

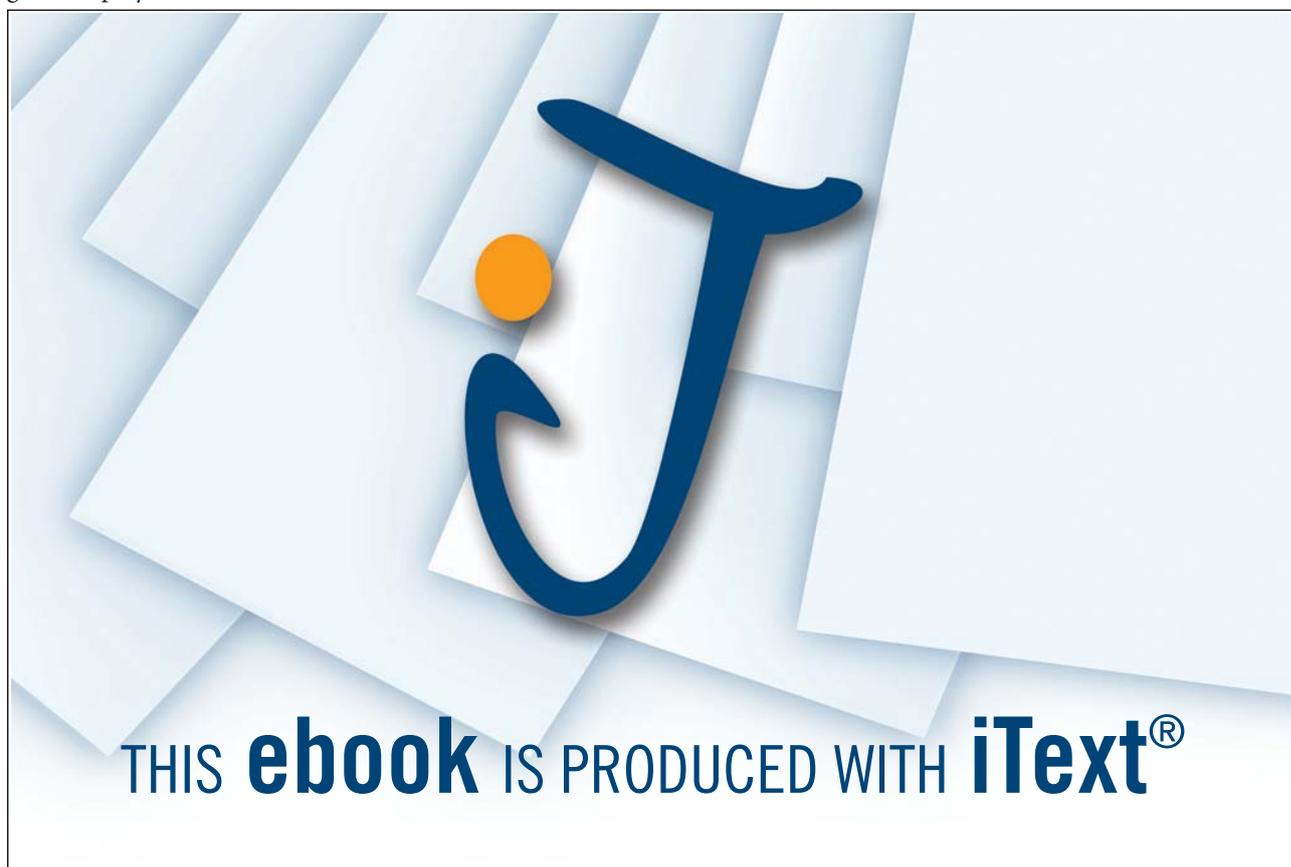
## 11.2 Why monitor?

Monitoring can tell you how effectively you are trawling the market for candidates and whether you are offering equality of opportunity and treatment across the board. It can also tell you how and why you are falling short of this ideal. You can then concentrate on finding solutions and making changes, rather than using guesswork or assumptions. For example, an organisation that encourages job applications from under-represented groups may be wasting its time and money (and possibly doing more harm than good) if the real reason for a group's under-representation is that people from that group are already applying but being rejected for whatever reason.

Monitoring can spot barriers that are preventing you from making use of available talent. It also helps you to avoid what could be costly complaints of discrimination, by making sure that you pick up and tackle problems at an early stage.

Finally, monitoring can help to improve your reputation both as a good and fair provider of goods or services and as a good employer.

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# 12 Data Protection Act 1998

## 12.1 Introduction

The recruitment and selection process necessarily involves an employer in collecting and using information about workers. Much of this information is personal in nature and can affect a worker's privacy. The Act does not prevent an employer from carrying out an effective recruitment exercise but helps to strike a balance between the employer's needs and the applicant's right to respect for his private life.

## 12.2 Relevant data

Make sure that you only collect data that is relevant. You may require different data at different times. For example, it will be appropriate to ask about skills, qualifications and experience prior to interview because you need the information to assess whether a candidate can do the job. In most cases you can't gather any data about a candidate's health until after a job offer has been made.

Don't ask for information that is not relevant. For example, in most cases there will be no need to find out about dependents at the initial stage. This may become relevant later on if you offer benefits, such as medical insurance, that also apply to dependents.

## 12.3 Express permission

Since the Act became law, stricter rules have applied to the processing of sensitive personal data, much of which may be collected at the recruitment stage. This includes information relating to the data subject's racial or ethnic origin, political opinions, religious beliefs, sex life, health, trade union membership and criminal convictions. If the data is sensitive and personal, the employee responsible for data control ('data controller') must either obtain the explicit consent of the data subject or show that processing is necessary under other criteria. To meet this requirement, you must obtain specific written consent or an opt-in agreement; this has implications for recruitment. Consider including a clause in your application forms seeking consent to gather and process sensitive personal data.

## 12.4 Security of data

Make sure that data is kept secure and confidential at all times: for example, application forms and CVs should be kept locked away.

## 12.5 The Employment Practices Code

Data protection in the area of employment is covered by The Employment Practices Code which is available from the Information Commissioner's Office.

Part 1 of the code covers seven main recruitment activities: advertising, applications, verification, shortlisting, interviews, pre-employment vetting and retention of recruitment records.

The key points are as follows:

### 12.5.1 Advertising

Candidates for jobs should know to whom they are sending their applications and – if this is not obvious – how the information that they provide will be used.

### 12.5.2 Applications

Any application form should only ask for the information needed for a particular job. This may render it impossible to use one single form for all vacancies.

### 12.5.3 Checking the information provided

This should not go beyond the checking of information that is sought in the application or supplied later in the recruitment process. This includes taking up references.

Employers can check qualifications and other information given during the recruitment process, but applicants should be told that this will happen and they should be asked to agree to this in writing. If the checks carried out do not agree with the information provided by any candidate, that person should be given an opportunity to respond before any final decision is taken about employment.

### 12.5.4 Shortlisting

If candidates for the short list are to be determined by a process which evaluates performance, such as a psychometric test, they must be told this. If a candidate requests the information, he must also be told the logic behind the process. Tests should only be administered by people qualified to do so.

### 12.5.5 Interviews

Where interview notes are made and kept on file, they are likely to fall within the definition of processed data, which means that the applicants are likely to be entitled to have access to them.

### 12.5.6 Pre-employment vetting

This is defined in the code as actively making enquiries of third parties about the applicant's background and circumstances. These should only take place where the nature of the job makes them essential – where a jobholder might have to work with children, for example – and applicants should be told that such vetting will take place.

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# 13 Eligibility to work in the UK

## 13.1 Introduction

In February 2008, the Immigration, Asylum and Nationality Act 2006 came into force. In it, the Government introduced changes which all UK employers need to know and follow to avoid liability for payment of a civil penalty for employing illegal migrants. The law relating to enforcement of immigration checks is now significantly more stringent. The UK Border Agency (UKBA) confirm that breach of the law is likely to close down employers who knowingly employ illegal workers; the fact is that it could also close down careless employers, so make sure that you check your records and can establish the statutory excuse.

## 13.2 Checking eligibility to work in the UK

As an employer, you may be presented with a document, or documents, from one of two lists. Documents provided from List A establish that the person has an ongoing entitlement to work in the UK; documents from List B indicate that the applicant or employee has restrictions on their entitlement to be in the UK.

If an employee is supported by a document from List B, you will need to ensure that he takes steps to renew his permission before it expires. If the employee fails to do so and allows the visa to expire, he will have to leave the country and make an application to return from abroad. If you continue to employ someone in these circumstances, you will be in breach of the law. Make sure you check **all** the facts before making a decision to dismiss and note that advice from the UK Borders Agency will not always be a defence.

**Example**

Mrs Okuoimose is a Nigerian woman married to a Spanish national. She gained the right to take up employment in the UK because she was a family member of a European citizen who had the right of residence in a Member State. Her passport stamp said that her right of residence expired on 8th July 2010.

She worked as a cleaner for City Facilities up to 8th July 2010. On this date the employer suspended her without pay because it alleged that the contract of employment was now illegal and requested that she provide evidence of her eligibility to work in the UK. Mrs Okuoimose initiated an application to renew the permit on her passport. She was dismissed on 20th August 2010 on the grounds of illegality.

Later the same day she produced a letter dated 16th August from the Border Agency which said that until her application had been decided she would be treated for immigration purposes as being free to work and live in the UK. The company contacted the UK Border Agency itself. The response was they had "checked their records... and cannot confirm that this individual is currently entitled to work in the UK on the basis of an outstanding application."

City Facilities reinstated her but she went off on sick leave and claimed reimbursement of wages during the suspension period. The Employment Tribunal considered the fact that Mrs Okuoimose had not produced evidence which showed her entitlement to work in the UK and also the penalties that could have been imposed on the Respondent if they had employed an illegal immigrant and came to the conclusion that the contract of employment was illegal. Mrs Okuoimose appealed.

The EAT accepted her argument which was that she had not in fact lost the entitlement to work in the UK simply by reason of her failure to obtain a new stamp in her passport. She had a right to work by reason of her status as a family member of an EU national which did not depend upon letters written by the UK Border Agency.

Okuoimose v City Facilities [2011]

Although the employer in this case may have thought it reasonable to take action as it did, especially in the light of conflicting advice from the UKBA, as it turned out, their decision to act that way was not actually based on fact.

An employer who employs someone subject to immigration control who is aged over 16 and is not entitled to undertake the work in question will be liable to pay a civil penalty of up to £10,000 per illegal worker. The legislation provides that notice of liability to pay a civil penalty of a specific amount can be served by UKBA officials on behalf of the Secretary of State. The penalty will be calculated on a sliding scale, but the final amount that the employer is required to pay will be determined on an individual basis, according to the circumstances of the case. You can appeal against the fine if you wish, but you still have to pay it – and will be prosecuted if you don't.

If you know that you are employing a person who is not permitted to work, then you will not be entitled to the excuse. In addition, you could be prosecuted for the offence of knowingly employing an illegal worker. Conviction under this offence will carry the potential of an unlimited fine and/or prison sentence of up to two years.

### 13.3 Establishing the statutory excuse

Employers can establish the excuse for prospective employees by checking and copying one, or a specified combination, of original documents. In all cases, the excuse must be established before the employment begins. The repeat checks can only enable you to rely on the original excuse, as the excuse cannot be established after employment has started.

Where you can demonstrate that you have complied with these requirements, you will have established the excuse and may not have to pay the civil penalty, even if it becomes apparent that the employee was working illegally.

### 13.4 What documents do I check?

If the individual is not subject to immigration control, or has no restrictions on his stay in the UK, he should be able to produce a document, or a specified combination of documents, from List A. The checks must be made before he is employed and the excuse will then be established for the duration of his employment.

Where the leave to enter or remain in the UK granted to an individual is time-limited, the document or documents provided will be specified in List B. If an individual provides a document or documents from List B, you should carry out specified document checks before his employment begins. Repeat checks are required to retain the excuse. If you don't carry out the follow-up checks, then you may be subject to a civil penalty if the employee is found to be working illegally.

### 13.5 Establishing an excuse

In order to establish an excuse for every new prospective employee whom you intend to employ, you will need to demonstrate that you have carried out a proper check.

Your prospective employee must provide one of the original documents from List A or List B. Check the validity of the document and satisfy yourself that the prospective employee is the person named in the documents he presents to you. These documents should also allow him to do the work in question. Carry out the following specified steps when checking the documents presented by your prospective employee.

#### **Check:**

- that any photographs, where available, contained in the documentation are consistent with the appearance of the employee;
- the date of birth listed, where available, to ensure that this is consistent across documents and that you are satisfied that these correspond with the appearance of the individual presenting the document(s);
- that the expiry dates of any limited leave to enter or remain in the UK have not passed; check any UK Government endorsements (stamps, visas, and so on) to see if the individual is able to do the type of work you are offering.

You must also satisfy yourself that the documents are genuine and have not been tampered with and belong to the holder.

If the individual gives you documents which contain different names, ask him for a further document to explain the reason for this (the further document could be a marriage certificate, a divorce decree, a deed poll document or statutory declaration).

Make a copy of the relevant page or pages of the document, in a format which cannot be subsequently altered, such as a photocopy or scan. Where an electronic copy is made of a document, it must be made using Write Once Read Many format: for example, on a non-rewritable disk.

In the case of a passport or other travel document, the following parts must be photocopied or scanned:

- passports and travel documents – take a copy of the document's front cover and any page containing the holder's personal details; in particular, copy any page that provides details of nationality, his photograph, date of birth, signature, date of expiry or biometric details;
- any page containing UK Government endorsements, noting the date of expiry and any relevant UK immigration endorsement which allows prospective employee to do the type of work you are offering.

Copy other documents in their entirety. You should then keep a record of every document you have copied. The copies of the documents should be kept securely for the duration of the individual's employment and for a further two years after his employment has ceased. If you do this, the UKBA will be able to examine your right to the excuse if they detect anyone working illegally for you.

If you employ an employee with a List B document or documents and have not made the follow-up checks required in order to retain the excuse, then you may be liable for payment of a civil penalty if that person is found to be working illegally in the UK.

If you are presented with a false travel document or visa, you will only be liable to pay a civil penalty if the falsity is reasonably apparent. The test for what would be considered to be 'reasonably apparent' is if an individual who is untrained in the identification of false documents, examining it carefully, but briefly and without the use of technological aids, could reasonably be expected to realise that the document in question is not genuine. Equally, where a prospective employee presents a document and it is reasonably apparent that the person presenting the document is not the person referred to in that document, then you may also be subject to legal action, even if the document itself is genuine.

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If the falsity is not reasonably apparent, or a valid document is presented by the named person, then you will not normally be liable to the payment of a civil penalty.

Employers who acquire staff as a result of a Transfer of Undertakings (Protection of Employment) transfer (TUPE) are provided with a grace period of 28 days to undertake the appropriate document checks following the date of transfer.

If you have carried out these checks and have established that your prospective employee is not permitted to work, you are entitled to refuse employment to that person. It is up to your prospective employee to show you that he is permitted to do the work you are offering.

### 13.6 Knowingly employing an illegal migrant

You will commit a criminal offence if you knowingly employ an illegal migrant. On summary conviction, the maximum penalty will be a fine of no more than the statutory maximum for each person employed illegally and/or imprisonment for up to six months.

Following conviction on indictment, there is no upper limit to the level of fine that can be imposed and you may also be subject to imprisonment for up to two years. The UKBA will prosecute and/or remove from the UK any person found to be working illegally in the UK.

### 13.7 Employing EEA nationals

Nationals from European Economic Area (EEA) countries and Switzerland can enter the UK without any restrictions.

Note that not all EEA nationals can work in the UK without restrictions, so you should not employ any individual on the basis of his claim to be a national from an EEA country without further checks. Ask nationals from all EEA countries and Switzerland to produce a document showing their nationality. This will usually be either a national passport or national identity card. Some nationals from EEA countries and Switzerland may also be able to produce a residence permit issued by the UKBA which confirms their right to reside and work here.

All of these documents are included in List A and may provide you with the excuse against a civil penalty, if checked and copied.

EEA nationals from the following countries can work in the UK without restriction:

Austria*	Greece*	Netherlands*
Belgium*	Iceland	Norway
Cyprus*	Ireland*	Portugal*
Denmark*	Italy*	Spain*
Finland*	Liechtenstein	Sweden*
France*	Luxembourg*	UK*
Germany*	Malta*	

\* Those countries marked with a star are also members of the European Union.

Nationals from these EEA countries can enter and work freely in the UK without restriction. Their immediate family members are also able to work freely in the UK while their adult EEA family member is legally residing and working here.

Remember you should still check their documents to demonstrate this entitlement. Since 1 June 2002, nationals from Switzerland and their family members have also had the same free movement and employment rights as EEA nationals.

### 13.8 The Workers Registration Scheme

In 2004, the Government established a Worker Registration Scheme (WRS) to monitor the participation of workers from eight of these countries in the UK labour market, as follows:

Czech Republic	Latvia	Slovakia
Estonia	Lithuania	Slovenia
Hungary	Poland	

Workers from these countries are often referred to as 'Accession State workers' or 'A8 countries'. On 1 January 2007, Bulgaria and Romania joined the European Union, and also became part of the EEA. They're known as A2 workers.

A2 workers are free to come to the UK, but may be subject to worker authorisation. This means that they are only able to work in the UK if they hold a valid accession worker authorisation document or if they are exempt from authorisation.

From 30th April 2011 the registration requirements were changed and workers from any of the A8 countries are now free to work anywhere in the UK without any restrictions.

The restrictions currently applying to A2 workers, which require them to have work authorisations to work in the UK, remain in place and may be extended until 2013.

### 13.9 Non-EU workers

There is a five tier points based system for migrants who are not from the European Union and who wish to come to the UK to work, study and train.

Under the points-based system, migrants must pass a points assessment before they can get permission to enter or remain in the UK.

Each of the system's five tiers has different points requirements. The number of points the migrant needs and the way the points are awarded will depend on the tier. Points are awarded to reflect the migrant's ability, experience and age and, when appropriate, the level of need in the migrant's chosen industry.

Migrants in any tier except Tier 1 must be **sponsored** before they can apply to work in the UK. If a UK organisation wants to sponsor a migrant under Tier 2, Tier 4 or Tier 5 (temporary workers), they must apply to the UKBA for a sponsor licence.

The points-based system consists of five tiers.

- Tier 1 - for highly skilled workers, such as scientists and entrepreneurs.
- Tier 2 - for skilled workers with a job offer, such as teachers and nurses.
- Tier 3 - for low-skilled workers filling specific temporary labour shortages, such as construction workers for a particular project.
- Tier 4 – students.
- Tier 5 - for temporary workers, such as musicians coming to play in a concert, and participants in the youth mobility scheme.

Tiers 1, 2, 4 and 5 are now open. Tier 3 is currently suspended.

### 13.10 Points based assessment

For each tier, applicants need to score enough points to gain entry clearance or leave to remain in the United Kingdom. The awarding of points is based on objective and transparent criteria. The UKBA will also look at whether the applicant is likely to comply with his immigration requirements in the United Kingdom.

Each tier will require the migrant to score a sufficient number of points to gain entry clearance or leave to remain (permanent residence) in the United Kingdom. Points will be awarded for various criteria specific to each tier. In all tiers, points will be awarded for criteria which indicate that the individual is likely to comply with immigration requirements.

Prospective applicants can assess themselves against these criteria using the UKBA's points-based calculator, which is an online self-assessment tool, to see whether they have enough points to qualify before paying an application fee.

The Government has recently introduced caps on the numbers of non-EU migrant workers being allowed to enter the UK. Caps will be subject to periodic review and employers should check with the UKBA to clarify current levels and to ensure compliance.

There have been a considerable number of changes to the points-based scheme and employers who are considering employing migrant workers from outside the EU would be well advised to check with the UKBA for the current position. For more information, visit the employers page on the UKBA website <http://www.ukba.homeoffice.gov.uk/employers/>

### 13.11 Sponsorship duties

For all tiers except tier 1, employers and educational institutions must apply for a licence to sponsor and bring migrants in to the United Kingdom and must meet a number of sponsorship duties.

Licensed sponsors are responsible for ensuring that migrants comply with their immigration conditions, by keeping records on them and reporting any changes (such as a failure to turn up for work or for study) to the UKBA. Sponsors who do not comply with these duties, can have their licence downgraded or withdrawn.

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# 14 The interview

## 14.1 Introduction

The interview is an opportunity to gather more data, probe and check data already gathered and to answer a candidate's questions. Interviews are a fairly economical way of recruitment, so they remain popular, but research suggests that at best interviews alone have a success predictor of around 50%; at worst it can be as low as 25%. If you are going to interview, prepare properly and make sure you obtain as much data as you need to make a good decision.

## 14.2 Preparing for the interview

Make sure you prepare for the interviews thoroughly. Here is a checklist to help you plan properly.

- Letters to applicants must be correctly addressed and contain accurate information.
- Applicants should be asked to ring to confirm their attendance at interviews.
- Make any reasonable adjustments if requested to do so.
- Communication must be kept confidential (if you need to ring the applicant at work, give your name, but not your company name).
- Front-of-house staff should have a list of interviewees' names.
- Refreshments and company reading materials should be provided while interviewees are waiting.
- Book a suitable meeting room, where you won't be interrupted.

- Book time in your diary.
- You should have read the candidates' details and prepared individual questions.
- You should have prepared some general questions (see chapter 15).
- Other managers should have been briefed, where appropriate.

### 14.3 Interview structure

An interview needs to be structured, as this helps both you and your interviewee. The opening and closing phases will be brief, but they are important.

As a rough guide, you should aim to talk for no more than 40 per cent of the time throughout the interview. Make full notes of your questions and the answers. Make sure your notes are objective and accurate. Under the Data Protection Act, candidates can ask you to produce a copy of the interview notes.

Avoid making promises that can't be kept during the interview; they may be legally binding.

### 14.4 Stages of the interview

#### 14.4.1 Stage 1 – setting the scene

At the start of the interview introduce yourself and then outline the format. Tell the applicant what to expect and how long the interview will last.

Tell him that you will be taking notes so that you can keep an accurate record of what he has said in the interview.

Build rapport. A good way to do this is to look at the candidate details you have in front of you and pick out the things that naturally interest you so that you can talk about them.

#### 14.4.2 Stage 2 – collection of data

Gather information systematically. Question the applicant in a methodical way and thoroughly probe the competencies and personality traits you have decided to explore. Do not finish questioning until you have got the information you want.

Make good notes. You need to record what the applicant says as accurately as possible. Take your time and write down each answer after he has finished speaking. Don't try to do everything at once.

Control the interview. Remember you are in charge. If the applicant is not going into enough detail, ask him to expand on what is being said. If he is talking too much, ask him just to give you the important points.

#### 14.4.3 Stage 3 – close and part

Do a final question check. Look through your notes and do not finish the interview until you have asked all the questions you planned.

Tell the applicant what the next stage of the process is and when he will be hearing from you.

Allow the applicant to ask any final questions of you.

Thank the applicant and say goodbye.

## 14.5 Common mistakes

One reason why so many interviews yield relatively poor results is that it is all too easy for the interviewer to fall into one of several traps.

### 14.5.1 Our own idiosyncrasies

We all have preferences in terms of appearance and behaviour. It's easy to be disproportionately affected by these. But note that these minor things don't mean that the candidate can't do the job.

The types of thing that interviewers may recoil from include wearing a baseball cap during the interview, scruffy clothing, facial hair, too much aftershave/perfume/make up/jewellery ...and there are many more!

**Cure:** Recognise and put away your personal preferences and concentrate objectively on the relevant facts.

### 14.5.2 Impatience

Some employers delay their recruitment activities until they're really desperate for staff. This often means that the employer will accept a deviation away from the requirements of the person specification. In fact, they will accept almost anyone with a pulse to do the job. Inevitably, serious mistakes occur when you are in this frame of mind.

**Cure:** Plan ahead properly.

### 14.5.3 Assumptions

Human beings tend to draw conclusions based on a variety of things, including racial stereotypes. One of my former bosses was convinced that a strong handshake meant that the person was a good leader. There is no evidence that a strong (or weak) handshake means anything of the sort.

**Cure:** Collect all the relevant facts presented by a candidate and compare them to the criteria for the job.

### 14.5.4 Similarities

People are drawn to people like themselves. We feel rapport and a sense of sameness with others with whom we share certain similarities. Just because a candidate supports the same football team as you, plays golf or has children at the same school it does not mean that they're the right person for the job.

**Cure:** Disregard the shared interests and focus on the criteria needed for the job.

### 14.5.5 Halo and horns

The halo effect results when an interviewer decides because an answer is outstanding in one area, there are no problems in other areas.

The horns effect results when an interviewer underrates a candidate by failing to see the candidate's good points and then can't see anything good about him at all.

**Cure:** Even if you have really liked (or really disliked) an answer, keep testing the data you are collecting. Use probing questions to get more information.

### 14.5.6 The 30 second assessment

Many interviewers pride themselves on their ability to judge a candidate immediately. All you really know about someone after 30 seconds is how they look and sound. You don't know anything about his ability to do the job.

If, after collecting evidence, you still have a gut feeling about the candidate, explore the feeling through questions.

**Cure:** Put aside your immediate impression and look for evidence to confirm or deny that the candidate has the appropriate skills. Compare them to the criteria for the job.

## 14.6 After the interview

Keep records of interviews for up to four months. They can be evidence if you go to tribunal. Following the interviews, send out rejection letters to unsuccessful applicants as soon as possible.

Arrange second interviews (if appropriate) and invite applicants to attend.

Alternatively, send out a job offer and take up references.

# 15 Interview questions

## 15.1 Introduction

Before the interview, prepare a checklist of questions to ask each candidate.

## 15.2 The dos and don'ts of questioning

### Do:

- Keep questions relevant, in other words make them relevant to the job.
- Prepare in advance questions that explore each applicant's background and experience.
- Write down the answers.
- Use open and behavioural questions.
- Create a short-list of technical questions to put to all applicants and score their responses.

### Don't:

- Ask questions about such things as childcare arrangements or marital status.
- Ask hypothetical questions.
- Ask discriminatory questions or make discriminatory allusions.

## 15.3 Types of questions

There is a range of question types available for you to use in the interview. Choose the type of question that will give you the information you want and will allow you to control the pace of the interview.

### 15.3.1 Open questions

Open questions are the basic tool of interviewing. They are called open questions because they open up the discussion with information and lead on to more questions. Once you have asked an open question, let the person talk while you keep quiet and listen. You need only interrupt with another question if the interviewee is going off the point or not giving you the information you need.

Useful words to encourage a candidate to talk:

- How...
- What...
- Where...
- When...
- Why...
- Who...
- Explain...

- Tell me...
- Give me an example...
- Demonstrate...
- Describe...

### 15.3.2 Behavioural example questions

Behavioural example questions ask the candidate to describe specific past situations where they may have used the behaviour you are trying to assess. You can probe past behaviour to find out if the candidate has had the opportunity to acquire skills, his approach to using the skills and any evidence that he was successful in using the skills. Follow up these questions with open questions to get a full picture.

#### Example

Tell me about a time you had to deal with a customer who had received poor service elsewhere and assumed that you would offer the same poor level of service.

You can probe past behaviour to find out if the candidate has had the opportunity to acquire skills, their approach to using the skills and any evidence that they were successful in using the skills. Follow up these questions with open questions to get a full picture.

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### Some useful starter questions

These can start the ball rolling and 'warm up' the applicant. Then you can follow up with more probing open questions.

- What impression did you form of that technique?
- Tell me about your present job.
- Why did you decide to leave that job?
- How would you describe your relations with outside contractors?
- What experience do you have of XYZ? Describe that to me.
- What do you most enjoy about your present job?
- What do you like least about your present job?
- Tell me about a time when you did XYZ. How did you feel about that?

#### 15.3.3 Closed questions

It is generally best to avoid closed questions unless you want simple yes or no answers in order to verify facts.

#### 15.3.4 Leading questions

Leading questions are those that tend to place words in the interviewee's mouth; for example, 'You did manage a budget, didn't you?'

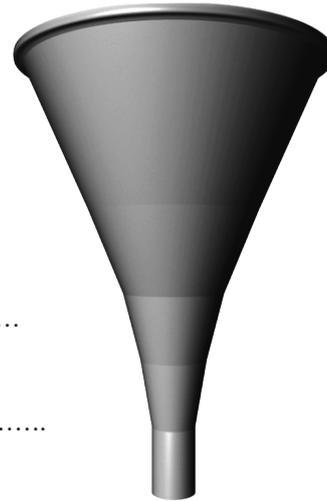
Avoid leading questions except when you are using them to summarise what an interviewee has said to you and to check the accuracy of your understanding.

#### 15.4 Question funnel

You could use the question funnel to drill down and get to the detail of the information you need.

- Start by asking an open question about a particular matter you want to explore...
- Get more detail by probing, using as many open questions as you need,
- Summarise to check your understanding.
- Close by asking a sweeper questions. Ask 'Is there anything you'd like to tell me about this matter that I haven't asked you about?'

- Open questions .....
- Probing open questions .....
- Summarising/ clarifying .....
- Closed/ sweeper .....



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# 16 Testing

## 16.1 Introduction

Many employers use tests to assess skills and aptitudes. This can be very useful for gaining additional information about candidates. However, use appropriate tests and ensure that they are relevant to the job. Where you use psychometric tests, they must be administered and interpreted by a qualified person.

## 16.2 Reasonable adjustments for candidates with a disability

Ensure you offer support to applicants who have a visual impairment or other disability that may adversely affect their performance.

### Example

Dyslexia is capable of being a disability. The only question is the degree to which the candidate's condition affects him.

Mr Paterson joined the police force in 1983. He had reached a senior level before being diagnosed with dyslexia in 2004. In the course of a promotion examination he complained that he was placed at a disadvantage compared to other candidates who did not suffer from dyslexia.

The EAT found that taking an examination could be considered to be a normal day-to-day activity. It said that employers should interpret 'normal day-to-day activities' widely and include activities which are relevant to participation in professional life, and not just more mundane 'daily' tasks such as shopping, cooking and cleaning.

Paterson v Commissioner of Police of the Metropolis (Metropolitan Police) [2007]

It may also be appropriate to use translated versions of a test in the case of candidates for whom English is a second language.

## 16.3 Ensure that there is no taint of unlawful discrimination

Use tests consistently and do not apply them in a discriminatory way.

### Example

Ms Mallidi, a postal worker of Indian origin, was asked to take a written aptitude test in order to remain in employment, when a number of comparable white employees were given temporary or permanent contracts without having to take a test. When Ms Mallidi complained of racial discrimination to her employer, the management failed to investigate the matter seriously.

The employment tribunal found this failure to address legitimate complaints to be direct discrimination on grounds of race. She had received 'less favourable treatment' than her white counterparts and was awarded £19,757.19 in damages.

Mallidi v Post Office [2000]

## 16.4 Psychometric testing

Psychometric testing attempts to objectively measure aspects of a person's mental ability or personality.

They are rarely (and should not be) used in isolation, but added to other forms of data collection can add a helpful extra dimension.

Aptitude and ability tests are designed to assess a candidate's logical reasoning or thinking performance. They consist of multiple choice questions and are administered under exam conditions. Typically a test might allow 30 minutes for 30 or so questions.

These tests produce raw scores which are compared to a benchmark which may be either average scores for a particular norm group or which may be a specific criterion of performance.

There is no such thing as a 'right' or 'wrong' personality, but certain personality traits will produce better results than others. For example, it would be desirable for an accountant to have a high degree of attention to detail. This would be considerably less desirable in a senior operations manager because it may indicate a reluctance to delegate. Questionnaires ask about feelings, thoughts and behaviour and asked to answer on a scale. From this it is possible to draw conclusions about the characteristics and preferences of candidates.

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# 17 Assessment centres

## 17.1 Introduction

An assessment centre is a process in which candidates undertake a range of different activities, all designed to allow them to demonstrate their skills while being observed.

They are one of the most reliable methods of assessing candidates. Any other method, taken alone, may have an accuracy rate as low as 25 per cent. However, when scores from a number of different selection exercises are combined, their accuracy can rise to over 80 per cent. Assessment centres are generally accepted as a fair method of selection, providing equal opportunities for all candidates and selecting on merit.

## 17.2 Why use assessment centres?

The in-depth assessment across a variety of criteria is designed to provide a recruiting employer with as much information as possible about candidates. They are a much better predictor of what candidates will actually do if selected.

The information that is gathered by an assessment centre about the successful candidate can be carried forward into their personal development plan.

The process can be costly, but its success rate is likely to be in the region of 85 per cent.

## 17.3 What happens at an assessment centre?

A group of candidates will be observed taking part in a range of tasks, both individually and as a group, designed to assess the competencies that the employer requires. The tasks set should link with the job description and person specification.

Typically, an assessment centre will include the following components:

- an interview;
- preparation and delivery of a presentation;
- aptitude tests and personality profiling;
- group exercises at which participants are observed.

Depending on the nature of the job, the tasks might include individual or group work, written and/or verbal input (tasks set in advance such as preparing a report or presentation), and written and/or verbal activities on the day such as in-tray exercises, analytical work, individual problem solving, group discussions, group problem solving, tasks which match business activities, personal role-play and functional role-play.

## 17.4 Observation and feedback

There should be a number of observers to ensure the data is collected objectively through a range of views. Observers must be trained to observe, record, classify and rate behaviour, and seek evidence accurately and objectively against the job description and person specification.

A feedback session with either an occupational psychologist or someone trained to deliver professional feedback is of benefit to candidates and indicates the organisation takes selection seriously. The whole process should be perceived as fair by the candidates.

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# 18 References

## 18.1 Introduction

If you are recruiting, always take up references. They're a useful way of checking information given in an applicant's CV or application form and can give you advance warning of potential problems. The purpose of references is to obtain information about the candidate's employment history and to cross-check his suitability for the role.

## 18.2 Taking up references

Your offer letter should stipulate that the offer is conditional upon the receipt of references that are satisfactory to the company.

Under the Data Protection Act, employees are not able to demand copies of personal references given by their current employer, but they can ask the recipient of the reference for a copy. As a general rule, if an employee asks to see a reference, you should allow him to do so, but without allowing the name of the provider to be seen.

To overcome objections or delays on the grounds of data protection, ask the successful candidate to sign a reference permission form, a copy of which can be sent to the prospective referee.

## 18.3 What sort of thing can I ask for in a reference?

It is perfectly acceptable to ask a former employer to provide basic factual details: These can include:

- start and end dates;
- capacity in which employed;
- final salary;
- number of days of sickness absence;
- whether there were any disciplinary warnings live on the file at the time of termination;
- whether the employee resigned or was dismissed;
- details of last appraisal, if given. You will need an explanation of the ratings.

It is not unheard of for candidates to 'embroider' their CVs or even tell outright lies. If there is a discrepancy, don't assume the worst. Check the facts with the referee to ensure that what he has told you is correct. Tell the candidate that there is an apparent difference and ask for his version.

## 18.4 Unsatisfactory references

If the reference is not satisfactory, you can withdraw the job offer without sanction.

NB If you made an unconditional job offer, you will have to pay a sum in respect of notice if you withdraw it.

## 18.5 Personal v company references

As a general rule, employers are **not** under a duty to provide a reference for a current or former employee, so if they don't want to provide a reference they usually won't have to. If that is the situation you come across, ask the former employer to confirm it in writing on headed paper that this is their policy. In cases like this, you shouldn't read anything negative into the refusal to provide a reference.

If the former employer normally does provide references, it should adopt a consistent reference policy to avoid discrimination claims or breaching trust and confidence.

The reference does not have to be comprehensive, but the former employer must take reasonable care to ensure the facts contained in the reference are true and accurate and that the opinions expressed in the reference are fair and reasonable.

Even if the reference is factually accurate, the employer must avoid creating an unfair impression of the employee concerned, for example by focussing on negative facts and omitting to include more positive facts about the employee.

If an employee has been the subject of disciplinary action, the employer should only refer to this if it:

- genuinely believes in the truth of the facts which are being referred to; and
- has reasonable grounds for believing that the facts are true; and
- has carried out as much investigation into the matters referred to in the statement as is reasonable under the circumstances.

Some employers ask for personal references as well as professional references. This may also apply where the candidate has not been employed before, for example, he is a school leaver. You may well consider information given by personal referees to be limited in value as they are always likely to be complimentary.

## 18.6 Other pre-employment checks

In addition to taking up references, the law requires specific checks to be carried out if the employee will be working in a role with children or vulnerable adults.

Organisations need to ensure particular rigour and vigilance when recruiting people to work with children and vulnerable adults. 'Children' are defined as those under 18; 'vulnerable adults' include the elderly, people with disabilities, people in residential accommodation or in custody and those receiving domiciliary care.