

***View from the Chair; Business Newsletter; Tuesday 27 August 2019
by Dr Michael Wardlow, Chief Commissioner, Equality Commission NI***

Online recruitment processes and the potential for discrimination

Recruitment has changed a great deal over the last 25 years – no more waiting for the postman or sitting by the phone for many of today’s job applicants. Social media, mobile phone use, job boards and e-recruitment portals have revolutionised the recruitment process.

Online recruitment is subject to the same legal and good practice principles as traditional recruitment. It should be fair, systematic, have objective criteria which are appropriate for the job and be widely publicised. And the duty to make reasonable adjustments for disabled candidates still applies.

Let me take you back a few weeks to when the Court of Appeal dismissed an appeal by British Telecommunications PLC (BT) against a decision of the Industrial Tribunal. It found that BT discriminated against Kevin Meier, who has Asperger’s Syndrome and Dyslexia (ASD), by failing to make reasonable adjustments for his disability, linked to an online testing process. This failure denied Mr. Meier an opportunity to be considered for a well-paid post for which he was otherwise qualified. It cost the company over £18,000, plus the time and cost spent to defend the case and take the appeal.

Mr Meier’s job application to BT was rejected at the initial shortlisting stage because he did not score sufficiently highly in an online Situational Strengths test (SST) a standard part of BT’s automated recruitment process. This widely-used recruitment tool uses scenarios as a way of assessing applicants’ situational judgement.

The Tribunal and the Court accepted the evidence of a specialist clinical psychologist that the SST would put people with ASD at a substantial disadvantage over people without an ASD diagnosis. The Tribunal and Court held that it would have been reasonable, in this case, for BT to have adjusted its selection process either by waiving the need for Mr Meier to take the test or by ignoring his test score and allowing him to proceed to the interview stage of the selection process.

There are as many disabilities, and many reasonable adjustments, as there are people with disabilities. Every person’s condition, and what he or she needs to help them to compete on equal terms for a job, is unique. So does that make a recruiter’s job impossible?

No - it just requires recruiters to respond appropriately to a declaration of disability, by talking to the disabled applicant about what he or she needs in order to be able to compete on an equal basis with everyone else.

While there is no duty on job applicants to disclose a disability to a potential employer, to reduce the chances of a discrimination claim recruiters would be wise to be able to show that they make every effort to gather information from disabled job applicants and have processes in place to act on it.

The onus is on the recruiter to adjust the selection process to accommodate an applicant with disabilities, and this has to be done on an individual basis.

We recommend that recruiters should make sure that candidates have the opportunity, and are encouraged, to disclose information about their disability and the type of reasonable adjustments which might help them.

There is more guidance on the reasonable adjustment duty on our website: www.equalityni.org/ReasonableAdjustments

Read more about the [Kevin Meier case](#) and the Tribunal and Court of Appeal decisions.