

Legal Academy

March 2023



Legal Academy Presenters (Employment Legal)

We are a full service employment law team based in London, Manchester and Belfast. We advise clients on all employment law matters including workplace diversity, pay governance and status, international advisory, litigation, investigations, HR support and collective workplace engagement.



Ayesha Salahuddin

Manager

ayesha.salahuddin@pwc.com

Ayesha Salahuddin is a qualified solicitor with 5.5 years' experience of advising on employment matters and litigating employment disputes. She has advised a wide variety of clients including multinational corporate clients, household name retail clients and leisure and hospitality clients.

Ayesha advises on a range of D&I and pay governance issues such as gender pay, equal pay, NMW and holiday pay.



Chantel McCormack

Manager

chantel.s.mccormack@pwc.com

Chantel is a qualified solicitor, and regularly advises clients on a variety of contentious and non-contentious matters and has worked with a diverse range of clients from start-ups to multinational organisations.

Chantel provides clients on all stages of the employee life-cycle, including recruitment, restructuring, ongoing management and dispute resolution.

Employment Law –
a session to discuss and
explore the responsibility
to educate our leaders
and workforce to manage
discrimination, unconscious
bias and pay inequality.



Agenda



Discrimination

1



Key D&I terms

2



Microaggressions and unconscious bias

3



Pay inequality

4



Questions and feedback

5



1

Discrimination



The Equality Act

Under the Equality Act it is unlawful to discriminate because of certain “protected characteristics”

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



What is discrimination?

Direct discrimination is treating someone less favourably because of a protected characteristic.

1

Indirect discrimination is a provision, criterion or practice which applies to everyone, but which adversely affects individuals who share a particular protected characteristic, compared to those who do not.

2

Disability discrimination includes direct and indirect discrimination, failure to make reasonable adjustments and discrimination arising from a disability (e.g. an employee with cancer is refused a pay rise because they took time off for treatment).

3

Harassment is unlawful discrimination if it's because of or connected to a protected characteristic.

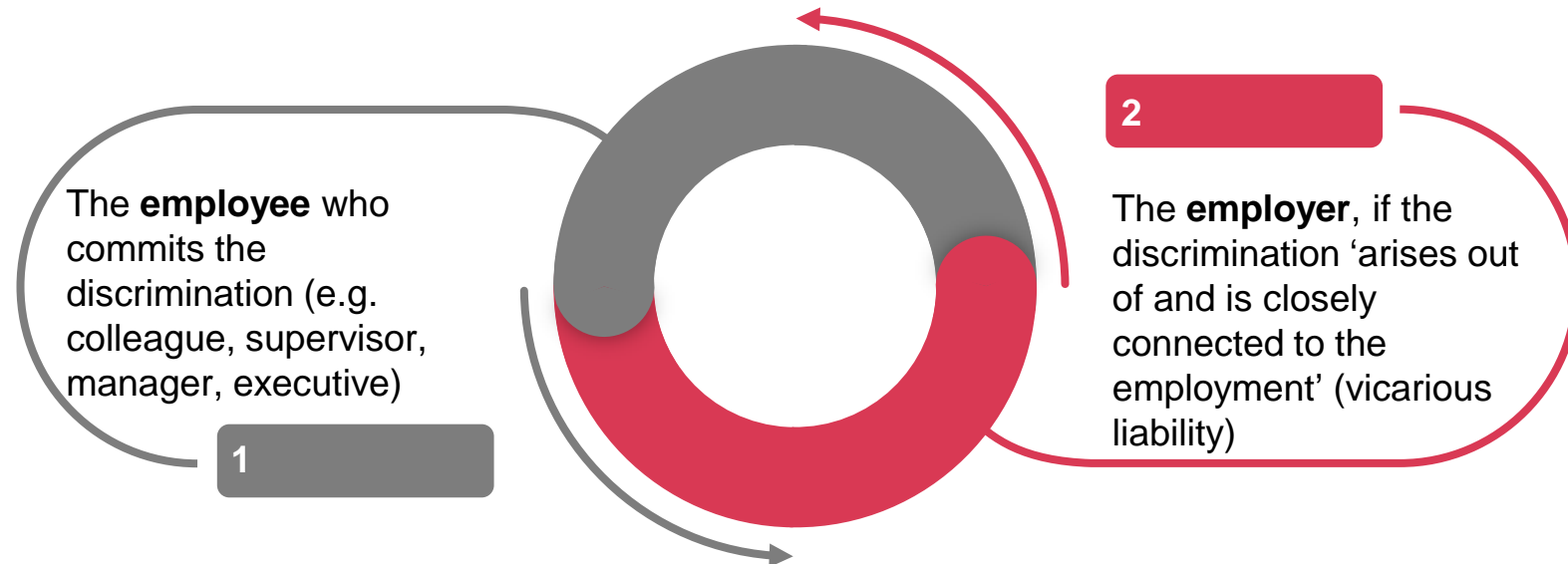
4

Victimisation is subjecting someone to a detriment because they have done a 'protected act' (e.g. bringing a discrimination claim or giving evidence in connection with the proceedings) or you believe they have/may do a 'protected act'.

5

Liability for discrimination

Who is legally responsible for discrimination in the workplace?



“**Closely connected to the employment**” covers occasions linked to work e.g. conferences, team away days & social events linked to work e.g. Christmas parties, after-work drinks

Employers will have a defence if they can show that they took “**reasonable steps**” to **prevent** such discrimination occurring. For example, having a comprehensive policy and training programme.

The impact of discrimination

The negative impact of discrimination is wide-reaching, including the following

Individual victim

Workplace morale

Workplace culture

Commercial impact

Legal implications

Reputation



Breakout session



Group Exercise

Recognising potential discrimination

Is this discrimination?

- Form small groups to discuss one of the following case studies
- Work through the scenario to determine if discrimination is present
- Be prepared to share your ideas with the group



Case study

Recognising potential discrimination

Scenario 1

Sheila and Jeff work in the same team. Their manager decides to place Jeff on an important project which involves a bit of travel. The manager assumes Sheila won't want to travel given she's four months pregnant.

Has Sheila been discriminated against?

Scenario 2

One of your suppliers has arranged a wine tasting event for your team. The team manager does not think it's appropriate to invite Sara as she is Muslim and would therefore not want to attend.

Has Sara been discriminated against?

Scenario 3

Your new colleague, Ash, tells his manager that he needs to pray three times a day and will need to take breaks from work in order to do this. The prayers last on average 5 minutes on each occasion. This employee was taken on to cover a particularly busy role in an over-worked department and all staff are only allowed to take a break from 12pm - 1pm. Ash is therefore told he is not allowed to take breaks to pray.

Has Ash been discriminated against?

2

Key D&I terms



Starting with the building blocks...

Diversity

Diversity is a fact. It is the existence of differences, both visible and invisible, within a group of people. Diversity can be comprised of different identities, experiences, perspectives, beliefs and personal characteristics.

Inclusion

Inclusion is an act. Inclusion results in an environment where everyone, regardless of their background or identity, feels valued and able to contribute.

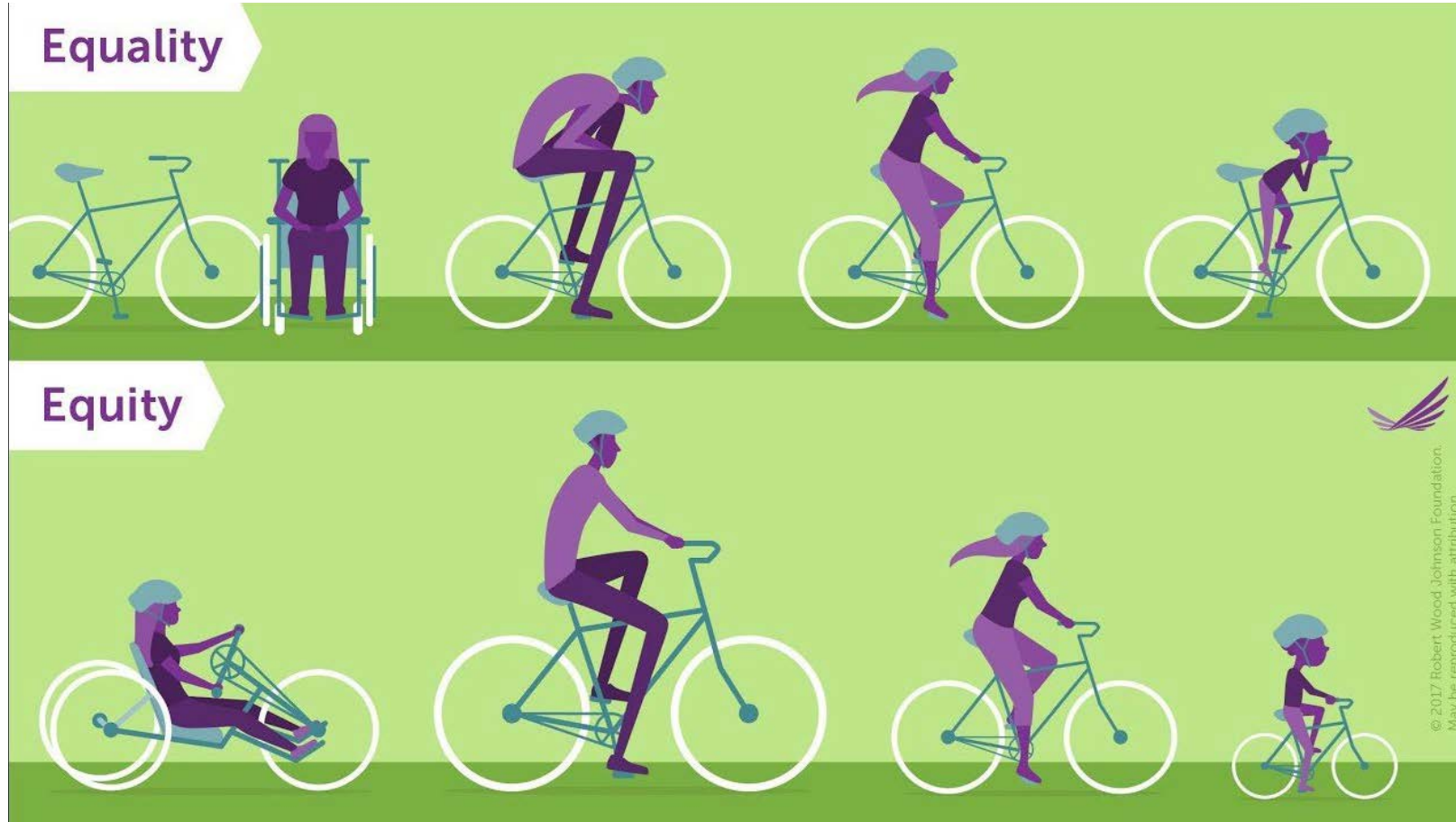
Equity

Equity is a process. It recognises that advantages and barriers exist for some people, just because of who they are, and that as a result, we don't all start from the same place. Ensuring that everyone has access to the same opportunities requires varying levels and types of resources for different people.

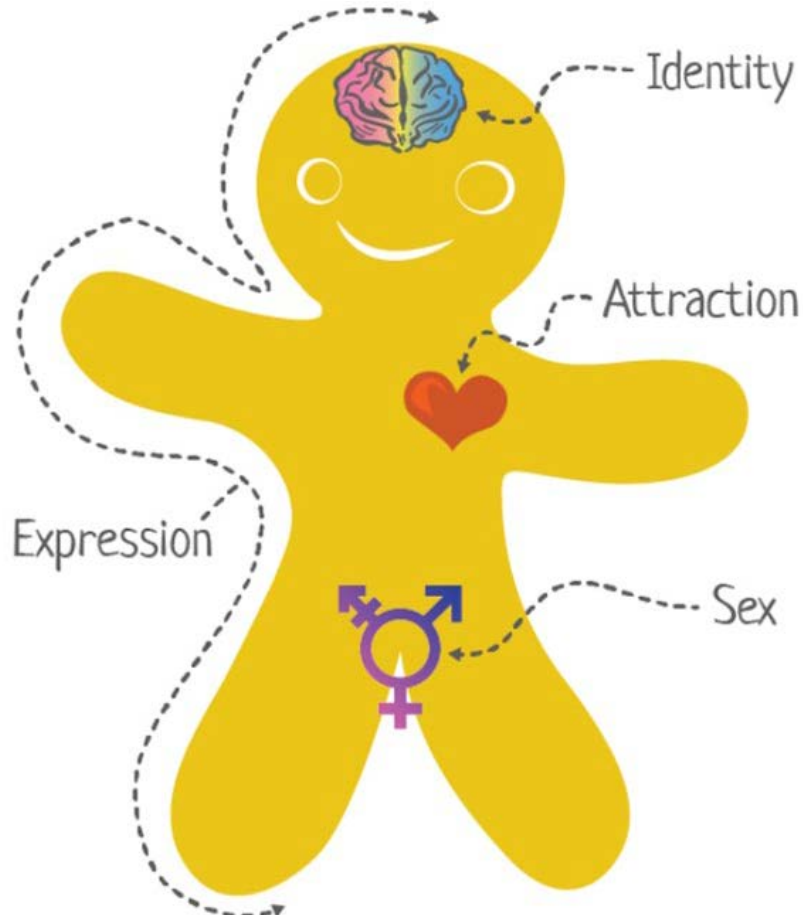
Equality

Equality is an outcome. Equality in the workplace means equal job opportunities and fairness for employees and job applicants.

Understanding Equality vs Equity...



Understanding the evolving gender conversation



Sex and gender are two different things.

- **Sex** - defined by your reproductive organs, assigned at birth. Generally defined as male, female or intersex.
- **Gender** - a social construct relating to behaviours and attributes based on labels of masculinity and femininity, most commonly referred to as man, woman and non-binary. Gender identity is a perception of oneself and does not always match the sex assigned at birth.

Gender pronouns are the way we refer to one another in the third person, e.g. her, he, they. **People who identify as non-binary usually prefer the use of neutral pronouns, i.e. they/them.** Referring to someone as the wrong gender is called 'misgendering' and can be very upsetting.

Source: www.genderbread.org, September 2022

Understanding other key terms

- **ALLY** - people who advocate for individuals from underrepresented or marginalised groups in society
- **CISGENDER** - people whose sex assigned at birth is the same as their gender identity
- **LGBTQ+** - lesbian, gay, bisexual, transgender, queer, questioning, ace and other identities, excluding cisgender heterosexual people
- **NEURODIVERSITY** - the different ways the brain can work and interpret information. It usually refers to a range of specific learning differences including autism, ADHD, dyslexia, dyspraxia
- **SOCIAL MOBILITY** - the link between a person's occupation and income and the occupation and income of their parents. When the link is weak, there is a higher level of social mobility.
- **TRANSGENDER** - people whose sex assigned at birth is different to their gender identity
- **BAME** - Black, Asian, Minority Ethnic (term not recommended)



3

Microaggressions and unconscious bias



Let's talk about bias

A **cognitive bias** is a systematic error in thinking that occurs when people are processing and interpreting information; we are often unaware of our own biases - which can make them **unconscious** - and the distorting effect they have on our decisions and judgments.

All people have unconscious biases, based on stereotypes, which shape our judgements about certain groups of people. We absorb these judgements from a very early age through our social environment - our families, schools and societies.

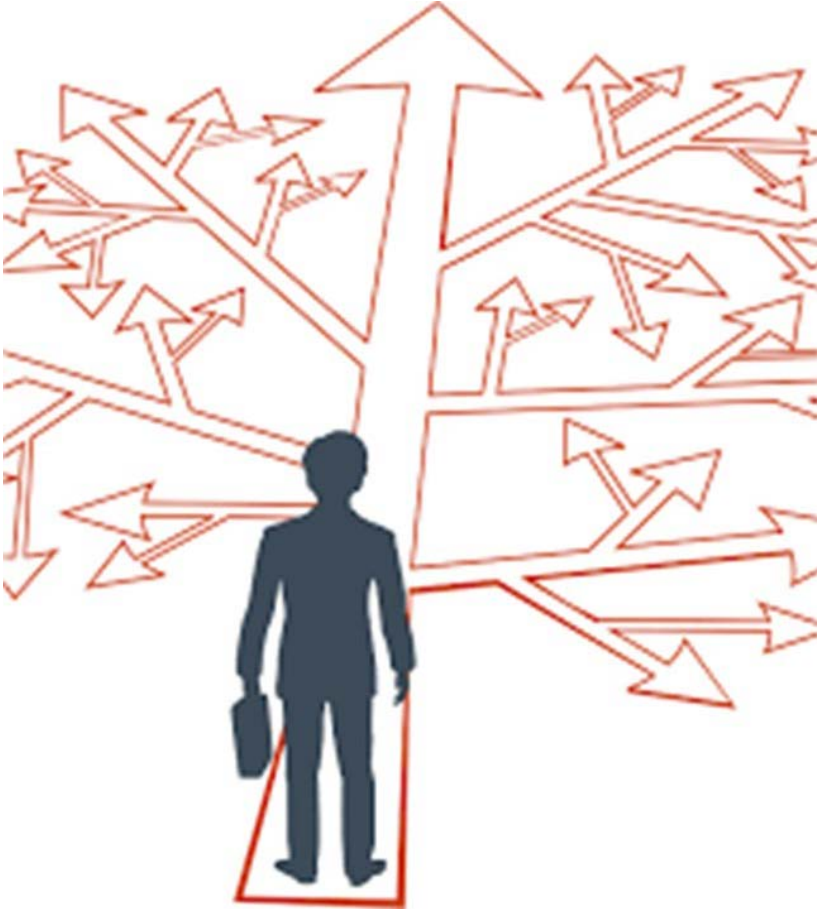


Random Errors



Systemic Errors

Three common biases that inhibit inclusion



- **Similarity bias:** we are drawn to people 'like us' and repelled by those who are different
- **Fundamental attribution error:** we tend to attribute another's actions or outcomes to their character or personality, while attributing our own to external situational factors outside of our control
- **Confirmation bias:** we seek information that confirms our prior beliefs; we select information that supports our views and ignore conflicting data

An evidence base for unconscious bias

Research indicates that unconscious bias continues to adversely impact the health, employment and economic outcomes of marginalised populations

A meta-analysis of 20 years of US studies found that Black patients were 22% less likely than White patients to be prescribed pain medication. Studies have also shown that White doctors are more likely to recognise pain on White faces than on Black faces.

Association of American Medical Colleges, 2020

“Venture Capitalists prefer to fund pitches narrated by a male voice and rate them as more persuasive, logical, and fact-based than pitches narrated by a female voice (content being identical)”.

Harvard Kennedy School, 2019

Studies show that people perceive Black men as larger and more threatening than similarly sized White men.

“We found that these estimates were consistently biased. Participants judged the black men to be larger, stronger and more muscular than the white men, even though they were actually the same size,”

Journal of Personality and Social Psychology, 2017

Tips to reduce bias in employee decision making

- **Seek out different perspectives.** Encourage employees to seek out information and opinions from diverse sources, ideally those who will disagree. They should stay listen and stay open to what they find.
- **Give yourself time.** When faced with a strategic decision, break the process down into two phases: 1) data collection and 2) decision/commitment. Put time in between the two phases.
- **Implement bias interrupters.** Identify decisions, processes or interactions that are particularly prone to bias - e.g. allocation of work projects, team meetings, performance evaluation - and adopt practices that will help leaders mitigate them in the moment (e.g. pre-planning, checklists, checking your own track record).
- **Manage employee wellbeing.** Evidence clearly shows that we are more prone to bias when we are depleted - tired, overwhelmed, stressed.



Microaggressions as a tool for exclusion

Microaggressions are brief and commonplace daily verbal, behavioural and environmental indignities

01

Whether intentional or unintentional, they communicate hostile, derogatory or negative slights and insults to the target person or group

02

Microaggressions are communicated through language in the workplace and can sometimes be ambiguous

03

Often the recipient may feel vaguely insulted as the words or language used may read or sound complimentary on the surface

04



Examples of microaggressions

Making a comment on someone's physical appearance, e.g. 'you're in great shape' or 'you really wear a lot of makeup'

Making a joke at the expense of an individual or group and then saying 'no offense, mate'

Avoiding eye contact with one individual when making a presentation or speaking to a group

Introducing people with different levels of detail and/or enthusiasm

Not acknowledging when someone new joins a group of people or a meeting

Referring to someone with any personal pronoun other than the one they have requested

Touching someone's hair and/or making comments on their hair

Calling someone a nickname that they do not appreciate, or shortening their name without their permission

Making a comment that indicates surprise at someone's intellect, e.g. 'you're so articulate'

What to do when you witness a microaggression

Call out

- Seek clarity around the intentions behind their language or action
- Let the microaggressor know how their words or actions are hurtful
- State clearly that it is not acceptable



Reach out

- Acknowledge to the recipient of the microaggression that you witnessed it and do not condone it
- Offer support or encouragement
- Offer to provide feedback to the microaggressor and/or report the behaviour



Pivot in the moment

Acknowledge in the moment that the microaggression has occurred so that recipient feels supported but the microaggressor isn't embarrassed, e.g.

- **'James, I think that's exactly what Mary said a few minutes ago; I'm glad to see that you two agree.'**
- **'Shall we all take a moment and introduce ourselves since we have a newcomer to the meeting?'**
- **'Ashish, do you mind if people call you Ash? I'm not sure I've heard you use that nickname before.'**



4

Equal pay



Understanding the concept of 'equal' pay in the UK

Equal pay is a legal obligation under UK law (the Equality Act 2010) for employers to provide men and women with equal pay if they do equal work. Equal pay law covers pay or other contractual terms.

For example, matters such as basic pay, automatic pay progression, travel allowances, sick pay, hours of work, performance-related pay (such as contractual bonuses) and holiday pay, pension benefits and benefits in kind such as company cars would all tend to be contained in a contract, and so fall within equal pay law.



What does equal pay actually mean?

Where a woman performs **equal work** to a man, they will be entitled to **equal pay**

If a man and woman are doing “like work”

1

If a man and woman are doing “work rated as equivalent”

2

If a man and woman are doing “work of equal value”

3



Examples of 'like work'

A female employee worked in a one-person department with a lower output target. A few of the male employees had higher output targets, but worked in a team of 3. They all worked similar hours and their jobs required very similar skills.

01

An employee was promoted to a more senior role in a different department, but paid less than a male employee in a different department. The two roles required a similar level of skills but consisted of different specific duties and the female employee had more overall responsibility.

02



Breakout session



Group Exercise

Recognising 'like work'

**Are they
performing
'like work'?**



- Form small groups to discuss one of the following case studies
- Work through the scenario to determine if an equal pay claim could be brought.
- Be prepared to share your ideas with the group



Case study: A

Anne started her role as a part-time Research Fellow in July 2021; 5 months after her colleague David.

After having a conversation about their 2022 pay rise, Anne realises that she is being paid £4,000 less than David (when prorated against his full-time pay). She speaks to her line manager, who explains that Anne started working after the starting salary for her role was reviewed and decreased. Her line manager also says that David occasionally helps out another department and therefore his role has additional responsibilities.

Would Anne have a potential equal pay claim?

What other information would we need to consider?

A



Would your response be different if you knew the below:

Anne has higher sick pay rates than David and has been told that, overall, this balances out the difference in basic salary.

Current landscape for equal pay: what are organisations doing?

Streamlining pay structures and voluntary equal pay audits

01

Implementing one set of pay banding across the organisation (with variations being limited to departments and location)

Having separate compensation and performance reviews

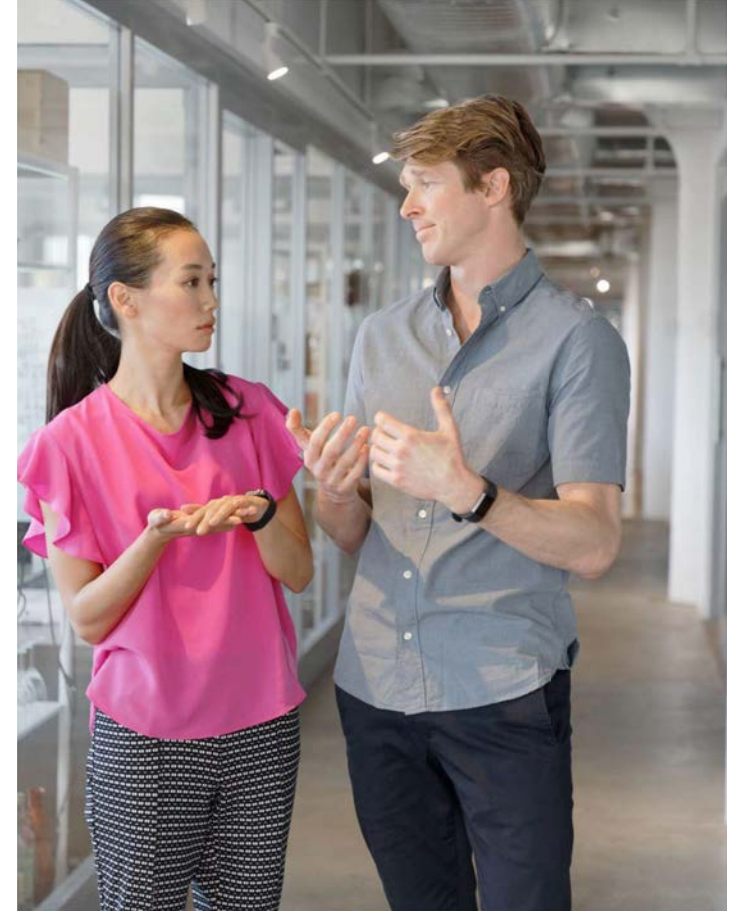
02

Creating a distinction between the processes may help to limit pay inequality as salary adjustments based on individual negotiations may be limited

Disclosure of salary ranges

03

While some organisations have not provided the exact formulae for how salaries have been calculated, there has been a move toward publishing salary ranges per grade



Questions and feedback



Thank you

pwc.com

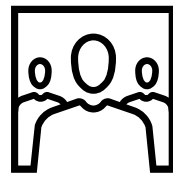
© 2023 PwC. All rights reserved. Not for further distribution without the permission of PwC. “PwC” refers to the network of member firms of PricewaterhouseCoopers International Limited (PwCIL), or, as the context requires, individual member firms of the PwC network. Each member firm is a separate legal entity and does not act as agent of PwCIL or any other member firm. PwCIL does not provide any services to clients. PwCIL is not responsible or liable for the acts or omissions of any of its member firms nor can it control the exercise of their professional judgment or bind them in any way. No member firm is responsible or liable for the acts or omissions of any other member firm nor can it control the exercise of another member firm’s professional judgment or bind another member firm or PwCIL in any way.

RITM11476149

Positive Action vs Positive Discrimination

Positive Action

- Permitted action by an employer to assist protected groups who are disadvantaged, have particular needs or are under-represented. This is legal.
- E.g. an employer which has a policy of interviewing all disabled candidates who meet the minimum selection criteria for a job would not be acting unlawfully.
- Tie-breaker provision



Positive Discrimination

- Treating one person more favourably than another because they have a protected characteristic.
- E.g. an employer offers a job to a woman on the basis that women are under-represented in the company's workforce when there was a male candidate who was more qualified. This would be unlawful direct discrimination.



Exercise

Positive action vs positive discrimination

Positive action vs positive discrimination

- Get together in your small groups
- Work through each statement and decide if it is positive action or positive discrimination
- Be prepared to share your ideas with the group



Exercise

Positive action vs positive discrimination (continued)

Positive Action	Positive Discrimination	Third section
		A company reviews its workforce data and finds that 80% of its employees are under the age of 35. When next recruiting, the recruitment manager sets a quota for 50% of new recruits to be over the age of 35, regardless of whether they are of equal merit to other applicants under the age of 35.
		An employer is faced with having to choose between three candidates of equal merit for a post. One candidate has a mobility impairment, another has a learning disability and the third has no form of disability. In order to address the under-representation of people with learning disabilities within the organisation and in the local area, the employer selects the candidate with the learning disability.
		A company is recruiting for its graduate training scheme. There is a tie-breaker situation for the final place on the shortlist as there are two candidates of equal merit. The firm decides to advance a candidate from a minority ethnic background to the next round of recruitment, because people from minority ethnic backgrounds are under-represented in the firm.
		Setting a lower threshold for females to progress through the promotion process, e.g. at the panel/interview stage.
		Investment in training, coaching and providing career sponsorship to highly rated female managers with potential to progress.