

WALKERS

Equality Awareness SERIES



Human Rights and Equality: Challenging the way we think as Employers

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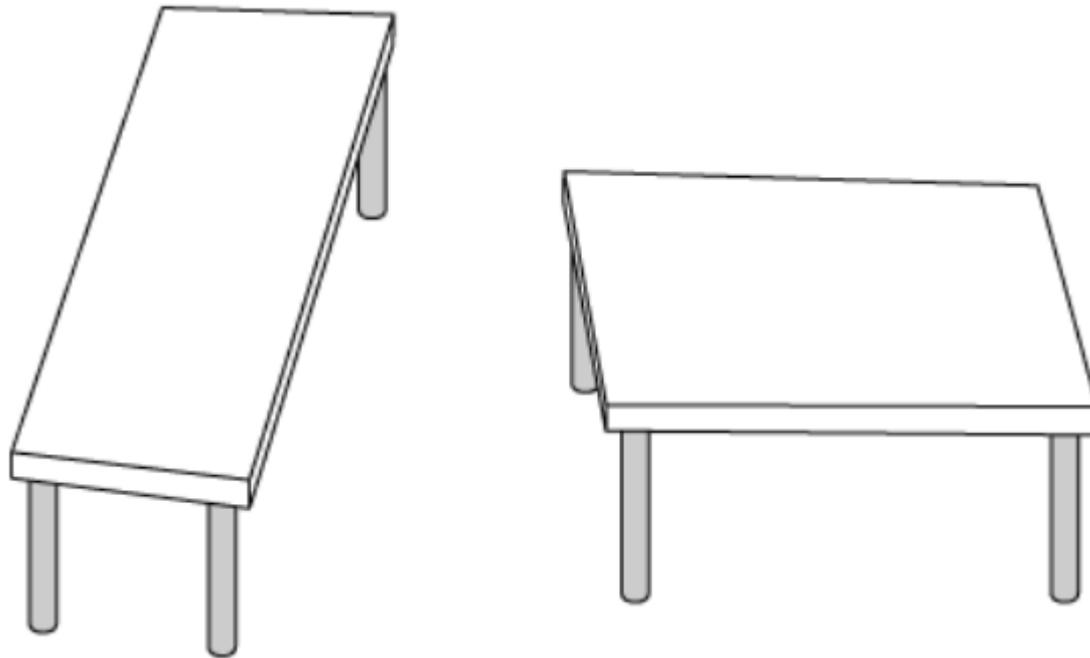


Welcome & Introduction

- Unconscious bias
 - What is it?
 - Why is it so important?
 - What are the benefits of addressing it?
- Charter of Fundamental Rights (EU)
- Equality and Rights Organisation (ERO)
- How can we overcome unconscious bias in the workplace?



Roger Shepard's Tables





Unconscious bias / Perceptual interpretation

- Less than 15% of American men are over six feet tall
- 60% of American corporate CEOs are over six feet tall
- Less than 4% of American men are over six feet two inches tall
- More than 36% of American corporate CEOs are over six foot, two inches tall



New York Philharmonic Orchestra

- Up until 1969 the composition of top American orchestras was typically 100% white men
- NYPO was sued in 1969 by a non-white musician for discrimination
- The audition process was overhauled
- Led to far more diverse pool of musicians both ethnically and racially
- Proportion of women grew to 44%



How important is your name?

- Research studies show that names can unconsciously impact people's decision-making
 - Vikki Boliver, a senior lecturer in Sociology at Durham University, led a study of the Russell Group of leading UK universities around university place offers
 - Her findings suggested:
 - 36% of ethnic minority applicants for university places between 2010-2012 had received offers, compared with
 - 55% of white applicants for university places between 2010-2012 had received offers



How important is your name?

- UK Government announced that, from 2017, candidates' names would be removed from university application forms
- A number of leading graduate employers committed to keeping candidates' names off graduate recruitment applications
- The employers included the Civil Service, Teach First, the BBC, NHS and local government, HSBC, Virgin Money, KPMG and Deloitte



What is Unconscious Bias?

- Everyone has unconscious biases
- Affinity bias
- The halo effect
- It can lead to a less diverse workforce and talent can be overlooked
- If it's against a protected characteristic (sex, race, disability, age etc), it can be discriminatory
- Unconscious thoughts can be based on stereotypes



Why is it so important to recognise and address unconscious bias at work?

- Negative impact on your employees and prospective employees
 - Missing out on talent
 - Risk of treating employees differently can lead to loss of confidence, lack of motivation, reduced output
 - Risk of failing to reward, promote and advance all employees fairly within the organisation
 - Taking a different approach to development for some employees
 - Risk of having the same faces round the table
 - Losing the “competitive edge”



What are the benefits of addressing unconscious bias at work?

- Increased profitability
- In 2018, McKinsey found that companies in the top quartile for gender diversity were 27% more likely to outperform their national industry average in terms of economic profit compared to bottom quartile companies
- Research suggests diverse teams outperform homogenous teams
- Different perspectives



What are the benefits of addressing unconscious bias at work? (cont)

- People of different backgrounds, culture, sex, age etc bring a different perspective to the table
- Clients and customers are starting to take an interest in this area
- Diversity & Inclusion is an area that the younger generation care about
- Minimise your potential legal exposure



Legal framework - Guernsey

- Human Rights (Bailiwick of Guernsey) Law 2000:
 - right to respect for private and family life (Art 8)
 - freedom of thought, conscience and religion (Art 9)
 - freedom of assembly and association (Art 11)
 - enjoyment of rights secured without discrimination (Art 14)
- Sex Discrimination (Employment) (Guernsey) Ordinance 2005 prohibits discrimination at work on the grounds of gender, gender reassignment and/or marital status
- Disability (pending); ESS to return with proposals on flexible working and age discrimination legislation as part of States' commitment to promote 'longer working lives'



Legal framework - Jersey

- Human Rights (Jersey) Law 2000, as for Guernsey
- Discrimination (Jersey) Law 2013:
 - race including colour, nationality, ethnic origin, national origin (which includes being of Jersey origin) (2014)
 - sex, sexual orientation, gender re-assignment, pregnancy and maternity (2015)
 - age (2016)
 - disability (2018)



UN Conventions

	UK position	Guernsey position
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	Signed 1966, Ratified 1969	Extended Registered in Bailiwick 18th March 1969 - In force 6th April 1969
International Covenant on Civil and Political Rights (ICCPR)	Signed 1968, Ratified 1976	Extended Ratified 20th May 1976, in force 20th August 1976
International Covenant on Economic, Social and Cultural Rights (ICESCR)	Signed 1968, Ratified 1976	Extended Ratified 20th May 1976, in force 20th August 1976
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	Signed 1981, Ratified 1986	Intended to seek extension direction to extend: Billet XXI of 2003
Convention on the Rights of Persons with Disabilities (CRPD)	Signed 2007, Ratified 2009	Intended to seek extension direction to extend: Billet XXII of 2013



Legal framework - EU

- Charter of Fundamental Rights of the EU
- Common values:
 - human dignity
 - freedom
 - equality
 - solidarity
- Implemented through EU Treaties (direct effect) and EU Directives (requiring implementation in national law of member states)
- Charter, treaties, directives **do not apply** to Guernsey but are indicative of international expectations



Titles I and II - Dignity and Freedoms

- Human **dignity** is inviolable and must be protected (Article 1)
- Everyone has the right to respect for his or her **private and family life**, home and correspondence (Article 7)



Title III - Equality

- Any **discrimination** based on any ground such as sex, race, colour, ethnic or social origin, genetic feature, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited (Article 21 (2))
- Equality between women and men must be ensured in all areas, including **employment, work and pay** (Article 23)
- The Union recognises and respects the right of persons with **disabilities** to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community (Article 26)



Title IV - Solidarity

- Every worker has the right to **working conditions** which respect his or her health, safety and dignity (Article 31(1))
- The **family** shall enjoy legal, economic and social protection (Article 33(1))
- To recognise family and professional life, everyone shall have the right to protection from dismissal for a reason connected with **maternity** and the right to **parental leave** following the birth or adoption of a child (Article 33(2))



EU Treaties / Directives

- Pregnant Women's Directive
- Parental Leave Directive
- Fixed Term Worker Directive/Part Time Worker Directive
- Temporary Agency Worker Directive
- Treaty of the Functioning of the European Union: principle of equal pay for male and female workers for equal work or work of equal value (Article 157)
- Equal Pay Directive: gives effect to fundamental right outlined in Treaty



EU Treaties / Directives - Anti-Discrimination

- EU Framework Equal Treatment Directive:
 - multiple protected characteristics (sex, race, colour, ethnic origin, religion or belief, disability, age, sexual orientation, gender reassignment, marital status)
- EU case law: discrimination includes less favourable treatment because of association – *Coleman v Attridge Law* [ECJ] (2008)



Case Law

- Hastings v Kings College Hospital NHS Trust (2017)
 - unfair dismissal
 - race discrimination
- Bayfield and others v J Walter Thompson (2019)
 - race discrimination
 - sex discrimination
 - unfair dismissal



Hastings v Kings College Hospital NHS Trust (2017)

Points of unconscious bias picked up by the Tribunal:

- investigator referred to 3 contractors as the "victims"
- witness statements referring to Mr H as a "large black male"
- investigator prefaced his report of Mr H's evidence with "according to RH..." (with other witnesses, report of evidence prefaced with "they said...")
- failed to challenge inconsistencies in witness statements (took them as read)
- was sceptical of Mr H's complaints of race discrimination and did not investigate
- approach to the investigation reflected a preconceived view that Mr H, as a black male, was the aggressor, demonstrating unconscious bias



Guernsey's Equality and Rights Organisation (ERO)

- What is an ERO?
 - A statutory body designed to help foster a culture of equality, inclusion, diversity and human rights and reduce discrimination
 - More than 120 countries have national human rights institutions and/or equality bodies
 - The States' Disability & Inclusion Strategy 2013 included a Resolution to establish an ERO based on the Paris Principles
 - "Disability, Equality and Inclusion" is one of 23 policy priorities in the Policy & Resource Plan ("Future Guernsey") that The Committee *for* Employment and Social Security is now responsible for developing and includes the ERO proposals



Guernsey's Equality and Rights Organisation (ERO) (cont)

- The Paris Principles provide for a range of possible functions of the ERO, which may or may not include:
 - Conducting awareness-raising and education on issues relating to equality, inclusion, diversity and human rights;
 - Acting as an accessible, expert point of contact for enquiries from individuals and others on these issues
 - Advising individuals, businesses, government and other organisations as to their rights and responsibilities, and best practice on these issues
 - Supporting the effective operation of discrimination laws, including producing Codes of Practice



Guernsey's Equality and Rights Organisation (ERO) (cont)

- Facilitating the informal resolution of discrimination complaints and referring cases to adjudication bodies or courts if necessary
- Conducting enquiries into systemic discrimination issues
- Issuing compliance orders
- Monitoring, researching and publishing findings in relation to equality
- Producing annual reports
- Encouraging States' compliance with international conventions



Why does Guernsey need an ERO?

- Fairness – ensuring everyone is treated fairly and not discriminated against
- Discrimination exists
- In June 2018 the States agreed to expand the Disability & Inclusion Strategy's disability discrimination workstream to cover multiple grounds of discrimination including race/nationality, sex, age and sexual orientation
- Legislation alone will not be sufficient to combat discrimination
- The role of the ERO will help support wider cultural change to prevent discrimination occurring
- The ERO will help prepare individuals, organisations and businesses for Guernsey's proposed discrimination legislation



Progress update on the ERO

- The Committee is developing proposals for an ERO appropriate for Guernsey which meets the Island's needs
- The Committee has engaged with a variety of stakeholders and consulted with other human rights institutions in other jurisdictions
- Guernsey's ERO will work alongside the Employment Relations Service and the Employment & Discrimination Tribunal
- Proposals will be presented to the States during 2019



How can we overcome unconscious bias in the workplace?

- Be aware it exists
- Don't rush decisions
- Be objective not subjective, justify decisions with evidence and record the reasons for your decisions
- Work with a wider range of people
- Implement policies/procedures to help limit the influence of individual characteristics and preferences
- Offer training to employees



Engagement and Support from Senior Management

- Lead by example – change comes from the top
- Senior Management will need to invest time, energy and resource to see results
- Get managers on-board
- Encourage an open, inclusive and diverse culture
- Consider how meetings are conducted and who typically speaks up
- Ensure your employees know each other and that your workplace is integrated – internal connections will help your business thrive
- Encourage team building opportunities
- Vary social events to encourage more people to attend



Change the narrative & speak up

- Think about what type of language you use
- Focus on the positive messages eg:
 - Fair treatment, respect, equal opportunities (rather than “preventing discrimination” or “positive discrimination”)
 - Increased collaboration, innovation and profitability
- Be aware of the risks and why this is important:
 - Discrimination and protected characteristics
- Tackle inappropriate conduct and make it clear what is acceptable
- Consider introducing an anonymous “external” complaint channel



Review the Gender Balance in the Workplace

- Consider a pay/bonus audit
- What are your male:female promotion and pay rise statistics?
- Attracting and retaining female talent is vital to increase diversity and to improve your (and Guernsey's) business results
- Channel Islands Women in Work Index 2019 – PwC Channel Islands
 - CI gender pay gap is high at 21%
 - Closing the gap in Guernsey could generate 27% increase in women's earnings (£108m)
 - If Guernsey's 61% employment rate matched Sweden's 69% employment rate GDP would be boosted by 6% (£168m economic boost)



Flexibility - how adaptable are you?

- Consider what flexibility means for your business
- Can you do more?
- Be aware of what is important to the younger generation when attracting new talent/graduates
- With an ageing population employees may need to take responsibility for caring for children and parents
- Being flexible could encourage a wider group of people to be interested in working for your business and help with retention



Invest in the community & next generation

- Consider allowing students to attend your office for work experience, work placements, temporary roles
- Could you take 50:50 - male:female students?
- If your industry is predominantly male, how might you appeal and attract the next generation of female students?
- Consider a “youth” mentor for senior employees



Recruitment

- Blind cvs
- Diverse interview panels
- Look beyond technical expertise to the other skills you need in your business
- Consider automatically interviewing candidates with a disability
- Consider signing up to the Employer's Disability Charter – 9 commitments
- Use neutral and inclusive language in job advertisements and job descriptions
- Consider flexible working options from the outset
- Consider incentivising your recruiters to find diverse candidates for you



Talent Management / Reviews & Promotion

- Ensure your pay review and promotion cycles are being conducted fairly
- Be aware of who is getting the stretch assignments, career advice, mentoring opportunities etc
- Ensure that review processes are moderated and are used properly
- Don't make assumptions about what your team want to achieve – ask them
- 360 feedback



Mentors

- Consider introducing a mentoring scheme
- Ensure that mentors understand what their role is
- Mentors do not have to be the same sex or race as their mentees
- Role models who can offer advice and support



Employee Forums, Surveys & Exit interviews

- Employee forums – internal & external opportunities
- Employee satisfaction survey – views on diversity & inclusion
- Surveys – employee concerns, need for support/training
- Exit interviews



Questions

Answers

The word 'Questions' is written in white on a pink speech bubble. The word 'Answers' is written in white on a green speech bubble. There are four smaller speech bubbles containing question marks: one blue, one orange, one red, and one white.



Walkers Employment Team, in association with the States of Guernsey, is delighted to invite you to the second event in our Equality Awareness Series: **Disability: What does it mean in practice for Employers?**

The session will cover

- » What does “disability” look like?
- » Why is this important for Employers?
- » What is the “Social Model”? How does it work in Ireland?
- » How can Employers become disability confident?
- » How can Employers prepare for new legislation?

Date:

Thursday 2 May

Venue:

Les Cotils, L’Hyvreuse, St Peter Port, GY1 1UU

Time:

8.30am registration (including pastries)
Presentations from 9am-10am

Topic:

Disability: What does it mean in practice for Employers?



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Disclaimer:

The information contained in these slides is necessarily brief and general in nature and does not constitute legal or taxation advice. Appropriate legal or other professional advice should be sought for any specific matter.



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