

Unconscious Racial Bias

SWU Trade Union Advice and Representation Officer **Julie Long** discusses this problem



Unconscious bias is within everyone. As our brain receives information, we are drawing on our past experiences constantly. We make decisions about people regarding gender, age, ethnicity, education and sexual orientation. These are developed from our social background and also views purported by friends, colleagues

and from the media. The brain has developed judgements and biases through evolution for tens of thousands of years, for basic human survival. These judgements are placed into categories within the brain, to help us make rapid decisions that could be life-saving.

In modern society and particularly in the workplace, this can lead to unconscious bias towards a person. These biases could affect recruitment, promotion, disciplinary processes and how diverse the overall workforce is. In an interview process, factors that could lead to bias are a stereotype, based on gender, ethnicity and other social categories, what the interviewee is wearing, the accent of the interviewee and the CV, where the interviewer could make assumptions about the candidate, based on subjects studied and outside activities.

Unconscious racial bias can be developed significantly by social surroundings and the media. A survey by the Guardian found that 43% of those from a minority ethnic background had been overlooked for a work promotion in a way that felt unfair in the last five years, more than twice the proportion of white people (18%) who reported the same experience. It also reported recruitment consultancy Green Park, had found that the total number of BAME board members, both executive and non-executive at FTSE 100 companies, had decreased to just 7.4%, down nearly 9% from 2018. Forty seven of the companies still had no BAME people at board and executive level. The firm chair, former Equalities Commission head Trevor Phillips, said: "Our latest analysis shows that after five years of monitoring, the promise that things would change over time for ethnic minority leaders in the FTSE 100, looks just as empty as the corporate pipeline. Women are cracking the glass ceiling; but people of colour remain super-glued to the corporate floor."

On the 1st October 2010 the Equality Act 2010 took effect, replacing the previous workplace discrimination legislation.

This was brought in to help strengthen and protect people from being disadvantaged by age, disability, race, gender reassignment, marriage & civil partnership, pregnancy & maternity, race, religion or belief, sex and sexual orientation. The Equality and Human Rights Commission (EHRC) were set up as independent statutory body, on the back of the Equality Act and have taken more than 80 legal actions, with success in over two thirds of cases. In her 2017 review, *Race in the Workplace*, Baroness McGregor-Smith highlighted the 'structural, historical bias' that prevents ethnic minorities, women, disabled people and others from progressing in their careers. She recommended that the UK Government create a free, online unconscious bias training (UBT) resource to tackle the unconscious bias that she described as 'much more pervasive and more insidious than the overt racism that we associate with the 1970s' (McGregor-Smith, 2017, p.2).

If we take a look at the recent Hastings v Kings College case, it was found that Kings College used unconscious racial bias towards Mr Hastings, when dealing with a disciplinary. Mr Hastings a man of African-Caribbean descent, had worked at the King's College Hospital NHS Trust since 1st December 1996, as an IT manager. In October 2015, Mr Hastings was dismissed following an incident of racial abuse in the hospital's car park. Mr Hastings had been verbally sworn at by a van driver of Caucasian descent, whilst waiting in a loading bay, for a car parking space to become available. The van contained three Caucasian males, two of whom were contractors employed by the Trust at the time of the altercation. Mr Hastings approached the van after the initial incident and was immediately subjected to a racial slur regarding his skin colour, being told "careful it doesn't come off". Mr Hastings then proceeded to tell men who he was. Upon hearing his name, one of the men uttered that he could not have such an "English-sounding name". Mr Hastings carried on and told them he was a manager at the hospital and one of the men in the van replied, "look! They'll let anything happen in here".

During the incident, Mr Hastings had called the Security Office for assistance but no help was given and the call was not logged. After the altercation, the Trust suspended Mr Hastings due to an allegation that he had "acted aggressively towards and physically assaulted two other persons". After consulting the CCTV evidence, the Trust came to the conclusion that Mr Hastings was the aggressor. During the

investigation Mr Hastings provided evidence of the racial abuse and explained he had in fact been defending himself. Mr Hastings' version was not investigated at all by the Trust. Following the investigation he was dismissed on the grounds of gross misconduct.

Mr Hastings brought claims for unfair dismissal and direct race discrimination before the Employment Tribunal. The Tribunal found that Mr Hastings has been subjected to unconscious bias during the investigation, finding that his evidence, as a man of African-Caribbean descent, was treated with distrust. The Tribunal stated that the employer had failed to consider that Mr Hastings had been racially abused, and had failed to identify and collect any evidence to support Mr Hastings' claim that he had been abused. The Tribunal found in Mr Hastings' favour; he was directly discriminated against on the grounds of his race, and was treated less favourably due to the Trust's failure to investigate his complaints. The Trust were ordered to pay Mr Hastings a total of £1 million in compensation, by the Employment Tribunal. The figure being an accumulation of payments for a basic award, injury to Mr Hastings feelings, damages for personal injury, and compensation for pecuniary loss. The vast majority of the compensation was due to the significant pension loss suffered by Mr Hastings, after nearly twenty years at the Trust.

In order to try and prevent unconscious bias, employers should implement different policies and procedures, that limit characteristics of individuals and preferences. All evidence in cases should be taken into consideration and time, consideration and the awareness of the existence of unconscious bias, should be used in an effort to overcome their own bias.

If you consider that you may have been subjected to unconscious racial bias in the work-place and would like to discuss this issue further, please contact the Advice & Representation Service to make an appointment with a duty officer on **0121 622 8413**

References

McGregor-Smith, R. (2017), *Race in the workplace: The McGregor-Smith review*. London: Department for Business, Energy and Industrial Strategy. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/594336/race-in-workplace-mcgregor-smith-review.pdf [accessed: 5 February 2018]