



The Works Search

Avoid the legal pitfalls of hiring employees

Our Guide to staying on the right side of the law when interviewing



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INTRODUCTION

Have you ever undertaken *legal* interviewer training?
Do you feel confident that you know *exactly* what you can and cannot ask during an interview?
Do you know that you could be personally liable if your questions and comments cross the line, and that damages are unlimited?

You may think that you are highly experienced and have all the relevant skills to conduct successful interviews for selecting and attracting the right candidate for a job role. You can structure the conversation well and ask the right questions, and you pride yourself on knowing who is the best fit for a role. However, you may unwittingly be asking questions that are unlawful, ones that could land you and your business in hot water.

As communications professionals, reputation is key and the last thing you want to be known for is asking illegal questions.

Not all questions are appropriate to ask during an interview. Some questions can be discriminatory and have legal implications for you as the interviewer, and your organisation. Although not common, you can face legal proceedings from an unsuccessful candidate *if they felt* that the interview questions were discriminatory in anyway.

We recognise that there isn't always a human resources expert sitting in many businesses, so training can fall through the cracks.

This guide will help you understand what you can and cannot ask during an interview so that you prevent claims of discrimination, ensuring fair hiring practices and keeping your reputation intact.

We hope the information will serve as a useful resource for training your hiring managers, helping them get up to speed with continually changing laws, and feel confident in what they are asking. By conducting interviews ethically, you not only protect your organisation but also uphold the principles of equality and inclusivity.

HOW THIS GUIDE CAME ABOUT

We are fortunate to work with many highly skilled and experienced communications professionals, looking for the best talent to join their teams.

However, based on feedback from the candidates that we put forward, a few of these clients are asking inappropriate, illegal questions in their interviews.

To share a recent example, a candidate attended an interview where the client pointed at their surname and asked where it was from. This seemingly innocuous conversation starter is an illegal question in the context of a professional interview. In most cases, unlawful questions are being posed because interviewers have not been trained in what they can and cannot ask.

On occasion, clients have approached us to find candidates for a role, telling us that it would present them with issues to hire a woman. We always challenge these views. Female candidates continue to be asked about their childcare arrangements and we are left wondering how relevant this is to their ability to carry out the job?

We have therefore put this guide together to help you navigate your interviews successfully and safely, enabling you to get the information you need without crossing any lines, making candidates feel uncomfortable and opening the door to allegations of discrimination, even if that wasn't your intention.

The guide will bring you up to speed on what you can and cannot ask; it will cover the legal implications of asking an inappropriate question as well as provide valuable guidelines that will help you understand the fine line between what's considered invasive, unprofessional and unlawful.



WHAT ARE ILLEGAL INTERVIEW QUESTIONS?

Illegal job interview questions are questions that have nothing to do with a person's skills and ability to do the job. They're usually related to personal life and refer to sensitive, personal information.

If a topic bears no relevance to someone's ability to work in a certain position, and there's no need for you as potential employer to know that information, the question is likely illegal.

Similarly, if you think your answer to a certain question could be a basis for discrimination, the question probably is illegal. A simple question such as – what are your childcare arrangements can be a basis for sex discrimination, where does your surname originate from – could form the basis of race discrimination!

Some illegal job interview questions may seem harmless or conversational, yet lawsuits against companies have been filed and won by applicants because of the subject matter of the questions. Knowing what's safe to ask can mean the difference between keeping your company on solid legal footing – and supporting a great candidate experience – or opening up your organisation to potential liability.

According to a CIPD report, the most common illegal interview questions in order were based on:

- *Age* – What year were you born?
- *Race* – Where were your parents from?
- *Marital status* – Are you married, and where does your partner work?
- *Gender* – Have you gender transitioned?
- *Religion* – Are you religion/faith?
- *Parental status* – What are your childcare arrangements?
- *Sexual orientation* – Are you a member of the LGBTQIA+ community?
- *Pregnancy status* – Are you planning on having more children?



INTERVIEW QUESTIONS – WHAT IS STRICTLY OFF-LIMITS?

Protected characteristics

Discrimination, victimisation and harassment during the recruitment process is covered under the [Equality Act 2010](#) in relation to nine 'protected characteristics':

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

Any questions that touch upon candidates' protected characteristics are best left out of any interview situation, as probing into these areas can leave you open to a lawsuit.

You should certainly avoid asking any questions that may give candidates the impression that these characteristics have formed the basis of your decision not to hire them – or to hire someone else instead.

Remember, although you are not yet their employer, discrimination claims can still be brought in the pre-employment period.



QUESTIONS TO AVOID

When interviewing candidates, it is best to avoid the following questions, as they could be discriminatory:

- “How old are you?”
- “When do you plan on retiring?”
- “How do you feel about managing a team of younger people?”
- “Are you married?”
- “How many children do you have?”
- “How do you plan on balancing work and childcare arrangements?”
- “Do you want children?”
- “What does your husband do?”
- “Where do you come from?”
- “Is English your first language?”
- “What political party do you belong to?”

Questions about place of birth or ethnicity should never be asked. Similarly, it goes without saying that you should never ask any candidate questions about family planning, marital status or childcare availability. Not only could they open you up to discrimination claims, but they simply aren't relevant to the candidate's ability to do the job.

By asking these kinds of questions, if you later decide not to hire the candidate, no matter how valid the reason, they would have reasonable grounds to allege discrimination.

It is possible to find out pertinent information without directly asking by simply rephrasing your questions.



WHAT ARE THE LEGAL IMPLICATIONS IF YOU SAY SOMETHING INAPPROPRIATE?

A claim for discrimination or harassment can be brought in an Employment Tribunal by a job applicant, against the employer and/or any employees and recruitment consultants who discriminated or harassed the applicant during the recruitment process.

The candidate can potentially bring a claim against the employer and the individual who asked the discriminatory questions. Even if the employer can defend themselves, showing they took all reasonable steps to prevent the discrimination, the interviewer can still be personally liable. Compensation for discrimination is uncapped so it will be down to the employment tribunal to decide what losses were caused by any unlawful discrimination and harassment. Perhaps less quantifiable – though crucial to account for – are the wider cultural and reputational risks which can arise, particularly where a candidate shares their negative experience online or with other potential recruits or even customers.

Like reputation, positive workplace cultures take time and deliberate effort to build but can be significantly damaged much more quickly and unintentionally.

Legal guidelines

The Equality and Human Rights Commission (EHRC) Code of Practice has some helpful guidance, pointing out that interviews are, in reality, the stage in recruitment at which it is “easiest to make judgments about an applicant based on instant, subjective and sometimes wholly irrelevant assumptions”. It recommends conducting interviews strictly on the basis of the application form, job description and/or person specification. Avoid veering into questions which are irrelevant to the job and that could potentially create issues. If an applicant volunteers that kind of information (e.g. by saying they are planning to have children), it is really important to take care not to allow yourself to be influenced by that information.

The official [government website](#) has clear advice for employers on how to [prevent discrimination during recruitment](#). We would highly recommend that to err on the side of caution, all members of your interviewing panel should remind themselves of this guidance prior to entering an interview room.

Former Partner (HR) Hamide Ahmet of Tulchan Communications LLP has always told her Partners and interviewing managers,

“The rule is simple; don’t ask anything that isn’t job related – nothing, everything can be taken out of context!”

POINTS TO REMEMBER

You must not interview in a way that discriminates unlawfully

- Decisions must be based on job-related criteria, not on grounds of race, age, sex, marital status (including civil partnerships), sexual orientation, gender reassignment, disability, pregnancy or maternity, religious beliefs or nationality.
- In general, you must not ask candidates questions about their health before offering a role.

Avoid over-personal questions

- For example, asking about children or dependants and their care arrangements, family background, out-of-work activities, health, or willingness to comply with dress codes. Only ask such questions if they are directly relevant to the job.

Under data protection regulations, candidates have the right to access your interview notes

- Only make notes of factual matters, or your assessment of the individual in relation to the job requirements and selection criteria.
- It is always advisable to have selection criteria that is applied to all candidates and one that the employer can present as needed if someone does claim they did not get a job because they feel they were discriminated against – there should always be a clear and documented paper trail of why the candidate did not get the job based on the experience and skills!

An oral offer of employment made during an interview is legally binding

- If you make an offer during an interview or in a letter to a candidate, it forms the basis of the employment contract.

Remember!

The interview process is all about selling your business, and delving into candidates' behavioural, cultural and technical skills.

HOW TO CONDUCT A LEGAL INTERVIEW

From an organisational perspective, it is important that you train and educate your interviewers regularly, and support them in identifying where they may be falling into biases or assumptions and to disrupt that bias with objective decision making. It's important to keep accurate records which comply with data protection requirements and to document the decisions made in case you are challenged to justify them.

Your interview questions should be designed to determine a candidate's capability to perform the essential functions you have defined for the job. Just be sure to stick to job-relevant questions, and don't make assumptions about a candidate's ability or disability.

For example, let's say you're interviewing a candidate who uses a wheelchair for an account manager position, and an essential function of the job is to visit client sites. It's perfectly acceptable to ask how the candidate would perform this essential function, with a question like:

"This job will require you to be out of the office, meeting with clients several days per week. Do you see any issue with this?"

It is not okay to say to this same candidate: *"How long have you been disabled?"* or *"What is your particular disability?"*

This is also true for other characteristics, such as family size. For example, while you cannot ask a candidate if they have children or have adequate childcare, you can ask about their ability to perform the job with a question such as:

"This job requires you to travel overnight about two days per week and attend out-of-town conferences once per month. Does this travel schedule present a problem for you?"



QUIZ

If you are using this Guide as a training resource, see if your participants can rephrase these illegal interview questions so that they are legal.

What should you ask instead?

Where do you live? ✗

Ask instead: Are you comfortable with our location?

To ensure that commuting will not be an issue. Be sure to mention any commuting benefits like car shares or commuter compensation your organisation offers.

What country are you from? ✗

Ask instead: Are you authorised to work in the UK?

You have a right to ask whether a person is legally entitled to work in the UK. This information is important because you must check that a job applicant is allowed to work for you in the UK before you employ them.

How many sickness days did you take in your last job? ✗

Ask instead: Are there any specific requirements you need in order to perform the job effectively?

Questions about sickness, health and disabilities should always be avoided. As an employer in the UK, you can only ask about health or disability if there are necessary requirements of the job that can't be met with reasonable adjustments, you're finding out if someone needs help taking part in a selection test or interview, or if you're using 'positive action' to recruit a disabled person.

What year did you graduate? ✗

Ask instead: What are you looking for in your career right now? / What are you looking for in your next position?

Avoid any questions that might force admission of specific milestones tied to years.

Are you pregnant? Are you married? Do you have kids you'll have to collect early from school each day? ✗

Ask instead: Do you foresee any issue with being here during work hours, travelling as needed, or fulfilling the job requirements?

Candidates' family planning and familial status is none of your business. Focus on their qualifications for the role.

Are there any religious holidays you observe? ✗

Ask instead: Nothing related to religious affiliation.

Do not ask about religion, ever. Not only is this an illegal interview question in the UK, but any question that refers to a protected class is a bad interview question – those include sex (including sexual orientation and gender identity), race, religion, national origin/citizenship, age, disability status, veteran status, pregnancy and familial status and genetic information.

Who did you vote for in the last election? ✗

Ask instead: Nothing related to politics.

It may sound obvious, but this is one of the worst interview questions to ask because political preferences should never be discussed.

Have you been convicted of a crime? ✗

Ask instead: Nothing related to a criminal record.

You can find this information out in a background check.

FINAL WORDS

In the world of recruitment, ensuring legal compliance during interviews is not just a box to check, it's a fundamental responsibility that safeguards both individuals' rights and the integrity of your business. Our Guide, 'Avoid the legal pitfalls of hiring employees', offers clarity as you navigate the complex terrain of interview questioning.

Throughout this Guide, we've highlighted the critical distinction between lawful and unlawful interview questions, shedding light on the potential legal ramifications of veering into prohibited territory. By understanding the nuances of what can and cannot be asked, you not only mitigate legal risks but also foster an environment of fairness and respect.

Drawing from the experiences of our candidates and clients, we have recognised the necessity and importance of continuous training for interviewers. As laws evolve, staying abreast of legal interview guidelines is not just advisable, it's essential.

We hope that this Guide will help your hiring managers refine their interviewing practices, remembering that every question carries weight. By having a crystal clear understanding of and following the legal guidelines, you pave the way for a recruitment process that is not only effective but also fair and respectful.

Remember!

**Don't ask anything personal.
Be consistent with the interview process.
Create a set list of questions before the first interview and stick to the script...
and if you don't, ensure questions are only job-related.**

Compensation for discrimination is uncapped and damage to reputation is unlimited.

ABOUT THE AUTHOR



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Sarah has extensive recruitment experience and when she joined The Works Search in 2003 she specialised in PR and corporate communications search. Passionate about making great connections and supporting fantastic careers, Sarah bought the business in 2005. Over 20 years of running a profitable business and leading a great team she has placed candidates two or three times, helping them move up the ladder, opening doors for them with fantastic companies in London and beyond.

Sarah enjoys learning, sharing her knowledge of the communications industry and writes regularly for the company newsletter. She cares deeply about making great careers, diverse teams and successful hires. Her talent and thorough approach for filling all the executive searches she manages is unheard of in recruitment and that's thanks to a solutions-focused, tenacious team who take pride in what they do.

**For more advice, market insights,
or to speak to us if you're looking
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