



“Not hired because I am a white straight man”

By **Lisa Rix** - 27 March 2019

I'm sure readers saw the title of this article and thought “what!? White straight men are the most represented group in businesses!” Well, there has recently been an employment tribunal case where a strong candidate was actually deliberately not hired because he was a white, heterosexual male.

Mr Furlong applied to join the Cheshire Police Force in 2017 along with hundreds of other applicants. At interview stage, each candidate was assessed against a list of criteria before being assigned a ‘pass’ or ‘fail’ mark. Although Mr Furlong was one of the candidates to pass, he was then not offered a job. Mr Furlong was confident, from the positive comments made to him in his interview, that he must have been one of the stronger candidates who achieved a ‘pass’, and so believed that the Force must have deliberately chosen not to employ him as part of its drive to achieve greater diversity within the Force. By way of background, Cheshire Police was among a number of forces criticised in 2015 for having no black officers and had been taking steps to improve opportunities for those of different ethnicity, gender, sexual orientation and disability since. Mr Furlong’s father (who worked at the Force) lodged a complaint on his son’s behalf, claiming that he had been refused the job because he was a white, heterosexual male.

In an employment tribunal, the Force explained that after the interview stage it had looked at the 127 candidates who ‘passed’ and had prioritised offering jobs to those who were female, BME, LGBT or had a disability. The Force argued that it was legal for it to do this under the positive action provisions permitted by equality law.

The positive action provisions essentially allow employers faced with making a choice between two or more candidates who are “as qualified as” each other to take into consideration whether one is from a group that is disproportionately underrepresented or otherwise disadvantaged within the workforce. However, this “tie-breaker” scenario is, as you can appreciate, a rare occurrence in practice.

The Force argued that the 127 candidates that “passed” the interview stage were all equally qualified as one another for the role, because they were all assessed as ‘passing’ the interview stage, so the Force was then able to take positive action in relation to all 127 candidates.



The tribunal found that it was a “fallacy” that all 127 people were equally qualified and that it was clear from the evidence of candidates’ interview notes comparing them to the interview assessment criteria that the candidates were not all equal. The tribunal ruled that Mr Furlong had been a victim of direct discrimination on the grounds of his sexual orientation, race and sex. The tribunal will reconvene later this year to determine the amount of compensation to be awarded.

This is the first reported case on positive action in recruitment in the UK. Although it seems that the Force had good intentions in their attempts to improve diversity, positive action is rarely appropriate, and so employers should be cautious not to accidentally act in a discriminatory way against other groups of people when trying to achieve diversity goals.

My colleagues’ Hannah Mahon and Raoul Parekh have [recently debated](#) about whether employers have the tools they need to address diversity in the workplace and whether positive action does enough to help employers in this regard.

Case: Furlong v Chief Constable of Cheshire Police 2405577/2018