

NEWS FROM THE HR TEAM



# Multiple-Choice Test Discrimination?



The Employment Appeal Tribunal has held that a job applicant with Asperger syndrome suffered unlawful disability discrimination when a prospective employer required her to sit a multiple-choice test at the first stage of its recruitment process and refused to adjust the format of the test due to her disability. So why did they come to this finding?

In **Government Legal Service v Brookes 2017**, Ms Brookes (B) applied for a trainee role within a Solicitors firm. At the first stage in the recruitment process, all applicants must sit a multiple-choice "situational judgment" test as a means of testing their ability to make effective decisions. B, who has Asperger syndrome, requested that she be allowed to submit her answers to the questions in narrative form, but she was advised that this wasn't possible. When B sat the test, she failed to achieve the pass mark and so her job application was denied. She subsequently brought claims in the employment tribunal of indirect disability discrimination and a failure to comply with the duty to make reasonable adjustments contrary to the **Equality Act 2010**.

The employment tribunal found that the GLS had applied a provision, criterion or practice (PCP) of requiring all applicants to take and pass the multiple-choice test. It concluded that the PCP generally placed people who had Asperger syndrome at a particular disadvantage compared with those who didn't have it. It found that B was put at that disadvantage as her Asperger's causes difficulties in reasoning in hypothetical scenarios, and no alternative explanation as to why she failed the test was put forward by the GLS. On appeal, the EAT upheld the tribunal's decision. It stated that the decision-making powers of job applicants with Asperger's could probably have been measured by requiring them to answer the test in narrative format, as B had indeed requested.

Be flexible when considering reasonable adjustments for disabled candidates during recruitment. If you do have a testing procedure, be mindful to have alternative methods of testing for key competencies if necessary, or allow extra time for completion of the test.

As the requirement to pass the multiple-choice test was a provision, criterion or practice which put job applicants with Asperger's at a particular disadvantage, this couldn't be justified as there was a less discriminatory alternative way of testing available. It amounted to indirect disability discrimination and It also amounted to a failure to make reasonable adjustments. Allowing job applicants with Asperger's to answer the test in narrative form would have been a reasonable adjustment.

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## Poor Timekeeping.....

So recently you have noticed that employees are being a little sloppy when it comes to their start time. You decide that to resolve this issue, you will now insist that everyone starts work ten minutes before their official start. Is this a problem?

You notice that several employees are late by around ten minutes at least twice a week. Well that doesn't seem too bad does it! When you add it up, you realise that actually this is a big problem. Lets do the maths and see how much you are actually losing. If one employee is late twice a week by ten minutes, taking away holiday weeks, you will lose out on 920 minutes per year, or 15 hours and 20 minutes - roughly two working days per annum.

### Now let's add a few more employees to the calculation

By multiplying this scenario we can see that:

- two employees = 30 hours and 40 minutes lost working time p.a.
- three employees = 46 hours lost working time p.a.
- four employees = 61 hours and 20 minutes lost working time p.a.
- five employee = 76 hours and 40 minutes lost working time p.a.

### Two working weeks

In the case of five employees that's approximately ten working days or two working weeks lost due to poor timekeeping - so those ten minutes here and there soon add up. So how about you solve the matter by introducing a new workplace rule which says that all employees must arrive at least ten minutes before their contractual start time. Is this possible or a potential problem?

### It's possible but...

You could indeed introduce this type of rule but there's a pitfall that must be considered: those ten minutes (or more) could in theory be deemed working time. This is because the Working Time Regulations 1998 state that employees should be paid whenever they are "working at their employer's disposal and carrying out activities or duties".

So why not remind your staff about the fact that they are to arrive at their place of work in good time to ensure they are ready to start work at your specific start time. Your start time is the time that you are expected to start work and not the time you are expected to arrive.

By insisting that all staff arrive early you could fall foul of the Working Time Regulations 1998 and have to pay employees from the time of their arrival. The safer position is to have a timekeeping policy which says that employees "must be ready to start work at the appointed time".

## Tax Free Child Care

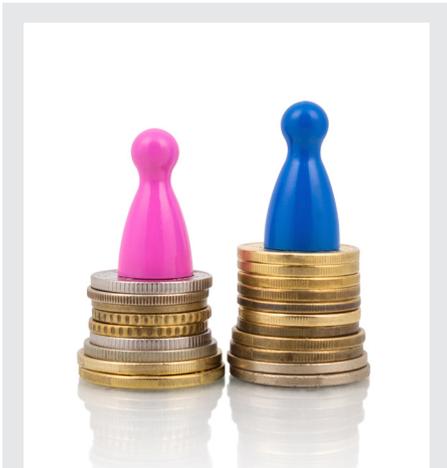
On 21 April 2017 the new Tax-Free Childcare (TFC) scheme was launched. It will come into force in stages and is quite different to the existing childcare voucher scheme.

### Eligibility criteria

To qualify, parents will have to be in work, and each expecting to earn at least £120 a week. Each parent must not have income over £100,000 per year. This is different to the ESC scheme - its eligibility criterion is one parent must be working and earning above the national minimum wage. Another important difference is that ESC is available for children up to the age of 15 (or 16 if disabled), whereas TFC is available for children up to the age of twelve (or 17 if disabled).

Initially, TFC is being made available for employees with children aged under four on 31 August 2017. You don't have to do anything as they should automatically receive a letter from HMRC inviting them to register for the scheme. The letter also explains how they can do this. Over the course of 2017 other parents will receive their invites as TFC is rolled out.

Something to be mindful of..... If an employee opts to register for TFC, they can open a special online savings account. The government will add £2 for every £8 saved, up to a maximum of £2,000 per year, per child aged eleven or under, or £4,000 for disabled children until they reach 17.



### Gender Pay Gap Reporting in 2018

Both public and private sector employers with more than 250 employees are expected to start publishing reports on gender pay gap from April and May 2018 respectively. These reports are expected to be made easily accessible and uploaded on the government's page, a link to the page is given below;

[www.gov.uk/report-gender-pay-gap-data](http://www.gov.uk/report-gender-pay-gap-data)



### General Data Protection Regulations

UK is set to implement EU's General Data Protection Regulations (GDPR) in May 2018. While this may mean little for most employers who are already following the Data Protection Act, now would be a good time for employers to check the way they manage data as there would be increased protections for employees. Under the new regulations, employers will be required to show how they comply with data protection principles, issue privacy notice, prepare for data portability (providing data

electronically and in a commonly used format). Importantly employers will have a month to respond to subject access requests and not the current 40 days. There is further guidance from the ICO, please follow the link below for further guidance;

[dpreformdotorgdotuk.files.wordpress.com/2016/03/preparing-for-the-gdpr-12-steps.pdf](http://dpreformdotorgdotuk.files.wordpress.com/2016/03/preparing-for-the-gdpr-12-steps.pdf)

## Berns Brett & Horsham Insurance Brokers achieve Chartered Insurance Broker Status

The Chartered Insurance Institute (CII) has awarded Chartered Insurance Broker status to Berns Brett Limited. The Lloyd's broker and UNA member is also celebrating its 50th anniversary this year.

Chartered status is an exclusive title only awarded to brokers that meet rigorous criteria relating to professionalism and capability. All Chartered Insurance Brokers commit to the CII's Code of Ethics, reinforcing the highest standards of professional practice in their business dealings.

Berns Brett, which is part of the BBi Group, is one of a small number of insurance brokers who have achieved this accreditation.

It follows sister company, BBi Financial Planning Ltd, who received Chartered Financial Planners status earlier this year and following this BBI Horsham also achieved Chartered Insurance Broker status in June 2017.

David Skinner, Director of BBi Group, commented: "Securing Corporate Chartered Insurance Broker status is another important milestone and comes at a very special time in our company's history. This is testament to the emphasis we place on all our employees to gain professional qualifications and to provide the highest standard of advice and service to our customers."

