

RAIL CYMRU CONFERENCE

**POSITIVE ACTION IN RECRUITMENT AND
PROMOTION**

17 April 2024

HUGH | JAMES
Understanding law, understanding you

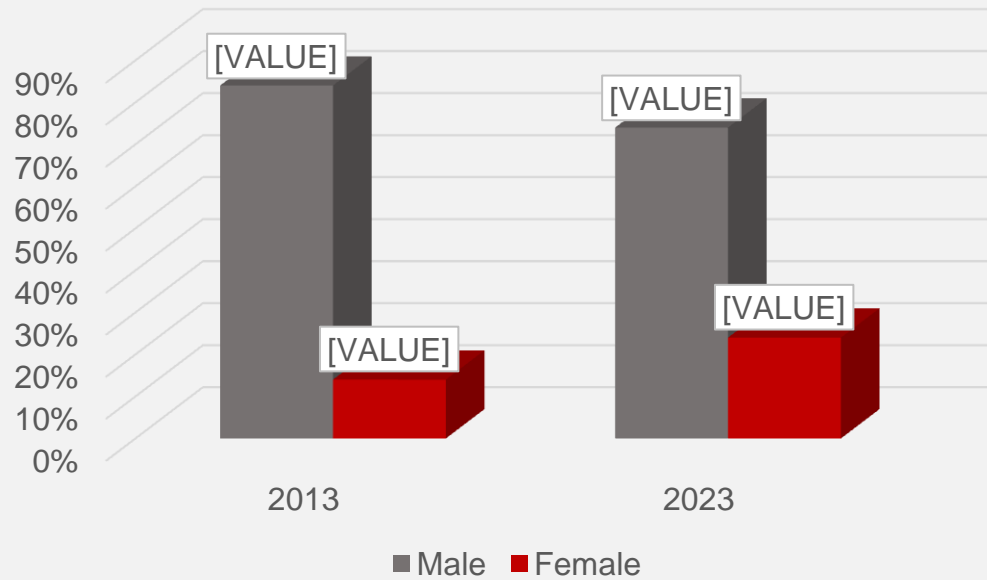
A photograph of a white ceramic coffee cup filled with dark coffee, sitting on a matching saucer. The cup is on a rustic wooden table. The background is dark and out of focus. The image is partially obscured by a white diagonal shape that contains the text.

Introduction

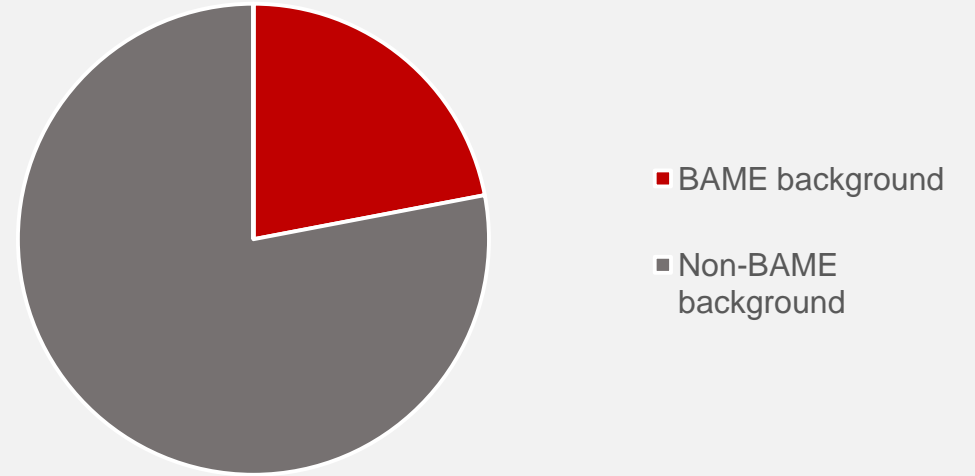
- Diversity in the workplace – spotlight on positive action in recruitment and promotion
- What is positive action and how to “get it right” (ie lawful)

EDI Statistics in UK Industries

Gender Representation in the UK Rail Industry



Ethnic diversity amongst HS2 Employees (2023)



Neurodivergency



What is positive action?

- 9 "protected characteristics" in the Equality Act 2010 (EqA 2010)
 - Age
 - Disability
 - Gender reassignment
 - Marriage and civil partnership
 - Pregnancy and maternity
 - Race
 - Religion or belief
 - Sex
 - Sexual orientation
- Disadvantage as a result of a protected characteristic (underrepresentation / different needs)
- Positive action allows action to enable or encourage members of a protected group to:
 - Overcome or minimise disadvantage
 - Meet needs, or
 - Increase participation in a particular activity
- Employer must "reasonably think" one of the above applies before taking positive action



Positive discrimination v positive action

- Positive discrimination (unlawful) v positive action (lawful)
- Lawful positive action provisions are exceptions to the rules against discrimination
- Line between positive action v positive discrimination a fine one to tread
- Positive action is entirely voluntary
- Where the RAF “got it wrong”

Positive action – the “general” rule

- Found in section 158 EqA 2010
- Examples of action to encourage participation
 - setting targets for increasing participation of the targeted group
 - providing bursaries to obtain qualifications
 - outreach work such as raising awareness of public appointments within the community
 - reserving places on training courses, eg in management
 - targeted networking opportunities
 - working with local schools and FE colleges
 - providing mentoring
- Action must always be “proportionate”



Positive action – recruitment and promotion

- Found in section 159 EqA 2010
- Sometimes called the “tie break” rule
- Must “reasonably think” that participation in an activity by persons who share a protected characteristic is disproportionately low
- Action must be taken with the aim of enabling or encouraging participation in that activity
- Crucial that more favourable treatment **only** permissible where candidates are of ‘equal merit’
- Action must still be proportionate

Conclusion

- Benefits of taking positive action
 - result in a wider talent pool
 - level the playing field for many applicants
 - introduce new skills and abilities to the workforce
 - encourage participation from more stakeholders.
- Just remember the line between positive discrimination (unlawful) and positive action (lawful) can be a fine one to tread

Contact details



Eleanor Bamber

Senior Associate, Employment & HR Services

eleanor.bamber@hughjames.com

029 2267 5615

H | J

hughjames.com