

Use of pre-employment health questions by employers

Lorna Adams, Katie Oldfield, Laura Godwin
and Jolyon Fairburn-Beech

IFF Research Ltd

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Executive Summary

This report presents the findings of research conducted by IFF Research on behalf of the Equality and Human Rights Commission (the Commission). The research focused on the recruitment practices of employers relating to collecting information about a job applicant's health prior to any offer of work being made. Such health enquiries are prohibited under Section 60 of the Equality Act 2010¹, unless they fall under a prescribed set of exemptions.

The Commission has the sole power to enforce compliance with and take legal action under Section 60. To inform how it implements its powers under the section, this research was commissioned to understand:

- the extent of compliance with the legislation, looking at the extent to which health-related questions are still being used during recruitment, and how this information is collected;

- what reasons employers have for asking potentially unlawful health questions; how compliance differs by the sector of the employer and the nature of the job role;

- whether disabled people are more likely to be subject to prohibited health queries during recruitment, and what impact this has on their confidence and future job-seeking behaviour;

- employers' awareness of their responsibilities under Section 60, and the extent to which they have modified their recruitment practices in response to the legislation.

The level of employer understanding of the legislation around pre-employment health questions has implications for the way the Commission ensures further compliance and for informing guidance which it may publish.

The research consisted of three elements:

- an online survey of recent job applicants;

- a suite of questions placed on IFF Research's Small and Medium Sized Employers Omnibus in February 2012;

- ten in-depth interviews with recruitment consultants.

The survey of job applicants consisted of two phases. The first covered 'people with impairments', defined as people who have physical or mental health conditions or

¹See <http://www.legislation.gov.uk/ukpga/2010/15/section/60>

illnesses lasting or expected to last for 12 months or more, that reduce their ability to carry out day-to-day activities. This included a sub-set of people who fit the definition of a disabled person under the terms of the Equality Act 2010, whose impairment has a ‘substantial’ adverse effect on their ability to carry out normal day-to-day activities. The second phase focused on people without impairments.

Individuals’ experiences of being asked pre-employment health and disability questions

A central aim of this research was to provide insight into the extent to which employers are continuing to ask applicants health questions in advance of the decision of whether to make them a job offer, and how often this represents practice prohibited under Section 60 of the Equality Act.

The research found that half of applicants both with and without impairments were asked whether or not they have a disability or health condition at some point in the recruitment process (52 per cent and 50 per cent respectively).

We asked all applicants whether they were asked specific questions by employers. While a very similar proportion of people with impairments and people without impairments were asked by employers **whether they had a disability or health condition**, applicants with an impairment were significantly more likely to report being asked:

- the nature of any disability or health condition (34 per cent vs. 24 per cent of applicants without impairments);

- how a disability or health condition might affect them at work (24 per cent vs. 14 per cent);

- whether they would have any problems - because of disability or ill health – doing an essential part of the job (20 per cent vs. 13 per cent);

- whether they would need any adjustments to participate fully in the workplace, because of a disability or health condition (17 per cent vs. 6 per cent).

The incidence of people with impairments being asked **any** of these pre-employment health questions is higher (at 69 per cent) than for applicants without impairments (61 per cent).

Where applicants proactively **volunteer** information about their health or disability status during the recruitment process, the employer is much more likely to feel that the issue is 'out in the open' and ask further questions about the impact this would have on the individual at work. Those who are forthcoming in disclosing their condition or illness to the potential employer are, for instance, much more likely to be asked about whether this would impact on their ability to do an essential part of the job (32 per cent vs. 17 per cent) and about adjustments that would be necessary in the workplace because of their disability or health condition (33 per cent vs. 13 per cent).

The incidence of practices potentially prohibited under Section 60 as reported by applicants

In delineating the extent to which the recruitment questions reported by applicants represent activities prohibited under the Equality Act, there is a need to understand whether the reasons given by employers for asking these questions relate to exemptions within the Act. Specifically, these were as follows:

- to understand any adjustments that needed to be made to ensure that the applicant could take part in an assessment or interview (e.g. different formats of assessment materials, access considerations);

- for diversity monitoring purposes;

- because the employer has a specific policy to encourage diversity, for instance, a guaranteed interview scheme for disabled people;

- because it relates to an essential part of the job;

- because there is a legal requirement: for instance, where a valid medical fitness certificate is required by law to do the job.

This report has provided a cautious estimate of the extent of possible and probable unlawful practice in the use of health questions, based on the terms of the Equality Act 2010.

The evidence from job applicants suggests that for both people with and without impairments, in three in ten cases the employer asks them information about their health or disability, without providing an explanation related to any of the legitimate exemptions in the Equality Act. In one in twenty cases, the research uncovered practices that we could be more confident in classifying as unlawful (Table 1.1).

Table ES1 Overall incidence of potentially unlawful practice in recruitment prior to a job offer being made

	People with impairments	People without impairments
<i>Base</i>	(506)	(502)
	%	%
No health questions asked: Lawful	31	39
Health questions asked and given an explanation related to an exemption: Probably lawful	40	32
Health questions asked and explanation given does not fall within an exemption: Probably unlawful	6	4
Health questions asked and no explanation given: Possibly unlawful	23	26
Total: Lawful or probably lawful	71	70
Total: Probably or possibly unlawful	29	30

People with impairments were more likely than those without impairments to be asked questions about their health or disability prior to any job offer being made. But where the questions were asked, these were more likely to fall under the exemptions within the Equality Act allowing these types of questions to be used. As a result, there is no significant difference in the total incidence of probable or possible unlawful activity across the two groups; 29 per cent of people with impairments reported employer activity that could be considered probably or possibly unlawful, compared to 30 per cent of applicants without impairments. This is true for all age groups.

The research findings suggest some differences in the use of health questions by public and private sector employers. The incidence of applicants being asked any health questions is significantly higher in the public sector (79 per cent and 71 per cent for applicants with and without impairments respectively, compared to 67 per cent and 54 per cent in the private sector). There is evidence in the data, however, that private sector employers that do use health questions are more likely to target them specifically at applicants with impairments - within the private sector, two thirds of people with impairments (67 per cent) were asked health questions prior to any job

offer, compared to half of people without impairments (54 per cent). However, for public sector applications there was relatively small difference in the likelihood of applicants with or without impairments experiencing these practices.

Exploring variations in the incidence of prohibited practice by size of employer shows that there are relatively small differences in the likelihood of experiencing prohibited practice between small and large employers (those with 250 or more staff). However, where people with impairments in this study applied to medium-sized employers, they were significantly more likely to have experienced possible or probable unlawful practice with regard to the use of health questions (40 per cent), in comparison to people without impairments applying to these medium-sized employers (27 per cent).

Exploring variations in experiences of pre-employment health questions by job role applied for reveals very little variation.

Individuals' experience of pre-employment health questionnaires and health forms

The research also sought to explore the use of formalised questionnaires or forms specifically designed to collect information on an individual's health status during recruitment.

Across all applicants covered by the survey, one third (33 per cent) said that they were asked to fill out a health questionnaire or health form, before receiving any offer of employment. There was no statistically significant difference between people with impairments (36 per cent receiving a health questionnaire) and those without impairments (30 per cent).

Of those applicants asked to complete a health questionnaire or form, three fifths received this as part of the initial application (63 per cent for people with impairments, 62 per cent for people without impairments). In one quarter of cases where a health form was issued, this was when a person was invited for or attended an interview (27 per cent for people with impairments, 23 per cent for people without impairments), and in only a small proportion of cases were the forms issued after an interview (9 per cent, 14 per cent).

Individuals' experiences of health information being sought from a previous employer

Applicants were asked whether they were aware of the prospective employer having sought information from a current or previous employer about their health, their disability status, or their record of absence due to ill-health.

Although applicants may not have been in a very good position to know whether information had been sought from a previous employer, one in eight (13 per cent) thought that the employer had sought some information on their health, disability status or record of absence. People with impairments were significantly more likely to say that they thought that the prospective employer had sought references in relation to their health, disability status or record of absence (15 per cent, compared to 11 per cent of people without impairments). The higher incidence rate for people with impairments is related to the groups who have a visible impairment and those disclosing information about their health unprompted during the recruitment process.

Use of pre-employment health and disability questions by employers

Small and medium-sized employers (SMEs) were asked whether they ever obtain the following types of information from job applicants before they are made an offer of employment:

- 1) whether the candidate has a disability or health condition;
- 2) whether a disability or health condition would cause the candidate problems doing an essential part of the job;
- 3) the number of days the candidate has had off work for ill-health in a previous role;
- 4) whether the candidate's health condition or disability would affect their ability to participate in any part of the recruitment processes; and
- 5) whether the candidate would need any adjustments to their work environment or job role as a result of their health condition or disability.

Almost two-thirds of SME employers surveyed (65 per cent) stated that they collect information in one of the areas explored prior to making a job offer. It is more common for employers to collect each type of information at the interview stage than prior to this.

The most common reason given for requesting pre-employment health information was that employers wanted to ascertain any adjustments that would be required for the candidate to participate fully in the workplace if they were successful (83 per cent of those asking health questions – over half of all SMEs in total) - even though this may be unlawful under Section 60.

Table 1.2 summarises findings on the practices of SMEs. This analysis shows that in over one third of cases (35 per cent) the employer did not ask any health questions before deciding whether to offer the applicant the role. In these cases, the

recruitment practices would self-evidently be lawful under the Equality Act. In a further three fifths of cases (59 per cent) the employer said that they asked for health information from the applicant for a reason that would represent an exemption under the Equality Act. This leaves around one in twenty cases (six per cent) where the employer asked health questions, but did not give a reason for doing so that related to any of the exemptions. The recruitment practices of these SMEs can be considered probably unlawful.

Table ES2 Overall incidence of potentially unlawful practice in recruitment prior to a job offer being made – employers

	Employers
<i>Base</i>	<i>(400)</i>
	%
No health questions asked: Lawful	35
Health questions asked and given an explanation related to an exemption: Probably lawful	59
Health questions asked and explanation given does not fall within an exemption: Probably unlawful	6
Total: Lawful or probably lawful	94
Total: Probably or possibly unlawful	6

SMEs were also asked whether they used a health questionnaire or form to collect information from candidates. One in eight employers (12%) stated that they used a health questionnaire prior to a job offer being made.

Employers were asked about their awareness and understanding of the Equality Act in relation to asking about health or disability during the recruitment process. Half of SMEs (49 per cent) stated that they were not aware of what the Act details about health and disability questions during recruitment; 45 per cent stated that they were aware and five per cent were unsure. There does not appear to be a clear relationship between stated awareness of the content of the Equality Act and the likelihood to engage in practices that it prohibits.

Recruitment consultants said that they did not collect information about applicants' health or disability status. Although recruitment consultants feel knowledgeable about good recruitment practice when it comes to asking about health and disability, they

generally feel that responsibility in ensuring compliance lies with the employer, and they do not often personally take responsibility for ensuring that recruitment practices adhere to Section 60.

Reaction of job applicants to the use of pre-employment health questions

When they are asked for pre-employment health information, people generally provide it. Two thirds of applicants with impairments (68 per cent) said they answered the questions, compared with four out of five applicants without impairments (79 per cent).

The findings indicate that being asked pre-employment health questions has a much more negative impact on people with impairments than on people without impairments. In relation to future job applications, applicants with impairments who had been asked pre-employment health questions and were looking for work were more likely to feel that this had:

- put them off applying for jobs generally (28 per cent compared with 5 per cent);

- led them to some extent to look for jobs with less responsibility or stress (45 per cent compared with 9 per cent);

- made them more wary of applying for jobs with an interview (34 per cent compared with 10 per cent);

- made them feel less confident in future interviews and assessments as a result of being asked questions on health and disability in a previous application (42 per cent compared with 7 per cent).

Overall conclusions

The key conclusions that can be drawn from this research are that:

- despite the stipulations of the Equality Act, the use of pre-employment health questions is relatively commonplace;

- substantial minorities of job applicants have experienced specific health questionnaires/forms or attempts made to obtain health information from previous employers;

- even where potentially allowable questions are asked, job applicants rarely recall being provided with a legitimate reason for the questions (or indeed any reason at all);

- people who are disabled or have a long-term physical or mental health condition or illness are more likely to be asked pre-employment health questions by their prospective employer;

in a large number of cases, employers state that at least part of the reason for requesting health information is in order to assess any adjustments that would be required to ensure that candidates would be able to carry out the job role. There is a suggestion that some employers do this because they understand it to be good practice, whereas it may in fact be unlawful;

employers in the public sector seem to take a blanket approach to collecting pre-employment health information, but those in the private sector and medium-sized employers are more likely to request this information from disabled applicants only;

when they are asked for pre-employment health information, people generally provide it;

for disabled people in particular, being asked the questions can have a negative impact on future job-hunting;

there is a significant challenge in tackling these practices, given that a good proportion of employers feel that they already have a good understanding of the Equality Act.

It is vital that employers are seen to comply with the legislation, and that both employers and job applicants are clear about the legitimate reasons why some health questions may be asked prior to a job offer. The research has highlighted a lack of clarity on how to implement Section 60. The publication of guidance will offer a valuable resource to employers and job applicants alike. In addition, further research in a year's time would allow an evaluation of the impact of that guidance and the extent to which this section of the Equality Act has made a difference to recruitment practice.

1 Introduction and methodology

1.1. Introduction

This report presents the findings of research conducted by IFF Research on behalf of the Equality and Human Rights Commission (the Commission). The research focused on the recruitment practices of employers relating to collecting information about a job applicant's health prior to any offer of work being made. Such health enquiries are prohibited through Section 60 of the Equality Act 2010², unless they fall under a prescribed set of exemptions. This Section also applies to persons or agencies acting on employers' behalf during the recruitment process. This Section of the Act came into force in October 2010.

The Equality Act does allow an employer to make health enquiries before making a recruitment decision in specific pre-determined circumstances, such as establishing an applicant's ability to carry out a function that is an essential part of the work concerned, or for the provision of reasonable adjustments relating to the recruitment process. For the purposes of Section 60, disability is regarded as an aspect of a person's health. It should be noted, however, that the Section 60 legislation covers everyone – employers are prohibited from asking health questions pre-job offer, irrespective of whether the applicant has a disability or health condition or not.

Section 60 was enacted following increasing concerns that people with health problems were being discriminated against in recruitment decisions, even where their health would not prevent them from carrying out the work in question. Such practice had the further effect of deterring disabled people and people with health problems from applying for jobs.

The Commission has the sole power to enforce compliance with and take legal action under Section 60. To inform how it implements its powers under the section, this research was commissioned to understand:

the extent of compliance with the legislation, looking at the extent to which health-related questions are still being used during recruitment, and how this information is collected;

what reasons employers have for asking potentially unlawful health questions;

how compliance differs by the sector of the employer and the nature of the job role;

²See <http://www.legislation.gov.uk/ukpga/2010/15/section/60>

whether disabled people are more likely to be subject to prohibited health queries during recruitment, and what impact this has on their confidence and future job-seeking behaviour;

employers' awareness of their responsibilities under Section 60, and the extent to which they have modified their recruitment practices in response to the legislation.

The level of employer understanding of the legislation around pre-employment health questions has implications for the way the Commission ensures further compliance and for informing guidance which it may publish.

1.2. Methodology

The research consisted of three elements:

- an online survey of recent job applicants;

- a suite of questions placed on IFF Research's Small and Medium Sized Employers Omnibus in February 2012;

- ten in-depth interviews with recruitment consultants.

Individuals were recruited to take part in the online survey of job applicants through a research panel, covering approximately 470,000 people across the UK.

The survey was conducted in two staggered phases – the first collecting the experiences of individuals with impairments and the second collecting experiences of a matched sample of individuals without impairments.

For the first phase, a random sample of panel members was sent a screening survey, which included questions about their health and disability status, and their work activity. These questions were included within a wider set of questions in order to disguise the nature of the survey being recruited for, and thereby minimise the risk of false claims of eligibility for the research.

Individuals were invited to take part in the first phase if they ticked the statements in the screening survey confirming that they:

had applied for a job within the three-month period prior to the survey (whether successful or not); and either

had any physical or mental health conditions or illnesses lasting or expected to last for 12 months or more, that reduce their ability to carry out day-to-day activities³; or

had had cancer, HIV or multiple sclerosis at any point.

The survey was designed to obtain information from job applicants within a short time frame (within three months of making an application) to aid recall.

The specific screener questions are based on the harmonised concepts and questions developed by the Office for National Statistics, which establish a conceptual framework for disability definition.⁴

The Equality Act defines a disabled person as someone who ‘has a physical or mental impairment that has a substantial and long-term adverse effect on the person’s ability to carry out normal day-to-day activities’. The Act also covers individuals with cancer, HIV or multiple sclerosis, from the point of diagnosis onwards.

It should be noted that the criteria used to select the group of applicants for phase one are wider than the Equality Act definition of disability. This is because the surveyed group included some people who said that they had a health condition or disability that reduces their ability to carry-out day-to-day activities ‘a little’ rather than ‘a lot’. These individuals would not necessarily fit the ‘substantial adverse effect’ criteria used in the Equality Act. For this reason, in reporting we have made a distinction between the wider group (all those who fit the criteria of a long-term condition with at least ‘a little’ adverse impact on their day-to-day activities), and the sub-group who say that their condition reduces their ability to carry out day-to-day activities ‘a lot’. The overarching group is described in this report as ‘people with impairments’. The more specific group is described as ‘disabled as defined by the Equality Act 2010’.

³ Examples of conditions and illnesses that covered were given to survey respondents. See the questionnaire document in the appendix for further details.

⁴ For more information see: <http://www.ons.gov.uk/ons/guide-method/harmonisation/primary-set-of-harmonised-concepts-and-questions/long-lasting-health-conditions-and-illnesses--impairments-and-disability.pdf>

The second phase of the online survey was conducted with a sample of job applicants without impairments, who did not fit the definitions above. These were included as a control group to allow assessment of whether people with impairments were more likely to be impacted by pre-employment health questions during recruitment. Again, these individuals were only included if they had applied for a job within the three months prior to the survey. Quotas were set to ensure that the sample matched the profile of the sample of people with impairments, in terms of gender, age and socio-economic classification. As shown in more detail in Chapter 3, the profile of the sample of job applicants without impairments was also very similar in other respects, including the stages of the job application process discussed.

In both phases of the applicant survey, respondents were asked to refer to either their latest application or, if they had had an interview as part of an application recently, to this application, when answering the questions on their experiences of the recruitment process. This was done in order to maximise the insights that could be gained about discussions about health and disability at the key interview stage.

This report provides a measure of the incidence of the use of pre-employment health questions, derived from the applicant survey. Although a wide range of applicants have been interviewed (of different ages, with different health conditions, applying for a wide range of roles across a variety of industry sectors), it is difficult to assess whether the profile of the applicants surveyed matches the full population of applicants in this position. The aim, rather, has been to ensure coverage of different types of people in different situations, to assess where poor practice is most likely to be evident, and to assess the differences between the experiences of people with and without impairments.

This report presents the findings for people with impairments and people without impairments separately. It is not valid to combine data from the two sets of survey respondents to give representative overall figures. This is because the combined sample would not be representative of the population profile of applicants; half of all applicants surveyed were people with impairments, but people with impairments are likely to make up a very much smaller proportion of the actual real world population of job applicants. The need to treat the findings for the two groups separately also applies when analysing the data by factors such as the size and sector of employer.

Differences in the findings for sub-groups have been subjected to statistical testing using a t-test methodology. Where differences in findings are referred to as 'significant' this means that they are statistically significant at the 95 per cent confidence level.

The research also sought information from employers, through a set of questions added to IFF Research's regular omnibus survey of Small and Medium-sized Employers (SMEs). 400 telephone interviews were conducted with representatives from employers with fewer than 250 employees across all sites, excluding owners and partners. Sole traders were excluded. The survey covered:

- types of information collected during the recruitment process;
- whether the employer uses a specific health form during recruitment, and/or asks certain pre-employment health and disability questions;
- what the rationale is for asking pre-employment health questions;
- awareness of what the Equality Act says about asking questions about health or disability during the recruitment process.

Key information about employer turnover and sector was also collected. The survey data was weighted to reflect the profile of SMEs in the UK in terms of size and broad sector.

The research among employers provides a useful complement to the applicant survey, providing insight into the decision-making and rationale lying behind applicant experiences of being asked about health and disability. It also provides evidence of employer awareness of Section 60 and how this fits with their recruitment practices.

The third element of the research consisted of ten in-depth interviews conducted face-to-face with recruitment consultants. Individuals were selected to take part on the basis that they had 'everyday', direct contact with employers. Interviews were conducted with consultants working for independent agencies and those employed by larger nationwide companies. The consultants taking part had a range of experiences working with employers in different ways and to fill different types of role, from permanent professional roles, skilled trades and roles in construction and transport, and placing people in temporary office and unskilled work with the recruitment agency effectively acting as the 'employer' for the applicant. The discussions took around an hour in each case, and were conducted with consultants in London, the West Midlands and South-East of England.

The objective of the recruitment consultant research was to gain insights into both employers' and their own use of pre-employment health questions, and whether there is the potential for 'pre-screening' to take place based on information collected about an individual's health or disability before the person goes forward to have contact with the potential employer. The aim was to understand the nature of any information about health or disability collected when consultants are signing up or

talking to job seekers, the rationale for this information being compiled, and the extent to which the information is used in making decisions about who to put forward for a vacancy. Consultants were asked to detail any examples of employers intentionally or inadvertently influencing recruiters to exclude people with particular impairments, illnesses or health conditions from consideration for a role.

1.3. Defining lawful and unlawful practice under Section 60 of the Equality Act

As described in the introduction, the key aim of the research was to explore recruitment practices and identify those which represent lawful and unlawful practice under the Equality Act 2010. In interpreting the findings, it is important to understand how these concepts have been defined.

The research sought to measure the incidence of job applicants being asked specific questions⁵ about the nature of any impairment, illness or health condition they have, and how it would impact on them at work, before any job offer was made. These questions might have been asked verbally, or been included in a written application or assessment form.

All applicants who had been asked these questions before being given a job offer were asked:

whether the employer had given them any explanation of why they had been asked each of these questions;

where a reason was given by the employer, what this was, against a list of possible explanations.

Some of these potential explanations related to exemptions within the Equality Act, representing lawful reasons for asking health questions before a job offer is made. Specifically, these were as follows:

to understand any adjustments that needed to be made to ensure that the applicant could take part in an assessment or interview (e.g. different formats of assessment materials, access considerations);

for diversity monitoring purposes;

because the employer has a specific policy to encourage diversity, for instance, a guaranteed interview scheme for disabled people;

because it relates to an essential part of the job;

⁵ See Appendix A for the full survey questionnaire.

because there is a legal requirement, for instance, where a valid medical fitness certificate is required by law to do the job.

These exemptions do not apply to questions about an applicant's previous record of absence due to ill-health (e.g. how many days they have had off work for ill-health in the past or in a previous role).

Based on this framework, it has been possible to construct a summary categorisation of the lawfulness of the recruitment practices experienced by applicants.

- 1) No health questions asked before any job offer is made. This is self-evidently **lawful** under the Equality Act.
- 2) A health question was asked before any job offer was made, but the employer gave the applicant an explanation for asking this question, which related to an exemption under the Equality Act. This has been categorised as **probably lawful** under the Equality Act, as it is not possible to be certain that this explanation was a full and accurate description of the employer's rationale.
- 3) A health question was asked before any job offer was made, the employer gave the applicant an explanation for asking this question, but this did not relate to an exemption under the Equality Act. This has been categorised as **probably unlawful** under the Equality Act, as it is possible that the employer had another reason for asking this question which they did not state, but which would relate to an exemption.
- 4) A health question was asked before any job offer was made, but the applicant did not report receiving any explanation from the employer for asking this question. This situation has been categorised as **possibly unlawful** under the Equality Act. While it is considered poor practice for employers to fail to give a clear explanation of the use of health questions during recruitment, it is difficult to know whether the employer behaviour in this case represents unlawful activity. It may be that the health question was asked for a lawful purpose but this was not explained to the applicant.

Clearly, applicants could have been asked a number of questions at various points in the recruitment process, and received different levels of explanation from the employer at different stages. Indeed, there were a considerable number of cases where individuals have experienced recruitment practices which would fall into more than one of the categories described above.

To provide a more definitive classification for analysis, an assumption of probable lawfulness has been made in cases where the employer gave an explanation related to an exemption for **any** health question e.g. if an individual was asked for several pieces of health information and given an explanation relating to an exemption for one of them but no explanation for others, then they have been included in the 'probably lawful' category.

Outside of this key lawfulness framework, the survey of applicants also allows us to measure other recruitment practices of interest in the context of health and disability. These were:

- the use of specific health questionnaires or health forms during recruitment, prior to any job offer being made;

- employers seeking information from an applicant's previous employer(s) about that person's health, disability status, or record of absence due to ill-health, before deciding whether to make them a job offer;

- the handling of health or disability information collected for diversity or equality monitoring purposes. (Where this is collected prior to a job offer, it is best practice for this information to be handled by a separate person or team from those making the recruitment decisions.)

In the employer survey, employers were asked to state whether they asked health-related questions of applicants and for what reasons. Employers were asked for their reasoning for asking pre-employment health questions as a whole, rather than being asked about the reasons given for particular individual questions being asked, as in the applicant survey. The same classification of lawfulness as described above for the applicant survey has been applied to the data from the employer survey.

1.4. About this report

This report presents the findings from the three strands of the research.

A key focus is on the incidence of pre-employment health questions being asked by employers, based on the reported experiences of job applicants. The report presents the incidence of health questions being asked overall, and then the measure of how often this would represent practice prohibited by the Equality Act (based on the framework described above).

The experiences of applicants with and without impairments are compared throughout the report, and specific findings relating to the sub-group of people who are disabled as defined by the Equality Act are highlighted. The fact that 1,000 applicants were surveyed has enabled an exploration of how experiences differ

according to factors such as the visibility of an individual's health condition or disability to a prospective employer, and demographics such as age. Information is also provided about how practices in collecting health information differ according to the sector and size of employer, and the type of role applied for.

The report is organised into five subsequent chapters:

Chapter 2 presents the profile of surveyed job applicants to provide context for the findings;

Chapter 3 looks at the incidence of experiencing pre-employment health questions among job applicants;

Chapter 4 focuses on the use of health questionnaires and forms, as reported by job applicants;

Chapter 5 looks at job applicants' reports of employers seeking information from applicants' previous employers about that person's health, disability status or record of absence due to ill-health, before deciding whether to make them a job offer;

Chapter 6 sets out the data on the use of pre-employment health questions reported by Small and Medium-sized Employers (SMEs). This chapter also looks at employers' rationale for asking pre-employment health questions, and the extent to which SMEs understand the principles of Section 60 with regard to recruitment practices. This is supplemented with the views of recruitment consultants on the extent to which employers understand legislation regarding how applicants are selected for a role.

Chapter 7 presents findings from the applicant survey about the impact on job applicants of being asked about their health or disability;

Chapter 8 draws together the key messages arising from the research project.

2 Profile of surveyed job applicants

To enable legitimate comparisons to be made between people with impairments and people without impairments, it is important to understand any differences in their profile that need to be taken into account. This chapter compares the two groups on a number of different characteristics. As far as possible, the profiling questions used were those recommended by the Office for National Statistics' (ONS) harmonisation guidelines.

2.1. Country of domicile

The majority of people surveyed for the research currently live in England (88 per cent of people with impairments, 89 per cent of people without impairments). The remainder were relatively evenly split between Scotland (7 per cent of people with impairments, 6 per cent of people without impairments) and Wales (4 per cent of people with impairments, 5 per cent of people without impairments).

2.2 Protected Characteristics

Table 2.1 below compares the applicants with and without impairments who took part in the survey, by the characteristics protected under the Equality Act: age, gender, gender reassignment, sexual orientation, ethnic group and religious affiliation⁶. This table shows no statistically significant differences between the two groups.

Table 2.1 Profile of respondents by protected characteristics

*= <0.5% but >0%	People with impairments	People without impairments
<i>Base</i>	(506)	(502)
	%	%
Age		
Under 25	15	15
25 – 34	31	31
35 – 44	18	19
45 – 54	20	20
55 – 64	15	14
65 – 74	1	1
Gender		
Male	34	35
Female	66	64
In another way	*	*
Prefer not to say	*	1

⁶ Note that the religion question measures religious affiliation and that it is important not to confuse this with belief and/or practice when presenting results.

Table 2.1 Profile of respondents by protected characteristics (continued)

*= <0.5% but >0%	People with impairments	People without impairments
<i>Base</i>	(506)	(502)
	%	%
Gender reassignment		
Yes	3	1
No	96	98
Prefer not to say	1	1
Sexual orientation		
Heterosexual or Straight	91	94
Gay or Lesbian	3	2
Bisexual	4	1
Other	1	1
Prefer not to say	1	3
Ethnic Group		
White		
English/ Welsh/ Scottish/ British	85	81
Irish	1	1
Gypsy, Traveller or Irish Traveller	-	*
Any other White background	4	7
Mixed/ Multiple ethnic groups	3	1
Asian/ Asian British		
Indian	2	3
Pakistani	1	1
Bangladeshi	*	1
Chinese	1	1
Any other Asian background	1	*
Black/ African/ Caribbean/ Black British	2	2
Other ethnic group		
Arab	*	*
Any other ethnic group	*	*
Prefer not to say	1	2
Religion		
No religion	42	43
Christian	47	48
Buddhist	1	*
Hindu	2	2
Jewish	1	*
Muslim	3	1
Sikh	*	1
Any other religion	2	1
Prefer not to say	3	3

2.3 Qualifications and work history

Table 2.2 compares the two groups by highest level of educational achievement which shows only slight differences.

Table 2.2 Level of education of respondents

	People with impairments	People without impairments
<i>Base</i>	(506)	(502)
	%	%
LEVEL 5 (Degree or Above)	32	40
LEVEL 4 (Certificates of Higher Education)	12	9
LEVEL 3 (A Level)	23	21
LEVEL 2 (5 GCSE's Grades A-C)	15	14
LEVEL 1 (GCSE Grades D-G)	7	8
ENTRY LEVEL (Entry Level Certificates – e.g. City and Guilds)	4	3
Other	2	2
No Qualifications	4	3
Don't Know	1	1

As well as being very similar in terms of educational level achieved, the two groups also mirrored each other closely in terms of level of jobs that applicants had worked in previously, or were currently working in (as classified using the National Statistics Socio-Economic Classification, or NS-SEC). As shown in Table 3.3, one-fifth of the applicants in both groups were or had been in semi-routine and routine occupations and just over two-fifths were or had been in managerial and professional occupations.

Table 2.3 National Statistics Socio-Economic Classification (NS-SEC) of respondents

	People with impairments	People without impairments
<i>Base</i>	(506)	(502)
	%	%
Managerial and professional occupations	43	44
Intermediate occupations	20	21
Small employers and own account workers	7	5
Lower supervisory and technical occupations	7	7
Semi-routine and routine occupations	21	22
Never worked or long-term unemployed	2	1

2.4 Nature of applications made

Table 2.4 below compares the profile of employers to which job applications had been made. This shows a very similar profile in terms of whether employers operated in the private, public or voluntary sectors and also by size of employer applied to. There are slight differences in the sector of employers applied to with people with impairments slightly more likely to have made applications to employers in the retail or wholesale sector.

Table 2.4 Profile of job applications, by type, sector and size of employer

	People with impairments	People without impairments
<i>Base</i>	<i>(506)</i>	<i>(502)</i>
	%	%
Type of Employer		
Private Sector	60	61
Public Sector	27	30
Third Sector or Voluntary	9	6
Not Sure	4	4
Sector		
Financial Services	5	7
Professional or Business Services	11	11
Retail or Wholesale	22	16
Hospitality, hotels or restaurants	7	5
Manufacturing or Transport	8	11
Construction	2	2
Education	11	12
Health, Social Work, Childcare	15	14
Other Public Sector	8	9
Agriculture, Horticulture, Animal Care	1	2
Arts, Entertainment, Sport and Recreation	3	4
Personal Services	2	1
Other	1	6
Not Sure	3	2
Size		
1-9 employees	3	5
10-49 employees	18	15
50-249 employees	15	16
250 + employees	42	46
Don't Know	22	19

Table 2.5 compares the two groups by nature of job applied for. This groups jobs by the nine major categories of the Standard Occupational Classification. Reflecting the fact that they were slightly more likely to be applying to employers in the retail and wholesale sector, applicants with impairments were more likely to have applied for sales and customer service roles than applicants without impairments (and correspondingly slightly less likely to have applied for associate professional roles).

Table 2.5 SOC classification of the roles respondents applied for

	People with impairments	People without impairments
<i>Base</i>	<i>(469)</i>	<i>(446)</i>
	%	%
Managers, Directors and Senior Officials	5	6
Professional Occupations	13	15
Associate Professional and Technical Occupations	10	18
Administrative and Secretarial Occupations	24	20
Skilled Trades Occupations	3	4
Caring, Leisure and Other Service Occupations	12	9
Sales and Customer Service Occupations	23	15
Process, Plant and Machine Operatives	4	4
Elementary Occupations	8	10

2.5 Stage of application process reached

Table 2.6 compares the job applications discussed by respondents in terms of the type of application process experienced. Again this shows that the people with impairments and people without impairments groups are very similar in terms of the way in which individuals placed their application and the stages of the application process that they reached. However, the proportion of applicants with impairments who attended a face-to-face interview was slightly lower than for applicants without impairments.

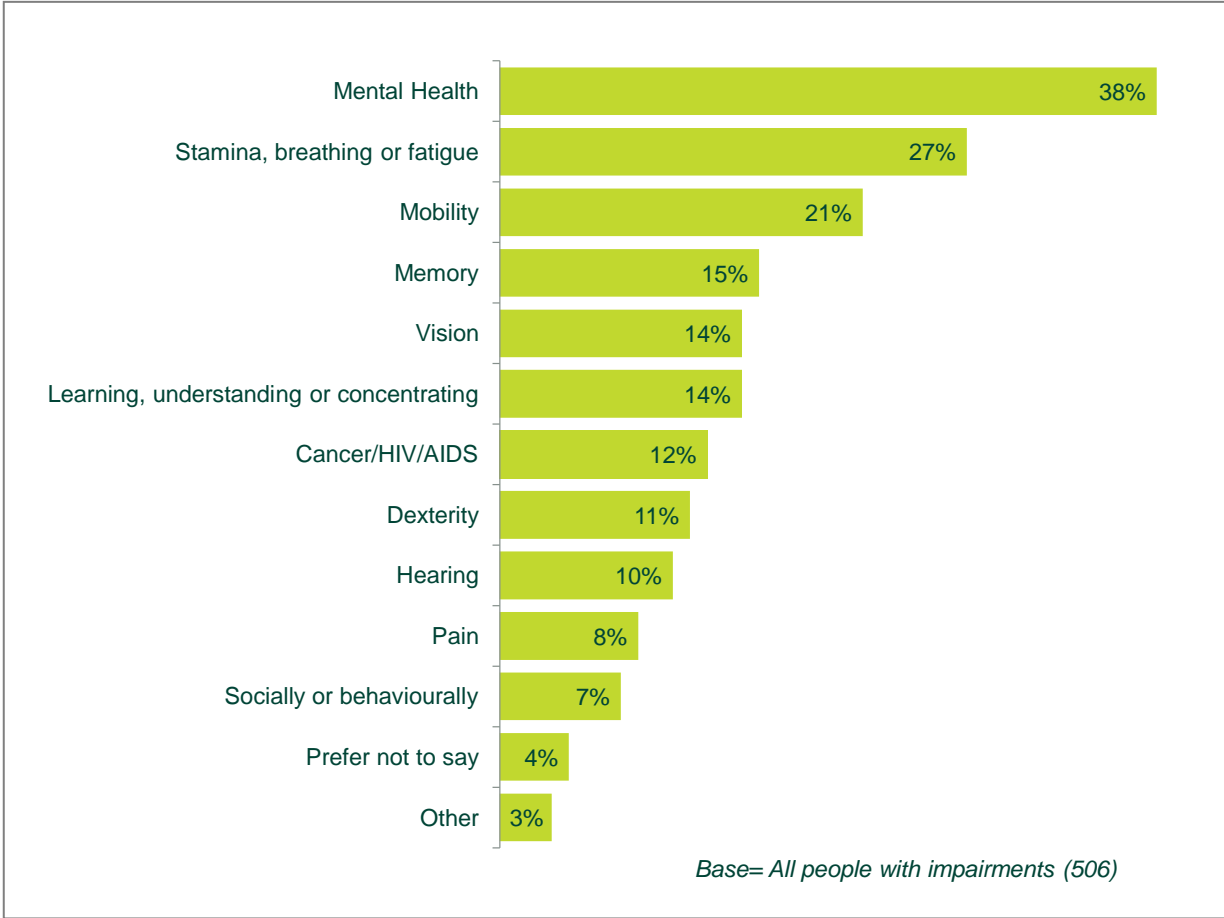
Table 2.6 Stages of the application process experienced

	People with impairments	People without impairments
<i>Base</i>	(506)	(502)
	%	%
Initial stages		
Submitted CV and/or cover letter	63	63
Completed online application form	48	45
Completed written application form	18	20
Contacted the employer by telephone or email to discuss the job role	21	21
Completed competency or ability test	30	31
Invited for telephone or face-to-face interview	64	68
Took part in telephone interview	15	10
Took part in face-to-face interview	56	62

2.6 Nature of impairment

The last section of this profiling chapter describes the group of people with impairments participating in the survey. All respondents in the people with impairments group were asked to define how they viewed their impairment or long-term health condition. The responses given are shown in Figure 3.1 below. Individuals often selected more than one option so the responses do not sum to 100 per cent.

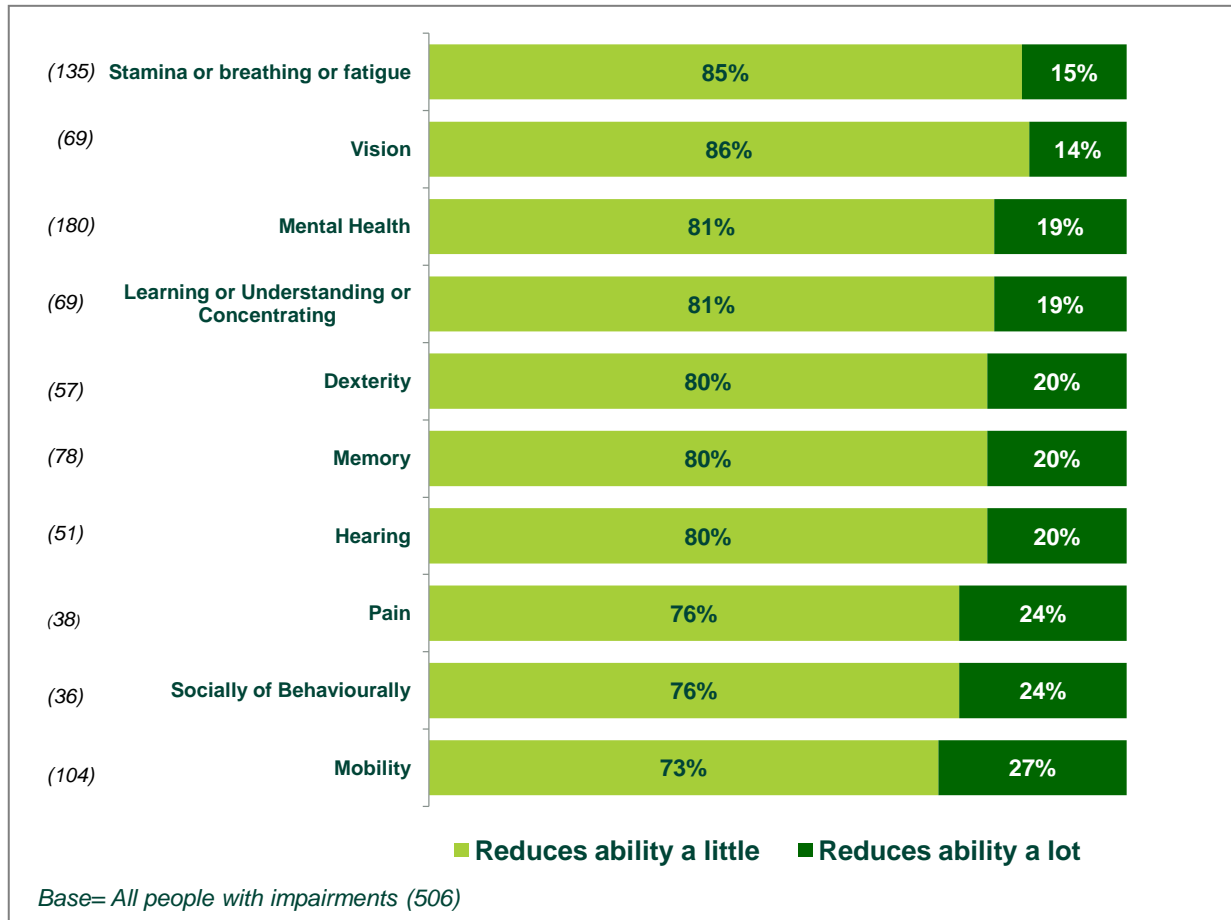
Figure 2.1 Respondents' classification of their impairment or long-term health condition



Respondents were also asked to what extent they felt that their impairment or long-term health condition reduced their ability to carry out day-to-day activities. Overall, 13 per cent of applicants with impairments felt it reduced their ability a lot with 87 per cent feeling that it impacted a little. The former group are disabled as defined by the Equality Act.

Figure 2.2 shows the variation in responses by nature of impairment or long-term health condition. Across all groups of impairment, the proportion of individuals stating that their health condition impacted a lot on their ability to carry out day-to-day activities ranged between 14 per cent and 27 per cent.

Figure 2.2 Impact on ability to carry out day-to-day activities, by impairment



A final profiling question asked applicants with impairments whether they felt that their physical or mental health condition or illness would be apparent in an interview situation. Overall, one in twelve of individuals (8 per cent) stated that this would definitely be the case, with a further third (37 per cent) stating that they felt that it would maybe be apparent. Half of respondents with impairments stated that their health condition was invisible. The variations in perceived visibility of health condition by broad impairment group are shown in Table 2.7 below.

Table 2.7 Whether respondent thinks that physical or health condition would be apparent in an interview, by nature of impairment

	Do you think that your physical or mental health condition would be apparent in an interview situation?					
	Base	%	Definitely	Maybe	No	Don't know
All	506	%	8	37	51	5
Vision	69	%	13	51	36	0
Hearing	51	%	12	49	29	10
Mobility	104	%	15	39	40	6
Dexterity	57	%	12	37	47	4
Learning or Understanding or Concentrating	69	%	7	42	46	4
Memory	78	%	4	51	39	6
Mental Health	180	%	7	40	46	7
Stamina or Breathing or Fatigue	135	%	5	41	50	4
Socially or Behaviourally	36	%	11	56	28	6
Pain	38	%	3	34	63	0
Cancer, HIV or MS	58	%	10	36	50	3

Applicants who are disabled as defined by the Equality Act were more likely to say that their condition would be evident to a prospective employer. One fifth (21 per cent) said that they thought their impairment would definitely be visible, with a further 47 per cent saying that their impairment would perhaps be evident. Therefore, in total, two thirds of those applicants who are disabled as defined by the Equality Act would consider themselves to have a visible impairment.

3 Individuals' experiences of being asked pre-employment health and disability questions

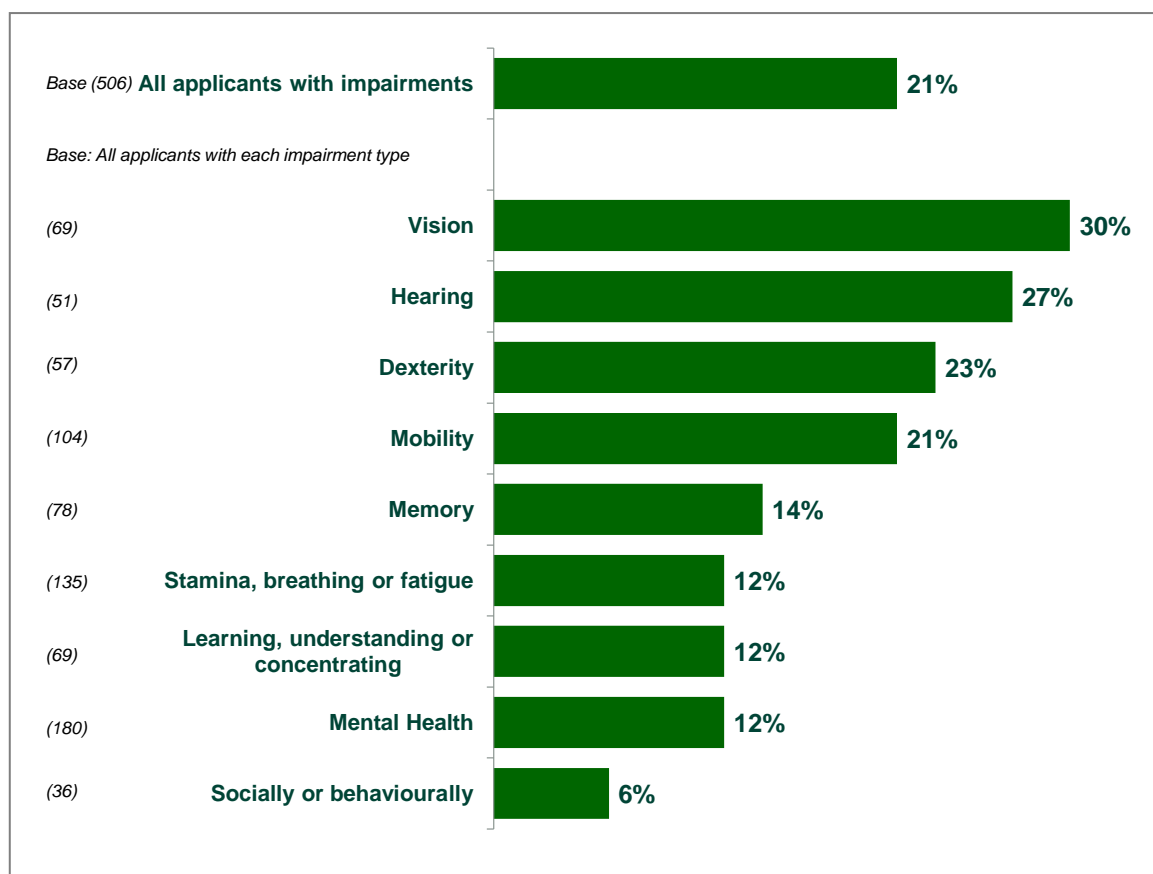
This chapter provides insight into the information collected by employers in relation to an individual's health and disability during the recruitment process. It provides a picture of how common it is for people with and without impairments to be asked for such information, which has the potential to influence the employer's recruitment decisions.

3.1 Voluntary disclosure of health and disability information during the application process

In assessing the extent of compliance with Section 60 among employers, it is important to understand that there will be cases where applicants themselves disclose information about their health or disability, without this being in response to employers asking health questions.

Applicants with impairments were asked whether they volunteered any information about their condition or illness, without being asked, at any stage of their application. Overall, one in five (21 per cent) said that they had disclosed at least some information proactively, as shown in Figure 3.1 below.

Figure 3.1 Proportion of applicants with impairments proactively volunteering health information



As shown in Figure 3.1, those whose condition or illness impacts on their vision or hearing are the most likely to raise this with the employer proactively: three in ten (30 per cent) of those with a visual impairment had done so, as had over one quarter (27 per cent) of those with a hearing impairment. Information about the impact of a condition or illness was less likely to be disclosed where the effect was on:

- stamina, breathing or fatigue (12 per cent);
- learning, understanding or concentration (12 per cent):
- mental health (12 per cent); and
- social and behavioural characteristics⁷ (6 per cent).

Where applicants consider that their condition or illness would be apparent in an interview situation, they are more likely to volunteer information about their health or disability: over one third (35 per cent) of those who said that their condition would be

⁷ Note that the base size for 'socially and behaviourally' is small (36 respondents), and therefore findings should be treated with caution.

'definitely' or 'maybe' apparent to a prospective employer had volunteered information about their condition without being asked. This compares to around one in eight (13 per cent) of those with a 'non-visible' condition who discussed their condition without being asked directly.

In a substantial proportion of cases the applicant volunteered information about their health condition or disability as part of their covering letter or CV (15 per cent of cases where applicants disclosed information). However, disclosure was much more likely to take place in an interview setting – face-to-face interviews accounting for one third (32 per cent) of all instances of disclosure. Overall, just over one in ten applicants with impairments who had a face-to-face interview said that they had volunteered information about their condition during the interview (12 per cent). (It is still illegal for employers to follow up on voluntary disclosure by asking further questions, unless these fall under the exemptions.)

3.2 The incidence of pre-employment health questions asked during recruitment as reported by applicants

A central aim of this research was to provide insight into the extent to which employers are continuing to ask applicants health questions in advance of the decision of whether to make them a job offer, and how often this represents practice prohibited under Section 60 of the Equality Act. The following discussion focuses on findings from the survey of job applicants, comparing the reported incidence of health questions among people with and without impairments.

Figure 3.2 shows the proportion of job applicants being asked particular health questions during the recruitment process, separately for people with and without impairments. Job applicants who had been offered the job they applied for were asked to look back to the recruitment process **before** this offer was made. Note that not all of these instances of pre-employment health questions being asked represent prohibited practice - there are some legitimate reasons for asking for health information, as described in the introduction.

Applicants were asked if they had been asked the following, either verbally or as part of a written or online application or assessment form.

whether or not you have a disability or health condition;

the nature of any disability or health condition i.e. what the condition or disability is;

how a disability or health condition might affect you at work;

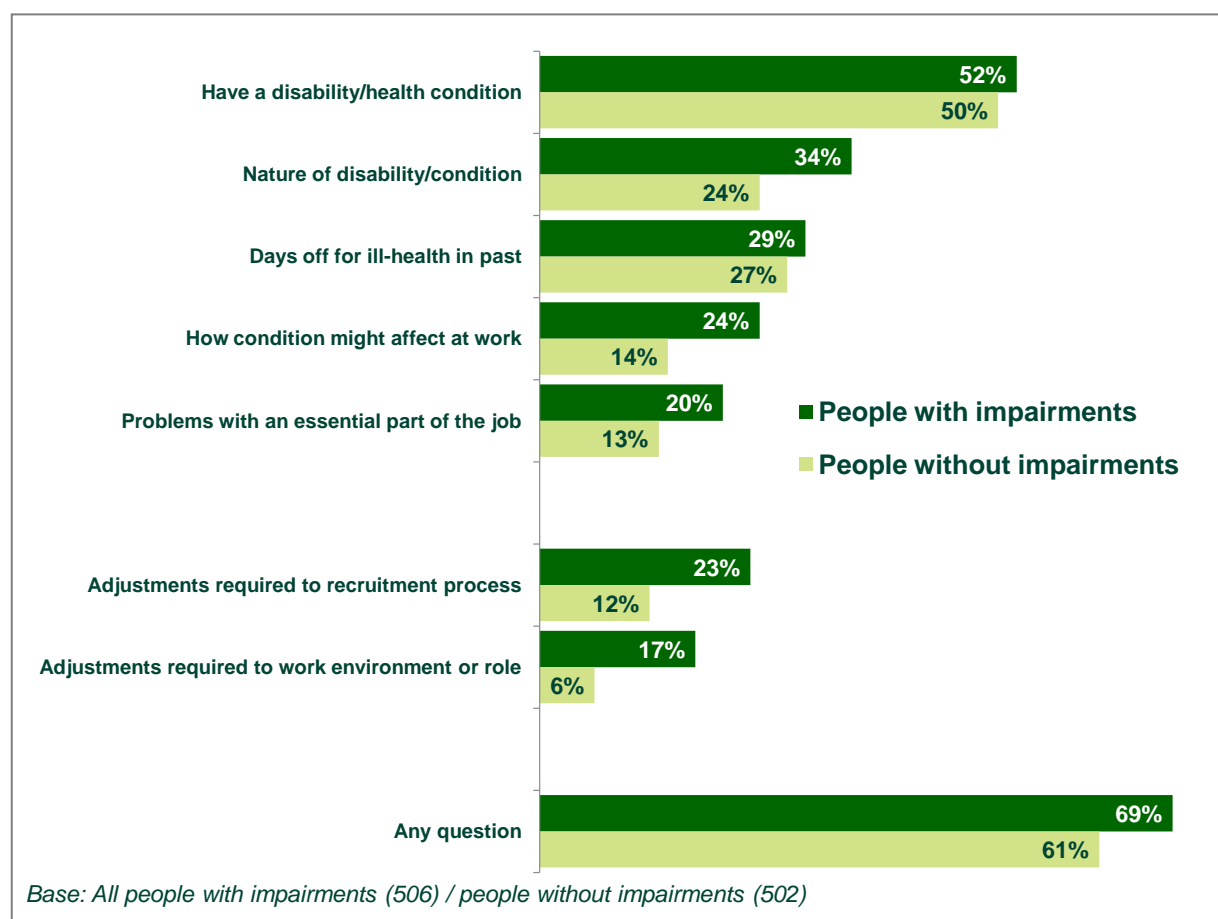
whether you would have any problems - because of disability or ill health – doing an essential part of the job;

how many days you have had off work for ill-health in the past or in a previous role;

whether you would need any adjustments to participate in any further recruitment stages such as assessments or tests, because of a disability or health condition;

whether you would need any adjustments to participate fully in the workplace, because of a disability or health condition (for instance, adjusting procedures, the work environment, your job role or working hours).

Figure 3.2 Proportion of applicants asked pre-employment health questions



Half of applicants in both the with impairments and without impairments groups were asked whether or not they have a disability or health condition at some point in the recruitment process (52 per cent and 50 per cent respectively). Applicants were less likely to be asked about the likely impact of a disability or health condition in the job role, or about any adjustments that might be required to ensure that the person could participate fully in either the recruitment process or prospective workplace.

Figure 3.2 demonstrates that, while very similar proportions of people with and without impairments are asked by the employer **whether they have any disability or health condition**, applicants with an impairment are significantly more likely to report being asked:

- the nature of any disability or health condition (34 per cent vs. 24 per cent of applicants without impairments);
- how a disability or health condition might affect them at work (24 per cent vs. 14 per cent);
- whether they would have any problems - because of disability or ill health – doing an essential part of the job (20 per cent vs. 13 per cent);
- whether they would need any adjustments to participate fully in the workplace, because of a disability or health condition (17 per cent vs. 6 per cent).

The incidence of people with impairments being asked any of these pre-employment health questions is higher (at 69 per cent) than for applicants without impairments (61 per cent).

Where applicants proactively **volunteer** information about their health or disability status during the recruitment process, the employer is much more likely to feel that the issue is 'out in the open' and ask further questions about the impact this would have on the individual at work. Table 3.1 shows a comparison in the incidence of certain questions being asked by the employer, separately for people with impairments who mentioned their health condition without being asked, and those who did not. Those who are forthcoming in disclosing their condition or illness to the potential employer are, for instance, much more likely to be asked whether this would impact on their ability to do an essential part of the job (32 per cent vs. 17 per cent) and about adjustments that would be necessary in the workplace (33 per cent vs. 13 per cent).

Table 3.1 Proportion of applicants with impairments asked pre-employment health questions – comparison between those voluntarily disclosing information about their condition and those not

	Voluntarily disclosed any information without being asked	Did not voluntarily disclose any information without being asked
<i>Base: All with impairments (506)</i>	<i>(107)</i>	<i>(399)</i>
	%	%
The nature of any disability or health condition – i.e. what the condition or disability is	48	31
How a disability or health condition might affect you at work	45	18
Whether you would have any problems - because of disability or ill-health - doing an essential part of the job	32	17
How many days you have had off work for ill-health in the past or in a previous role	34	28
Whether you would need any adjustments to participate in further recruitment stages such as assessment or tests, because of a disability or health condition	31	20
Whether you would need any adjustments to participate fully in the workplace, because of a disability or health condition (for instance, adjusting procedures, the work environment, your job role or working hours).	33	13

Where applicants had been asked any of the questions about health and disability they were asked whether or not they went on to answer these questions. The applicants voluntarily disclosing information were more likely to say that they had answered these more detailed health questions put to them during recruitment; only 10 per cent of this group who were asked questions refused to answer, compared to almost three in ten (28 per cent) of those who had not informed the employer of their condition themselves (see Chapter 8 for more details).

Applicants with impairments were more likely than those without impairments to be asked whether they would need any adjustments to participate in any further recruitment stages such as assessments or tests, because of a disability or health condition. This reflects the employer duty within the Equality Act towards disabled applicants (using the Equality Act definition) to make reasonable adjustments to the recruitment process.

3.3 At what stages of the recruitment process are these questions asked?

Applicants who reported being asked health questions were requested to describe at which stage or stages of the recruitment process these questions were raised.

Tables 3.2 and 3.3 below show the proportion of all applicants being asked health questions at particular stages in the recruitment process.

In general, health questions are most likely to arise in the context of online or written application forms or during a face-to-face interview. For instance, one third of applicants with impairments (33 per cent) were asked the basic question of whether or not they have a disability or health condition as part of an online or written application form, and one in ten were asked this as part of a face-to-face interview (10 per cent, Table 3.2). The same proportion of applicants without impairments (33 per cent) were asked to indicate whether they had a health condition or disability in the original online or written application.

It is also possible to look at the data the other way round – what percentage of all online application forms, for instance, contained particular health questions. Around half of online and written application forms received by applicants contained a question about whether the applicant has a health condition or disability (53 per cent of those forms received by people with impairments, 54 per cent of those received by people without impairments).

Where the question was about whether the applicant would need any adjustments to participate fully in recruitment stages such as assessments, this was more likely to be raised early in the process in the application form or when invited for interview. One in seven applicants with impairments (11 per cent) and a smaller proportion of people without impairments (seven per cent) were asked whether they would need any adjustments to the recruitment process as part of an initial online or written application form.

Applicants with impairments were twice as likely to report being asked most of the health questions during a face-to-face interview; for example, as shown in Tables 3.2 and 3.3, eight per cent of people with impairments were asked in an interview about whether any disability or condition would have implications for an essential part of the job role, compared to four per cent of people without impairments. People without impairments were just as likely, however, to be questioned on their record of absence due to ill health at the interview stage (eight per cent of all applicants without impairments, compared to seven per cent of all applicants with impairments).

Table 3.2 Stages at which applicants were asked pre-employment health questions – proportion of all applicants with impairments

Stage of recruitment process Base: All applicants with impairments (506)	Whether have condition	Nature of condition	Affect at work	Problems with essential part of the job	Days off for ill-health	Adjustments for recruitment	Adjustments in workplace
As part of the online application form	25	14	7	5	12	11	7
As part of the written application form	8	6	3	3	5	3	1
During initial discussion with employer about the job role	1	1	*	*	1	-	*
As part of the competency or ability test	4	2	3	1	2	1	1
When invited for interview	5	4	3	3	2	5	1
During the telephone interview	2	1	1	1	1	1	2
During the face-to-face interview	10	8	8	8	7	3	6
Other / Can't remember	2	1	1	1	1	1	*

- = zero

*= <0.5% but >0%

Table 3.3 Stages at which applicants were asked pre-employment health questions – proportion of all applicants without impairments

Stage of recruitment process Base: All applicants without impairments (502)	Whether have condition	Nature of condition	Affect at work	Problems with essential part of the job	Days off for ill-health	Adjustments for recruitment	Adjustments in workplace
As part of the online application form	24	11	6	4	8	5	2
As part of the written application form	9	4	3	2	5	2	1
During initial discussion with employer about the job role	1	-	*	*	1	-	*
As part of the competency or ability test	1	1	1	1	*	-	-
When invited for interview	3	2	1	1	3	2	1
During the telephone interview	*	*	-	*	-	-	-
During the face-to-face interview	8	4	4	3	8	1	2
Other / Can't remember	6	2	*	1	4	1	*

- = zero

*= <0.5% but >0%

3.4. Details of health questions asked

To provide more insight into employer practices, those applicants who reported having been asked 'how a disability or health condition might affect you at work' were asked to give more details about their experiences.

In many cases, the questions asked by employers were quite general, along the lines of the statement above ('how might a disability or health condition affect you at work?') without any accompanying context or explanation.

'Could I please explain how my illness affects my day to day life and how it could affect my work?'

'Have you any medical conditions that we should know before we employ you?'

'Do you have a disability or health condition that might affect you at work or need adjustments to the workplace?'

In a number of cases, people were asked whether they had a disability or health condition that could affect them in carrying out an essential part of the job: such questions would be potentially lawful under the exemptions:

'We were asked if we had any physical disabilities that would be a problem as we needed to be moving around quite quickly and also that it could be dangerous to us with bending and lifting.'

'I was asked whether I thought I could handle money without making mistakes.'

'They needed to know if I could move objects about in the warehouse, which I cannot do.'

'They asked if I could use a keyboard and mouse, and lifting equipment.'

In one case, a follow-up question related to access. However, this is not included in the exemptions and would therefore be unlawful:

'If I was ok to get to certain areas of the building, and if the work would be suitable for me and not cause me any problems.'

In other cases, the focus of the question was on the potential effect on reliability or stamina at work:

'They asked me what I am able to do and how long I can work without stopping, other than normal breaks.'

'They asked if the condition would cause me to have a lot of time off.'

'I had put on the application form (as I was asked to) about my thyroid eye disease and an overactive thyroid and they asked me if my condition would affect any part of the job I was applying for or cause me to take time off of work but was able to say I have never had any time off of work regarding my eyes and would be able to do the role.'

A substantial number of applicants who were asked about the impact at work mentioned that the employer had raised the idea of reasonable adjustments:

'Do you have any disabilities or health conditions? If so, what? And would any adjustments needs to be made to accommodate this?'

'It was asked in the context of whether there might be adaptations needed.'

'What would help me to work without my illness causing me any problems.'

Where the applicant had disclosed (either voluntarily or on being asked) a mental health condition, this seems to lead to a more personal or presumptive line of questioning from the employer. The lines of questioning experienced by applicants with mental health problems suggest employers perhaps making more assumptions about likely issues in the job role. Examples of specific questions were:

'Are you likely to take much time off due to your depression? Are you likely to have emotional episodes at work?'

'Whether or not I would actually be able to do the work. They seemed quite dismissive of my mental health difficulties and questioned my ability to be in employment at all.'

'How would I deal with a problem that arose? Would my mental health issue cloud my judgement?'

'Could you become exhausted and incapable due to distress in this job role?'

3.5. The incidence of potentially unlawful practices under Section 60, as reported by applicants

In delineating the extent to which the recruitment questions described above represent activities prohibited under the Equality Act, there is a need to understand whether the reasons given by employers for asking these questions relate to exemptions within the Act. To this end, all applicants who had been asked health questions before being made a job offer were asked:

whether the employer had given them any explanation of why they had been asked each of these questions;

where a reason was given by the employer, what this was, against a list of possible explanations.

Some of these potential explanations related to exemptions within the Equality Act, representing lawful reasons for asking health questions before a job offer is made. Specifically, these were as follows:

to understand any adjustments that needed to be made to ensure that the applicant could take part in an assessment or interview (e.g. different formats of assessment materials, access considerations);

for diversity monitoring purposes;

because the employer has a specific policy to encourage diversity: for instance, a guaranteed interview scheme for disabled people;

because it relates to an essential part of the job;

because there is a legal requirement: for instance, where a valid medical fitness certificate is required by law to do the job.

These exemptions do not apply to questions about an applicant's previous record of absence due to ill-health (e.g. how many days they have had off work for ill-health in the past or in a previous role). More detail on the exemptions can be found in the section on 'Defining lawful and unlawful practice' in Chapter 1.

Tables 3.4 and 3.5 list the seven health questions, giving a breakdown of the proportion of all applicants asked each question, given an explanation by the employer and given an explanation relating to an exemption under the Act. Table 3.4 shows the findings for the group of applicants with impairments, and Table 3.5 presents the findings for the group without impairments. These tables show that, in many cases where questions have been asked, the applicant was not given any explanation. For instance, while one quarter (24 per cent) of applicants with impairments were asked how a disability or health condition might affect them at work, only half were given any explanation for this (12 per cent of applicants with

impairments overall). Where an explanation was given, the vast majority of applicants confirmed that the reason given conformed with at least one of the legitimate exemptions. The general pattern is similar for people without impairments. Although we have seen that fewer of these applicants are asked most of the questions, where they were asked, in more than half of cases, no explanation was given.

Table 3.4: Extent to which explanations were given for asking health questions – people with impairments

Health question asked by the employer prior to any job offer being made		Not asked	Asked – not given explanation	Asked, given explanation – not related to an exemption	Asked, given explanation – related to an exemption
Base: All applicants with impairments (506) Table shows row percentages					
Whether or not you have a disability or health condition	%	48	34	2	17
The nature of any disability or health condition – i.e. what the condition or disability is	%	66	22	1	12
How a disability or health condition might affect you at work	%	76	12	1	11
Whether you would have any problems - because of disability or ill-health - doing an essential part of the job	%	80	11	1	8
Whether you would need any adjustments to participate fully in the workplace, because of a disability or health condition (for instance, adjusting procedures, the work environment, your job role or working hours).	%	83	9	4	4
Whether you would need any adjustments to participate in further recruitment stages such as assessment or tests, because of a disability or health condition	%	77	12		11
How many days you have had off work for ill-health in the past or in a previous role	%	71	19	10	

Table 3.5 Extent to which explanations were given for asking health questions – people without impairments

Health question asked by the employer prior to any job offer being made		Not asked	Asked – not given explanation	Asked, given explanation – not related to an exemption	Asked, given explanation – related to an exemption
Base: All applicants without impairments (502) Table shows row percentages					
Whether or not you have a disability or health condition	%	50	31	2	18
The nature of any disability or health condition – i.e. what the condition or disability is	%	76	15	1	9
How a disability or health condition might affect you at work	%	86	9	*	5
Whether you would have any problems - because of disability or ill-health - doing an essential part of the job	%	87	8	1	5
Whether you would need any adjustments to participate fully in the workplace, because of a disability or health condition (for instance, adjusting procedures, the work environment, your job role or working hours).	%	94	4	1	1
Whether you would need any adjustments to participate in further recruitment stages such as assessment or tests, because of a disability or health condition	%	88	7		5
How many days you have had off work for ill-health in the past or in a previous role	%	73	20	7	

*= <0.5% but >0%

Based on this information, it has been possible to construct a summary categorisation⁸ of the lawfulness of the recruitment practices experienced by applicants. Table 3.6 gives the proportion of all applicants whose experiences fall into each of the categories above, separately for individuals with and without impairments.

Table 3.6: Overall incidence of potentially unlawful practice in recruitment prior to a job offer being made

	People with impairments	People without impairments
<i>Base</i>	(506)	(502)
	%	%
No health questions asked: Lawful	31	39
Health questions asked and given an explanation related to an exemption: Probably lawful	40	32
Health questions asked and explanation given does not fall within an exemption: Probably unlawful	6	4
Health questions asked and no explanation given: Possibly unlawful	23	26
Total: Lawful or probably lawful	71	70
Total: Probably or possibly unlawful	29	30

When looking at the 'probably lawful' group in the table it should be noted that less than one third of the applicants in this category received an explanation relating to an exemption for **all** health questions asked.

As we have seen, people with impairments were more likely than those without impairments to be asked questions about their health or disability prior to any job offer being made. But where the questions were asked, these were more likely to fall under the exemptions within the Equality Act allowing these types of questions to be used. As a result, there is no significant difference in the total incidence of probable

⁸ Details on the derivation of this classification can be found in the section in Chapter 1 on 'Defining lawful and unlawful practice under Section 60 of the Equality Act'.

or possible unlawful activity across the two groups; 29 per cent of people with impairments reported employer activity that could be considered probably or possibly unlawful, compared to 30 per cent of applicants without impairments.

3.6 Variation in likelihood of having experienced potentially unlawful practice by severity of impairment

Table 3.7 shows the variation in the likelihood of having experienced potentially unlawful practice by the severity of the person’s impairment: that is, whether applicants with impairments felt that their health condition reduced their ability to carry out day-to-day tasks a little or a lot, the latter group meeting the definition of disability in the Equality Act.

Table 3.7: Incidence of potentially unlawful practice in recruitment prior to a job offer being made - by severity of impairment

	People with impairments		People without impairments
	Ability to carry out day-to-day tasks reduced <u>a lot</u> (disabled as defined in the Equality Act)	Ability to carry out day-to-day tasks reduced <u>a little</u>	
<i>Base</i>	(58)	(375)	(502)
	%	%	%
No health questions asked: Lawful	19	34	39
Health questions asked and given an explanation related to an exemption: Probably lawful	47	37	32
Health questions asked and explanation given does not fall within an exemption: Probably unlawful	5	7	4
Health questions asked and no explanation given: Possibly unlawful	29	23	26
Total: Lawful or probably lawful	66	71	70
Total: Probably or possibly unlawful	34	29	30

Table 3.7 shows that the applicants who are disabled (using the Equality Act definition) are significantly more likely to have been asked some health questions prior to any job offer being made (81 per cent, compared to 66 per cent of other people with impairments). However, the fact that in this group the employers tended to be more likely to explain their rationale in relation to an exemption, means that the incidence of probable or possible unlawful practice is similar to that for people whose impairment affects them only a little (34 per cent vs. 29 per cent). This difference in the incidence of probably or possibly unlawful practice is not statistically significant.

3.7 Variation in likelihood of having experienced potentially unlawful practice based on whether individual discloses health information voluntarily

As discussed earlier, where an individual voluntarily and proactively raises issues about their disability or health condition with their prospective employer, the employer tends to go on to ask further questions about the impact on a person's work.

Table 3.8 shows the actual incidence of such practice, by whether or not disabled applicants voluntarily disclosed information unprompted. The pattern of findings is similar to that seen for severity of impairment, but is more pronounced. Those who volunteered information were much more likely to be asked health questions, but were also more likely to receive an explanation relating to an exemption. This means that the incidence of probable or possible unlawful practice is actually lower in the voluntary group than in the non-disclosure group (23 per cent vs. 31 per cent).

Caution must be taken when interpreting these findings, however, given that the overall number of 'voluntary disclosures' in the survey sample is small, and the difference between the total unlawful figures for the two groups is not statistically significant at the 95 per cent confidence level.

Table 3.8: Incidence of potentially unlawful practice in recruitment prior to a job offer being made - by whether applicant disclosed information about their health unprompted

	People with impairments		People without impairments
	Individual disclosed some information unprompted	Did not disclose information unprompted	
<i>Base</i>	(107)	(388)	(502)
	%	%	%
No health questions asked: Lawful	17	35	39
Health questions asked and given an explanation related to an exemption: Probably lawful	60	35	32
Health questions asked and explanation given does not fall within an exemption: Probably unlawful	5	6	4
Health questions asked and no explanation given: Possibly unlawful	19	24	26
Total: Lawful or probably lawful	77	69	70
Total: Probably or possibly unlawful	23	31	30

Table 3.9 shows how this translates to an overall categorisation of the experiences of applicants, based on the lawfulness of the employer’s questions, combined with whether or not the individual disclosed some health information unprompted.

Table 3.9: Incidence of potentially unlawful practice in recruitment prior to a job offer being made – in situations where individuals with impairments do or do not disclose information about their health unprompted

	People with impairments
<i>Base</i>	(506)
	%
No health questions asked: lawful	31
Voluntary disclosure & probably lawful questions	12
No voluntary disclosure & probably lawful questions	27
Voluntary disclosure & probably unlawful questions	1
No voluntary disclosure & probably unlawful questions	5
Voluntary disclosure & possibly unlawful questions	4
No voluntary disclosure & possibly unlawful questions	19
Total: Lawful or probably lawful	71
Total: Probably or possibly unlawful	29

3.8 Variation in likelihood of having experienced potentially unlawful practice by visibility of disability or health condition

Table 3.10 shows the difference between job applicants with a disability or health condition that they felt would definitely or possibly be obvious to an employer in an interview situation and those who did not feel that this would be the case. This shows that those who considered their condition to be visible were more likely to have been asked pre-employment health questions by the prospective employer. However, as seen above with regard to those who disclose information unprompted, the group who considered themselves to have a visible impairment were overall less likely to have experienced unlawful practice, compared to people without impairments. This is because employers were more likely to give lawful reasons for asking health questions to those individuals considering themselves to have a visible impairment.

Table 3.10: Incidence of potentially unlawful practice, by visibility of disability or health condition

	People with impairments		People without impairments
	Definitely or maybe visible	Not visible	
<i>Base</i>	(226)	(257)	(502)
	%	%	%
No health questions asked: Lawful	28	35	39
Health questions asked and given an explanation related to an exemption: Probably lawful	45	36	32
Health questions asked and explanation given does not fall within an exemption: Probably unlawful	7	5	4
Health questions asked and no explanation given: Possibly unlawful	20	24	26
Total: Lawful or probably lawful	73	71	70
Total: Probably or possibly unlawful	27	29	30

Table 3.11 shows how this translates to an overall categorisation of the experiences of applicants, based on the lawfulness of the employer’s questions, combined with whether or not the individual considered their impairment to be visible to the prospective employer.

Table 3.11: Incidence of potentially unlawful practice in recruitment prior to a job offer being made – where individuals with impairments consider their health condition or disability to be visible or not visible to a potential employer

	People with impairments
<i>Base</i>	(506)
	%
No health questions asked: lawful	31
Visible impairment & probably lawful questions	20
No visible impairment & probably lawful questions	20
Visible impairment & probably unlawful questions	3
No visible impairment & probably unlawful questions	3
Visible impairment & possibly unlawful questions	9
No visible impairment & possibly unlawful questions	14
Total: Lawful or probably lawful	71
Total: Probably or possibly unlawful	29

3.9 Variation in likelihood of having experienced potentially unlawful practice, by applicant demographics and characteristics of employers

Having explored the incidence of potentially unlawful practice at an overall level, this next section explores variation in likelihood of having experienced such practice by the characteristics of job applicants and by the nature of the employment sought.

Table 3.12 and 3.13 show the variation in the likelihood of having encountered practice that might be unlawful, by applicants' age and gender.

Table 3.12 demonstrates that there are differences in the experiences of men with and without impairments: male applicants with impairments were much more likely than male applicants without impairments to have been asked some questions about their health (71 per cent vs. 59 per cent). This does not, however, translate into a significantly greater incidence of possible or probably unlawful practice. The profile of men with and without impairments is very similar on factors which influence the incidence of possible unlawful practice such as the size of company applied to.

The incidence of possible or probable unlawful practice does not vary significantly between women with impairments and those without.

As we have seen, at an overall level there is no statistically significant difference between people with and without impairments in the incidence of probable or possible unlawful practice. This is true for all age-groups (Table 3.13).

Table 3.12: Incidence of potentially unlawful practice, by gender

	Male		Female	
	With impairments	Without impairments	With impairments	Without impairments
<i>Base</i>	(173)	(174)	(330)	(324)
	%	%	%	%
No health questions asked: Lawful	29	41	32	37
Health questions asked and given an explanation related to an exemption: Probably lawful	39	32	41	31
Health questions asked and explanation given does not fall within an exemption: Probably unlawful	10	3	4	4
Health questions asked and no explanation given: Possibly unlawful	23	24	23	27
Total: Lawful or probably lawful	68	73	73	69
Total: Probably or possibly unlawful	32	27	27	31

Table 3.13: Incidence of potentially unlawful practice, by age

	Under 35		35-44		45-54		55 or over	
	With impairment	Without impairment	With impairment	Without impairment	With impairment	Without impairment	With impairment	Without impairment
<i>Base</i>	(236)	(233)	(93)	(94)	(100)	(100)	(77)	(75)
	%	%	%	%	%	%	%	%
No health questions asked: Lawful	29	36	28	35	36	41	38	49
Health questions asked and given an explanation related to an exemption: Probably lawful	47	34	32	32	34	29	35	28
Health questions asked and explanation given does not fall within an exemption: Probably unlawful	4	4	10	4	6	4	6	1
Health questions asked and no explanation given: Possibly unlawful	19	26	30	29	24	26	23	21
Total: Lawful or probably lawful	76	70	60	67	70	70	70	77
Total: Probably or possibly unlawful	24	30	40	33	30	30	30	23

USE OF PRE-EMPLOYMENT HEALTH QUESTIONS BY EMPLOYERS

Exploring variations in experiences of pre-employment health questions by job role applied for reveals very little variation (Table 3.14). There are no statistically significant differences in the incidence of probable or possible unlawful practice between people with and without impairments within each occupation category.

Table 3.14: Incidence of potentially unlawful practice, by type of occupation applied for

	Managerial and professional		Associate professional and administrative		Service occupations		Manual and elementary occupations	
	With impairment	Without impairment	With impairment	Without impairment	With impairment	Without impairment	With impairment	Without impairment
<i>Base</i>	(82)	(92)	(158)	(169)	(161)	(105)	(68)	(80)
	%	%	%	%	%	%	%	%
No health questions asked: Lawful	28	29	35	44	28	38	38	39
Health questions asked and given an explanation related to an exemption: Probably lawful	39	35	36	31	44	30	35	28
Health questions asked and explanation given does not fall within an exemption: Probably unlawful	6	5	6	2	4	5	4	4
Health questions asked and no explanation given: Possibly unlawful	27	30	23	24	24	27	22	30
Total: Lawful or probably lawful	67	64	71	75	72	69	74	66
Total: Probably or possibly unlawful	33	36	29	25	28	31	26	34

Table 4.15 compares the experiences of applicants by whether they were making a job application to an employer in the private or public sector. This shows that, at an overall level, the incidence of applicants being asked any health questions is significantly higher in the public sector (79 per cent and 71 per cent for applicants with and without impairments respectively, compared to 67 per cent and 54 per cent in the private sector).

In the public sector, in around half of cases where people with impairments were being recruited, and two fifths of cases involving people without impairments, health questions were asked in a probably lawful manner, falling under an exemption under the Equality Act. Despite the more common use of health questions in the public sector, because the majority of instances are related to a legitimate exemption, the overall incidence of probable or possible unlawful practice is the same across the public and private sectors.

There is evidence in the data that private sector employers that do use health questions are more likely to target them specifically at applicants with impairments - within the private sector, two thirds of people with impairments (67 per cent) are asked health questions prior to any job offer, compared to half of people without impairments (54 per cent). However, for public sector applications there was little difference in the likelihood of applicants with or without impairments experiencing these practices. This would seem to indicate that in the public sector, where pre-employment health questions are administered, they are implemented in a blanket fashion across all applicants.

Table 3.15: Incidence of potentially unlawful practice, by sector of employer

	Private sector		Public sector	
	With impairment	Without impairment	With impairment	Without impairment
<i>Base</i>	(308)	(305)	(135)	(149)
	%	%	%	%
No health questions asked: Lawful	33	46	21	26
Health questions asked and given an explanation related to an exemption: Probably lawful	36	24	51	42
Health questions asked and explanation given does not fall within an exemption: Probably unlawful	7	4	4	5
Health questions asked and no explanation given: Possibly unlawful	24	27	24	27
Total: Lawful or probably lawful	69	70	72	68
Total: Probably or possibly unlawful	31	30	28	32

Exploring variations in the incidence of potentially unlawful practice by size of employer (Table 3.16) shows that there are relatively small differences in the likelihood of experiencing such practice between small and large employers (those with 250 or more staff). However, where people with impairments apply to medium-sized employers, they are significantly more likely to have experienced possible or probable unlawful practice with regard to the use of health questions (40 per cent), in comparison to people without impairments applying to these medium-sized employers (27 per cent).

Table 3.16: Incidence of potentially unlawful practice, by size of employer applied to

	Small (fewer than 50 staff)		Medium (50-249 staff)		Large (250 or more staff)	
	With impairment	Without impairment	With impairment	Without impairment	With impairment	Without impairment
<i>Base</i>	(105)	(98)	(77)	(81)	(213)	(229)
	%	%	%	%	%	%
No health questions asked: Lawful	44	49	19	40	25	30
Health questions asked and given an explanation related to an exemption: Probably lawful	34	23	40	33	48	38
Health questions asked and explanation given does not fall within an exemption: Probably unlawful	5	2	14	4	4	3
Health questions asked and no explanation given: Possibly unlawful	17	26	26	23	23	29
Total: Lawful or probably lawful	78	72	60	73	73	68
Total: Probably or possibly unlawful	22	28	40	27	27	32

4 Individuals' experience of pre-employment health questionnaires and health forms

The findings so far have focused on the incidence of employers asking particular questions about an individual's health or disability, before making a decision on whether to offer them a position. These covered instances of questions being asked as part of the initial application and during discussions with the employer, including during interviews.

The research also sought to explore the use of formalised questionnaires or forms specifically designed to collect information on an individual's health status during recruitment. Again, the focus has been on pinpointing how widespread the use of such questionnaires and forms by employers is, specifically in the period before the final recruitment decision is made⁹.

Across all applicants covered by the survey, one third (33 per cent) said that they were asked to fill out a health questionnaire or health form, before receiving an offer of employment. There was no statistically significant difference between people with impairments (36 per cent receiving a health questionnaire) and those without impairments (30 per cent).

Of those applicants asked to complete a health questionnaire or form, three fifths received this as part of the initial application (63 per cent for people with impairments, 62 per cent for people without impairments). In one quarter of cases where a health form was issued, this was when a person was invited for or attended an interview (27 per cent for people with impairments, 23 per cent for people without impairments), and in only a small proportion of cases were the forms issued after an interview (9 per cent, 14 per cent).

It is the case that applicants with a more severe or visible impairment are significantly more likely to have been given a health questionnaire or form to complete. Among people who said that their condition or disability reduced their ability to do day-to-day tasks 'a lot', approaching half (48 per cent) had been issued a health form or questionnaire. The use of health questionnaires was significantly lower for those who considered that their health impacted only 'a little' on their day-to-day activities (34 per cent), much closer to the incidence reported by people without impairments (30 per cent).

⁹ In the interests of keeping the interview to a manageable length, it was not possible to look at the extent of exemptions associated with these practices.

Similarly, people who considered that their impairment would be definitely or perhaps visible to a prospective employer were significantly more likely to report having been asked to fill out a health questionnaire (44 per cent). As shown in Figure 5.1, less than three in ten individuals who had an impairment but did not think that this would be visible to an employer received a health questionnaire (29 per cent), in line with the rate for people without impairments (30 per cent).

Figure 4.1: Proportion of applicants asked to fill out a specific health questionnaire or form prior to a job offer being made – by visibility of impairment and whether they disclosed health information unprompted

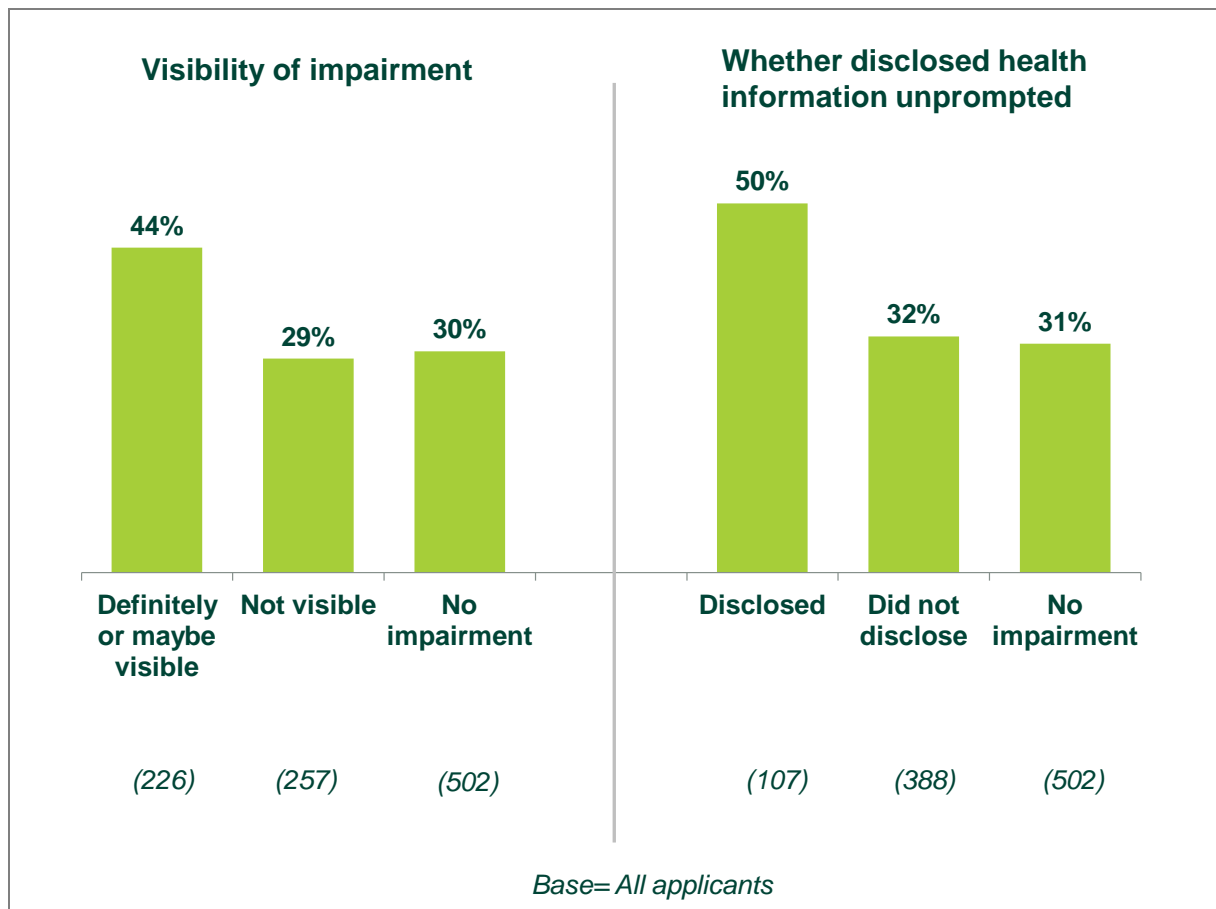
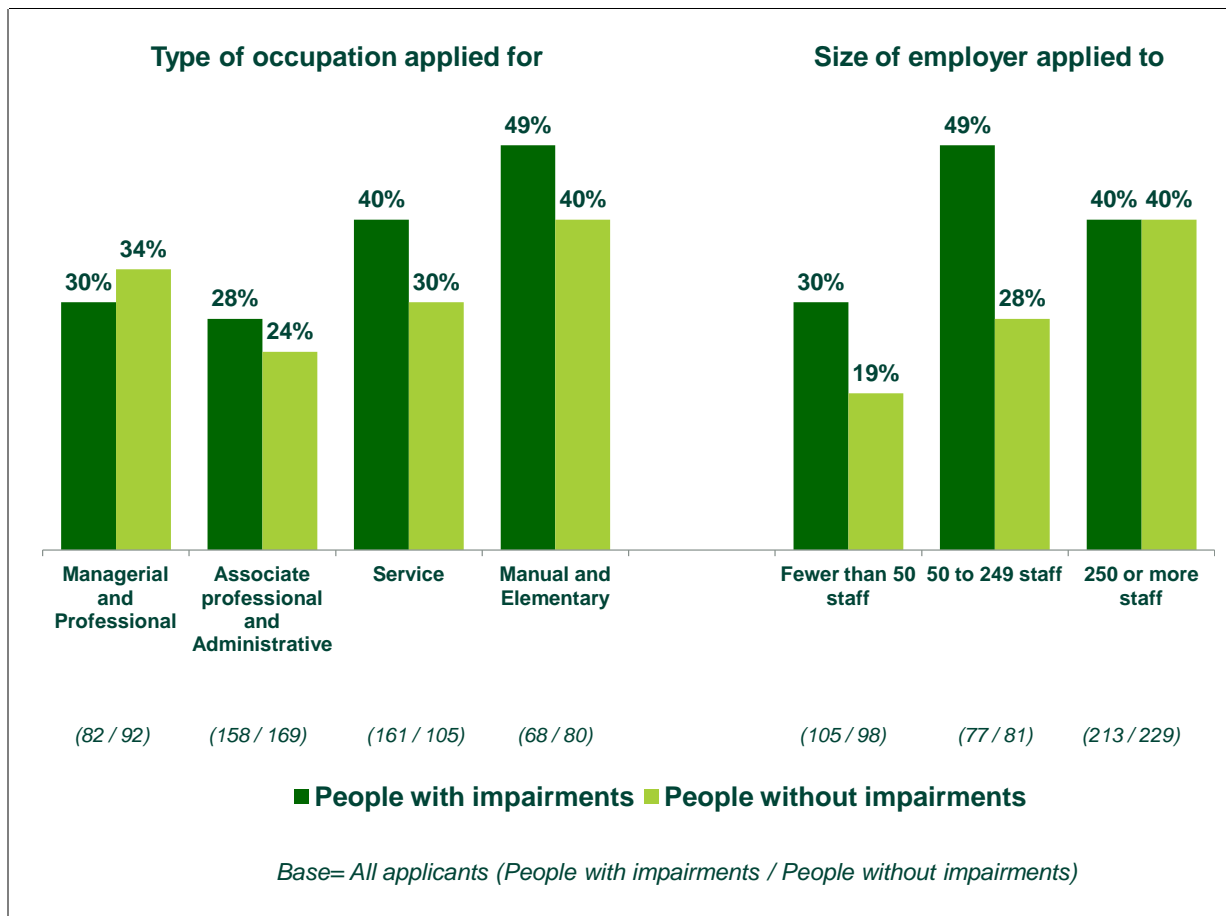


Figure 4.1 also highlights the differences in the experiences of applicants according to whether they disclosed any information about their health or disability without being asked. Half of all those disclosing information about their impairment (50 per cent) received a health questionnaire, compared to less than one third of those who did not disclose any information about their impairment (32 per cent) and people without an impairment (31 per cent).

Figure 4.2 shows the proportion of applicants being asked to complete a health questionnaire, broken down by the type of occupation applied for and the size of the employer applied to.

Figure 4.2: Proportion of applicants asked to fill out a specific health questionnaire or form prior to any job offer being made – by type of occupation applied for and size of employer applied to



Health questionnaires and forms were most often used when employers were recruiting for manual or elementary roles, where there might be a physical component to most roles for which the employer might want to assess capability. People with impairments who applied for a manual or elementary occupation were significantly more likely than average to have been asked to complete a health questionnaire (49 per cent had been asked to do so, compared to an average of 36 per cent across all occupations). While the group of people without impairments who applied for a manual or elementary occupation reported a higher rate of health questionnaires being used (40 per cent vs. an average of 30 per cent across all occupations), this difference was not significant. Within the group applying for manual or elementary roles, the difference in the incidence of health questionnaire use between people with and without impairments is not statistically significant.

The incidence of health questionnaires being used was lowest for associate professional and administrative occupations, for both people with impairments and people without impairments (28 per cent and 24 per cent respectively).

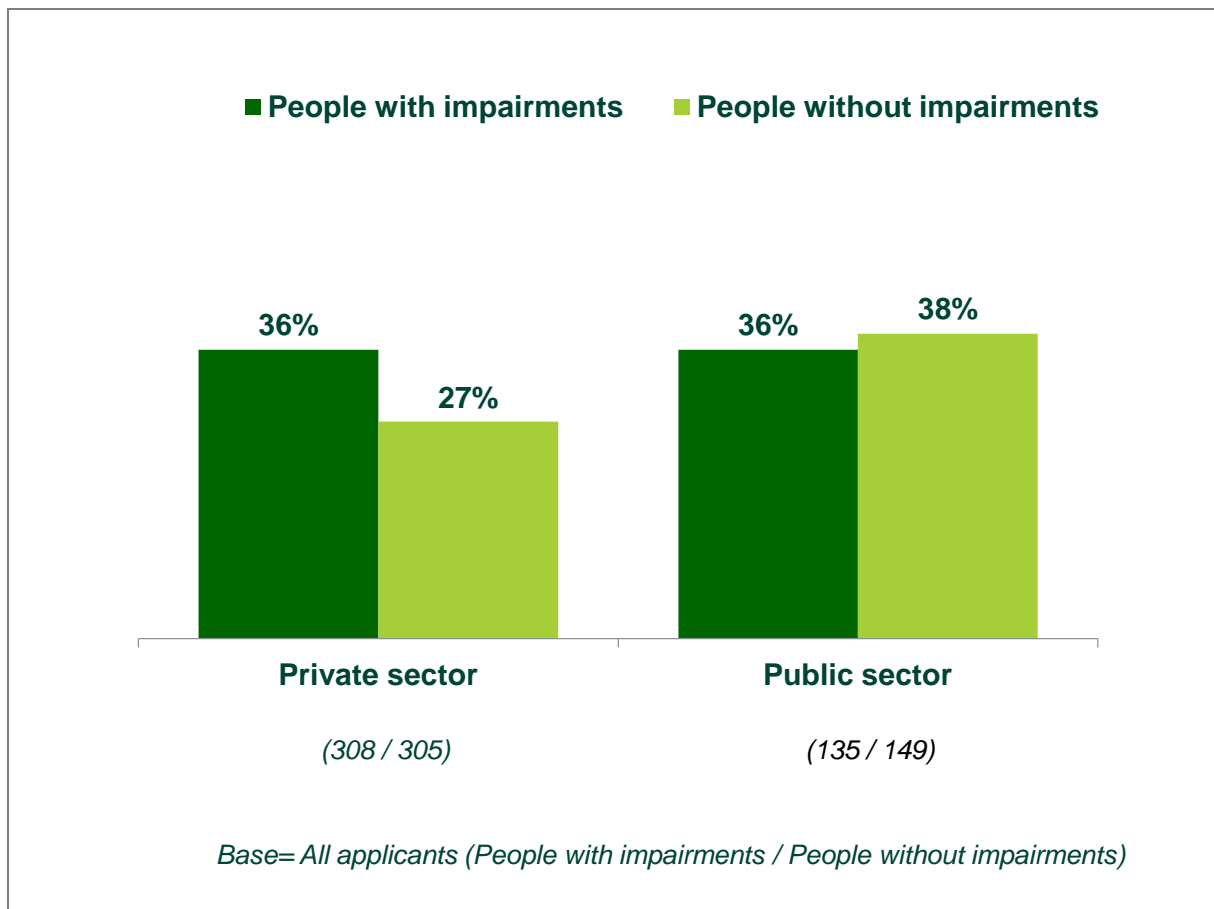
There was also variation in the use of health questionnaires according to the size of employer applied to. For individuals without impairments, the likelihood of being asked to complete a health questionnaire increased in line with the size of company, from one fifth of applicants to the smaller employers with fewer than 50 staff (19 per cent), to three in ten applicants to medium-sized organisations with 50 to 249 staff (28 per cent) and two fifths among applicants to the larger employers with 250 or more employees (40 per cent).

As Figure 4.2 makes clear, the pattern was different for people with impairments, with a significantly elevated incidence rate among those applying to medium-sized employers (49 per cent, compared to 30 per cent of those applying to small employers and 40 per cent for large employers). This matches the pattern seen earlier with regard to the use of potentially unlawful pre-employment health questions, with people with impairments applying to medium-sized employers the most likely to report possible or probable unlawful practice. It is difficult to unpick whether this is related to particular occupations being recruited for or types of employer, due to the relatively small base sizes. The public-private sector profile of medium-sized companies applied to is the same for people with and without impairments.

The incidence of health questionnaires being used is similar for the public and private sectors (37 per cent vs. 32 per cent – this difference is not statistically significant).

Figure 4.3 shows the proportion of applicants for public and private sector jobs who report receiving a health questionnaire, separately for people with and without impairments.

Figure 4.3: Proportion of applicants asked to fill out a specific health questionnaire or form prior to any job offer being made – by sector of employer applied to



As we have seen for pre-employment health questions, it seems that where private sector employers ask applicants to fill out a health questionnaire, they are more likely to target them specifically at applicants with impairments - within the private sector, more than one third of people with impairments (36 per cent) were asked to complete a health questionnaire, compared to nearer a quarter of people without impairments (27 per cent). For public sector applications, there was relatively little difference in the likelihood of applicants with or without impairments receiving a health questionnaire (36 per cent and 38 per cent respectively). This would seem to indicate that in the public sector, where pre-employment health questionnaires are administered, they are issued more consistently to all applicants.

5 Individuals' experiences of health information being sought from a previous employer

The final aspect of recruitment practice covered in the applicant survey was about employers seeking references with information about an individual's health or disability from that person's current or previous employer, before deciding whether to make them a job offer. Applicants were asked whether they were aware of the prospective employer having sought information from a current or previous employer about their health, disability status, or record of absence due to ill-health.

Although applicants may not have been in a very good position to know whether information had been sought from a previous employer, one in eight (13 per cent) thought that the employer had sought some information about their health, disability status or record of absence. People with impairments were significantly more likely to say that they thought that the prospective employer had sought references in relation to their health, disability status or record of absence (15 per cent, compared to 11 per cent of people without impairments).

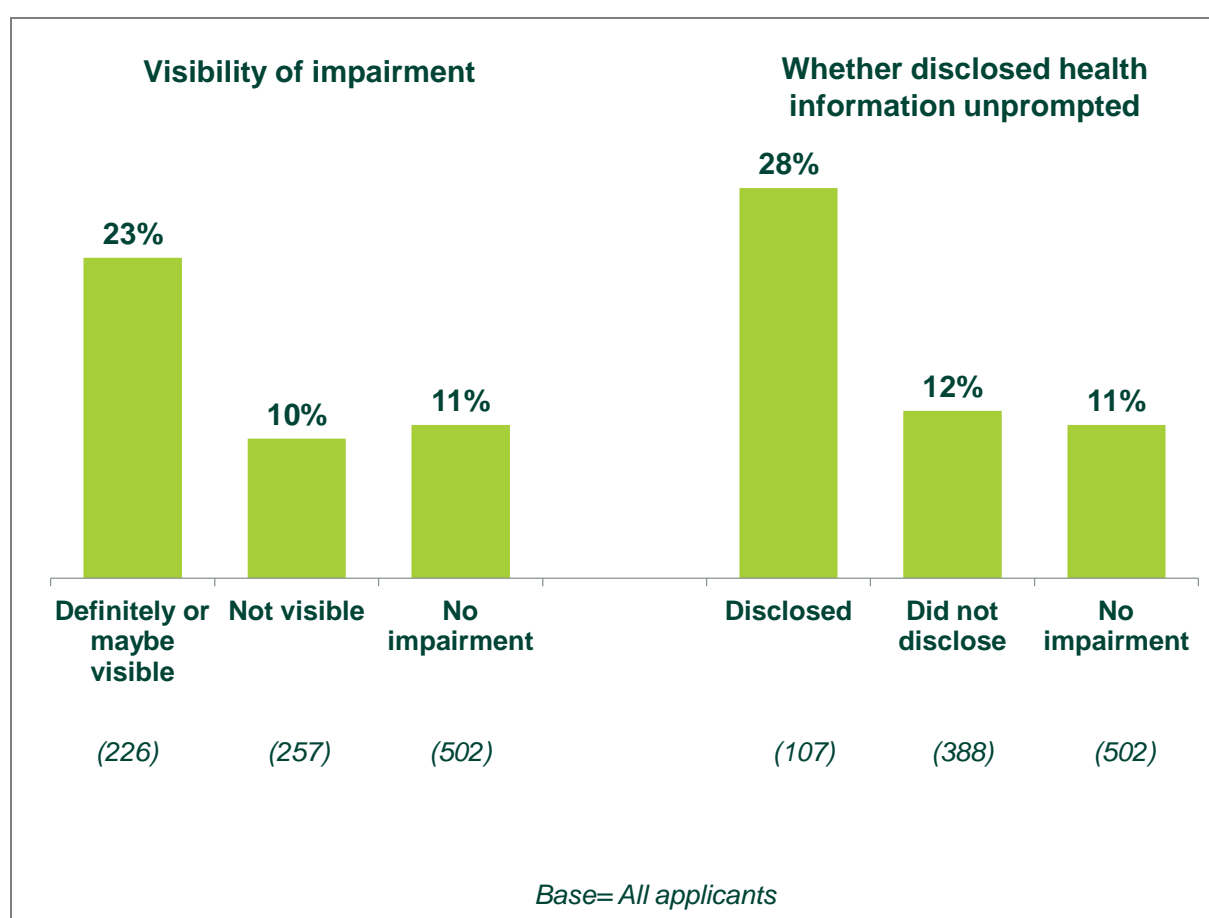
Table 5.1: Proportion of applicants reporting that the prospective employer had sought information from current or previous employer before job offer stage

	All applicants	People with impairments	People without impairments
Base: All applicants	(1,008)	(506)	(502)
	%	%	%
Information relating to applicant's health	10	12	8
Information relating to applicant's disability status	6	7	6
Information on applicant's record of absence due to ill-health	10	11	8
Any of these types of information	13	15	11

Figure 5.1 below shows that the higher incidence rate for people with impairments is related to the groups who have a visible impairment and those disclosing information about their health unprompted during the recruitment process. Almost one quarter (23 per cent) of applicants who had an impairment that they thought would be visible to a prospective employer believed that the employer had sought information on their health from a previous employer, compared to only one in ten applicants with a non-visible impairment (10 per cent). This is much closer to the incidence rate of pre-employment checks as reported by those without impairments (11 per cent). The

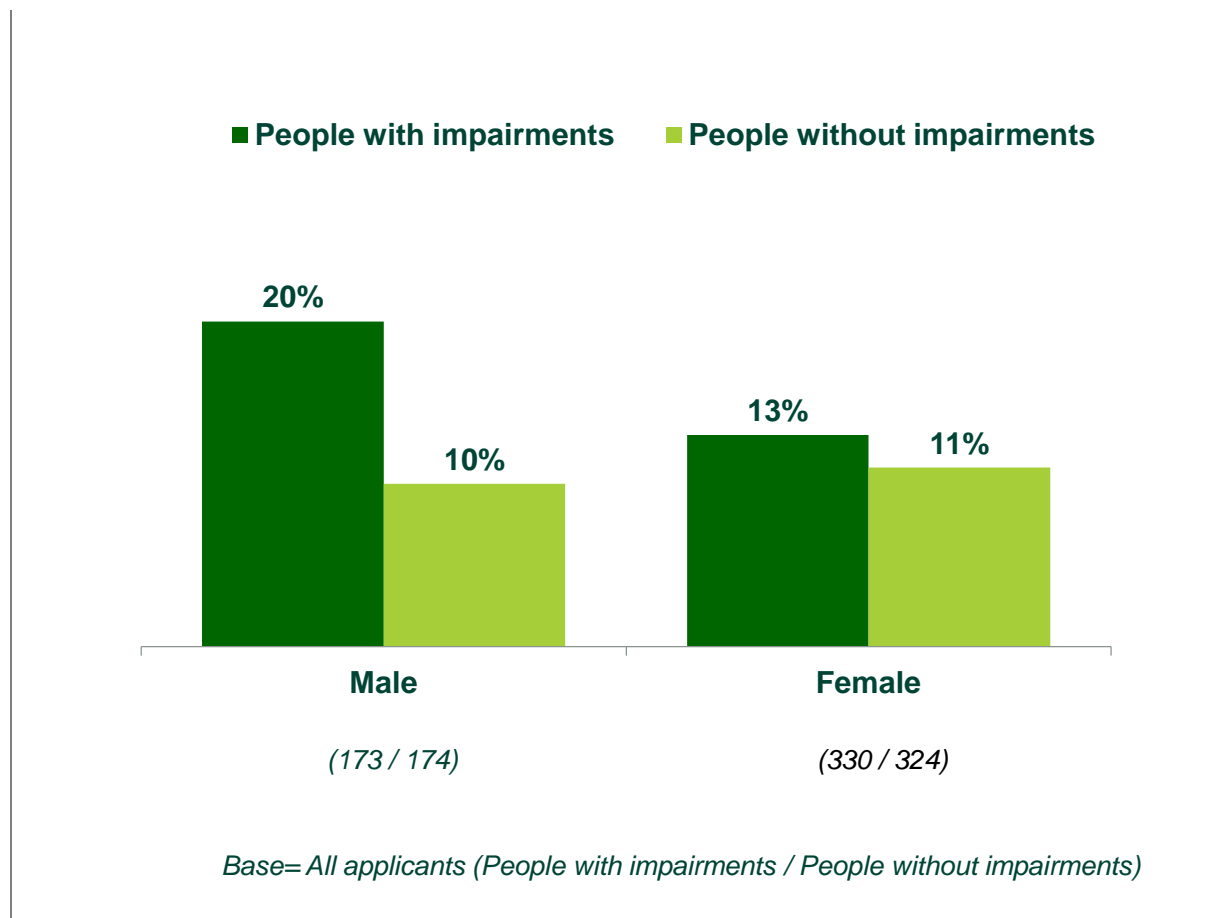
same pattern was evident for those people who disclosed information about their health themselves – more than one quarter of these applicants (28 per cent) reported that they were aware of the prospective employer having made checks with their previous employer, compared to one in eight people with impairments who did not tell the employer about their condition (12 per cent). While it is difficult to be sure of the direction of causation from the survey data, this may imply that employers are making checks in response to a person's visible or stated impairment.

Figure 5.1: Proportion of applicants reporting that the prospective employer had sought information from current or previous employer before job offer stage – by visibility of impairment and whether applicants disclosed health information unprompted



There was an interesting pattern by gender. Male applicants with impairments were significantly more likely to report that the prospective employer had asked their previous employer for information about their health or disability (20 per cent, compared to 10 per cent of those men without impairments). This cannot be ascribed to any substantial differences in the profile of the two groups in terms of the role applied for or size of employer applied to.

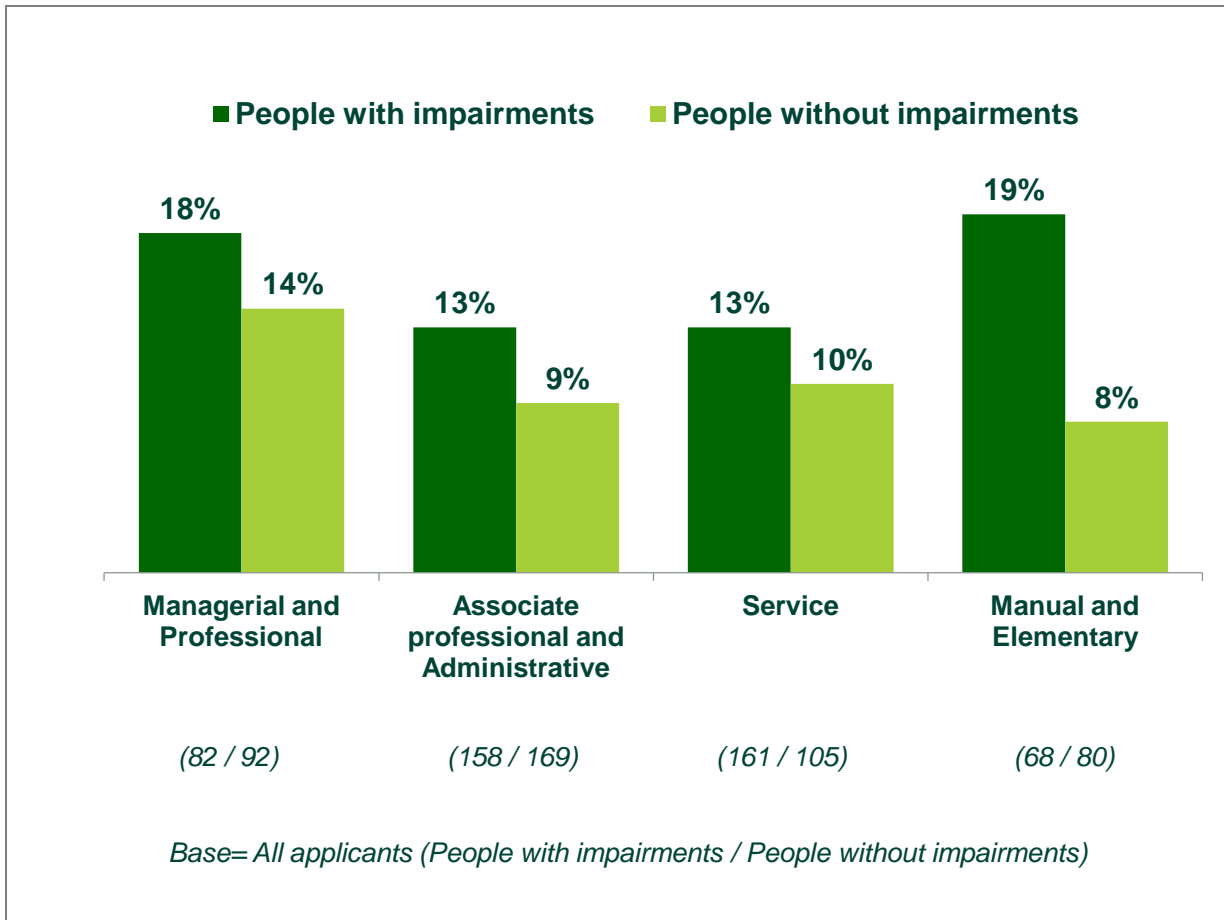
Figure 5.2: Proportion of applicants reporting that the prospective employer had sought information from current or previous employer before job offer stage – by gender



Female applicants with impairments showed a lower rate of reported information requests to previous employers as compared to men (13 per cent compared to 20 per cent). Among applicants with impairments, there was a slightly higher rate of visible impairments among men as compared to women (53 per cent considering their impairment to be definitely or maybe visible compared to 40 per cent for women), but this does not account for all the difference by gender seen here.

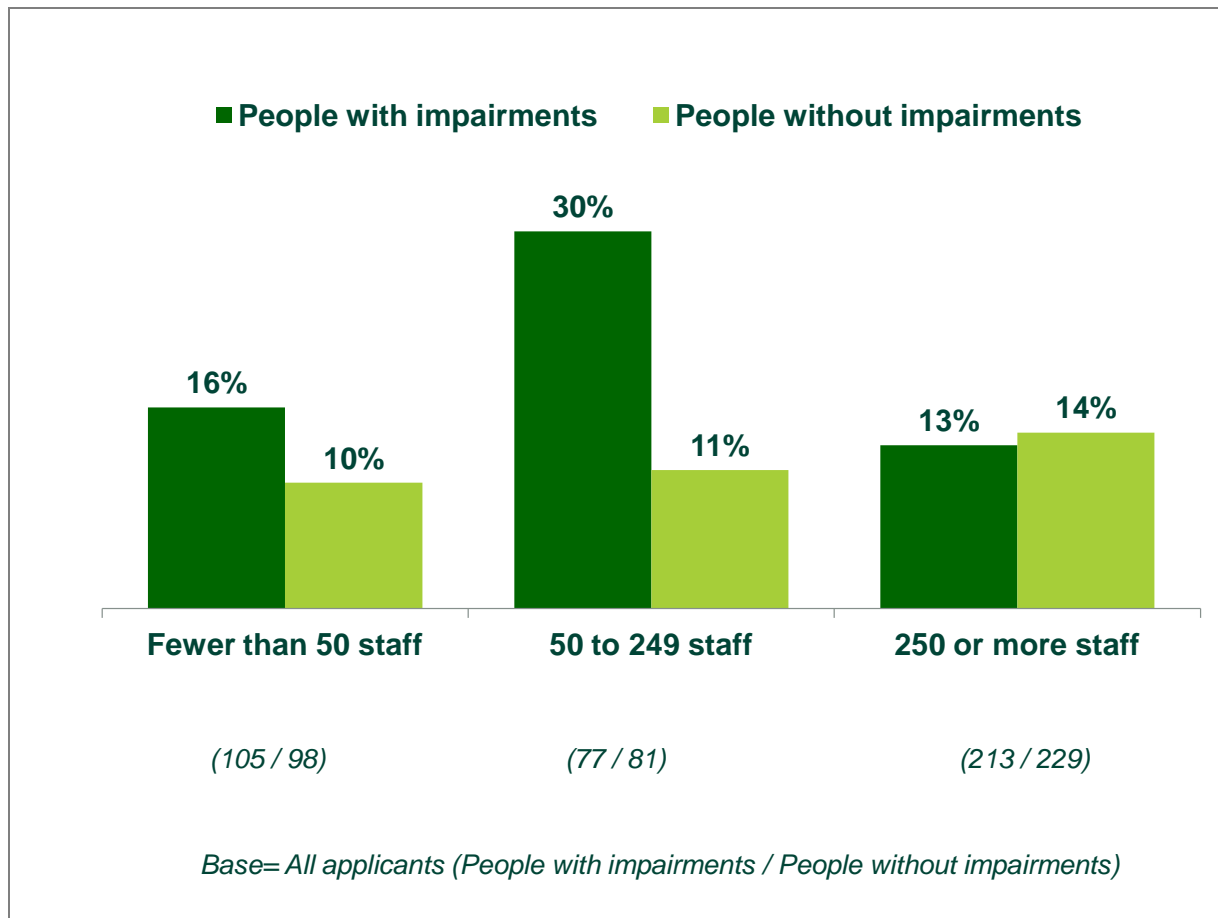
As shown in Figure 5.3, it seems that employers were more likely to ask for health information from an applicant's previous employer when recruiting for particular types of occupation. The pattern is different for people with and without impairments. People with impairments applying for a manual or elementary role are significantly more likely to report that the prospective employer made pre-employment health checks with a previous employer, as compared to people without impairments applying for similar roles (19 per cent compared to 8 per cent). For people without impairments, it is those applying for manual and elementary occupations who were the least likely to report checks being made.

Figure 5.3: Proportion of applicants reporting that the prospective employer had sought information from current or previous employer before job offer stage – by type of occupation applied for



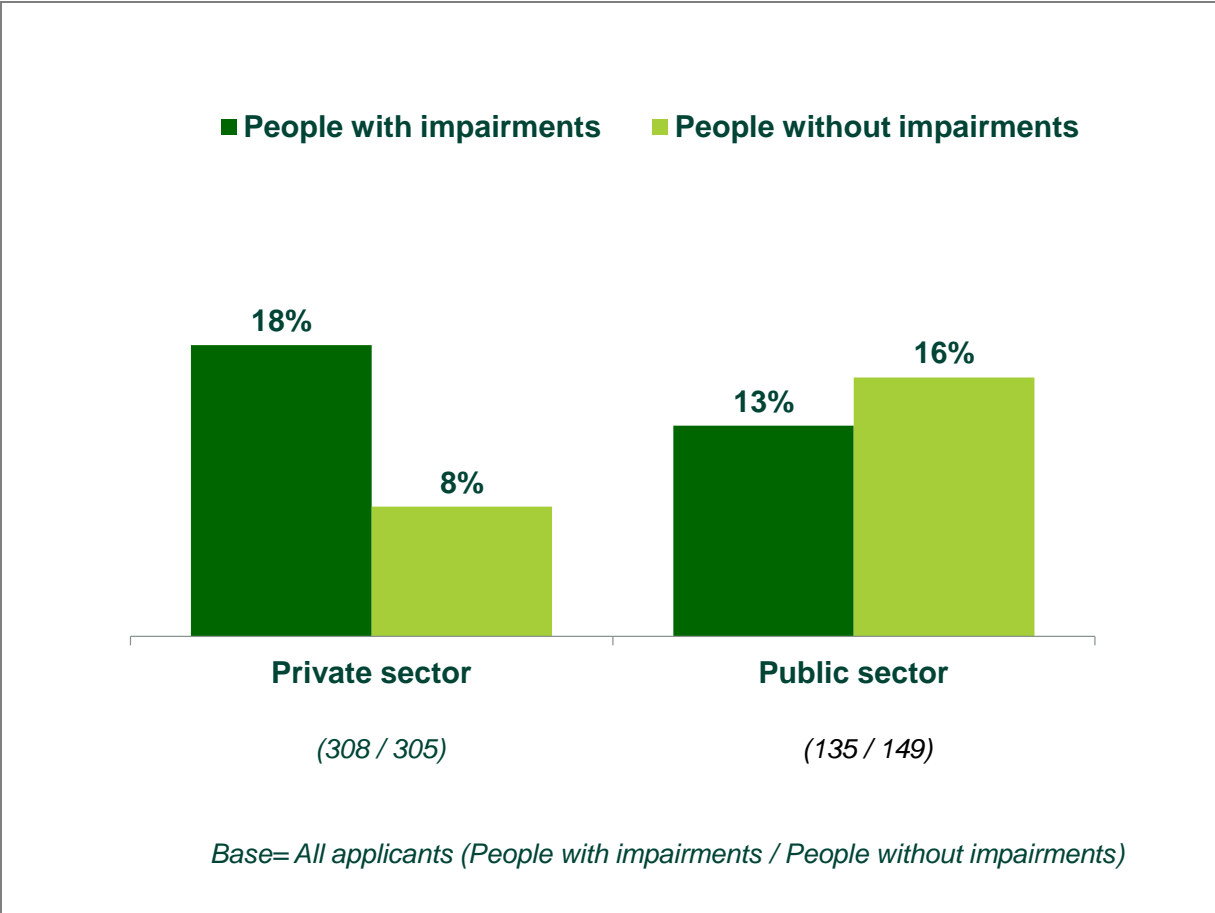
The key finding by employer size, as shown in Figure 5.4 below, is that among applicants to medium-sized employers, people with impairments were significantly more likely to report that information about their health had been sought from a previous employer (30 per cent, compared to 11 per cent of people without impairments). This matches the pattern seen earlier with regard to the use of potentially unlawful pre-employment health questions and health questionnaires, with people with impairments applying to medium-sized employers being the most likely to report possible or probable unlawful practice.

Figure 5.4: Proportion of applicants reporting that the prospective employer had sought information from current or previous employer before job offer stage – by size of employer applied to



As shown in Figure 5.5, people with impairments applying for a job in the private sector are significantly more likely to report information on health being sought from a previous employer, as compared to applicants without impairments (18 per cent compared to eight per cent). For public sector applications, there was relatively little difference in the likelihood of applicants with or without impairments reporting that the prospective employer had sought to obtain health information about the applicant from a previous employer (13 per cent and 16 per cent respectively). As seen for both pre-employment health questions and health questionnaires, this again indicates that in the public sector, where pre-employment health questionnaires are administered, they are issued more consistently across all applicants.

Figure 5.5: Proportion of applicants reporting that the prospective employer had sought information from current or previous employer before job offer stage – by sector of employer applied to



6 Use of pre-employment health and disability questions by employers

This chapter explores findings from the survey of private sector Small and Medium-sized Employers (SMEs) and qualitative interviews with recruitment consultants to investigate how the experiences reported by job applicants match with the practices that employers report that they use.

All employers were asked whether they ever collect a series of types of information about disability or health prior to an offer of employment. This might involve asking questions verbally or asking for information on an online or written application form. Employers were asked if they ever collect the following pieces of information from job applicants during recruitment, before deciding whether to make a job offer:

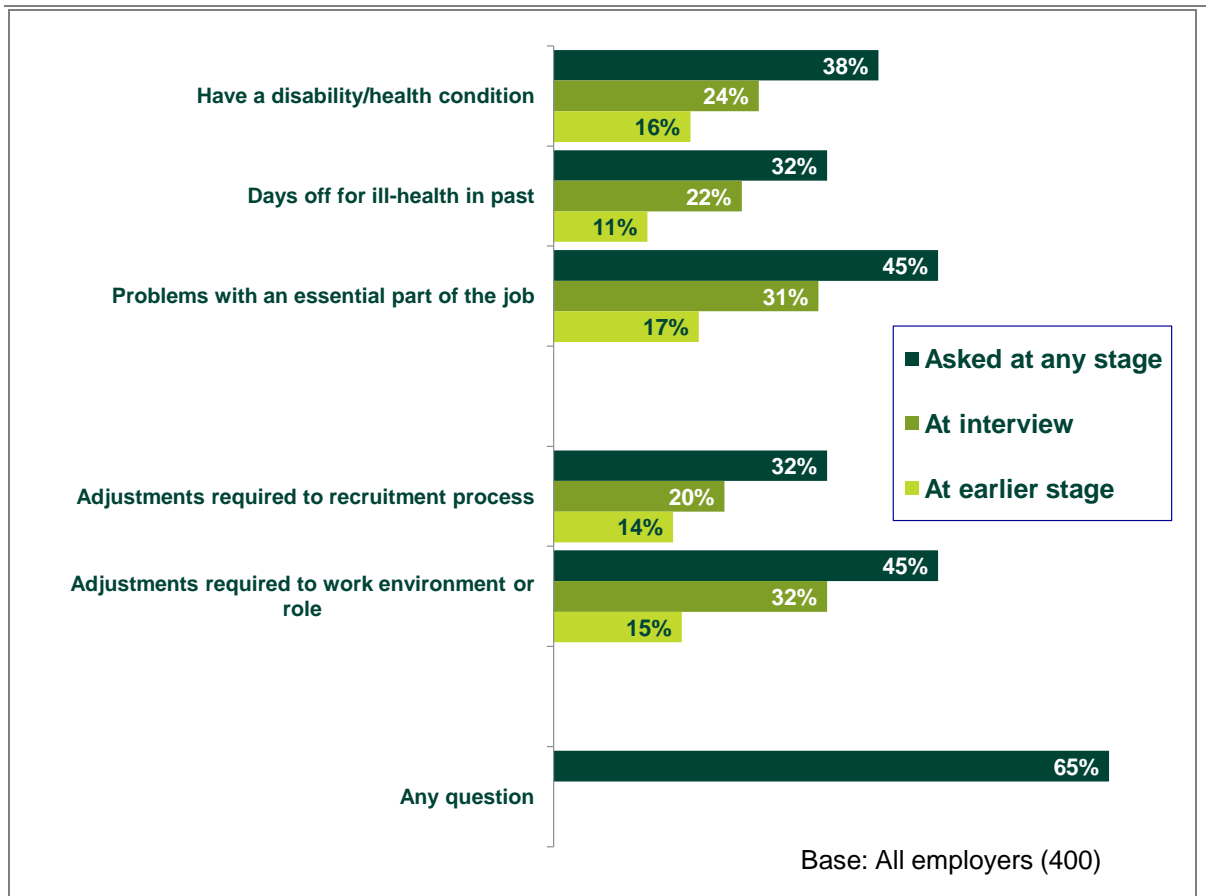
- 1) whether the candidate has a disability or health condition;
- 2) whether a disability or health condition would cause the candidate problems doing an essential part of the job;
- 3) the number of days the candidate has had off work for ill-health in a previous role;
- 4) whether the candidate's health condition or disability would affect their ability to participate in any part of the recruitment processes; and
- 5) whether the candidate would need any adjustments to their work environment or job role as a result of their health condition or disability.

Employers stating that they did collect any of this information were asked whether they collected this information at the point of interview or at an earlier stage.

Figure 6.1 below shows the proportion of employers stating that they requested each of these types of information.

Almost two-thirds of SME employers (65 per cent) stated that they collect information in one of the areas explored prior to making a job offer. It is more common for employers to collect each type of information at the interview stage than prior to this.

Figure 6.1 Incidence of asking for information about disability or health condition prior to a job offer being made



It is interesting to note that in cases where employers said that they ask an applicant about adjustments that might be required to the recruitment process, they often only raise this at the interview stage (in two thirds of cases where asked). It is reasonable to assume that the interview stage might well be the first time the candidate is asked to attend the employer premises and to take part in an assessment task. It may therefore be the first time that access considerations (in terms of the environment and resource materials) come to the fore.

In order to establish the extent to which asking for information about an individual’s health or disability might relate to an exemption under Section 60, employers were asked for their reasons for requesting this information. This was in relation to pre-employment health questions in general, rather than separately for each question asked, as in the applicant survey. They were given a series of prompted reasons and asked whether each of them was a reason why they sought to obtain this information from candidates. Table 6.1 below shows the proportion of employers giving each reason; the table shows the proportions based both on all employers and just those who asked for pre-employment health information.

Table 6.1 Explanations given by employers for asking whether an individual has a disability or health condition

	All employers	All employers collecting pre-employment health information
<i>Base</i>	(400)	(281)
	%	%
To understand any adjustments that would need to be made to ensure that the candidate could do the job and participate fully in the workplace	54	83
To understand any adjustments that needed to be made to ensure that candidate could take part in an assessment or interview	46	71
Because it relates to an essential part of the job	38	58
Because there is a legal requirement, for instance, where a valid medical fitness certificate is required by law to do the job	31	47
For diversity monitoring purposes	21	32
Because the employer has a specific policy to encourage diversity, for instance, a guaranteed interview scheme for disabled people	17	25
Other reasons	2	3

The most common reason given for requesting pre-employment health information was that employers wanted to ascertain any adjustments that would be required for the candidate to participate fully in the workplace if they were successful (83 per cent of those asking health questions – over half of all SMEs in total). As mentioned earlier, under Section 60 this is not a legitimate reason for asking about disability or health prior to a job offer being made. This is to afford disabled people protection against employer discrimination. The fact that such a large proportion of SMEs gave this as a reason for requesting pre-employment health information suggests a low awareness of this aspect of the Equality Act.

All the other reasons shown in Figure 6.1 (with the exception of the ‘other’ category) relate to exemptions applying to collecting pre-employment health information under the Equality Act.

Those employers who stated that they collected information because it related to an essential part of the job were asked to provide details of the roles that this would apply to and the nature of the work conducted in these roles. The most common requirements of the role that were mentioned were:

- physical fitness / strength / agility (29 per cent of all those that collected pre-employment information because of essential requirements of the job role);
- mobility (29 per cent);
- lifting / handling (26 per cent);
- vision – including colour blindness (11 per cent);
- driving (11 per cent); and
- operating machinery (11 per cent).

Although a wide range of job roles were cited as having ‘essential requirements’ necessitating a check on health and disability pre-employment, some of the more common were jobs in factory and warehouse settings, in construction or engineering, and roles involving driving, as made apparent above.

‘A lot of the roles advertised are for field work, physically demanding, working on machinery, hearing, partially sighted etc may affect ability to do particular roles.’

‘There is a lot of standing with factory floor work – this is required to operate the machinery so anyone who is wheel chair bound might not be able to do this.’

‘Anything that was a manual nature, like lifting of heavy sheet metal.’

‘Employing drivers. If people have bad backs and can't sit for too long. People working in warehouses doing manual work such as lifting will not be able to do the role if they have joint problems.’

Roles in care homes were mentioned quite frequently, where there is a requirement often to be able to lift and manually handle residents.

‘Moving and handling people in a care setting. Some clients can be quite challenging and so this determines where the candidate might be working.’

Legal considerations were also raised, with regard to driving in particular.

'It's for driving roles – people with poor eyesight or epilepsy are not suitable for driving jobs.'

'For coach driving, if they have a health or disability problem that would inhibit them from doing the job. It would be against the law based on the type of licence they need to hold.'

'The airfield operations involve manual handling, people's hearing has to be good, and they cannot be colour blind.'

'In regards to risk assessment. Whether they are disabled or able bodied we need to know we are not putting anyone at risk.'

The 'grey area' around an element of the job being 'essential' is evident in employer comments, where the tasks raised are not necessarily a bar to people with impairments doing the job. In some cases, it is possible that there may be the potential for reasonable adjustments to be made to the job role or environment to ensure disabled people or those with a health condition or illness could participate in the workplace.

'Serving customers, to be able to speak and listen to customers and run up and down steps and to carry out the customer's requirements.'

'We have had people who have had blood issues - I wouldn't send them out to my storage yard in the winter as it would be too cold.'

There was one instance when talking about 'essential parts of a role' where an employer described having a disability or health condition as the essential element, where individuals were being employed to provide a service to disabled people:

'It is about positive communication, to help make sure that the person can know and support someone that may have a disability. We look at this when employing psychotherapists and trainers.'

In another case, an employer referred to accessibility to the workplace being the reason for asking about a health condition or disability:

'It's about access to the property - it is upstairs so somebody with mobility problems may have difficulty.'

However, access is not included under the exemptions and a question about health or disability in this context would be potentially unlawful.

6.1 The incidence of practices potentially unlawful under Section 60, as reported by employers

Using the same broad framework as used for the applicant survey, it is possible to classify employers based on their use of pre-employment health questions and rationale for doing so. Employers can be assigned to one of the following three categories:

- 1) No health questions asked before any job offer is made. This is **lawful** under the Equality Act.
- 2) A health question was asked before any job offer was made, but the employer's reason for asking this question relates to one or more exemptions under the Equality Act. This has been categorised as **probably lawful** under the Equality Act.
- 3) A health question was asked before any job offer was made, and the employer's reason for asking this question did not relate to any exemption under the Equality Act. This has been categorised as **probably unlawful** under the Equality Act.

Note that because the survey required employers to give a reason for asking pre-employment health questions, the fourth category from the applicant lawfulness analysis does not apply here – essentially there are no cases where the employer's rationale was not known.

Table 6.2 shows the proportion of employers whose activities fall under the three categories.

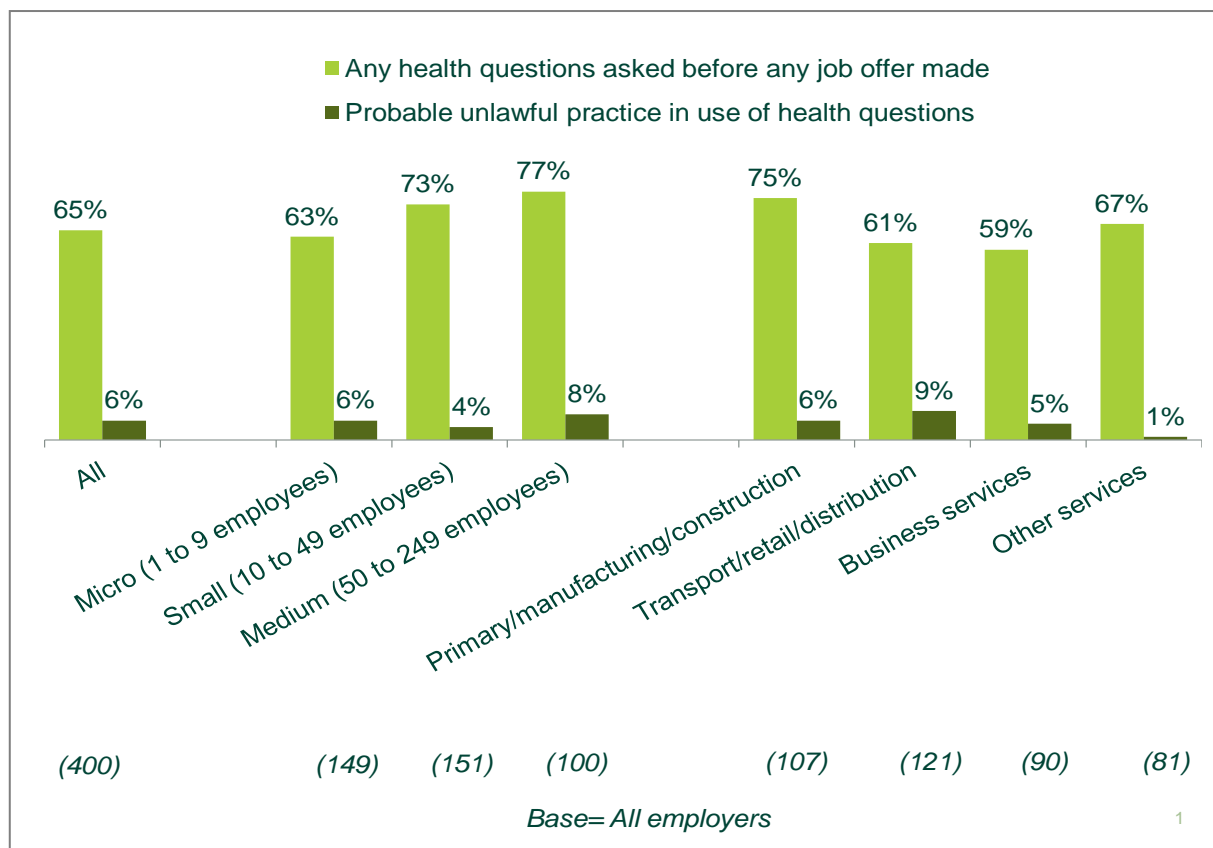
Table 6.2 Overall incidence of potentially unlawful practice in recruitment prior to a job offer being made – employers

	Employers
<i>Base</i>	(400)
	%
No health questions asked: Lawful	35
Health questions asked and given an explanation related to an exemption: Probably lawful	59
Health questions asked and explanation given does not fall within an exemption: Probably unlawful	6
Total: Lawful or probably lawful	94
Total: Probably or possibly unlawful	6

This analysis shows that in over one third of cases (35 per cent) the employer did not ask any health questions before deciding whether to offer the applicant the role. In these cases, the recruitment practices would self-evidently be lawful under the Equality Act. In a further three fifths of cases (59 per cent) the employer said that they asked for health information from the applicant for a reason that would represent an exemption under the Equality Act. This leaves around one in twenty cases (6 per cent) where the employer asked health questions, but did not give a reason for doing so that related to any of the exemptions. The recruitment practices of these SMEs can be considered probably unlawful.

Figure 6.2 shows the proportion of SMEs asking health questions before deciding whether to offer the applicant the role, and also the incidence of probable unlawful practice. These figures are shown overall, and then for SMEs in different size-bands and different sectors.

Figure 6.2 Incidence of asking for information about disability or health condition prior to a job offer being made and incidence of probable unlawful practice – by size and sector of employer



Within the SME bracket, the likelihood of employers asking pre-employment health questions increases with the size of company. Over three quarters of employers with 50 to 249 employees (77 per cent) reported that they sometimes ask questions about a candidate's health or disability before making any job offer, compared to less than two thirds (63 per cent) of micro employers with fewer than ten employees. The incidence of probable unlawful practice in the use of health questions does not vary significantly by size of SME, being at a low level for each size band (4 per cent to 8 per cent).

In terms of sector, there are significant differences in the use of health questions. The use of health questions is highest among SMEs in primary, manufacturing and construction industries (75 per cent). This compares to an incidence of around three fifths among SMEs in the transport, retail and distribution sector (61 per cent), and in the business services sector (59 per cent). There is no significant variation in the incidence of probable unlawful practice by industry sector, however.

6.2 Employer use of pre-employment health questionnaires and health forms

One in seven SMEs (15 per cent) stated that they have used health questionnaires or forms to collect details of any health condition or disability a candidate has. In most cases employers said that these forms were administered prior to a job offer being made (12 per cent of employers used a questionnaire before an offer of employment and three per cent after this point - Table 6.3).

Table 6.3 Use of health questionnaires and health forms by employers – by sector

	All	Sector			
		Primary, Manufacturing or Construction	Transport, Retail and Distribution	Business Services	Other services
<i>Base</i>	400	107	121	90	81
	%	%	%	%	%
Issued before job offer	12	20	7	11	10
Issued after job offer	3	2	2	3	5
Not used	85	79	90	86	85

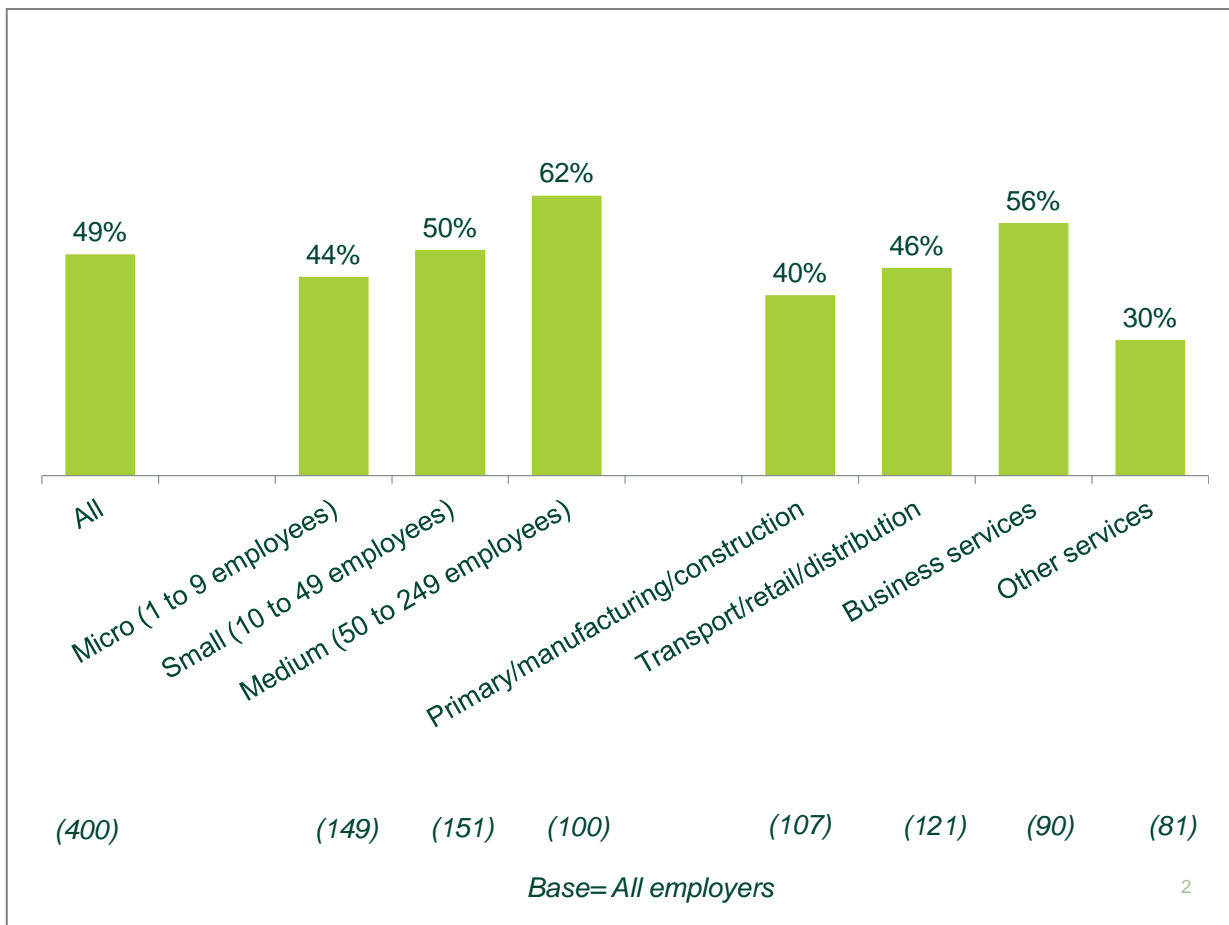
SMEs in the primary, manufacturing or construction industries were the most likely to report using a health questionnaire or form before deciding whether to make a job offer; one fifth (20 per cent) did so, compared to around one in ten SMEs in the business services (11 per cent) or other services categories (10 per cent) and a lower proportion still in the transport, retail and distribution sector (seven per cent). The other services category covers (amongst others) businesses involved in care, entertainment, travel, personal services such as hairdressing, and services such as maintenance.

6.3 Awareness of the Equality Act

Employers were asked about their awareness and understanding of the Equality Act in relation to asking about health or disability during the recruitment process. Half of SMEs (49 per cent) stated that they were not aware of what the Act details about health and disability questions during recruitment; 45 per cent stated that they were aware and 5 per cent were unsure.

As shown in Figure 6.3, stated awareness increased with employer size with three fifths (62 per cent) of medium-sized employers (those with 50 to 249 employees) stating that they were aware of the Act, compared with half (50 per cent) of small employers (10 to 49 employees) and less than half (44 per cent) of micro employers (1 to 9 employees). In terms of sector, employers in the business services sector showed the highest levels of stated awareness (56 per cent) while those in the other services category had the lowest (30 per cent).

Figure 6.3 Employers’ stated awareness of the content of the Equality Act with regard to asking about health and disability during recruitment - by size and sector of employer



There does not appear to be a clear relationship between stated awareness of the content of the Equality Act and the likelihood to engage in practices that it prohibits. Employers who said that they are aware of the content of the Equality Act with regard to asking about health or disability were actually significantly more likely overall to have practices that can be classified as probably unlawful: 11 per cent, compared to two per cent of those who said that they were not aware of the terms of the Act (Table 6.4).

Table 6.4 Overall incidence of potentially unlawful practice in recruitment prior to any job offer being made – by whether employer stated having awareness of the content of the Equality Act with regard to asking about health and disability during recruitment

	Aware	Not aware
<i>Base</i>	(181)	(219)
	%	%
No health questions asked: Lawful	33	37
Health questions asked and given an explanation related to an exemption: Probably lawful	56	61
Health questions asked and explanation given does not fall within an exemption: Probably unlawful	11	2
Total: Lawful or probably lawful	89	98
Total: Probably or possibly unlawful	11	2

Those employers who stated that they were aware of the Equality Act were asked whether they felt that there were any aspects of it that required clarification for employers. Of these SMEs, over two thirds stated that they did not feel any aspects needed more clarity (71 per cent). Most of the remainder felt that there was a need for clearer guidelines generally but were not able to stipulate particular aspects of the Act that they felt would benefit from greater clarification.

6.4 Experiences of recruitment consultants

Evidence from the employer and applicant surveys has demonstrated that information about health and disability is very often collected by employers during the recruitment process, but usually in the context of an exemption under the Equality Act. The research also sought to understand from recruitment consultants more about employers' behaviour and their own practices, to understand if there is potential for an individual's health or impairment to put them at a disadvantage before they are offered a job.

Qualitative interviews with recruitment consultants indicated that they generally feel that employers are aware that legislation around the use of pre-employment health questions exists, but do not demonstrate understanding of the exact nature of the legislation. Consultants feel that employers are aware of the necessity to exercise

caution when asking candidates questions about health or disability, but do not necessarily have robust recruitment practices to support this.

‘Employers are more sensitive than knowledgeable; they take measures to avoid getting themselves in any hot water.’

‘It isn’t well publicised for a start and also sometimes if an employer needs someone now – they don’t think about it. Our motivation is to find the right person; I’m sure corners could be cut in order to find the right candidates quickly.’

‘I think there is some confusion. Obviously I am aware of the ins and outs, but an SME is so focused on running their business they probably get little opportunity to understand these regulations.’

Recruitment consultants felt that large organisations with HR departments were more likely to be aware of the requirements of Section 60 than SMEs.

‘I think on the whole the sales director who contacts us about a position is naive to it but what they will have is a rigid HR department behind them and they will highlight any laws or legislation.’

Recruitment consultants stated that they did not collect information about applicants’ health or disability status when individuals registered with them. Although recruitment consultants feel knowledgeable about good recruitment practice when it comes to asking about health and disability, they generally feel that responsibility in ensuring compliance lies with the employer and do not often personally take responsibility for ensuring that recruitment practices adhere to Section 60. They tend to feel that their role is just to ensure that the person has the right to work, and the specified skills.

‘It is their prerogative. My role is to find the best candidate for the job.’

‘Unless the employer specifically asks us to look at health, which they don’t, this is left to their own HR procedure...we are there to get the best person for the job; you steer clear of any equality issues. When an offer goes out the HR department will send a pack about the company which will have a health questionnaire in it – we never see this.’

One exception to this is where the relationship is one of a recruitment agency, where the recruiter is acting as the employer for someone working in a temporary role. In these circumstances, agencies feel they need to check on health and disability issues to ensure that the workplace would be suitable for the candidate and/or they

would be covered in terms of health and safety and insurance liability. Their focus is on ensuring that the temp worker would not be a risk to themselves or to others – the fear would be that the agency would be liable for harm caused to the temp worker or others because of an undisclosed health condition. Situations described included asking individuals if they had a skin condition that might be aggravated by working with irritants, and asking candidates for information on conditions such as asthma which might affect them at work:

“The health information is very much for our records; the employer doesn’t always ask for this. It’s about us covering ourselves. We cover everything and ask them if there is anything we should be made aware of before moving them into employment. 99% of the time they say everything is fine. The rest of the time it tends to be minor things like asthma; so we have to check that they carry an inhaler. If they end up working a night shift and have an attack a 2 a.m. we might have the client calling us to check if this is the case. It’s more about covering the employee and any work they may take on; if anything does happen to them on site then at least we know about it.”

If these questions are not related to an essential part of the job or another legal requirement, then this practice would be prohibited under Section 60, and potentially deter or bar candidates from the position, even if the employer is not passed the information.

Most of the consultants did also say that issues about health and disability are sometimes discussed openly with applicants when talking about a potential role, usually as a result of voluntary disclosure by the applicant. This generally occurs as a natural part of discussing the job role and whether it would suit the candidate. Often consultants wish to engage in a face-to-face or in-depth discussion with the candidate to ensure that the employee proactively decides if they are suitable to perform the tasks required. It can be at this point that candidates raise any concerns about health or disability.

‘I did have one guy who told me that he had problems with mobility on one side of his body; we explored it in respect of it affecting any driving or if he needed any modifications for driving – it didn’t, and that was that.’

‘One candidate is dyslexic and was up-front about it at the interview, knowing that if he had not been asked then they wouldn’t have found out until he was in the role. The employer was accommodating and gave him a special software package. It is not about being discriminatory, it is just about being open.’

A couple of the consultants recalled instances where they have had to offer reassurance to candidates regarding their health or disability.

‘I had someone who was hard of hearing and he got a bit nervous about whether wearing the ear piece might affect his chances. I told him to do whatever would give him the most confidence in an interview situation.’

In some cases, consultants mentioned cases where, after having asked or been told about a candidate’s health, they had raised an issue with an employer about, for instance, accessibility (of the building or the assessment process) at the recruitment phase, and any issues around the likely adjustments required at that stage.

All ten recruitment consultants interviewed reported that they were not aware of any employers who had been deliberately attempting to get around Section 60 in their recruitment practices. However, one company responsible for providing temporary staff for employers stated that the nature of their relationship with employers meant that employers could terminate the employment of a candidate relatively easily, precluding the need for them to make many stipulations about the nature of candidates that they wished to be sent.

‘They would subtly lay that person off. They might come back and ask for a replacement in a few days time. They’d simply say the job had finished and then go to another agency. They’d never tell us the specific reason in fear of being discriminatory.’

‘I do think the reality is that a lot of companies do discriminate when they decide who they take on for work but this isn’t in the recruitment process. With the nature of short term/temporary work the employee is just laid off at the end of the first day.’

Other examples where discrimination could come in would be where employers make indirect presumptions or specifications based on a stereotypical vision of who would fit the role. They might end up specifying that the person should be able to do a task that is not an essential part of the job but is what they might expect from a stereotypical PA or warehouse worker. Some of the examples given were cases when employers had stipulated that there was a health requirement related to the specific job role but the rationale given for this was quite vague.

‘It tends to go along the lines of ‘we want someone fit and healthy...they may have to carry about a lot of demonstration kit.’

‘Sometimes the employer will say informally ‘we want someone who could go over and collect some boxes from time to time’ but this wasn’t really

part of the PA role. This happens sometimes, but it is more likely to be about gender, about 'we need a girl to do this.'

'We are not asked to 'pre-screen' but they may come through asking for 'strong lads for tomorrow' or things like 'no weaklings!'

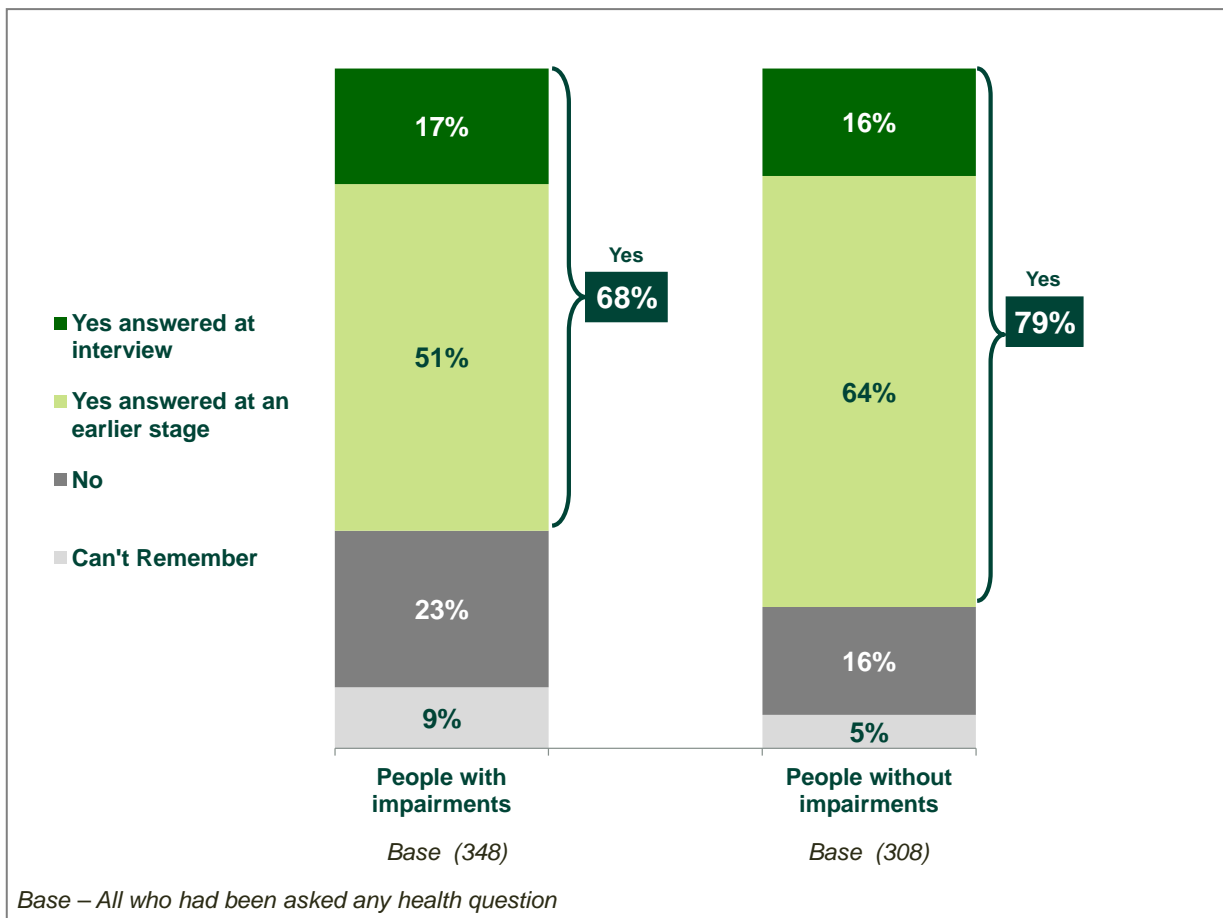
Recruitment consultants were asked whether or not they had seen any changes in their industry as a result of the introduction of Section 60. Again, the majority said they were not aware of any changes although one consultant noted that they had seen instances of questions to record the amount of sick days in a previous job being removed from application forms, and they considered this a result of the introduction of the Equality Act.

7 Reaction of job applicants to the use of pre-employment health questions

The research amongst job applicants has provided evidence of the widespread use of pre-employment health questions, which would often appear to be potentially unlawful. This final section looks at the impact of these practices on job applicants. It looks first at the extent to which applicants are exercising their right to refuse to answer these questions. The section also provides evidence of the impact on individuals' confidence in looking for work, given their experiences of having to reveal details of their health or impairment.

Where applicants had been asked any of the questions about health and disability they were asked whether or not they went on to answer these questions. The results are shown in Figure 7.1.

Figure 7.1 Incidence of respondents answering any questions about their health or disability status



Two thirds of applicants with impairments (68 per cent) said they answered these questions, compared with four out of five applicants without impairments (79 per cent). This might indicate a certain wariness among people with impairments about the potential impact of disclosing information about their condition, although it could also be indicative of greater awareness of employment rights among this group.

Within the two groups of people with and without impairments, there was no significant difference by age or gender in the likelihood of answering questions.

Applicants with impairments that they considered would be visible to a prospective employer were significantly more likely to answer the questions put to them, as compared to people with non-visible impairments (73 per cent compared to 63 per cent). Perhaps unsurprisingly, those applicants who voluntarily disclosed some information about their condition or impairment unprompted were also more likely to answer the questions put to them by the employer (83 per cent, compared to 63 per cent of those with impairments who did not disclose any information unprompted).

Figure 7.2 highlights whether applicants considered their experiences of being asked about their health and disability had affected how they approach their future job search. The base for these figures is all those applicants who were asked any health questions by the prospective employer and were still looking for a (new) job at the time of survey. Almost one third of these applicants with impairments felt that their experiences had put them off applying for future jobs in the same sector (29 per cent saying that the questions had affected them 'quite a bit' or 'a lot' in this regard). This compared to only 5 per cent of the applicants without impairments who had been asked health questions and were still looking for work.

Applicants with impairments were also more likely to be put off from applying for future jobs generally as a result of their experiences. Nearly three in ten (28 per cent) felt that being asked pre-employment health questions had made quite a bit or a lot of difference in their willingness and motivation for apply for jobs generally, compared to five per cent among applicants without impairments.

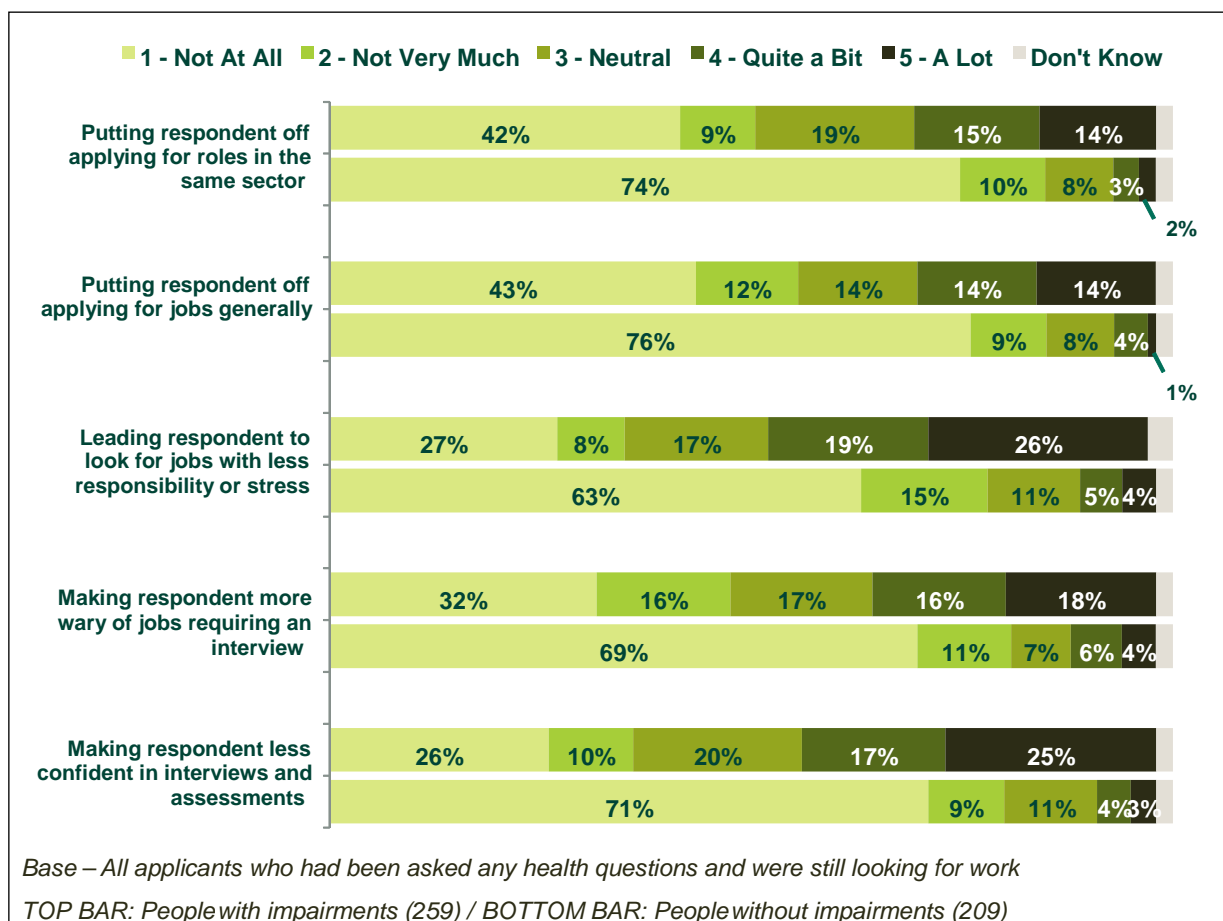
One quarter of these applicants who had impairments felt that their experiences had greatly influenced them to look for jobs with less responsibility or stress (26 per cent saying that the questions had affected them 'a lot' in this regard). This was significantly higher than the figure for applicants without impairments (four per cent).

One in three applicants with impairments who were asked for pre-employment health information and were still looking for work felt that as a result of the questioning they were now more wary of applying for jobs requiring an interview (34 per cent saying it

affected them ‘a lot’ or ‘quite a bit’, compared to four per cent of the equivalent group of people without impairments).

Applicants with impairments were also more likely to report an impact on their confidence. One in four applicants with impairments who were asked for pre-employment health information and were still looking for work stated that being asked about this greatly affected their confidence in future interviews and assessment (25 per cent saying it had affected them ‘a lot’, compared to just three per cent of the equivalent group of applicants without impairments).

Figure 7.2 How recent experiences of being asked pre-employment health questions have affected confidence and job search activity – comparison of people with and without impairments



Within the groups of people both with and without impairments, men and women were as likely as each other to say that there had been an impact on their confidence and job search.

8 Key messages

This research has provided evidence of the widespread use of health questions and health questionnaires by employers during recruitment. Seven in ten people with impairments, for instance, reported being asked health questions during recruitment, before any hiring decisions had been made by the employer. Around one third said that they were asked to fill out a health questionnaire or health form before receiving any offer of employment.

This report has provided a cautious estimate of the extent of possible and probable unlawful practice in the use of health questions, based on the terms of the Equality Act 2010. The evidence from job applicants suggests that for both people with and without impairments, in three in ten cases the employer asked them information about their health or disability without providing an explanation related to any of the legitimate exemptions in the Equality Act. In one in twenty cases, the research uncovered practices that we could be more confident in classifying as unlawful.

These practices appear to have a substantial impact on the confidence of people with impairments and lead many to downgrade their aspiration in terms of participation in the labour market. For instance, one in three applicants with impairments who were asked for pre-employment health information and were still looking for work felt that, as a result of the questioning, they were now more wary of applying for jobs requiring an interview (34 per cent saying it affected them 'a lot' or 'quite a bit'). It is therefore important that employers are given guidance on the use of pre-employment health questions during the recruitment process.

8.1 Providing guidance for employers

The research has reiterated the need for guidance for employers in interpreting Section 60 of the Equality Act, and highlighted particular issues that this might need to address.

A key message from the research is the lack of awareness amongst Small and Medium-sized Employers (SMEs) of the principles of the legislation. Half of SMEs surveyed stated that they were not aware of what the Equality Act says about asking health and disability questions during recruitment. Even in cases where employers claimed awareness of the legislation, questions remain about understanding and implementation; substantial numbers of employers who said that they were aware of the content of the Act with regard to asking about health or disability described recruitment practices which would be potentially unlawful.

The key priority for any guidance would therefore be to address this fundamental lack of knowledge, with clear information on the general prohibition of pre-employment health questions, and examples of what would and would not be permitted. The evidence from this research highlights that there is a general need for this guidance, given that probable unlawful practice was identified across all different types of employer.

The comments from some employers suggest that there may also be a need for more guidance on how employers define what aspects represent 'essential' parts of the job role, as defined under the Equality Act. This research has provided evidence that in some cases the tasks considered 'essential' by the employer would not necessarily represent a bar to people with impairments doing the job.

Where employers are acting legitimately, it is important for them to state clearly how they intend to use the information that they collect about a person's health. To reassure applicants, it is not necessarily sufficient for employers to comply with the legislation during recruitment: they must also be **seen** to comply. There were many cases in the research where employers asked candidates for information about their health, without telling them why (this applied to around one quarter of all recruitment situations involving people with impairments). While questions could have been asked for lawful or unlawful reasons, the mere fact of being asked about health and disability appears to have an adverse affect on the confidence of people with impairments in applying for future jobs.

There may also be a need to provide more guidance on how employers should proceed in cases where candidates themselves raise issues about their health and the possible impact on their work. Where applicants proactively volunteer information, employers currently tend to ask more questions about the impact this would have on the individual at work. This may be because the employer feels that the issue is 'out in the open'.

There is tentative evidence that some employers may need more guidance on how to balance their duty to open up the workplace for disabled people, with the bars on asking pre-employment health questions during recruitment. Under the Equality Act, an employer has a duty to make reasonable changes to work arrangements for disabled applicants and employees ('reasonable adjustments'). While many employers will be aware of the need to discuss requirements with disabled employees, understanding what adjustments might be required is not a legitimate reason for asking about disability or health prior to a job offer being made (except when the adjustments would be needed to ensure that they could carry out an *essential* part of the job). This research has found that around half of SMEs were

asking health questions prior to making a job offer with a view to future adjustments, perhaps representing misdirected good intentions.

The research suggests some variation in practice between different types of employer. In the private sector, applicants with impairments were more likely to be asked health questions, compared to people without impairments. Public sector employers and larger employers in general are more likely to ask pre-employment health questions as standard across applicants. Medium-sized employers showed the highest rates of probable unlawful practice in relation to the recruitment of people with impairments. While it is difficult to pinpoint the exact reasons for this, the views of recruitment consultants support the hypothesis that, compared to larger employers, some medium-sized companies may not have the same support from a knowledgeable human resources (HR) department when developing their recruitment practices. Therefore, there may be a particular need to ensure guidance is available to these employers who are expanding and formalising their recruitment practices as their company grows.

8.2 Overall conclusions

This report has identified the widespread use of health questions in advance of a job offer, despite the introduction of the Equality Act. Some health questions may be lawful if they are asked for reasons that are set out in the legislation as being legitimate. However, in over a quarter of cases, people with impairments were not given an explanation as to why they were being asked, and in one in twenty cases it is likely that the questions asked were unlawful. There is evidence that inappropriate health questions discourage future participation in the labour market. It is therefore vital that employers are seen to comply with the legislation, and that both employers and job applicants are clear about the legitimate reasons why some health questions may be asked prior to a job offer. The research has highlighted a lack of clarity about how to implement Section 60. The publication of guidance will offer a valuable resource to employers and job applicants alike. In addition, further research in a year's time would allow an evaluation of the impact of that guidance and the extent to which this section of the Equality Act has made a difference to recruitment practice.

Appendix A – Script for online survey of job applicants

Private & Confidential

Use of Pre-Employment Health Questions

Online

Job seekers element

Introductory screen

Welcome.

About this survey

This survey has been commissioned by the Equality and Human Rights Commission (EHRC). The survey asks you about experiences you may have had when applying for a job, in particular, whether you were asked to give any information about your health during the process.

[IF DISABLED PERSON SURVEY: The survey questions will ask about whether you have a disability or long-term health problem.]

The survey will take around 10 minutes to complete.

How information will be used

The information you give as part of the survey will be used to inform the Equality and Human Rights Commission's work around equality in the workplace.

All of the information you give during the survey will be kept confidential. Information will be passed to EHRC in the form of anonymised statistics. Your answers will not be reported to the EHRC in any way that would allow you to be identified.

The survey information is being collected and analysed by IFF Research, an independent market research company. IFF Research is a company partner of the Market Research Society and abides by the society's Code of Conduct. IFF Research will hold your details for the life of the project. Your details will not be passed to any third party.

About the Equality and Human Rights Commission

The Equality and Human Rights Commission (EHRC) works across Great Britain to eliminate discrimination, build good relations, and ensure that everyone has a fair chance to participate in society. It has a statutory remit to promote and monitor human rights, and to protect, enforce and promote equality across nine grounds that are "protected" under the Equality Act 2010- age, disability, gender, race, religion and belief, pregnancy and maternity, marriage and civil partnership, sexual orientation and gender reassignment.

A Screener questions

Firstly, we would like to ask some questions to work out whether this survey will be relevant for you.

ASK IF DISABLED PERSON SURVEY:

A1 **Do you have any physical or mental health conditions or illnesses lasting or expected to last for 12 months or more?**

This includes:

- **problems with hearing or sight, unless these can be corrected by spectacles or contact lenses**
- **mobility problems, including dyspraxia and cerebral palsy**
- **developmental conditions such as autism and Asperger's syndrome**
- **learning difficulties or disabilities, including Down's syndrome and dyslexia**
- **illnesses such as asthma, diabetes, heart and other circulatory conditions, respiratory conditions, and digestive conditions, where they have lasted or are expected to last 12 months or more**
- **anxiety and depression, again where they have lasted or are expected to last 12 months or more**
- **conditions that flare up or affect you from time to time, but which you expect to recur in the future**

Yes	1	CONTINUE
No	2	ASK A1A

A1A **Do you have, or have you had, cancer, HIV or multiple sclerosis?**

Yes	1	IF A1=1: ASK A2 IF A1=2: SKIP TO A4
No	2	IF A1=2: THANK AND CLOSE IF A1=1: ASK A2

ASK IF HAVE CONDITION OR ILLNESS (A1=1)

- A2 **Do any of these conditions or illnesses affect you in any of the following areas?** *Please select all that apply.*

The purpose of this question is to establish the type of impairment(s) you experience currently as a result of your health condition or illness. You should only select an option below if you are still affected in this way despite receiving treatment, medication, or using devices to help you, such as a hearing aid for example.

Vision (for example blindness or partial sight)	1
Hearing (for example deafness or partial hearing)	2
Mobility (for example walking short distances or climbing stairs)	3
Dexterity (for example lifting and carrying objects, using a keyboard)	4
Learning or understanding or concentrating	5
Memory	6
Mental health	7
Stamina or breathing or fatigue	8
Socially or behaviourally (for example associated with autism, attention deficit disorder or Asperger's syndrome)	9
Other (please specify)	10

ASK IF A1=1 AND A1A=2

- A3 **Does your condition or illness reduce your ability to carry-out day-to-day activities?**

Yes, a lot	1	CONTINUE
Yes, a little	2	CONTINUE
Not at all	3	THANK AND CLOSE

READ OUT IF CLOSE AT A1A OR A3: **Thank you for your interest in this research.**

Unfortunately, at this time we are only looking to speak to people who have a condition or illness which reduces their ability to carry out day-to-day activities.

USE OF PRE-EMPLOYMENT HEALTH QUESTIONS BY EMPLOYERS

ASK ALL

- A4 **Have you applied for a job at any time in the last 3 months? This could have been through responding to a job advert, completing an application form or applying through a recruitment agency or job centre.**

Yes	1	CONTINUE
No	2	THANK AND CLOSE

READ OUT IF CLOSE AT A4: **Thank you for your interest in this research. Unfortunately, at this time we are only looking to speak to people who have made a job application in the last 3 months.**

ASK ALL

- A5 **Did you have an interview (either face-to-face or over the telephone) for any of the jobs you applied for in the last 3 months?**

Yes	1
No	2
Can't remember	3

READ OUT FOR ALL: **Please answer the remaining questions in this survey with reference to [IF HAD INTERVIEW (A5=1): the most recent application where you had an interview] [IF NO INTERVIEW (A5=2 OR A5=3):your most recent application]. It does not matter if you were not successful in your application, or if you are still waiting to hear back about whether a current application has been successful – we are still interested to hear about your experiences.**

B Your recent job application

ASK ALL

B1 What type of employer did you make the job application to?

Please select one option.

A private sector company, i.e. one seeking to make a profit from selling a product or service	1
A charity or voluntary sector organisation	2
A public sector organisation Such as a school or college, any part of the NHS, local council or any organisation delivering transport, social care, waste or environmental health services	3
Not sure	4

B2 As far as you are aware, approximately how many people work for this employer across the whole of the UK? *Please select one option.*

Fewer than 5	1
5-9	2
10-24	3
25-49	4
50-249	5
250-499	6
500 or more	7
Don't know	8

USE OF PRE-EMPLOYMENT HEALTH QUESTIONS BY EMPLOYERS

In which sector was the job you were applying for? Please select one option.

Financial services	9
Professional or business services	10
Retail or wholesale (inc. motor trades)	11
Hospitality, hotels or restaurants	12
Manufacturing or Transport	13
Construction	14
Education	15
Health, Social Work and Childcare	16
Other Public Sector or public service organisations	17
Agriculture, Horticulture and Animal Care	18
Arts, Entertainment, Sport and Recreation	19
Personal services (e.g. Hair and Beauty)	20
Other (Please specify)	21
Not sure	22

B3 And what was the job role you were applying for?

**Please type in your answer below. Please provide as much detail as possible, outlining your main duties or responsibilities as appropriate
For example, rather than “supervisor”, specify “customer service supervisor in a bank”.**

DP/CODING NOTE: TO BE CODED TO SOC AND THEN CONVERT TO NS-SEC OCCUPATION ELEMENT (SEE NS-SEC_OCC DUMMY VARIABLE IN SECTION E).

C The process of applying for a job

ASK ALL

- C1 **Thinking about your most recent job application, did you do any of the following when making the initial application?** *Please select all that apply.*

Submitted a CV and/or cover letter	1
Completed an online application form	2
Completed a written application form	3
Contacted the employer by telephone or email to discuss the job role	4
None of the above	5

- C2 **Did you complete any ability or competency test as part of the recruitment process?** *Please select one option.*

Yes	1
No	2
Can't remember	3

- C3 **Were you selected or invited to take part in either a face-to-face or telephone interview?** *Please select one option.*

Yes - Face-to-face interview	1
Yes - Telephone interview	2
Yes - Both	3
No	4
Can't remember	5

ASK IF SELECTED FOR FACE TO FACE INTERVIEW (C3=1 OR C3=3):

- C4 **Did you go on to attend the face-to-face interview?**

Yes	1
No	2

USE OF PRE-EMPLOYMENT HEALTH QUESTIONS BY EMPLOYERS

ASK IF SELECTED FOR A TELEPHONE INTERVIEW (C3=2 OR C3=3):

C5 **Did you go on to take part in the telephone interview?**

Yes	1
No	2

ASK ALL

C6 **Were you offered the job that you applied for?** *Please select one option.*

Yes	1
No	2
Still waiting to hear	3

ASK IF OFFERED THE JOB ROLE (C6=1):

C7 **Was the job offer made on the condition of you passing a medical check?**

Yes	1
No	2
Don't know	3

ASK ALL

C8 **Were you asked to fill out a specific health questionnaire or health form [IF OFFERED JOB C6=1]: BEFORE you were offered the job]?**

Yes	1
No	2
Don't know	3

ASK IF ASKED TO FILL OUT HEALTH QUESTIONNAIRE OR FORM AND HAD GOT TO STAGE OF BEING INVITED FOR INTERVIEW (C8=1 AND (C3=1 OR C3=2 OR C3=3)):

C9 **Were you asked to fill out the health questionnaire or form...?** *Please select one option.*

As part of your initial application	1
After you had been invited for interview but before the interview itself	2
At the same time as the interview	3
After the interview	4
Can't remember	5

ASK IF DISABLED PERSON SURVEY:

C10 **Do you think your physical or mental health condition or illness would be apparent in an interview situation?** *Please select one option.*

Definitely	1
Maybe	2
No	3
Don't know	4

C11 **At any stage of your application, did you volunteer any information about your condition or illness, without being asked?** *Please select one option.*

Yes	1
No	2
Can't remember	3

USE OF PRE-EMPLOYMENT HEALTH QUESTIONS BY EMPLOYERS

ASK IF VOLUNTEERED HEALTH INFORMATION (C11=1):
C11B And was this about your impairment in terms of...? Please select all that apply.

Vision (for example blindness or partial sight)	1
Hearing (for example deafness or partial hearing)	2
Mobility (for example walking short distances or climbing stairs)	3
Dexterity (for example lifting and carrying objects, using a keyboard)	4
Learning or understanding or concentrating	5
Memory	6
Mental health	7
Stamina or breathing or fatigue	8
Socially or behaviourally (for example associated with autism, attention deficit disorder or Asperger's syndrome)	9
Other (please specify)	10
Can't remember	11

ASK IF VOLUNTEERED HEALTH INFORMATION (C11=1) AND IF RECALL STAGES OF EMPLOYER CONTACT (C1=1 OR C1=2 OR C1=3 OR C1=4 OR C2=1 OR C3=1 OR C3=2 OR C3=3 OR C8=1):

C11A Did you volunteer this information....?

[IF C1=1: In your CV or cover letter]	1
[IF C1=2: As part of the online application form]	2
[IF C1=3: As part of the written application form]	3
[IF C1=4: When you initially contacted the employer by telephone or email to discuss the job role]	4
[IF C2=1: As part of the competency or ability test]	5
[IF C3=1 OR C3=2 OR C3=3: When you were invited for interview]	6
[IF C4=1: During the face-to-face interview]	7
[IF C5=1: During the telephone interview]	8
At some other point (Please specify)	9
Can't remember	10

USE OF PRE-EMPLOYMENT HEALTH QUESTIONS BY EMPLOYERS

ASK ALL

C12 **We are interested to know if you were asked about the following issues as part of the application and recruitment process [IF OFFERED JOB (C6=1): BEFORE you were offered the job]? These points might have been asked verbally, or been included in a written application or assessment form. Please select Yes, No or Don't know for each question.**

	Yes	No	Don't Know
Whether or not you have a disability or health condition	1	2	3
The nature of any disability or health condition – i.e. what the condition or disability is	1	2	3
How a disability or health condition might affect you at work	1	2	3
Whether you would have any problems - because of disability or ill-health - doing an essential part of the job	1	2	3
How many days you have had off work for ill-health in the past or in a previous role	1	2	3
Whether you would need any adjustments to participate in further recruitment stages such as assessment or tests, because of a disability or health condition	1	2	3
Whether you would need any adjustments to participate fully in the workplace, because of a disability or health condition (for instance, adjusting procedures, the work environment, your job role or working hours).	1	2	3

DP INSTRUCTION: IF NO OR DK TO ALL ITERATIONS OF C12, SKIP TO C20.

ASK IF ANY HEALTH QUESTIONS ASKED (ANY OF C12_1 TO C12_7=1) AND IF RECALLED STAGES OF EMPLOYER CONTACT (C1=2 OR C1=3 OR C1=4 OR C2=1 OR C3=1 OR C3=2 OR C3=3 OR C8=1)

DP: REPEAT FOR EACH ITERATION CODED 1 AT C12. INTERLEAVE WITH C12.

C13 **At which stage or stages of the process was this question asked?** *Please select all that apply.*

[IF C1=2: As part of the online application form]	1
[IF C1=3: As part of the written application form]	2
[IF C1=4: When you initially contacted the employer by telephone or email to discuss the job role]	3
[IF C2=1: As part of the competency or ability test]	4
[IF C3=1 OR C3=2 OR C3=3: When you were invited for interview]	5
[IF C4=1: During the face-to-face interview]	6
[IF C5=1: During the telephone interview]	7
At some other point (Please specify)	8
Can't remember	9

C14 QUESTION MOVED

C15 QUESTION MOVED

USE OF PRE-EMPLOYMENT HEALTH QUESTIONS BY EMPLOYERS

ASK IF MENTIONED ANY HEALTH QUESTIONS BEING ASKED (ANY OF C12_1 TO C12_7 CODED 1)

DP: REPEAT FOR EACH ITERATION CODED 1 AT C12. INTERLEAVE WITH C12 AND C13.

C16 **Did the employer give any explanation of why they asked you** [ITERATION TEXT FROM C12]?

DP: PLEASE SHOW CODE 1 ONLY IF HAD INTERVIEW (C13=6 OR C13=7 IN SAME ITERATION LOOP)

	[IF C13=6 OR C13=7: Yes – at interview]	Yes [IF C13=6 OR C13=7: at an earlier stage]	No	Don't Know
Whether or not you have a disability or health condition	1	2	3	4
The nature of any disability or health condition – i.e. what the condition or disability is	1	2	3	4
How a disability or health condition might affect you at work	1	2	3	4
Whether you would have any problems - because of disability or ill-health - doing an essential part of the job	1	2	3	4
How many days you have had off work for ill-health in the past or in a previous role	1	2	3	4
Whether you would need any adjustments to participate in further recruitment stages such as assessment or tests, because of a disability or health condition	1	2	3	4
Whether you would need any adjustments to participate fully in the workplace, because of a disability or health condition (for instance, adjusting procedures, the work environment, your job role or working hours)	1	2	3	4

ASK IF EMPLOYER GAVE ANY EXPLANATIONS FOR HEALTH QUESTIONS (ANY OF C16_1 TO C16_7 CODE 1 OR CODE 2)

DP: REPEAT FOR EACH ITERATION CODED 1 OR 2 AT C16. PLEASE INTERLEAVE WITH C12, C13, C16. PLEASE SHOW CODE 1 ONLY IF HAD INTERVIEW (C13=6 OR C13=7 IN SAME ITERATION LOOP).

C17 Were any of the following explanations given for why they asked you this? Please select all that apply.

	[IF C13=6 OR C13=7: Yes – at interview]	Yes [IF C13=6 OR C13=7: at an earlier stage]	No	Don't Know
To understand any adjustments that needed to be made to ensure that you could take part in an assessment or interview (e.g. different formats of assessment materials, access considerations)	1	2	3	4
To understand any adjustments that would need to be made to ensure that you could do the job and participate fully in the workplace	5	6	7	8
For diversity monitoring purposes	9	10	11	12
Because the employer has a specific policy to encourage diversity, for instance, a guaranteed interview scheme for disabled people	13	14	15	16
Because it relates to an essential part of the job	17	18	19	20
Because there is a legal requirement, for instance, where a valid medical fitness certificate is required by law to do the job	21	22	23	24

C17OTH Did the employer give any other explanation?

Yes (PLEASE SPECIFY)	1
No	2
Can't remember	3

ASK IF 'DIVERSITY MONITORING' GIVEN AS EXPLANATION FOR ANY HEALTH QUESTION (C17_3=1 OR C17_3=2 ON ANY ITERATION OF C17)

- C18 **You said that you were told that the questions about your health and disability were being asked for diversity monitoring purposes. Were you told that the information would be handled separately from your job application?**

Yes	1
No	2
Can't remember	3

ASK IF ASKED WHETHER WOULD HAVE PROBLEMS WITH SPECIFIC ELEMENTS OF JOB (C12_4=1)

- C14 **You said that you were asked whether you would have any problems - because of disability or ill-health - doing an essential part of the job. What part of the job was mentioned? What were you asked? Please type in your answer below.**

ASK IF ASKED HOW A DISABILITY OR HEALTH CONDITION MIGHT AFFECT THEM AT WORK (C12_3=1)

- C15 **You said that you were asked how a disability or health condition might affect you at work. What exactly were you asked? Please type in your answer below.**

ASK IF MENTIONED ANY HEALTH QUESTIONS BEING ASKED (ANY OF C12_1 TO C12_7 CODED 1)

- C19 **Did you answer the questions about your health or disability status? This might have been verbally when talking to the employer, or answering the question on an application or health form.**

[IF ANY ITERATION OF C13=6 OR 7:Yes – at interview	1
Yes [IF ANY ITERATION OF C13=6 OR 7: - at an earlier stage]	2
No	2
Can't remember	3

ASK ALL

C20 **As far as you are aware, did the employer contact your current employer or any previous employers for any of the following information [IF OFFERED JOB (C6=1): BEFORE making you a job offer]?**

	Yes	No	DK
Information relating to your health	1	2	3
Information relating to your disability status	1	2	3
Information on your record of absence due to ill-health	1	2	3

D Future Applications

ASK ALL

D1 **Are you currently...?** *Please select one option.*

[IF OFFERED JOB ROLE (C6=1): In employment in the job mentioned above]	1
In employment [IF OFFERED JOB ROLE (C6=1): in another job]	2
Self-employed	3
Unemployed but available and looking for work	4
Unemployed and not available or looking for work	5

ASK IF UNEMPLOYED (D1=4 OR D1=5)

D2 **Have you ever been in work, either employed full or part time, or self-employed?** *Please select one option.*

Yes	1
No	2
Prefer not to say	3

ASK IF WORKING AT THE MOMENT (D1=1 OR D1=2 OR D1=3)

D3 **Are you currently looking for a new job?**

Yes	1
No	2
Prefer not to say	3

ASK IF STILL LOOKING FOR A JOB AND IF MENTIONED ANY HEALTH QUESTIONS BEING ASKED (D1=4 OR D3=1) AND (ANY OF C12_1 TO C12_7 CODE 1))

D4 **To what extent do you believe your recent experiences of being asked about your health and disability as part of your job application are...** *Please select one option per row.*

	Not at all				A lot	DK
	1	2	3	4	5	6
Putting you off applying for roles in the same sector	1	2	3	4	5	6
Putting you off applying for jobs generally	1	2	3	4	5	6
Leading you to look for jobs with less responsibility or stress						
Making you more wary of jobs requiring an interview	1	2	3	4	5	6
Making you less confident in interviews and	1	2	3	4	5	6

	Not at all				A lot	DK
assessments						

E About you

ASK IF WORKING CURRENTLY OR EVER BEEN IN WORK (D1=1 OR D1=2 OR D1=3 OR D2=1)

The following questions refer to your current main job, or (if you are not working now) to your last main job.

E1 [IF CURRENTLY IN EMPLOYMENT (D1=1 OR D1=2 OR D1=3): **Do you work as an employee or are you self-employed?**]

[IF NOT CURRENTLY IN EMPLOYMENT (D2=1): **Did you work as an employee or were you self-employed?**]

Please select one option.

Employee	1	ASK E1A
Self-employed with employees	2	ASK E1A
Self-employed / freelance without employees	3	GO TO E1C

ASK IF EMPLOYEE OR SELF EMPLOYED WITH EMPLOYEES IN CURRENT OR LATEST ROLE (E1=1 OR E1=2)

E1A [IF EMPLOYEE (E1=1): **How many people** [IF D1=1 OR D1=2 OR D1=3: **work**] [IF D2=1: **worked**] **for your employer at the place where you** [IF D1=1 OR D1=2 OR D1=3: **work**] [IF D2=1: **worked**]?]

[IF SELF-EMPLOYED WITH EMPLOYEES (E1=2): **How many people** [IF D1=1 OR D1=2 OR D1=3: **do**] [IF D2=1: **did**] **you employ?**]

Please select one option.

1 to 24	1
25 or more	2

ASK IF EMPLOYEE IN CURRENT OR LATEST ROLE (E1=1)

E1B [IF D1=1 OR D1=2 OR D1=3: **Do**] [IF D2=1: **Did**] **you supervise any other employees?**

Yes	1
No	2

ASK IF WORKING CURRENTLY OR EVER BEEN IN WORK (D1=1 OR D1=2 OR D1=3 OR D2=1)

E1C [IF CURRENTLY IN EMPLOYMENT (D1=1 OR D1=2 OR D1=3): **Please select one option to show which best describes the sort of work you do.**

[IF NOT CURRENTLY IN EMPLOYMENT (D2=1): **Please select one option to show which best describes the sort of work you did in your last job.**

Please select one option.

<p>Modern professional occupations <i>such as:</i> teacher - nurse - physiotherapist - social worker - welfare officer - artist - musician - police officer (sergeant or above) - software designer</p>	1
<p>Clerical and intermediate occupations <i>such as:</i> secretary - personal assistant - clerical worker - office clerk - call centre agent - nursing auxiliary - nursery nurse</p>	2
<p>Senior managers or administrators (usually responsible for planning, organising and co-ordinating work and for finance) <i>such as:</i> finance manager - chief executive</p>	3
<p>Technical and craft occupations <i>such as:</i> motor mechanic - fitter - inspector - plumber - printer – tool maker - electrician - gardener - train driver</p>	4
<p>Semi-routine manual and service occupations <i>such as:</i> postal worker - machine operative - security guard - caretaker - farm worker - catering assistant - receptionist - sales assistant</p>	5
<p>Routine manual and service occupations <i>such as:</i> HGV driver - van driver - cleaner - porter - packer - sewing machinist - messenger - labourer - waiter / waitress - bar staff</p>	6
<p>Middle or junior managers <i>such as:</i> office manager - retail manager - bank manager - restaurant manager - warehouse manager - publican</p>	7
<p>Traditional professional occupations <i>Such as:</i> accountant – solicitor – medical practitioner – scientist – civil or mechanical engineer</p>	8

DUMMY VARIABLE NS-SEC_EMP

DP: PLEASE CONSTRUCT IN REVERSE, SO THAT E.G. CODE 1 OVERWRITES CODE 2.

Employers – large organisations	1	E1=2 AND E1A=2
Employers – small organisations	2	E1=2 AND E1A=1
Self-employed, no employees	3	E1=3
Managers – large organisations	4	E1C=3 AND E1A=2
Managers – small organisations	5	E1C=3 AND E1A=1
Supervisors	6	E1=1 AND E1B=1 AND E1C NOT 3
Other employees	7	E1=1 AND E1B=2 AND E1C NOT 3
Never worked or long-term unemployed	8	D2=2 OR D2=3

DUMMY VARIABLE NS-SEC_OCC

Modern professional occupations	1	E1C=1
Clerical and intermediate occupations	2	E1C=2
Senior managers or administrators	3	E1C=3
Technical and craft occupations	4	E1C=4
Semi-routine manual and service occupations	5	E1C=5
Routine manual and service occupations	6	E1C=6
Middle or junior managers	7	E1C=7
Traditional professional occupations	8	E1C=8
Never worked or long-term unemployed	9	D2=2 OR D2=3

USE OF PRE-EMPLOYMENT HEALTH QUESTIONS BY EMPLOYERS

DUMMY VARIABLE NS-SEC FINAL5

Managerial and professional occupations	1	NS-SEC_EMP=1 NS-SEC_EMP=4 NS-SEC_EMP=5 NS-SEC_OCC=1 NS-SEC_OCC=8 NS-SEC_EMP=6 AND (NS-SEC_OCC=1,2,3,7,8) NS-SEC_EMP=7 AND (NS-SEC_OCC=1,3,7,8)
Intermediate occupations	2	NS-SEC_EMP=7 AND (NS-SEC_OCC=2)
Small employers and own account workers	3	NS-SEC_EMP=2 AND (NS-SEC_OCC=2,3,4,5,6,7) NS-SEC_EMP=3 AND (NS-SEC_OCC=2,3,4,5,6,7)
Lower supervisory and technical occupations	4	NS-SEC_EMP=6 AND (NS-SEC_OCC=4,5,6) NS-SEC_EMP=7 AND (NS-SEC_OCC=4)
Semi-routine and routine occupations	5	NS-SEC_EMP=7 AND (NS-SEC_OCC=5,6)
Never worked or long-term unemployed	6	D2=2 OR D2=3

ASK ALL

E2 **What is your highest level of qualification?** *Please select one option.*

LEVEL 5-8 – Degree or above	1
LEVEL 4 – Certificates of Higher Education (CertHE); NVQs at Level 4	2
LEVEL 3 – A levels; Access to Higher Education courses; International Baccalaureate; NVQs at Level 3; BTEC Diplomas, Certificates and Awards; BTEC Nationals; OCR Nationals at Level 3	3
LEVEL 2 – 5 GCSEs Grades A*-C; NVQ at Level 2, BTEC First Diplomas and Certificates; OCR Nationals at Level 2	4
LEVEL 1 – GCSE Grades D-G; NVQs at Level 1, BTEC Introductory Diplomas or Certificates; OCR Nationals at Level 1	5
ENTRY LEVEL – Entry level certificates, e.g. City & Guilds certificates; Skills for Life; English for Speakers of Other Languages (ESOL)	6
Other professional, technical or management qualification: PLEASE SPECIFY	7
Other: PLEASE SPECIFY	8
No qualifications	9
Don't know	10

READ OUT FOR ALL: The following questions ask you for personal information on your age, ethnicity, religion, sexual orientation and gender identity. As noted above, the Equality Act 2010 covers people with different 'protected characteristics': your answers to these questions will help identify any particular problems that different groups of people may face.

All of the information you give during the survey will be kept confidential. Information will be passed to EHRC in the form of anonymised statistics. Your answers will not be reported to the EHRC in any way that would allow you to be identified.

The survey information is being collected and analysed by IFF Research, an independent market research company. IFF Research is a company partner of the Market Research Society and abides by the society's Code of Conduct. IFF Research will hold your details in anonymised form for the life of the project only.

ASK ALL

E3 **What is your date of birth?** *Please select day, month and year from the drop-down lists.*

DP: PROVIDE 'PREFER NOT TO SAY' OPTION

DP: PLEASE CREATE DUMMY BANDED VARIABLE FROM DATE OF BIRTH (DATE DIFF FROM 23RD JANUARY 2012)

Under 25	1
25 - 34	2
35 – 44	3
45 – 54	4
55 – 64	5
65 – 74	6
75 or older	7
Prefer not to say	8

E4 **Where do you currently live?** *Please select one option.*

England	1
Wales	2
Scotland	3
Elsewhere	5

USE OF PRE-EMPLOYMENT HEALTH QUESTIONS BY EMPLOYERS

ASK ALL

E5 **What is your ethnic group?** *Please select the one option that best describes your ethnic group or background.*

White	
[IF E4=1 OR E4=5]: English/Welsh/Scottish/Northern Irish/British [IF E4=2]: Welsh/English/Scottish/Northern Irish/British [IF E4=3]: Scottish/Other British	1
[IF E4=1,2,3,5] Irish	2
[IF E4=1,2,3,5]: Gypsy/Irish Traveller	3
[IF E4=1,2,3,5] Any other White background (Please specify)	4
Mixed/Multiple ethnic groups	
White and Black Caribbean	5
White and Black African	6
White and Asian	7
Any other Mixed/Multiple ethnic background (Please specify)	8
Asian/Asian British	
Indian	9
Pakistani	10
Bangladeshi	11
Chinese	12
Any other Asian background (Please specify)	13
Black/African/Caribbean/Black British	
African	14
Caribbean	15
Any other Black/African/Caribbean background (Please specify)	16
Other ethnic group	
Arab	17
Any other ethnic group (Please specify)	18
Don't know	19

Prefer not to say	20
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ASK ALL

E6 **What is your religion?** *Please select one option.*

No Religion	1
[IF E4=1] Christian(including Church of England, Catholic, Protestant and all other Christian denominations)	2
[IF E4=2] Christian (all denominations)	3
[IF E4=3] Church of Scotland	4
[IF E4=3] Roman Catholic	5
[IF E4=3] Other Christian	6
Buddhist	7
Hindu	8
Jewish	9
Muslim	10
Sikh	11
Any other religion (Please specify)	12
Prefer not to say	13

ASK ALL

E7 **Which of the following options best describes how you think of yourself?** *Please select one option.*

Heterosexual or Straight	1
Gay or Lesbian	2
Bisexual	3
Other	4
Prefer not to say	5

E8 At birth were you described as...? Please select one option.

Male	1
Female	2
Intersex	3
Prefer not to say	4

E9 Which of the following describes how you think of yourself? Please select one option.

Male	1
Female	2
In another way (Please specify)	3

E9A Have you gone through any part of the process (including thoughts or actions) to change from the sex you were described as at birth to the gender you identify with, or do you intend to?

This could include changing your name, wearing different clothes, taking hormones or having gender reassignment surgery.

Yes	1
No	2

ASK IF CONSIDERED CHANGES (E9A=1)

E9B **Continuing to think about these examples, which of the following options best applies to you? Please select one option.**

I am thinking about going through this process	1
I am currently going through this process	2
I have already been through this process	3
I have been through this process, then changed back	4
None of the above	5
I prefer not to say	6

E9C **Which of the following describes how you think of yourself? Please select all that apply.**

Trans man	1
Trans woman	2
Transsexual person	3
Gender variant person	4
Cross dressing person	5
Transvestite person	6
Intersex person	7
In another way (PLEASE SPECIFY)	8
I prefer not to say	9

READ OUT FOR ALL: **Thank you. That is all the questions we have for you. Please be assured that all of the information you have given will be kept confidential.**

ASK ALL

E10 **Would it be OK for IFF Research to contact you in the future if we are doing any further research in this area?**

Yes	1
No	2

USE OF PRE-EMPLOYMENT HEALTH QUESTIONS BY EMPLOYERS

IF WILLING TO BE CONTACTED (E10=1)

E11 **Please provide your contact details below so that we can contact you in the future.**

Name	
Telephone number	
Email address	

DISPLAY FOR ALL: **That is the end of the survey. Thank you very much for taking time to tell us about your views and experiences.**

Appendix B – Script for SME omnibus

Private & Confidential Use of Pre-Employment Health Questions

Employers Element for SME Omnibus

Telephone

S Screener

ASK TELEPHONIST

S2 **Good morning / afternoon. My name is NAME and I'm calling from IFF Research. Please can I speak to NAME?**

Transferred	1	CONTINUE
Hard appointment	2	MAKE APPOINTMENT
Soft Appointment	3	
Refusal	4	CLOSE
Refusal – company policy	5	
Refusal – Taken part in recent survey	6	
Nobody at site able to answer questions	7	
Not available in deadline	8	
Engaged	9	
Fax Line	10	
No reply / Answer phone	11	
Residential Number	12	
Dead line	13	
Company closed	14	

USE OF PRE-EMPLOYMENT HEALTH QUESTIONS BY EMPLOYERS

ASK ALL

S3 **Good morning / afternoon, my name is NAME, calling from IFF Research, an independent market research company. We're conducting a survey on behalf of CLIENT.**

Continue	1	CONTINUE
Referred to someone else at establishment NAME_____	2	TRANSFER AND RE-INTRODUCE
JOB TITLE_____		
Hard appointment	3	MAKE APPOINTMENT
Soft appointment	4	
Refusal	5	THANK AND CLOSE
Refusal – company policy	6	
Refusal – taken part in recent survey	7	
Not available in deadline	8	

A Recruitment practices

ASK ALL EXCEPT IF S1=1

- A1 **When you recruit staff, do you collect any of the following types of information about candidates?**

Job History	1
Skills and Qualifications	2
References from previous employer	3
Personal Information	4
Information on candidates health or disability	5
Other (write in)	6
Don't know	7

ASK IF COLLECT QUESTIONS ON HEALTH (A1=5)

- A2 **Do you use a health questionnaire or form to ascertain more detail of these conditions from the potential candidate?**

Yes	1
No	2
Don't know	3

ASK IF USE FORM (A2=1)

- A3 **And when do you ask the candidate to fill out this form?**

When completing the initial application form	8
After being selected for interview but before the interview itself	9
During the interview	10
After the interview but before offering a job	11
After the job offer	12
Can't Remember	13

E12

ASK ALL

A4 **Does your organisation ever collect, either verbally or through a written application process, information about any of the following issues before offering a job?**

	YES at interview	Yes at earlier stage	NO	DK
a Whether candidate has a disability or health condition	1	2	3	4
b Whether a disability or health condition would cause problems doing an essential part of the job	1	2	3	4
c The number of days candidate has had off work for ill health in a previous role	1	2	3	4
d Whether candidate's health condition or disability would affect their ability to participate in any part of the recruitment processes	1	2	3	4
e Whether candidate would need any adjustments to their work environment or job role as a result of their health condition or disability	1	2	3	4

ASK IF ANY SELECTED AT A4

A5 **And why do you ask these questions as part of the application process?**

To understand adjustments that needed to be made to ensure candidate could take part in an assessment or interview.	1
To understand any adjustments that would need to be made for candidate to participate in the workplace	2
For diversity monitoring	3
You have a specific policy to encourage diversity (e.g. a guaranteed interview for disabled people)	4
Relates to an essential part of the particular job	5
Legal requirement (e.g where a valid medical certificate is needed to do the job)	6

ASK IF HAVE SPECIFIC POLICY (A5=4)

A5 **What is your policy in particular?**

WRITE IN

ASK IF RELATES TO PART OF JOB (A5=5)

- A6 **You said that you might ask about health or disability when it relates to an essential part of the role. What roles in particular does this apply to? What are the requirements for each of these roles?**

WRITE IN

INTERVIEWER INSTRUCTIONS: IF RESPONDENT REFERS TO MORE THAN ONE ROLE/REQUIREMENT PLEASE CLEARLY RECORD ALL REQUIREMENTS SEPARATELY FOR EACH.

ASK IF ANY SELECTED AT A4

- A7 **Are there any other reasons why you ask these questions as part of the application process?**

Yes (Specify)	1
No	2

ASK ALL EXCEPT SOLE TRADERS (S1=1)

- A8 **Are you aware of what the Equality Act says about asking questions about health or disability during the recruitment process?**

Yes	7
No	8
Don't know	9

ASK IF AWARE OF THE ACT (A8=1)

- A9 **Do you think there are aspects of the Act that need clarifying for employers?**

WRITE IN

Appendix C – Script for depth interviews with Recruitment Consultants

EHRC - Pre-employment health questions

Topic guide for interviews with Recruitment Consultants

Respondent details	
Name	
Position	
Type of agency	Specialist / Generalist Large / Small

Introduction

Thank you for your interest in this research, which is being carried out on behalf of the Equality and Human Rights Commission. The interview will last about an hour.

ABOUT THE RESEARCH:

During the discussion, I will ask about how employers want you to assess the suitability of candidates for a role, and what information is collected about candidates as part of the recruitment process. We are particularly interested in information about health and disability.

The information you give will be used to inform the Equality and Human Rights Commission's work around equality in the workplace.

REASSURE OF CONFIDENTIALITY:

All of the information you give during the survey will be kept confidential. Information will be passed to EHRC in the form of general findings. Your answers will not be presented or reported in any way that would allow you, your employer or your clients to be identified, by the EHRC or anyone else.

ABOUT IFF:

IFF Research is an independent market research company. IFF Research is a company partner of the Market Research Society and abides by the society's Code of Conduct.

INTERVIEWER: OBTAIN CONSENT FOR RECORDING OF INTERVIEW

Context and client base

To start off with, please could you tell me a bit about your role?

- How long have you worked as a recruitment consultant / at this agency?

What type of employers do you tend to work with?

- Size of employer?
- Industry sector?

How many employers do you typically work with?

How many employees might you send to them during a typical year?

What sort of roles are the employers generally trying to fill? (*level, manual vs. non-manual, skilled*)

The recruitment process

I'd like to understand a bit more about how the selection and recruitment process works in your organisation.

Could you take me through the typical recruitment process? What stages are there?

What information do you get from employers about a role and the type of candidates they are looking for? How is this communicated?

How do you go about selecting applicants to put forward for a role? How do you tend to assess whether they would be able to do the job?

How do you collect the information that allows you to assess candidates?

When is this information collected? (*probe: when the candidate first signs up with agency, when a role arises, other*)

What type of information do you collect? (*probe: job history, skills, qualifications, references from previous employers, personal information including information about health*)

- Is this standard across all job role, or different in response to the employer/job requirements?

What kind of pre-screening of candidates do employers ask you to administer, if any?

- What form does this take?
- What sort of things do employers want to know?

How often does the employer require applicants to:

- attend an interview?
- undertake a formal assessment? What might these assessments involve?
- fill in an application form?

Collecting information on health and disability

Thinking more specifically now...

What approaches, if any, are taken to obtaining information about a **candidate's health, or any disability they might have?**

- Is this collected as standard? Only if requested by an employer? Not at all?
- When and how is the information collected? (*probe: on registration, employer application form, standard agency application form, face-to-face with the consultant, other*)
- What questions are asked / what information are they asked to give?
- Is any information obtained from previous employers (e.g. absence records)

How is the information used?

- Is any specific information passed to the employer? Which information / in what circumstances?
- Do you use it to make decisions about who to put forward for the role?

Why do you think that employers want to collect this information / screen in this way?

Are you aware of any examples where an employer has 'changed their mind' about a candidate based on information they received about the person's health?

If yes:

- Did they give you any feedback about recruiting people for similar roles in future?

Awareness of Section 60

I'd like to talk a little bit about your experiences in working with employers, in the context of the Equality Act, which lays down particular laws around recruitment practice.

To what extent do you feel that employers have a clear idea of what is permissible under law, in terms of assessing an applicant's health or disability during the recruitment process?

If feel not clear:

- Why do you say that?
- What areas of confusion are there?

I would like to talk specifically now about changes to the Equality Act that came into force at the end of 2010.

Section 60 was built into the Equality Act in October 2010.

It makes it illegal for employers to ask questions about an applicant's health or disability prior to making a job offer, unless:

- **this is necessary to find out whether someone can perform an essential part of the job ;**
- **the information is needed so that they can make adjustments to make the recruitment process fully accessible.**
- **to monitor the diversity of people applying for the job**
- **to take positive action in relation to disabled people**
- **having a particular disability is an occupational requirement for the job**

How much awareness do you think there is of Section 60?

Have you seen any changes following on from the introduction of Section 60?

- in the recruitment industry?
- in the recruitment procedures of employers?
- in the profile of candidates coming forward for certain jobs?
- in how candidates behave during the recruitment process? (e.g. asking employers why health questions are being asked / feeling more/less confident applying or attending interviews)

Have you encountered / been aware of instances where employers have been trying to 'get around' section 60?

INTERVIEWER ADD IF NECESSARY: Just to remind you, everything you say is confidential, and nothing you tell us about specific employers will be passed on to anyone else.

- How were they doing this?
- Why do you think were they doing this?
- In what circumstances / for which types of role?
- How common is this?
- Have employers changed their approach for 'getting around' the legislation over the last year or so?

If say that aware of employers trying to 'get round' the law:

How do you think the legislation could be enforced to prevent employers acting in this way?

Wrap-up

Do you have any other comments you would like to make further to the issues we have talked about?

Thank you for your participation.

INTERVIEWER: Reiterate reassurance of confidentiality.

The Commission's publications are available to download on our website: **www.equalityhumanrights.com** If you are an organisation and would like to discuss the option of accessing a publication in an alternative format or language please contact engagementdesk@equalityhumanrights.com. If you are an individual please contact the Equality Advisory and Support Service (EASS) using the contact methods below.

Equality Advisory and Support Service (EASS)

The Equality Advisory Support Service has replaced the Equality and Human Rights Commission Helpline. It gives free advice, information and guidance to individuals on equality, discrimination and human rights issues.

Telephone: 0800 444 205

Textphone: 0800 444 206

Opening hours:

09:00 to 20:00 Monday to Friday

10:00 to 14:00 Saturday

Website: www.equalityadvisoryservice.com

Post: FREEPOST Equality Advisory Support Service FPN4431

Section 60 of the Equality Act 2010 prohibits the use of questions about a job applicant's health or disability before a job offer is made – unless they are for specific reasons set out in the Act. This report examines the extent to which prohibited questions are currently being asked.

WHAT IS ALREADY KNOWN ON THIS TOPIC:

Prior to the Equality Act, employers could ask questions about job applicants' health or disability before they made a decision to offer a job. This resulted in people with health problems or impairments being prevented from obtaining work that they would be capable of carrying out.

WHAT THIS REPORT ADDS:

This report provides evidence about the use of health or disability-related questions before job offer, over a year after the Act was implemented. It shows that:

- the use of pre-employment health questions is common
- while some questions fall under the exemptions listed in the Act, in other cases the evidence suggests that they are unlawful
- inappropriate health questions can discourage applicants' future participation in the labour market.

It is vital that employers are seen to comply with the legislation, and that employers and job applicants are clear about the circumstances in which health questions are prohibited.