



Scottish Police Federation

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JCC Circular 8 of 2019

Ref: CS/NB/LS

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Attachments: ET Decision Furlong v Cheshire Police

Dear Colleague

ET Decision - Furlong v Cheshire Police - Information

Please find the above Employment Tribunal decision attached for your information.

Yours sincerely

Calum Steele
General Secretary

Furlong v Cheshire Police

<https://www.gov.uk/employment-tribunal-decisions/mr-m-furlong-v-the-chief-constable-of-cheshire-police-2405577-2018>

This is an important case taken by an applicant to Cheshire Police who exposed the Force's unlawful use of positive action to boost recruitment numbers of women, gay and black and minority ethnic police officers.

Mr Furlong is a white, heterosexual, non-disabled man whose recruitment was effectively stopped by Cheshire Police because he did not belong to a group who were underrepresented in their employment.

The Equality Act 2010 (s159) permits employers to discriminate *in favour* of people from minority groups if, and only if, they can show that people from particular groups are under-represented in particular roles, they suffer a disadvantage and/or they have particular needs. But they can only do this if certain conditions are met: first, the candidates must be of "equal merit"; secondly, the employer must not have a pre-existing policy of treating people from these groups more favourably; and thirdly, the use of this discriminatory selection method must be a proportionate means of achieving a legitimate aim.

The Employment Tribunal in Liverpool found that Cheshire Police had not established any of these three conditions – looking at the interview records it was clear that the candidates were not all of equal merit; there was a policy that had been agreed at senior level by their "People's Board"; and thirdly, whilst the aim of the Force was laudable (to improve minority group representation) the means chosen were not proportionate. The Tribunal said that the positive action provisions of the Equality Act which allows *encouragement*, but not selection of people from underrepresented groups (s158) had been successful and it was premature to treat people from majority groups less favourably (directly discriminate against them) in this way.

This was a new provision included for the first time into the equality legislation when the Equality Act came into effect in 2010. It has never before been used in the UK, although several Forces in England and Wales had indicated that they were considering doing so. Cheshire Police were the first and Mr Furlong's challenge to it shows that the principle of treating people equally in recruitment and selection is vitally important and something enjoyed by all individuals – whether they are from a majority or a minority group. [It is important to note that it is possible to treat disabled people more favourably in recruitment and selection, which is why Mr Furlong did not take action on that ground].

The Tribunal commented that the "knock on effect of discontentment and disillusionment may lead to a lack of confidence in the ability of appointees to the role of police officer and the organisation in general. This would be counter-productive and not in the public interest if public confidence in the Force were undermined"