

10 May 2023

# Weekly Blog

By Philip Pearson-Batt



Turbo Care considers the impact of Artificial Intelligence at work. Are you ready?

Hello there, Turbo Care (Philip Pearson-Batt) here.

Welcome back from a lovely long-weekend – and what a way to be welcomed back? With a blog from yours truly!

I hope you all had good long-weekends? Did you watch the Coronation? Did you avoid it at all costs? Or, like me, did you accidentally book a trip to London thinking the Coronation was taking place on Monday when, in actual fact, it was very much happening on Saturday?

I wish I could tell you that I caught all the action and got a wave from King Charles himself but, I just missed him! I was either eating my weight in the best pasta this side of the River Tiber (Emilia's Handcrafted Pasta – don't tell everyone), sipping my (multiple) Aperol spritz or enjoying a musical about the notorious American gangsters, Bonnie & Clyde. You really ought to be getting a flavour of my life by now: it is perfect, and I wouldn't change a thing. 10/10. Would highly recommend!

One hot topic in the Pearson-Batt house at the moment is Artificial Intelligence (AI). Not least because we often find ourselves shouting at Alexa to “play Sam Fender on Spotify” and she decides to play Eurovision artist Sam Ryder (not that I'm complaining, although I think my husband Paul secretly listens to Eurovision constantly which is why Alexa gets confused!)

But actually, our conversations about AI are more serious than that: in particular, I was horrified to read a news story the other day about somebody who asked a ChatBot about whether they put jam or cream on their scones first. Fairly innocuous I hear you say? You would think that, but the ChatBot was able to provide a very detailed and logical response about the practicalities and tastes involved and I still haven't gotten over it (although to be fair it did get it the right way round – cream first, then jam).

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Aside from my potentially irrational fear of AI, I do genuinely question what impact these latest developments might have on the world of HR and Employment law. Given recent research suggests that automation will impact an estimated 300 million jobs around the world, now seems like a really good time to start thinking about that, especially as more and more employers are starting to use this technology.

As is often the case in employment law, it's likely the law is going to take some time to actually catch up with real-life developments and practices. Currently, there's no one piece of legislation on the use of AI at work. And actually, AI might already be present in your workplace (sounds scary, but it isn't). For example, some firms use AI for facial recognition to secure mobile phones or have spam filters on email.

But what are the risks of this? And how do we overcome them (this is where our Precept Superhero capes come in!) Before we can talk solutions, we have to explore what the risks are ...

## Discrimination

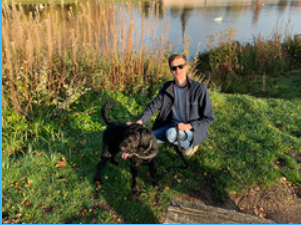
One major area of risk for employers using AI is the risks associated with discrimination. The current provisions of the Equality Act 2010 will apply equally to humans taking potentially discriminatory steps and to AI taking potentially discriminatory steps. How? I hear you asking.

Well, the use of AI could result in indirect discrimination where someone with a particular protected characteristic is put at a disadvantage because of an AI output. So, for example, if you had AI that used a certain algorithm that demonstrated a preference for certain traits which resulted in more men being recruited than women, that would potentially be discriminatory unless the employer could justify it. Whilst using AI to streamline your recruitment process might be a legitimate aim, I doubt very much using such a blanket tool would be a proportionate means of achieving a legitimate aim. In short, I doubt you will be able to justify it's blanket use in this way.

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Remember also your duties to make reasonable adjustments where you know or ought to know that your staff (or potential staff) have a disability under the Equality Act. Think about it, if you have somebody who is neurodiverse and you put them in front of an AI system that reads or assesses facial expressions, that individual will be put at a disadvantage because they're less likely to maintain the level of eye contact that a non-neurodiverse individual might. You're going to need to consider ways to help individuals in that kind of scenario overcome any disadvantage they might face as a result of their disability. Otherwise, you're going to fall foul of the Equality Act and nobody wants that!

## Data protection

Using AI also risks exposing employers to breaches of data protection legislation and in particular the UK GDPR and Data Protection Act 2018. Using AI is going to require processing personal data.

If you are going to use AI then I would suggest making sure you've properly considered the relevant data protection issues and the best way to do that is to undertake a Data Protection Impact Assessment (more details of which can be found on the ICO website). You will also need to make sure that your privacy notices are fully up to date to reflect the fact that there may be automated decisions being made.

Remember! Under GDPR employers are restricted from making automated decisions that have significant impacts on data subjects (in this case employees or potential employees) unless the automated decision is authorised by law, necessary for the performance of a contract or explicit consent has been given.

Even then, except where it is authorised by law, employers must make sure they've got really clear safeguards in place. Essentially, they are going to have to have something in place that allows an individual to challenge a decision that has been made automatically – i.e. the good old high-tech system of a human-led appeals process!

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## Mitigating the risks

Whilst on the face of it, using AI is a really technical matter reserved for the high-flying tech industry, you might already be using it! So, as usual, we have got your back...

The best tips and tricks that we can give you are:

1. Make sure you fully understand what AI is and whether you are actually already using it in your business.
2. Make sure you've properly considered the potential implications of using AI;
3. Ensure staff are fully trained on the use of AI;
4. Have clear and transparent policies in place (with the opportunity for human intervention if somebody feels something is going wrong);
5. Try not to rely solely on AI – wherever possible, say in recruitment practices, make sure it's just one of a range of tools used to assess suitability;
6. Monitor the use of AI to ensure that it's not resulting in steps being taken that might be indirectly discriminatory.

We're 100% sure that there's going to be future developments in this area and we at Precept are going to stay ahead of the curve to ensure you're kept fully abreast of those.

This includes us developing a new Policy on AI which will go onto our shiny document bank for all our lucky clients!

If you've got any questions, queries or concerns about the use of AI at work at this point in time, please, please, please pick up the phone and call us! We're human: it's what we're here for!