

The Law and the Little Things

How to mitigate microaggressions in the workplace

Most organisations today recognise the importance of equity, diversity and inclusion within their workplaces, in particular, how to build an inclusive culture; however, organisations need to go beyond warm words to deliver on commitments in practice. This webinar series addressed subtle aspects of discrimination in the workplace in the form of microaggressions. It brought these issues to life and helped leaders develop their awareness and understanding of the impact of behaviours that many write off as too trivial to mention; the little things that just happen. Though “little” in name, these occurrences can become large by nature, and businesses must be aware of the deep and often devastating impact of ignoring them.

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What are microaggressions?

Microaggressions are indirect, subtle and normally unintentional acts of discrimination against members of certain groups causing harm to the individual. As the title of our series makes it clear, they are the “little things”, the everyday occurrences, but what we learnt throughout this series was that the little things really do matter.



Why do microaggressions matter?

Microaggressions can make people feel undermined, humiliated, excluded or lead them to question their own abilities. Many of the people we heard from also talked about repeated exposure to microaggressions, and the damage this can cause. When comments or actions conflict with a person's sense of identity, the impact can linger long after the comment or action takes place.



It's death by a thousand cuts to hide that part of your identity."

While there are legal risks involved (as we explain in more detail below) the most significant impact is the harm to the individual and, from a workplace perspective, the wider impact on culture and potentially on an individual employee's performance. It can also affect an organisation's ability to attract candidates as part of the recruitment process and can lead to increased attrition levels where people leave or feel disengaged. In truth, the prevalence of microaggressions could be one of the reasons that despite your best efforts to develop strong D&I policies and initiatives, you are not changing the culture at the heart of your organisation.

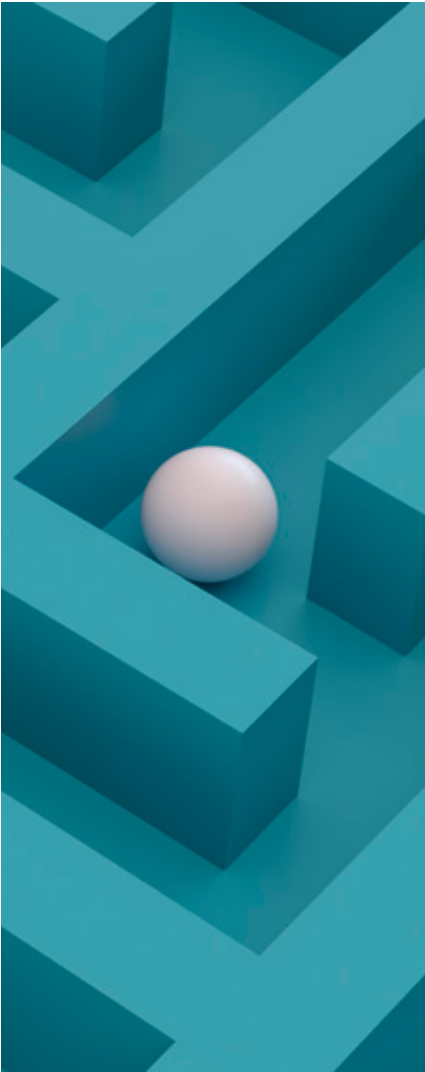


Why do microaggressions happen?

Some individuals may take their background or privilege for granted and will have very little awareness of the impact that their comment or actions could have on someone. In our session looking at microaggressions from a social mobility perspective, we heard about people feeling excluded if they did not “fit in” with someone else's perceived norms around background and education. One of our panellists shared an example from earlier in her career where she told a senior member of her team that she had gone to state school and they responded by saying “well at least you redeemed yourself by going to a decent University.”

In some situations, social power dynamics can be at the root of the comments. This was a particular theme when we discussed microaggressions experienced by women in the workplace and female panel members shared their experiences of being asked to organise the tea and coffee in meetings, or having assumptions made that their male colleagues at a meeting were more senior or being given “non-promotable tasks”.

But it's not always about power. In our LGBTQ+ session, we heard about ways in which gay and trans employees can feel excluded by colleagues taking a “heteronormative” view of relationships - the view that heterosexual relationships are the norm. In one example we heard that an employee had been praised for not being “too gay.”



Assumptions and stereotypes can also be a factor in microaggressions. We heard during our session focusing on menopause related microaggressions that, while those going through the menopause will have very different experiences, assumptions are often made of what is “normal”.



Some people are just downright intolerant and insensitive, making comments like – and I’ve heard these – “she’s a nightmare”, “she needs to get some HRT”, “her husband deserves a medal having to live with her moods”, all those kind of comments that are just not appropriate.”

Our session on Islamophobia highlighted the role that a lack of understanding can play, in that context in relation to a lack of understanding of the Muslim faith or the culture or customs associated with it. And while this definitely plays a part in certain microaggressions, it can also be about prejudice as well. Our guest speaker from MEND spoke about her view that unconscious bias and preconceived notions of the Muslim faith play a part and she gave examples of being asked if she was forced to wear a hijab to please her husband when in fact it is entirely her choice.

In addition, history and context can be relevant and this was explored in our opening session on hair discrimination session. Stephanie Cohen, from the Halo Collective explained that afro-hair discrimination has historical roots in slavery and colonialism when dehumanising terminology around afro-hair was first used.

Nancy Kelley, CEO of Stonewall who joined the panel in our LGBTQ+ session commented that microaggressions often come from a combination of curiosity and a lack of understanding, which again adds a different dynamic to the picture.

Words can have long lasting damage

Many of our speakers talked about the impact of microaggressive comments, explaining that they caused huge upset to the people involved, that this had a long-term impact and, for example, affected their confidence at work. We heard that microaggressions can cause feelings of isolation, and make recipients feel they are not “good enough” or in some situations can lead to imposter syndrome where people feel they have to work twice as hard to compensate.



It sticks with you. A lot of these are subtle nuances about what keeps people back in their careers – potentially, if they have been called ‘pushy’ or aggressive, they tone themselves down to fit into the working environment rather than being themselves.”

Our external speaker in our social mobility session, Iain MacRitchie from MCR Pathways, commented that he felt microaggressions were “macro” in their impact. He explained that we need to look at microaggressions through a human lens, and they can act as a barrier to progression. Iain talked about the way microaggressions can affect the young people he works with from socially disadvantaged backgrounds and how microaggressive comments take “the wind out of your sails” and affect confidence.



A graphic of concentric circles in shades of purple and blue, creating a ripple effect.

What role does the law play here?

The short answer is that by and large it plays a somewhat limited role. There is no specific protection against microaggressions – instead the Equality Act 2010 provides protection against harassment and discrimination, if the conduct is because of a protected characteristic.

This applied to many of the issues we discussed in this series, but not all. For example, a person's socio-economic status is not a protected characteristic, nor is menopause or hair. Claims relating to menopause have been brought by women relying on other protected characteristics, such as sex, age or disability. There have been fewer employment related cases involving hair discrimination but generally the protection invoked here will be that arising from race discrimination provisions. The most relevant part of the Equality Act is likely to be the provisions dealing with harassment.

Definition of harassment

“Where a person is subjected to unwanted conduct related to a protected characteristic and that conduct has the purpose or effect of violating their dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.”

Although the legal definition of harassment is largely about impact and not intent, many of the subtle and unintentional comments we heard about during the series would not be enough to result in a successful claim and would likely fall below the threshold of unlawful harassment in the legal sense.

... or is the correct question, *should* the law play a role in tackling microaggressions?

By the end of the series it was clear that, not only does the law play a limited role here, but perhaps it should remain that way. In the vast majority of cases the solution to an inappropriate comment or action is education not a legal remedy. Our panellists talked about the need for more widespread understanding of lived experience, meaning training and education are paramount. We also heard of the importance of accepting that mistakes happen and facilitating a culture where people can address this openly without fear of blame or causing offence is crucial. Let's face it, most of us at some point in our working careers have said the “wrong” thing at work.

It is also undeniable that to develop the law to offer full coverage in this area would be extremely challenging given the vast array of comments and behaviours that fall under the banner of “microaggressions” and the complex factors surrounding each of these. Allied to this is the fact that, as was drawn out in some of our sessions, this is an area where in some cases rights and interests have to be balanced – for example, in relation to religious views and homosexuality or gender critical views and an organisation's approach to trans rights. As the law stands, the Equality Act allows a balance to be arrived at between these different areas and in reality it is likely that this is more effective than an overly prescriptive legal approach here.

A graphic of abstract, wavy lines in shades of purple and pink, creating a sense of movement.

Is education enough?

Not all microaggressive conduct should be dealt with by education and training. There will be instances of behaviour that will be deliberate or are so offensive that they will merit disciplinary action, particularly if the microaggressive conduct is repeated. Indeed there is a risk that not addressing these sorts of microaggressions will set the wrong tone in workplaces and have a negative impact on culture (along the lines explained above). On the other hand, an employer who decides to take a “zero tolerance” approach to microaggressions by disciplining people as a matter of course is only going to alienate their employees and foster a climate of resentment and possibly fear.



How can employers tackle these issues?

77% of those who attended one of our Law and the Little Things sessions* indicated that following the event they intended to implement change in their workplace. This is great news. So, what should employers be doing?



Education, Education, Education

- Education and training is key. In all of our sessions, we heard examples of comments and actions which were not said or done intentionally but through thoughtlessness or ignorance or because the individual was blinded by privilege or prejudice.
- One of our panellists felt that part of the solution to tackling microaggressions was around increasing our empathy towards others and we agree this is vital.
- It is important that microaggressions are viewed in the relevant context in order for people to understand the impact they have on others; that understanding is hugely powerful and scenario-based training can be an effective way to encourage this way of thinking.
- Similarly real life examples of comments and sharing them can have a long lasting impact; people remember stories. They are often a good way to address the thorny issue that one person's joke (or in some cases perceived compliment) can be another person's microaggression.
- Unconscious bias training can also play an important part here.
- During our session on hair discrimination, Stephanie Cohen of the Halo Collective stressed the need for us all to keep learning. And we would emphasise this point; this is a learning journey.



The importance of bystanders and calling out microaggressions

- A recurring theme throughout the series was the problem that when the microaggression is minor, people feel that they can't challenge the comment or action; they fear looking "silly" or "petty". This can often mean the issue is not tackled.
- There was also recognition that power dynamics in the workplace can make calling out the behaviour difficult.
- Training should therefore cover how employees can respond to microaggressive behaviour they experience and the support the employer will provide in this respect.
- It should also cover how colleagues "accused" should respond where a concern is raised about an action or comment they are responsible for; the initial reaction can be to become defensive but this is unhelpful. Much comes back to the points addressed before, of fostering a culture that encourages open dialogue. And it is a balance; nobody wants to work in a workplace where no one can say anything for fear of offence.
- A point raised a number of times is also the importance of bystanders taking an active and not a passive role; why should it always be the subject of the microaggression who has to call it out when others can see the behaviour is not appropriate? Training on the importance of active bystanders can be hugely impactful.

The role of senior staff

- All employees at different levels of seniority can experience, or indeed be responsible for, microaggressions.
- Leaders play a vital part in tone setting; they should be particularly careful not to engage in behaviour that could be seen to constitute a microaggression.
- However it is also important that they are willing to challenge microaggressions they experience or witness. Being seen *not* to act can operate as a green flag for others in the organisation to behave in a similar way.
- There is a real benefit in senior staff sharing their own personal experiences; sometimes it is easier for them to speak openly than more junior employees.

Engage with your networks

- Networks can play a significant role in making a workplace culture more inclusive – change needs to be bottom up as well leadership driven.
- Encourage open conversations around microaggressions to raise awareness and to help eliminate feelings of discomfort around these issues.
- Often those in your in networks have first hand experience of the issues you as an employer are trying to address, so listen to them!
- The only health warning here is that we must always remember that people are individuals and we should not assume everyone in a group will hold identical views.
- We were so grateful to be joined in our series by so many representatives of our CMS Networks, namely CMS Women; embRACE; the LGBT Network; the Muslim Network and the Social Mobility Network. The Law and the Little Things series would not have been what it was without them and their thought-provoking insight.



Engage with external organisations

- We were delighted to be joined in each of our sessions by hugely impactful speakers from external organisations operating in this space, namely Stephanie Cohen from the Halo Collective; Michelle Gascoine from Henpicked; Iain MacRitchie from MCR Pathways; Lindsay Taylor from MEND; Jane Gotts from GenAnalytics; and Nancy Kelley from Stonewall. Their experience added hugely to our series and we heard great things about how they work with employers.
- With such amazing organisations out there, take time to make some good connections!

