AI Powered Unfair Recruitment by Susan Scott-Parker OBE HonD.

Unless the unintended consequences of 'artificial intelligence (AI) powered recruitment' are urgently addressed – given the inevitable roll out across low- and middle-income countries - millions, indeed hundreds of millions already disadvantaged by assumptions triggered by their disability, face lifetimes of needless economic and social exclusion.

AI recruitment tools are increasingly regarded as the 'first line of defence' again high-volume online hiring. Recruiters need to discard as many applicants as possible, as quickly and as cheaply as possible, so as to narrow down to the talent deemed worthy of consideration by human recruiters. Candidates with a wide range of disabilities stand very little chance of getting through - and will struggle to prove they were discriminated against by an AI powered process.

Recruiters are increasingly using AI Screening to recruit people who match as 'microanalytically' as possible the company's 'Ideal Hire': that is, who match someone who already works for them. In one example, all candidates answer standard interview questions in front of a camera, while the software notes thousands of barely perceptible changes in posture, non-verbal communications, facial expression, eye movement, vocal tone, eye contact and word choice.

This data, described as "key to the best screening decisions," combined with multiple insights regarding competencies and potential, is turned into a score for comparison with the score of the employer's high performing employees. In effect, an AI is taught to select replicas of the best people the employer already has. Estimates show this fast growing 'pre-hire assessment market' to be already worth £2.14 Billion per year…….

Disabled people, however, are always, everywhere, at least twice as likely as anyone else - often considerably more - to be excluded from the labour market, and so are highly unlikely to be any employer's 'ideal' colleague. As classic 'outsiders' they will rarely, if ever, knowingly be presented to the AI creator as a top performing 'insider.'

Yet neither AI developers nor their employer customers nor those influencing the ethical AI debate have even begun to address the potential impact of this fast-moving technology on the world's more than 1.3 Billion persons with disabilities.

When standardised processes encounter non-standard candidates

Bias, a 'tendency to prefer', an 'inclination of the mind', is quite different in real life from 'discrimination', which is the tangible, active reality of discriminatory behaviours and unfair treatment, such as refusing to vary a process so that someone can be accurately assessed on merit.

This not just about 'technology'. While standardising a process so that it is free from human bias sounds like a good idea, imposing standard processes on non-standard applicants virtually guarantees unfair treatment for many persons with disabilities - regardless of which 'preferences' or 'inclination of mind' shape the database. (Note the UK Tribunal case, **Brooke vs GLS,** which found that an applicant with Asperger Syndrome had been unfairly

disadvantaged by the employer's rigid insistence on multiple choice questions, rather than allowing her to provide short written answers.)

Employers treat candidates differently by making 'adjustments' or accommodations so that each candidate can compete equitably on the basis of their individual capability. Will these screening tools be granted the authority to deviate from the rigid processes that they are asked to design and control? Or to enable candidates in emerging markets who use mobiles, not computers - noting the refusal of one AI market leader to adapt their technology so they can interview people via mobile phones?

How will the Robot Interviewer in Sweden adapt their standard 20 minute programmed interview for the candidate who stutters and takes longer? Will it deviate from their programming for the job seeker using a sign language interpreter? (See Appendix for more examples of risks triggered by video interview assessments)

Systems which work for extreme users work better for everyone

AI Screening Tools which enable a diverse range of disabled job seekers to compete fairly, will be much less likely to discriminate against other groups who are also unlikely to be in the employer's current data set- and who may also require flexible processes which enable them to demonstrate their capability.

What best practice guidance will AI developers require as they set out to validate their processes for this highly diverse and growing population of more than one billion human beings worldwide? What particular AI and e-recruitment related barriers will onfront disabled job seekers in low income countries in the next 5 years?

What legal and regulatory innovation can we expect?

Q: What is the difference between an AI tool that prevents millions from competing fairly for work, and a teddy bear with button eyes that a child might swallow?

A: The Consumer Protection Regulator pulls the toy bear off the market.

We must expect substantial changes in how unfair treatment in recruitment delivered by and through AI and technology more generally, is viewed and addressed in law - with a possible helpful shift towards new Consumer Protection interventions to supplement existing Equalities and Human Rights frameworks.

Under most equality legislation, job seekers who have suffered unfair treatment must take their individual cases to court - and prove they have been treated badly by an algorithm. Redress is after the fact. Under consumer protection legislation, the teddy bear manufacturer has an anticipatory obligation to ensure that the bear is 'safe' before they put it up for sale.

Creators of AI screening tools are not legally obliged to ensure their recruitment products are 'safe', even when these tools threaten the life chances of those who undergo the assessments, and even when they generate legal, reputation and commercial risks for the employers who buy them. We anticipate increasing pressure on regulators worldwide to bring these AI tools into the realm of consumer protection.

We need to act now

Bdi (Business disability international), The European Disability Forum; IBM; The Australian Employers Network on Disability; BIOSS International; Face Equality International; Oxford Brookes University Institute for Ethical AI; Goldsmiths, University of London; The Viscardi Centre (USA); the World Bank; the Institute of Intelligent Systems and Robotics IST/UL (Portugal); The Centre for Responsible AI at NYU and the ILO Global Business Disability Network are joining forces to focus a coalition of thought leaders on raising the profile of disability in the context of the global RAI debate.

'Optimising AI recruitment related tools and machine learning models, for fairness, non-discrimination, accountability and transparency'

We are making progress:

- The Institute for Ethical AI at Oxford Brookes Unversity has published a ground breaking White Paper: "Recruitment AI has a Disability Problem," exploring the risks to both job seekers and to the employers who deploy this technology.
- IBM recently published: "Designing AI applications that Treat People with Disabilities Fairly."
- We aim to convene a 'Global Summit 2021' to challenge key influencers in the field of Ethical & Responsible AI to ground their work firmly in human reality and in the lived experience of disability which is intrinsic to that reality.
- The global Monitoring Committee for the UN's Convention on the Rights of Persons with Disabilities is explicitly referencing the need to ensure HR technology does not discriminate against disabled people.

Our aim: To determine what practical guidance buyers, AI creators, employers, governments and regulators will require, if the global market is to deliver AI screening tools which ensure fair and equitable treatment for people with disabilities, worldwide.

We need to resource a multi-stakeholder 'research & development' initiative which enables us:

- to research and map this new marketplace: it's ethical, commercial and technical challenges, key actors, and emerging opportunities. How will use of these AI recruitment tools impact labour markets in low- and middle-income countries? Who are the key actors to engage in finding solutions? Which thought leaders, AI developers & researchers. leaders with disabilities, innovators, standard setters, scientists, should be invited to participate??

- to determine what is now being done, by whom, to minimise AI recruitment related disability discrimination as well as bias? Where is the cutting edge thinking and practice regarding accountability and governance for both developers and their employer customers? What existing' Responsible AI' initiatives can and should quickly put these issues relating recruitment and persons with disabilities on their agenda as a priority?

- to raise awareness of the need for action - trigger the debate - convey to a wide range of influential stakeholders the human, ethical, commercial, economic and societal risks and opportunities associated both with this emerging AI technology - and with the impact of technology on the end to end recruitment and people management processes deployed by employers more generally.

- to produce, in the first instance, practical guidance for AI developers, employers, governments and regulators.

Appendix

"What if you aren't in the data base?" A draft briefing for an animation storyboard which would bring alive the potential impact of AI powered recruitment on job seekers with disabilities.

Imagine:

You want a job at a company which uses a video interview screening tool that assesses how closely you resemble an employee they hold in high regard. An AI notes thousands of barely perceptible changes in your posture, facial expression, non-verbal communications, vocal tone and word choice, and then compares these thousands of data points with those of the employer's 'Ideal Hire'. Let's call this ideal employee: 'Harry'.

You answer questions staring into the computer, as the AI powered camera assesses you on screen.

But:
- Your face was scarred by acid and works very differently from Harry's:
- You are a maths graduate with Cerebral Palsy and a speech impediment – sadly Harry doesn't have a speech impediment.
- Which means your fellow graduate, Sally, who stammers, probably can't get through either. Will the AI know that her stammer doesn't get in the way when she is working? Will it give her a bit longer to answer each question?
- You are visually impaired and don't look where Harry the 'ideal hire' looks - which means you don't look where the AI thinks you should be looking.
- You have a cognitive impairment: your vocabulary and voice tone differ from Harry's.
- You have Downe's Syndrome and can do the job, but the interviewer needs to deviate from the standard questions and simplify the phrasing.
- You are 55 and can do the job, but your word choice seems out of date when compared to the trendy business jargon Harry tends to use.
- You don't call yourself 'disabled' but you do have one shoulder higher than the other, which combines with your arthritis, obesity, pain, other health condition, to limit your range of non-verbal communications.
- You are a graduate who was denied work experience due to your disability; the assessment should take this previous unfair treatment into account.
- You have limited use of your hands – or prosthetic hands.
- You are a bit like Stephen Hawkins: the camera can't see your face clearly as hunch in your chair, though your unusual computerised 'vocal tone' may well knock you out of contention anyway.
- You are hearing impaired and naturally drop your eyes looking for subtitles, which aren't there, because Harry doesn't need them.
- You are trying to lip read the Robot Interviewer.
- You can do the job but ONLY if the employer allows you to work flexi-hours –or moves the parking bay or buys assistive software: but the AI screening tool uses only standard questions, The question: "Would an adjustment enable you to contribute?" is not one of them.