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# Race Equality

guide for  
Unite negotiators



*The UK and Ireland race legislation in this document has been verified by Unite  
Legal Department and Thompson Solicitors*

# FOREWORD

Within our movement it is now widely accepted that race equality is a key trade union issue.

Trade unions have a crucial role to play in helping to create working conditions that are fair to all workers – including Black, Asian and ethnic minority workers.

The Equality Act 2010 (and equivalent in Northern Ireland) provides protection for our members from racial discrimination and harassment and the opportunity to promote race equality. UNITE will continue to strive for equal opportunities for all our members.

**Len McCluskey**  
General Secretary

# INTRODUCTION

This UNITE Negotiators' Guide aims to build on good practice and assist in developing policies as part of our bargaining agenda on race equality in the workplace.

We want to ensure that all negotiators have as much support as possible in understanding and dealing with race discrimination and harassment, but also to create a climate in the workplace that welcomes diversity and positively promotes good race relations.

We hope you find the UNITE Negotiators Guide on Race Equality both useful and informative.

**Collette Cork-Hurst**  
National Officer for Equalities

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## WHAT ARE THE REASONS FOR RACE INEQUALITY AT WORK?

The reasons for race inequality at work are complex and inter-related, but the major reasons for the higher unemployment levels, the wider pay gap and the lack of progression for Black, Asian and ethnic minority workers include the following:

**Race Discrimination** – Government research has found that even when class, education and location are taken into account there is still a so called, 'ethnic penalty'. Therefore, race discrimination is a key factor of race inequality.

**Pay and Job Segregation** – More Black, Asian and ethnic minority workers are in poorly paid areas of employment such as some areas of transport, catering and semi-skilled jobs in manufacturing.

**Progression** – Black, Asian and ethnic minorities are under-represented in managerial and professional jobs.

**Location** – Over 75% of Black, Asian and ethnic minorities live in Greater London, the Midlands and the North of Britain. In many parts of these areas we often see high levels of poverty, low pay and a prevalence of semi-skilled jobs.

# 1. THE CASE FOR RACE EQUALITY

## Introduction

The over-riding justification for race equality in the workplace is a moral one. In a civilised society no worker should be discriminated against because of their race. As trade unionists, our role is to ensure that all workers are treated fairly with equality of opportunity. However, for some employers, this strong ethical argument is not always enough and in such cases it is worth making clear to employers that there are also powerful economic arguments why race equality in the workplace is good for business and good for employers.

## The Business Case

### 1.1 Benefits of Race Equality

#### Greater attraction and retention of staff

The best workplace is one that employs the best person for the job, regardless of their race. An organisation that values diversity and equal opportunity for all, will be an employer of choice. By discriminating against workers, employers run the risk of missing out on a large pool of talent. Companies that tolerate harassment of existing staff will find their ability to retain the staff they have will suffer.

#### More motivation

An environment in which all employees feel valued and included is likely to be a much more committed and motivated workforce. In turn this will have a positive impact on productivity, and reduces absenteeism.

#### Meeting the needs of a large customer/service user base

A diverse workforce can better understand a diverse customer/service user base and their needs. Many Black, Asian and ethnic minority workers speak more than one language and can be effective in communicating with

customers/service users whose first language is not English. The spending power of Black, Asian and ethnic minorities in the UK is immense and with an increasing global market these benefits are even more important.

## **Tap into new markets**

Creativity is greater where there is greater diversity. Different perspectives and experiences can lead to new ideas and maximise business opportunities.

## **Generate a positive company image**

Companies' reputations are increasingly important to their profitability. Media stories and awards from government, voluntary sector bodies and trade unions can generate positive coverage of companies who tackle the issue of race equality head on. Some companies are using such activities to develop their brand, differentiating themselves from their less responsible competitors, which in turn raise a positive profile and reputation amongst ethnic minorities and the wider community.

# **1.2 Costs of Race Discrimination**

## **Cut off from significant proportion of labour market**

A Leeds University study in 2010 predicted that the ethnic minority share of the population is to increase from 8% in 2001 to around 20% by 2051. Additionally, ethnic minorities are likely to be moving to inner cities in other areas which will result in a more even spread of these groups across the UK.

Companies that discriminate, either intentionally or not, against Black, Asian and ethnic minority workers will therefore be cutting themselves off from an increasing proportion of the available workforce.

## **Costs of discrimination cases**

Employment tribunals in cases of unlawful race discrimination have awarded high compensation costs. In addition,

- discrimination has contributed to many unfair dismissal cases

- companies have had to expend time and resources in resolving race cases
- there are heavy human and financial costs related to long term sickness of employees suffering from race discrimination

## **Negative company reputation**

Many consumers form impressions of a company based on employment practices, business ethics, responsibility to society and environmental effects.

## **Risk of losing business and investment**

As a commitment to race equality becomes more widespread in society, clients may ask about diversity records and company equality policies and if these are not satisfactory business may be lost.

Organisations that do not employ a diverse workforce or take into account the needs of diverse consumers, may not benefit from the spending powers of the black community.

## 2. THE BARGAINING AGENDA

### 2.1 Recruitment and Selection

Trade Union negotiators should work with employers to ensure they have fair recruitment and selection processes, which will attract a wide cross section of the community and give the employer the best chance of finding the right person for the job. Evidence shows us that Black, Asian and ethnic minority workers often fail to be aware of job openings, fail to be short-listed, fail to be interviewed and fail to be appointed into positions due to barriers within the recruitment and selection procedure of an organisation.

Particular areas in the recruitment and selection procedure that will need to be looked at are:

- Advertising
- Interview and Selection

#### Advertising

One of the key elements of getting the right person for the job is to make sure that applicants are chosen from as wide a pool as possible and that all members of the community are aware that there is a vacant position that needs to be filled.

One of the barriers in the past has been 'word of mouth' recruiting. This means that the employer only tells people s/he knows or is known by other members of the current workforce that there is a job vacancy. This and other informal methods of recruiting can lead to a workforce that has no diversity in terms of racial and cultural backgrounds. A similar situation can arise when jobs are only advertised internally.

#### EXAMPLE

An IT company has left it up to the Supervisor to recruit when there is a vacant position in the Finance Section. The Supervisor has always recruited from his family and friends, but he only has white friends and family and this has resulted in no Black, Asian and ethnic minority workers being recruited into the Finance Section.

## Where?

Advertisements should be placed in publications that reach a wide section of the community, including the ethnic minority press. If employment agencies, Job Centres or schools are used to place advertisements, make sure that they carry out the organisation's policy to encourage applicants from a diversity of backgrounds, as well as ensuring that they meet the requirements of the law.

## What?

The advertisement should not include a requirement that directly or indirectly discriminates against applicants on racial grounds, e.g. 'must have English as a first language' as this would be in contradiction of the Equality Act 2010. In very few instances discrimination is allowed if it can be 'objectively justified' (see section on Race Legislation). Employers should also avoid making unnecessary requirements, such as asking for a minimum length of residence.

A positive step would be to ensure inclusion of an equal opportunities statement that explicitly encourages applicants from under-represented groups to apply as the organisation wishes to have a diverse workforce. It could also incorporate a specific section on accepting comparable qualifications and skills gained abroad.

If the Union and employer are concerned about the under-representation of workers from a specific ethnic minority background, you may find it appropriate to liaise with the UNITE Regional Black, Asian and Ethnic Minorities Committee or Regional Women's & Equalities Organiser or contact community organisations for advice on ways in which you can reach members of this community and what barriers may need to be overcome in order for these workers to feel welcome.

### **CHECKLIST FOR NEGOTIATORS**

- **Try to negotiate for simultaneous External/Internal advertising**
- **Ensure that advertisements are placed in the ethnic minority press**
- **Ensure that advertisements include equal opportunities commitments/statements**
- **Ensure that job descriptions have been equality-proofed**
- **Ensure agencies and other outside bodies are aware of recruitment policy**

## The Selection Process

Employers often use the essential and desirable criteria in the person specifications for selection of candidates. It is important that desirable criteria are not used to discriminate and that this process is equality proofed and monitored.

Criteria for selection and questions in interview should be the same for every candidate. It is important that all staff involved in short-listing and interviewing are aware of the criteria and are given appropriate training in equal opportunities. More than one person should be involved in selections. Criteria on which a candidate will be judged in interview should be equality-proofed in the same way as job requirements. Wherever possible, employees from under-represented groups already working at the company should be involved in every stage of the recruitment process. If these steps are not followed there is a danger that Black, Asian and ethnic minority candidates will be treated differently to other candidates.

### EXAMPLE

An electronics store is recruiting a Sales Manager. One of the interview criteria to be met by candidates is that they must have good communication skills. Candidate X speaks excellent English and has excellent communication skills. He also has a strong African-Caribbean accent. The interviewing manager thinks that his customers will find Candidate X difficult to understand and so marks him down on communication skills and as a result he does not get the job.

Psychometric testing and personality tests are increasingly popular with employers. The quasi-scientific appearance of such tests may conceal in-built race bias. For example, they may discriminate against those who speak English as a second language.

It is important that the process is open and transparent and reasons for selection and rejection of applicants for vacancies are written down and recorded. These decisions can then be monitored.

The most commonly recognised standards in the UK are those published by the British Psychological Society (BPS) on their psychtesting website. The guidelines include:

- Procedures for dealing with enquiries and complaints should be communicated to all involved
- Tests should only be used in conjunction with other assessment methods and only when their use can be justified
- Informed consent should be obtained from test-takers and consideration given to factors that might influence the outcome including age, ethnicity, educational background, disability and gender
- Appropriate feedback from qualified persons must be given to test takers which make the implications of results clear

### **CHECKLIST FOR NEGOTIATORS**

- **Check that those interviewing staff have been trained in equal opportunities**
- **Equality proof interview criteria**
- **Involve employees from under-represented groups in the selection process**
- **Record all reasons for selection and rejection**
- **Ensure that psychometric tests are from reputable publishers and have been evaluated by the British Psychological Society (BPS)**
- **Ensure that those administering tests are trained to do so, preferably to BPS standards**

## 2.2 Career Development

Equal opportunities do not begin and end with the recruitment process. Training and promotion opportunities are vital to career development and evidence shows us that Black, Asian and ethnic minority workers are often discriminated against and not given the opportunity to compete for advancement on a level playing field.

Particular areas that will need to be looked at by negotiators are

- Promotion
- Training
- Appraisals

### Promotion

It is important that when selecting for promotion, the same equal opportunities procedures that are used in recruiting new staff are followed (see above).

Ensure employers encourage under-represented groups to apply for employment opportunities within the company. Wherever possible additional training, mentoring schemes, open days or other events should be provided for such groups to prepare them to compete on genuinely equal terms for jobs and promotion. This is known as **positive action** – taking steps to promote positive attitudes and practices that enhance race equality – and is allowed under the Equality Act 2010. The actual recruitment to all jobs must be on merit, however – positive discrimination (giving preferential treatment to one racial group or groups over another) is forbidden under UK law.

### EXAMPLE

A factory is seeking to promote someone to the position of floor manager. The supervisor informally asks all those employees who have relevant experience to apply. In the past he has informally arranged cover for the floor manager when necessary, and those who have provided this cover have been white. Employee X who is of an Asian origin has never been asked to cover for the manager and applies for the job and is unsuccessful as he is not as experienced as the other applicants.

## CHECKLIST FOR NEGOTIATORS

- Ensure equal opportunities procedures are followed when selecting for promotion
- Ensure under-represented groups are encouraged to apply for promotion
- Try to negotiate specific training for under-represented groups

## Training

Training helps to break down segregation at work. It brings skill recognition, higher status and better pay. Training opportunities that are equal and positive, are a high priority for UNITE. However, Black, Asian and ethnic minority workers tend to be concentrated in areas with poor training records and even where it does take place, workers from these groups often do not benefit from it.

Make sure the Equal Opportunities statement guarantees equal access to training and recognises its importance as a positive action measure. The Equal Opportunities policy should be included in any supervisory and staff induction training.

Review selection procedures for training to ensure they do not directly or indirectly discriminate and that, for example, relevant qualifications gained in other countries are recognised. Also monitor the take up and nature of training and qualification attainment according to ethnic origin, gender and other areas of equality.

Negotiate for particular training provision where Black, Asian and ethnic minority workers are under-represented in a section or occupation. Find out if there is a need for language training in these areas and ensure its provision where needed.

## EXAMPLE

Employee X works for a catering company. Employees are periodically offered the opportunity to go on training programmes to gain advanced catering qualifications and hence be paid a higher wage. Employee X has comparable qualifications, which she earned whilst living in India. However, the company recognises only UK qualifications meaning she is paid at the lower wage for a year until the training opportunity is offered again.

## CHECKLIST FOR NEGOTIATORS

- **Make sure the Equal Opportunities statement recognises access to training**
- **Review selection procedures for training and ethnically monitor those who undertake it**
- **Negotiate for training for under-represented groups as a positive action tool**
- **Negotiate for English language training for those who require it**

## Appraisals

Performance appraisals are often undertaken in the workplace and they involve an assessment of an individual's work by a supervisor or manager. Appraisals can be very open to discrimination as issues such as prejudices and stereotyping can be at play.

Appraisals cannot only affect an employee's short-term career (including pay and benefits) but also his or her long-term career in the organisation. Through monitoring the spread of appraisal marks for various ethnic groups you can highlight differences between them. Since appraisal marks can be linked to other factors, such as grade and pay, it is recommended you compare appraisal marks on a grade-by-grade basis as well as overall. If your analysis shows differences between ethnic groups then negotiate with the employer to conduct a full equalities review of the appraisal system.

You should also try to negotiate with the employer to implement full equal opportunities training for those conducting and counter-signing appraisals and it is recommended that more than one person is involved in the appraisal process to avoid subjectivity. Appraisal procedures should involve an appeal's process as part of best practice.

## EXAMPLE

Company X is a large electrical company. It operates an annual appraisal system, which impacts on training and promotion opportunities. The Shop Steward decides to monitor the results of the appraisal system and discovers that Black, Asian and ethnic minority employees do significantly worse than their white counterparts in the appraisal system. He also discovers that none of the Black, Asian and ethnic minority managers are involved in conducting appraisals and suspects that the appraisal system may discriminate against Black, Asian and ethnic minority Workers. He negotiates with the employer to have a full equalities review of the appraisal system.

### CHECKLIST FOR NEGOTIATORS

- **Monitor appraisal marks between different ethnic groups**
- **If there are problems negotiate for an equalities review**
- **Negotiate for equal opportunities training for appraisers**
- **Ensure that more than one person is involved in the appraisals process**
- **Ensure that there is an appeals process**

## 2.3 Equal Pay

Black, Asian and ethnic minority workers are significantly less well paid than white workers. Pakistani and Bangladeshi women have the lowest rates of pay. Black, Asian and ethnic minority workers are concentrated in the lowest paying industries and jobs. Many of the tried and tested Union demands around ending low pay will directly benefit these workers.

However, BAEM workers also suffer from the low value given to their work. As with gender discrimination, a worker's race can affect how society perceives the work that they do and how much that job is worth. Black, Asian and ethnic minority women's work is often viewed as the lowest skilled of all.

There is scope to use the Equality Act 2010 to tackle inequalities of pay. However, conducting an equality audit followed up by negotiation can produce significant gains. Please refer to forms in this guide.

### **CHECKLIST FOR NEGOTIATORS**

- **Where it is clear that there is an equal pay issue in your workplace, approach the employer directly and highlight the issue, along with the evidence**
- **Tackle this issue directly in your pay negotiations**
- **Negotiate to conduct a workplace Equality Audit**
- **Negotiate with your employer to set action plans in place to address workplace inequalities**
- **Where employers will not negotiate, consider bringing a case under the Equality Act 2010.**

## **2.4 Health**

Many Black, Asian and ethnic minority workers are employed in some of the most dangerous jobs and industries. Additionally, as many BAEM workers do unsocial hours, they are more likely to suffer ill health as a result. Ensure your workplace has an elected health and safety representative who can then run targeted safety campaigns to improve conditions. Ensure safety and other employment literature is available in languages other than English.

It is also important to recognise, raise awareness and negotiate fair procedures around specific health problems that are prevalent in particular ethnic groups. On a general level, it is known that some ethnic groups are more likely to have diabetes, heart disease and other illnesses. There are also some illnesses and diseases that are specific to certain ethnic groups, such as Sickle Cell and Thalassaemia.

## Sickle Cell and Thalassaemia

Sickle Cell and Thalassaemia are inherited blood conditions that are most common among people of African, Mediterranean and Asian origin. Sickle Cell Anaemia can lead to jaundice, a low resistance to infections and health 'crises'. People with serious forms of Thalassaemia need regular blood transfusions and nightly drug injections. Neither disease is infectious.

It is important that members with Sickle Cell and Thalassaemia have paid time off for screening and treatment. Equally important is that all staff are aware of and understand the nature of these conditions, particularly as those with these conditions are likely to need regular access to fluids and more frequent toilet breaks. Work with employers to ensure there are no discriminatory recruitment or employment clauses and that the pension and insurance providers used understand sickle cell and Thalassaemia and do not discriminate against members with these conditions.

Obviously the parents of children who have Sickle Cell Anaemia or Thalassaemia are likely to need assistance also.

### **CHECKLIST FOR NEGOTIATORS**

- **Ensure your workplace has an elected health and safety representative.**
- **Ensure health and safety literature is available in other languages.**
- **Negotiate paid time off for Sickle Cell and Thalassaemia treatment.**
- **Ensure that members/workers with Sickle Cell and Thalassaemia are not discriminated against due to policies and practices**

## 2.5 Redundancy and Retention

Criteria for selecting individuals for redundancy may have a disproportionate impact on black people and so be against the law. The traditional method of redundancy selection has been 'Last In, First Out'. However, the EHRC advises that, where Black, Asian and ethnic minority workers have been employed in recent years, such a policy would be indirectly discriminatory.

Other methods of redundancy selection can be equally discriminatory. For example, job proficiency is often dependent on length of service and for the reasons outlined above may discriminate against Black, Asian and ethnic minority staff who have been employed in recent years. Through monitoring methods of redundancy selection you can find out if they disproportionately discriminate against Black, Asian and ethnic minority workers. If the method in use is found to be discriminatory then negotiate a change in the employer's redundancy selection policy. Remember that the new policy will also need to be monitored carefully. If the employer refuses to change their policy, then consider taking a case against them using the Equality Act 2010 (see section on 'Dealing with Race Discrimination').

### EXAMPLE

Company X is a large car plant. Although the region they are in has a large Black, Asian and ethnic minority population, in the past the workforce of the plant has been predominately white. In recent years they have made a concerted effort to recruit a more diverse workforce that is more representative of the local population. Even more recently the local economy has taken a downturn and the company decides to lay off a fifth of their workforce. They decide the fairest way to do this is to lay off the 20% of the workforce most recently recruited. In doing so they proportionately lose far more Black, Asian and ethnic minority than white staff and completely undermine their recruitment drive.

### CHECKLIST FOR NEGOTIATORS

- **Monitor redundancy selection methods.**
- **Make sure you monitor which staff leaves and the reasons why they leave**
- **Where problems are identified, approach the employer directly and negotiate change where it is needed**

## 2.6 Caring Responsibilities and Homeworking

### Caring Responsibilities

Many Black, Asian and ethnic minority families have a low income, are living in poor housing and have heavy caring responsibilities. Also some ethnic minority women and men are more likely to work full time than their white colleagues, which often mean that they have difficulties in caring needs for looking after children, elderly and disabled dependants. It is not difficult to see why negotiating improved arrangements such as flexible working for carers will be of particular benefit. The UNITE publication 'Equality and Family Rights' has guidance on negotiating improved arrangements for carers.

#### CHECKLIST FOR NEGOTIATORS

- Access UNITE publications and contact relevant outside sources for advice on negotiating for those with caring responsibilities

## 2.7 Cultural Needs

It is important that terms and conditions and other workplace practices take account of the cultural needs of Black, Asian and ethnic minority workers. However, it is equally important not to make assumptions about an individual's cultural identity. Speaking directly to an individual is always the best way to determine their cultural needs.

Create a climate in which Black, Asian and ethnic minority employees will come to you to discuss their cultural needs. Publicise that both the employer and the Union take this issue seriously and want to meet everybody's needs. Always keep in touch with your Regional BAEM Committee who can be an invaluable source of help, advice and support.

Key areas include: • Extended Leave • Dress • Food • Social Events

### Extended Leave

Extended leave arrangements are extremely valuable for any worker with friends and family in a country a long distance away. No worker should have to forfeit their job security in order to maintain family ties.

Try to win support for broadening extended leave demands to cover visiting relatives, caring responsibilities, bereavement, etc. You should also make sure the agreement guarantees continuity of employment during leave and protects pension rights and other benefits. The right to delay return because of illness or other problems should be made explicit. For example, some companies allow workers to take additional leave every few years, which would mean that they could take 6/8 weeks at one time. This could be agreed by the worker being allowed to carry over some days leave for two years or the extra leave may be unpaid, if that is what the worker wants to do.

Make sure you win the support of the whole workforce when negotiating this agreement as colleagues will often have to cover absences. Remember, that although Black, Asian and ethnic minority workers are more likely to have relatives and other connections abroad, many white workers also have relatives in far off countries such as Australia and others and would just like to take the facility to travel for an extended period.

## **Food**

Canteen menus could cater for different cultural needs. Ask that canteen staff be trained to cater for different cultural diets and that all food is labelled clearly. At the very least make sure there is always a vegetarian option on canteen menus. Ensure that the same rules are applied to outside events using outside caterers. It might be useful to conduct a survey of the workforce to find out if they have any specific requirement in this area.

## **Social Events**

Ensure that those responsible for organising social events, both formal and informal, do not do so in a way that is exclusionary to those with different cultural needs.

### **CHECKLIST FOR NEGOTIATORS**

- **Negotiate a broad extended leave arrangement.**
- **Check work wear requirements do not conflict with cultural needs.**
- **Make sure the canteen caters for different cultural diets.**
- **Ensure that social events are not exclusionary.**

## 2.8 Negotiating for Race Equality in the Public Sector

In addition to the protection under general race legislation, workers in the public sector are further protected by the Equality Act 2010.

### Using the Equality Act 2010

As can be seen under the section on Legislation in this document, there are specific duties related to employment under the Equality Act 2010. The main aim of these duties is to ensure that Black, Asian and ethnic minority workers are not discriminated against and have equality of opportunity in the workplace.

Trade Unions clearly have an important role in preventing unlawful discrimination and in promoting equality of opportunity and good race relations. The General and Specific Duties provide those negotiating for race equality with a real opportunity to work with management to meet the general and specific duties and ideally, to go beyond them.

In particular, under the General Duty, the Union can play a vital role in contributing to the identification and assessment of functions and policies. Specifically, examples of inequality should be highlighted by the Union during the assessment stage so that changes can be introduced to rectify them.

Again, under the Specific Duty union involvement is crucial to the success of all aspects of the Equality Objectives, particularly during the consultation and training stages. With regards to the Specific Duties in employment which relate to monitoring, the Union should work with management to collect monitoring information. If under-representation of particular groups becomes apparent as a result of monitoring, then the Union can work with the authority to introduce positive action to rectify this. Positive action is encouraged in the EHRC guidance and allows employers and others to target their job training and recruitment efforts at those who are under-represented in the workplace. The Union should also work with the employer to ensure that any barriers identified in grievance and disciplinary procedures, appraisals, training and dismissals are effectively dealt with, in full consultation with the relevant groups of workers.

The **EHRC Guidance** refers to the following:

- employers should build long-term relationships of trust with trade unions. This may involve formalising links or setting up representative forums.

- engagement with trade unions can provide useful evidence for public authorities decision-making. This can help public authorities give proper consideration to the aims of the general equality duty, identify priority areas for setting objectives and demonstrating that earlier input of trade unions has informed the authorities objectives and finally give trade unions the opportunity to make final comments and suggest amendments.

The EHRC would normally expect to see the following information (for listed authorities with 150 staff or more):

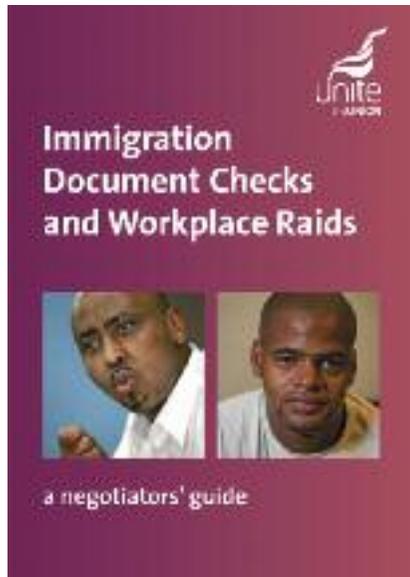
- details and feedback of engagement with trade unions
- details of policies and programmes that have been put into place to address equality concerns raised by trade unions.

## **CHECKLIST FOR NEGOTIATORS**

- **Ensure that joint race equality agreements include the role of the Union in promoting equality of opportunity; promoting good relations and in preventing unlawful discrimination under the General Duty of the Equality Act 2010**
- **Ensure Union Representatives and Black, Asian and ethnic minority members are involved in all consultation processes**
- **Ensure the Union is party to the setting up and delivery of monitoring systems of employees and in any actions taken as a result**
- **Ensure that the public authority meets all its obligations under the Equality Act 2010**
- **Ensure that negotiators are aware of their duties as outlined in the EHRC Code of Practice and Guidance in encouraging recruitment and involvement of under-represented groups of workers**

## 2.9 Immigration Document Checks and workplace Raids

Britain like many other countries relies substantially on the contribution of migrant workers. In recent years the ever increasing change and scope of immigration legislations and regulations has meant that the enforcement of laws about migrant workers are intruding into the workplace and having an impact on the jobs of workers. Legislation passed in 2002 and 2006 has deepened the responsibility of employers for the immigration status of their workers has moved the UK's borders from the point of entry into the UK and into our workplaces.



This has been reinforced by an increasing number of workplace raids by the UK Border Agency which has reinforced the idea that we all need to be checking on migrant workers to make sure that they are not illegal and are causing division racism and fear in our workplaces.

UNITE, TUC and other unions have recognised that there is a need for the trade union movement to take steps to ensure that employers do not use these regulations to divide and rule and exploit those that are most vulnerable. However to do this we need to recognise that all workers have rights and that the only way to respond to such challenges is through a collective response.

For this reason it is important that reps think about collective bargaining strategies that may pre-empt or address unlawful discrimination or other problems. It is important to negotiate a document check agreement that minimises the risks of damage to the workforce in the case of immigration document checks or workplace raids.

In February 2008, the UK Border Agency (UKBA) issued a code of practice on avoiding unlawful discrimination to accompany the new regulations on document checks. This code includes guidance on the steps employers should take while conducting document checks on workers.

According to this guidance employers should:

- avoid making assumptions about job applicants based on their appearance or accent
- ask for the specified documents from all job applicants being considered, at the same stage of the recruitment process
- avoid treating job applicants differently if they produce documents from List B rather than List A
- avoid treating employees with limited leave to remain less favourably than other employees, other than subjecting them to repeat checks.

A series of legal cases has demonstrated that employers cannot rely on their assumptions about the right to work of migrant workers to justify discrimination against them.

For more information please refer to the Immigration Document Checks and workplace Raids – a negotiators' guide. This guide has been produced by UNITE and TUC to help you deal with document checks by negotiating agreements and to give you guidance on what to do in an immigration raid.

## 2.10 Black History Month

Black people have been living in Britain since Roman times, as soldiers, servants, writers, entertainers, campaigners, scientists and business-people. Too often their struggles and successes have been invisible from the history books.

To recognise the contributions of Black, Asian and ethnic minority people to the economic, cultural and political life in the UK, the first Black History Month was organised by the Greater London Council (GLC) on 1st October 1987. Black History Month aims to promote knowledge of the black history, culture and heritage and to provide information on black people's positive contributions to British society.

There are now hundreds of events taking place across the UK during this month. Black History Month was recognised by the Labour government and many MPs got involved in hosting and chairing events and speaking at launches.

UNITE has been celebrating Black History Month, now a well established date in the British calendar, for many years. During this month we celebrate the achievements of black people in Britain and the difference they have made and continue to make in all fields.

Black History Month is a time to celebrate the contributions Black, Asian and ethnic minority people have made to the fight for social justice for all and the trade union movement enriching British society immeasurably, and continue to do so. Over the years we have produced leaflets, posters, badges and stickers, DVDs and have organised national and regional events.

We would encourage you to circulate UNITE Black History Month publications and consider developing initiatives in your workplace, working with BAEM members and/or the regional BAEM Committee. You can also offer to be involved in any regional UNITE or community Black History Month events.

## 2.11 Union Equality Reps help achieve fairer workplaces

### Who are Union Equality Reps?

Union Equality Reps are active members of the union who are elected to concentrate on equality issues once they have been trained and accredited by the Union. They are union reps with a particular interest in one or more area of equalities and an important part of the union team, promoting equality in the workplace and community. Working alongside other union reps and as part of the collective bargaining structure, union equality reps recruit, organise, represent and involve all members and they will:

- advise and support members
- raise awareness on discrimination issues
- map workplaces and the membership to ensure equality by gender, race, disability, sexual orientation, gender identity, age and religion
- carry out equality surveys
- promote best practice on all policies and agreements including equality objectives
- organise under-represented members
- keep members informed of equality issues
- negotiate for policies and practices
- monitor their effectiveness
- identify equality issues
- ensure issues are raised and placed on the bargaining agenda

Some union equality reps will also be shop stewards, safety or union learning reps, while others will be union equality reps only. Some will be general equality representatives, while others will be more specialist eg women's rep, disability champion, black members' rep, young members, LGBT, or harassment listening support rep.

**Union equality reps enter negotiations with the agreement of the shop stewards and are entitled to support from the union, other union reps, the Regional Organiser for Women, Race & Equalities.**

## **Who can become a union equality rep?**

UNITE already has a number of union equality reps in different workplaces and the numbers are on the increase. However, both UNITE and the TUC recommend that every workplace and branch should elect union equality reps. To achieve this we should encourage:

- shop stewards, safety reps and union learning reps who would like to extend their role
- all other existing reps for example, women's reps, disability champions, branch equalities officers and UNITE's Women, BAEM, Disabled, LGBT and Young Members Committee delegates
- active members who represent the diversity of our union and want to get more involved

**The union's aim is for all workplaces to have a union equality rep,** with a network of union equality reps in larger workplaces, for all union reps to attend the union's equality courses, and for a Branch Equality Rep on the branch committee. As soon as they are elected they will need to let the union know nationally and regionally so that they can get support and information.

UNITE believes that it is important to avoid cases of discrimination and harassment rather than only addressing the issues when they occur. We believe that all our shop stewards, safety reps and union learning reps deal with cases regarding equalities in their work but we can go a lot further when we have reps that have a specific role for equality. While union equality reps currently have no legal rights to time off, UNITE has negotiated agreements with employers, the role is included in our rules, and the campaign for statutory rights for union equality reps continues.

## 3. RACE LEGISLATION IN BRITAIN

### 3.1 The Equality Act 2010<sup>2</sup>

The Equality Act 2010 covers the following 'protected characteristics':

Gender	Race	Disability
Sexual Orientation	Gender Reassignment	Age
Religion or Belief	Pregnancy and Maternity	
Marriage and Civil Partnership		

The Equality Act 2010<sup>3</sup> makes it unlawful to discriminate on the grounds of race, which is defined as including a person's race, colour, nationality and ethnic or national origin. It applies to England, Scotland and Wales, but not to Northern Ireland and Ireland. It extends to the provision of jobs, training, housing, education, goods and services and exercising of public function.

#### Defining Discrimination<sup>4</sup>

The Act covers the following forms of discrimination:

**Direct Discrimination** is when a person treats another person less favourably because of their own race or because of their perceived race (for example for being wrongly assumed a Jamaican) or their association with someone of a particular race or their perceived race (such as a partner or friend). The motive of the discriminator in doing so is irrelevant.

**Indirect Discrimination** is treatment that could be described as equal in theory, but which in practice is discriminatory in its effect on one particular racial group. Indirect racial discrimination occurs where the employer applies a workplace provision, criterion or practice which puts employees of a particular race, ethnic or national origin at a disadvantage when compared

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<sup>2</sup> Please refer to the appendix 2 for legislation in Ireland

<sup>3</sup> The Act also allows a Minister of the Crown to amend the Act to add "caste" to the current definition of "race". It defines the term "caste" as a hereditary, endogamous (marrying within the group) community associated with a traditional occupation and ranked accordingly on a perceived scale of ritual purity.

<sup>4</sup> Combined Discrimination: dual characteristics - this part of the Act was not enacted

with other employees and the employer cannot show it is a proportionate means of achieving a legitimate aim. For example, a requirement that all female employees wear skirts would discriminate against a racial group for whom that was culturally unacceptable. Again, whether or not this discrimination was intentional is irrelevant, though unlike direct race discrimination, the employer could potentially justify the discrimination.

**Harassment** is unwanted and unwelcome physical, verbal or non-verbal racial conduct related to race. Harassment may be persistent or an isolated incident and may be directed towards one or more individuals. As with direct discrimination, the definition of harassment is wide enough so that it is not necessary that the person (or anyone else) subject to the harassment be actually of a particular race. In order to fall within the protection the person need only show that the conduct was "**related to**" their race. So for example, a white worker who sees a black colleague is being subjected to racially abusive language could have a case of harassment if the language also causes an offensive environment for her. Similarly, those who are subject to harassment, because they are associated with someone of a particular race or their perceived race, will be protected.

Employers are for the first time, liable for repeated harassment of their employees by third parties, for example customers. However, the harassment has to have taken place twice previously (i.e.. three times altogether) and been reported to the employer.

**Victimisation** is when a person is victimised for having brought or is suspected to bring proceedings under the Act or supported/given evidence for another person bringing proceedings under the Act.

**Segregation** is when people are separated in a working environment or given different facilities to use because of race.

**Instruction/Pressure to Discriminate** is when a person instructs or pressures someone to discriminate against another because of race.

**Discriminatory Advertisements** are advertisements or notices that indicate, or might reasonably be taken to indicate, an intention to unlawfully discriminate. An advert of this nature is unlawful to publish or place for publication. Only the Equality and Human Rights Commission can bring proceedings under this section.

## **Scope of the Act**

The Equality Act 2010 covers all employers, large and small and covers the vast majority of employees. Employers must not discriminate because of race against people employed by or seeking work with them. This also covers bodies responsible for giving qualifications and trade unions' relations with their members.

The following exceptions apply to this part of the Act: jobs that involve working outside of Great Britain most of the time and certain jobs where the Crown is the employer and discrimination is permitted only on the grounds of nationality or residency (such as work in embassies).

In addition work, where race is an 'occupational requirement' for the job is exempted. An example is where a black actor is needed for a film or television programme for reasons of authenticity.

The Act also extends beyond employment and covers training, housing, education and the provision of goods, facilities and services, although with some limited exceptions.

## **The Responsibilities of Trade Unions**

Trade Unions, like other organisations, have a role both as employers and providers of services covered by the Equality Act 2010. They have the same responsibilities to those they employ as any other employer. However, in addition they have responsibilities to ensure their representatives and members do not discriminate against any particular racial groups in the admission or treatment of members, or as colleagues, supervisors, or subordinates.

Trade Union officials and union representatives also have an extremely important role to play in preventing unlawful discrimination and in promoting equality of opportunity and good race relations within the workplace.

## **Equality Duty**

The 1993 death of Stephen Lawrence at the hands of racist attackers, followed by the inquiry into the totally inadequate and flawed police investigation marked a watershed in the history of race relations in Britain.

The inquiry was extremely critical of the Metropolitan Police and highlighted the deep-rooted institutional racism in society. The inquiry defined institutional racism as “the collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantages minority ethnic people”.

The inquiry made 70 recommendations including making the police liable to prosecution under legislation. In response to this, the government extended the legislation to cover policing and the functions of almost all public authorities. The Equality Act provides general and specific duties for public authorities to promote race equality under the Equality Duty.

Section 149 of the Equality Act 2010 makes it unlawful for public authorities to racially discriminate when carrying out their functions. The public sector equality duty consists of a general equality duty and specific duties which are imposed by secondary legislation. The purpose of the specific duties is to help public authorities comply with the general equality duty, by improving the focus and transparency of activity to meet the duty. Various public bodies are covered by this provision. The list of specified public authorities include local authorities; central government departments; schools, colleges and universities; police, criminal justice agencies; health authorities; NHS trusts; and non-departmental public bodies. These bodies are named, defined or described in Schedule 19 of the Act.

In summary, those subject to the equality duty must, in the exercise of their functions, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- advance equality of opportunity between people who share a protected characteristic and those who do not; and
- foster good relations between people who share a protected characteristic and those who do not.

## Statutory Codes of Practice

The Equality and Human Rights Commission has issued statutory Codes of Practice on employment, services, public functions and associations and equal pay. The Commission has also published non-statutory guidance on the Equality Duty. Although the Codes are not legally binding, it is admissible as evidence in legal proceedings under the Equality Act 2010. The tribunals and courts should take the Equality and Human Rights Commission Codes into consideration during proceedings.

## Procurement

The Equality Act 2010 makes it unlawful for private and voluntary sector bodies to discriminate in the carrying out of any function, which is classed as a 'public function'. It remains the responsibility of the relevant public authority to ensure that any of their functions that have been contracted out to a third party, where the duty to promote equality applies, meet the general and any specific duties. The duty will require public bodies: "to consider the needs of diverse groups in the community when designing and delivering public services" which also applies to private bodies exercising public functions.

## 3.2 The Equality and Human Rights Commission<sup>5</sup>

The Equality and Human Rights Commission (EHRC) was established on 1 October 2007. It is a publicly funded, non-governmental organisation. The EHRC works in both the public and private sectors to promote equal opportunities for everyone, regardless of their racial group. Its powers were extended with the Equality Act 2010. The EHRC covers all areas of equality including race and performs the following specific functions:

- It provides information and legal advice to people who think they have been discriminated against.
- It works with the public, private and voluntary sectors to promote equal opportunity policies and practices.

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<sup>5</sup> The Equality Commission in Northern Ireland and the Equality Authority in the Republic of Ireland

- It runs campaigns to raise awareness of specific race issues.
- It makes sure all new laws comply with the Equality Act 2010.

It also has the following statutory powers:

- To conduct investigations into companies and organisations where there is evidence of discrimination. Where that discrimination is proved they may require the organisation to change the way it operates.
- To take legal action against discriminatory adverts.
- To take legal action against those that pressurise others to discriminate.
- To issue statutory codes of practice to help public authorities meet their general and specific duties.
- To issue compliance notices on any authority which it believes is failing or has failed to meet its specific duties. If the authority does not respond, the EHRC can apply to the county court (the sheriff's court in Scotland) for an order to obey.

PLEASE NOTE: The scope, duties and funding of the EHRC is under review and is therefore subject to change.

### **3.3 The Human Rights Act**

The Human Rights Act 1998 brought the European Convention on Human Rights into UK law. The Convention provides individuals with a positive statement of their rights, which they can assert if they consider themselves to have been treated unfairly by a public authority or in circumstances where a public authority has failed properly to protect such rights. Although the UK government ratified the Convention in 1951, prior to the Human Rights Act 1998 individuals could only enforce their rights through the European courts. The purpose of the Human Rights Act 1998 is to incorporate the Convention rights into domestic law so that individuals can have their rights enforced directly in UK courts.

Article 14 of the Convention states that: "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status".

This Article therefore only prohibits discrimination in relation to other rights in the Convention. For example, Article 5 – The Right to Liberty and Security may be used in conjunction with Article 14 to challenge race discrimination in prison sentences.

The Convention potentially has significant implications for discrimination law in the UK. In addition to the duties on public bodies, since courts and tribunals are themselves public bodies, they will be under their own obligation to take into account the Convention even in private law proceedings between private bodies. Any organisation carrying out public functions have to comply with the Convention.

# 4. DEALING WITH RACE DISCRIMINATION

## Introduction

In dealing with race complaints it is important that members in your workplace have full confidence in the union to deal effectively with the issues raised around race discrimination and harassment. It is often a difficult decision for a member to approach the union with a race case, which is why union representatives and officers need to be confident in dealing with this type of case and have full support and assistance if needed. Remember also that creating a climate of anti discrimination and promotion of diversity in the workplace will assist in encouraging members to come forward.

You also need to bear in mind that sometimes colleagues and management are not fully supportive and responsive to complaints of race discrimination and harassment and this can often make matters worse.

## 4.1 Step-by-Step Guide to Dealing with Complaints of Race Discrimination

### 1 – Create a Climate in which Members will want to come to you with their Complaints

Black, Asian and ethnic minority members may feel reluctant to complain about racism in the workplace due to a fear of not being taken seriously or reprisals from colleagues. Make sure that union materials in the workplace make it clear that the union takes race discrimination seriously and that complete confidentiality is assured.

### 2 – Listen Carefully

If a member comes to you with a complaint it is important that you listen carefully to what the member has to say and take their complaint seriously. Never suggest that a member is being too sensitive or that the incident was 'only a joke'. The only thing that matters is that the member felt that the behaviour was unacceptable.

The member may want the opportunity to talk through their case with someone who has personal experience of race discrimination and harassment. If you need further assistance, the Regional BAEM Committee may be able to help.

### **3 – Find out Relevant Information**

Speak to your Regional Industrial Organiser and find out who you can go to for help and advice. In particular make sure you have contact details for your Regional BAEM Committee and your Regional Women's & Equalities Organiser.

Make sure you are fully aware of your workplace procedures for dealing with complaints of discrimination. In cases of harassment, find out if there are special procedures in place or whether the standard grievance procedure is used. There may well be no procedures but this should not discourage you from pursuing the complaint.

### **4 – Interview**

Interview members in a quiet and private place and find out the full details of the case. Ask open questions and find out exactly what happened, who it involved, when and where it began and what witnesses there were to the incident. Take your time and make sure you have all the relevant facts. Advise members to put in writing what happened and to keep note of any further incidents.

### **5 – Provide Information and Support on Taking Further Action**

There are a number of options available. They include an informal approach either in person or in writing by the complainant in conjunction with the union rep; a written approach that copies in the manager or personnel department; or a formal approach through the grievance or other agreed procedure. Keep a record of which option is chosen. Do not try to steer member into a particular course of action, but provide them with information and support to enable them to decide on the option they feel most comfortable with.

## **6 – Monitor the Results of Agreed Action Carefully**

Regardless of which approach is taken initially, make sure that if harassment continues formal procedures are used to remove the alleged harasser from the workplace. In such circumstances you should reject any attempt to move the complainant if that is counter to their wishes. Such action could lead to an additional claim of victimisation against an employer.

If the complaint is not dealt with satisfactorily by formal procedures, you and the member may wish to consider taking a race discrimination case against the employer.

### **CHECKLIST FOR NEGOTIATORS**

- **Create a climate in which members will want to come to you with their complaints**
- **Listen carefully to the members' complaint**
- **Find out relevant information**
- **Undertake and interview**
- **Inform the member of time limits if they wish to take a case now or in the future**
- **Be very clear on what action they wish to take**
- **Monitor the results of agreed action carefully**

## **4.2 Step-by-Step Guide to Bringing a Race Discrimination Case**

### **1 – Race Discrimination – Taking a Legal Case**

The Equality Act 2010 makes it illegal to treat a person less favourably than others on racial grounds (see the section on Legislation). These cover grounds of race, colour, nationality and national or ethnic origin. If the member has been discriminated against on racial grounds, then you can support them in taking a complaint before an employment tribunal.

You may have other related complaints, for example, unfair dismissal, sex or disability discrimination. These complaints may be heard at the same time as your racial discrimination complaint.

The current success rate for race cases is very low. Where discrimination is indirect or 'unconscious', employers may be reluctant to admit that something is wrong. Taking a case can encourage employers to see sense and come to an agreement.

Remember, the failure of a union to act at all in a race relations case can bring it into a tribunal as a defendant.

## 2 – Collecting Evidence

Encourage the member to keep a diary of incidents and collect any correspondence and other materials relating to the case. If s/he has suffered stress and illness, for example, as a result of harassment, ask for a copy of the medical certificate or doctor's letter. Talk to other members to see if they would be willing to act as witnesses and, if so, take statements.

## 3 – Making a Complaint to the Tribunal

To make a claim to an Employment Tribunal<sup>6</sup> the member needs a form called ET1. You can get this from your full-time UNITE officer or from your local Employment Tribunal Office. S/he will be asked on this form about their complaint, some personal details including their earnings and what remedy they want from the tribunal. Keep a copy of the form and send it to the local Employment Tribunal Office. **S/he must make the complaint not more than three months less one day from the date of the incident you are complaining about.** Exceptionally and in very limited circumstances, the court or tribunal will consider a late application when they believe it is 'just and equitable' to do so.

<sup>6</sup> Industrial Tribunals and Fair Employment Tribunal in Northern Ireland

## **4 – Getting More Information from the Employer**

The Equality Act 2010 Discrimination and Other Prohibited Conduct Questions Form (See Appendix 1) can be used to request more information from the members' employer about how they think they have treated the member. This can be very helpful, as it will tell you which aspects of your case the employer accepts and which they deny.

You can also request the employer sends you any documents relating to the workplace that you think may be helpful in your case. Examples of documents you might want to request include job descriptions, equal opportunities policy, time sheets, copies of the company disciplinary procedure, appraisal records and monitoring information etc.

These documents and the answers to your questions can be used in evidence at the tribunal. It is especially useful to check answers given by the employer at a tribunal against documentary evidence or their earlier response to your written questions.

The questionnaire can be sent to the employer at any time before the member's ET1 form is lodged or within 21 days after lodging the ET1. If the employer fails to return the questionnaire or complete it fully, the Tribunal is free to draw its own conclusions.

## **5 – Dealing with Matters that may arise before the Tribunal**

A copy of the member's complaint will be sent to their employer who will have to reply within 21 days. The tribunal will send the member a copy of the employer's reply. If the employer does not reply, you can ask the tribunal to stop the employer from defending the complaint.

The Advisory, Conciliation and Arbitration Service (ACAS) will receive copies of the member's complaint and their employer's reply. ACAS will try to find a settlement acceptable to both sides. About 30% of race discrimination cases were withdrawn and 38% settled before they reach the Tribunal (2010/2011) so its worth agreeing with the member beforehand just what the bottom line is – for example, if the member has been dismissed, does s/he want compensation or reinstatement?

You may receive requests for further information from the employer and likewise you may ask the employer for further information. For example, you may need clarification of the employer's defence or need to ask further questions about the employer's conduct. If you have not already sent a the Equality Act 2010 Discrimination and Other Prohibited Conduct Questions Form to the employer then you should do so within 21 days of sending the

member's tribunal application form (see above).

If you want to call any witnesses, they may attend voluntarily or you may need to get a 'Witness Order' from the Tribunal if they do not wish to attend.

## **6 – Attending any Pre-Hearing Reviews and Preliminary Hearings**

If the Tribunal or the employer believes that your case has no prospect of success or your case is weak, they may call a Pre-Hearing Review that can order you to pay a fee if you decide to carry on to the full hearing.

A Preliminary Hearing can be called if there is a legal point to establish, such as whether the Tribunal has the authority to hear your complaint or whether your complaint has been made in time.

## **7 – Getting Ready for Tribunal**

- You will be sent the date of the hearing at least 14 days before it is due. It is important to tell the Tribunal as soon as possible if you or the member cannot attend.
- Interview your witnesses, prepare them and check they are able to attend.
- At least seven days before the hearing you will need to exchange witness statements and documents with the employer.
- If you are not ready, apply for a postponement immediately.

## **8 – Attending the Tribunal Hearing**

Tribunal procedures are simpler and more informal than other courts. A panel of three people who include the Chair, who is legally qualified and two non-legally qualified members, who have experience as employers or union representatives, will hear it. You can find out more about procedures and the Tribunal's three members from UNITE officers and the local EHRC before the hearing.

Remember to do the following:

- Check the arrangements for using interpreters if necessary. It is important that those involved in the case, including witnesses do not know the interpreter so that the court can rely on his/her impartiality.
- Arrive early – the Tribunal clerk will want to check whether you will be quoting any reported cases so s/he can copy details to the Tribunal members. Tell the clerk if your witnesses need the Koran or other holy books to swear in.

- Make sure you and/or the member take notes.
- Speak clearly and slowly – and keep calm! The Tribunal members are more likely to be impressed if you and the member stay cool and rational.
- Do speak up if you think that the Chair's introduction to the case misses an important point or if you want to clarify procedures.

Most race discrimination cases are dealt with like this:

- 1) You make an opening statement of the complainant's case
- 2) The complainant gives evidence
- 3) The complainant is cross-examined by the respondent (employer)
- 4) You ask questions by way of re-examination
- 5) The Tribunal members put any questions they may have
- 6) You call each of your witnesses in turn and question them
- 7) The respondent cross-examines them
- 8) You re-examine them if necessary
- 9) The respondent goes through 1-7 but the roles are reversed – i.e. you will cross-examine the employer
- 10) The respondent sums up
- 11) You sum up
- 12) The Tribunal will inform you of its decision and the reasons, either the same day or by post

In some circumstances, if you lose your case you may be able to ask for a review of the Tribunal's decision or appeal to the Employment Appeal Tribunal on a 'point of law'. You have 42 days from the Tribunal's decision to appeal.

## **9 – Attending any Remedies Hearing if you Win**

Under the Equality Act 2010, the Tribunal is empowered to make certain orders, for example, that the employer should pay compensation or that the employer should take a particular course of action to stop discrimination. You may be required to attend a Remedies Hearing where you will need to provide details of any loss of earnings to help the Tribunal decide what compensation you should receive. If the employer fails to comply the Tribunal can increase the amount of compensation to be paid. The tribunal can also order your employer to pay your legal costs and expenses.

## **CHECKLIST FOR NEGOTIATORS**

- **Finding out from the member whether or not s/he wishes to bring a case**
- **Collecting evidence**
- **Making a complaint**
- **Getting more information from the employer**
- **Dealing with matters that may arise before the tribunal**
- **Attending any pre-hearing reviews or preliminary hearings**
- **Getting ready and preparing for the hearing**
- **Attending the tribunal hearing**
- **Attending any remedies hearing if you win**

# 5. RACIAL HARASSMENT

## 5.1 Introduction and Definitions

Harassment can amount to unlawful race discrimination under the Equality Act 2010. For advice on representing a member who is suffering harassment, refer to the steps outlined in the section 'Dealing with Race Discrimination'.

Racial harassment, from so-called 'jokes' to physical assault, creates a climate of fear and intimidation. It damages the health of Black, Asian and ethnic minority workers and threatens their job security, undermines equality at work. The harasser can be an employer, a supervisor, a colleague or a member of the public.

Black, Asian and ethnic minority women may face a combination of racial and sexual harassment and procedures will need to take account of this. Your Regional Women's & Equalities Organiser can give you help and advice on this.

### Definitions of Harassment

The UNITE's Model Agreement on Harassment defines harassment as:

- Unwelcome Remarks
- Intimate/personal questions, suggestions and propositions
- Threats
- Abuse or name-calling
- Malicious Gossip
- Jokes or ridicule based on a person's characteristics
- Offensive literature or pictures
- Offensive flags or emblems
- Offensive graffiti
- Unnecessary touching, gestures or assault
- Offensive letters or notes
- Being Ignored or excluded
- Differential Treatment, e.g. unfair allocation of work or enforcement of company rules

Please note this list is not exhaustive.

## **5.2 Step-by-Step Guide – Negotiating a Joint Approach to Combat Racial Harassment**

### **1 – Make sure it is Clear in your Workplace that the Union Takes Racial Harassment Seriously**

It is in everyone's interest to put a stop to racist language and behaviour before it ever gets to the stage of formal procedures. To challenge racism takes courage and individual members must feel confident that when they do, the Union is right there beside them.

Harassment is less likely to flourish where the Union encourages open discussion about equal opportunities and is involved in practical and anti-racist activity, in and out of the workplace.

Remember, your Regional Black, Asian and Ethnic Minorities Committee will be happy to talk to you informally or provide speakers.

### **2 – Make sure the Employer takes Racial Harassment Seriously**

A statement and procedure for dealing with racial harassment should be built into a joint union-management equal opportunities agreement. UNITE has model policies and agreements on Equal Opportunities including a Model Agreement on Workplace Harassment, which you can get from your Regional Women's & Equalities Organiser.

Any statement for dealing with racial harassment should:

- Define harassment (see previous page).
- State that racial harassment is a disciplinary offence that will be dealt with under agreed grievance and disciplinary procedures.
- Set out procedures for dealing with complaints of racial harassment (see below).
- Explain that grievances will be handled with speed and confidentiality and that, where appropriate the harasser and not the victim will be relocated.
- Clearly state that all employees have a duty to comply with the policy and that all supervisors and managers have a responsibility to eliminate harassment whether or not it is brought formally to their attention.

- Encourage victims of harassment to approach their Union representative and list other sources of help, for example, the EHRC
- Identify the senior member of management who has been allocated responsibility for race equality issues.
- Make a commitment to provide suitable training for staff involved in operating procedures.
- Make a commitment to give paid time off for counselling for victims of harassment. The employer should also undertake to meet all reasonable costs of counselling.

### **3 – Negotiate an Effective Grievance and Disciplinary Procedure**

Existing grievance and disciplinary procedures will need to be reviewed. Check whether they are adequate to deal with racial (and sexual) harassment. Providing for an 'informal first stage', for example, can be an important way of encouraging workers to report harassment. Existing procedures can be amended or a special procedure agreed.

#### **Best Practice**

1. The employee should make a complaint in writing to the employer setting out exactly what actions took place, the times and dates of those actions and if there were any witnesses.
2. The employer should carry out an investigation, making sure they interview the complainant, the alleged harasser(s) and any witnesses to the events. If the complainant is alleging an adverse impact on their health and the employer wishes to see medical evidence, the cost of any medical examinations should be met by the employer.
3. If the employer is of the opinion that the complainant has a case they should use the standard Company disciplinary procedure to discipline the harasser.

A good procedure will also:

- Set time limits. The member's right to take a case to Tribunal must not be put at risk. Remember, cases must be lodged within 3 months, less one day, of the incident occurring.

- Provide for a short cut to the top. Procedures must take account of circumstances where harassment has been carried out by a supervisor or manager.
- Guarantee complete confidentiality.
- Provide for union representation at all stages.
- Provide for special leave on full pay for the member, should s/he request it, pending the investigation.
- Provide for the alleged harasser to be sent home if there is a danger the harassment will be repeated.

### **CHECKLIST FOR NEGOTIATORS**

- **Challenge racists language**
- **Hold open discussions about equal opportunities and anti racism**
- **Negotiate an agreement on racial harassment**
- **Make sure it is clear in your workplace that the union takes racial harassment seriously**
- **Make sure the employer takes racial harassment seriously**
- **Negotiate an effective grievance and disciplinary procedure**

## **5.3 Step-by-Step Guide to Dealing with Racial Harassment**

Also see the section on 'Dealing with Race Discrimination'.

1. Adopt a Sympathetic Approach
2. Offer the opportunity to speak to a Black, Asian or ethnic minority UNITE Representative (Contact your UNITE Officer, Regional Women's & Equalities Organiser or Regional BAEM Committee)

3. Confirm the interview will be kept confidential
4. Confirm no action will be taken without the member's consent
5. Make notes of the incident for your own records
6. Explain that there are legal procedures to racial harassment and that there is a three-month time limit from the date of the incident to lodge a case
7. Agree the way forward on one or more of the following options:
  - No action to be taken
  - Informal approach by the Union
  - Formal grievance to be raised
  - Legal application to be lodged
  - Member to report incident to police
8. Confirm the Union's support for members taking up cases of racial harassment and that they should be accompanied by a UNITE representative in any investigation or hearings set up
9. If necessary explain that the Union may be requested to provide representation for the alleged harasser (if a UNITE member) in a disciplinary hearing. Confirm the absolute confidentiality which applies and that the complainant will not be accompanied by a Union representative of lower rank. Explain that the Union will not defend harassment, but will ensure fair treatment in disciplinary procedures
10. Remind members to keep full notes of dates, time and places
11. Reassure the member that the Union recognises the distress that can be caused by harassment and that you will do all you can to ensure that the procedures cause as little additional stress as possible

Complete UNITE (HDB1) Harassment, Discrimination and Bullying Report form, which is available from your Regional Women's & Equalities Organiser. Please make sure you send a copy to your Regional Women's & Equalities Organiser.

## 5.4 Further Issues

### What if Both Parties are Union Members?

If both the person who has been harassed and the alleged harasser are UNITE members you will need to be clear from the start about how to deal with a potential conflict of interest.

- Contact your Regional Women's & Equalities Organiser for advice.
- As your first step, secure proper representation and support for the harassed member. It is expected that you and your usual full-time officer will provide this representation.
- Assuming that the alleged harasser is not the subject of internal UNITE disciplinary proceedings (see below), arrangements should be made for a different full-time officer to represent him/her. It is important that whilst representing an alleged harasser, union representatives stick to the facts of the case. Representatives should not make any personal attacks, slanderous accusations about the complainant or irrelevant comments about the complainant's personal life or personal relationships.
- Make sure that the harassed member is fully aware of the Union's support and explain that at no time will information s/he provides about the case be passed on to the representative of the harasser.

Where more than one trade union organises in a workplace, it is vital to develop a joint union approach to harassment cases and establish a procedure for dealing with an inter-union case of harassment.

### What if the Harasser is a UNITE Officer or Representative?

The Union will not tolerate harassment by one of its representatives. It is against the rules of the UNITE. The matter should be referred to a more senior officer such as the Regional Secretary, the Regional Women's & Equalities Organiser, National Officer for Equalities, Assistant General Secretary for Equalities or the General Secretary.

## **What if the Harasser is a Member of the Public?**

Many UNITE members work in the service industries, which brings them into close contact with members of the public and clients. Employers have legal responsibilities under the Equality Act 2010 to ensure that Black, Asian and ethnic minority employees do not suffer from third party harassment. In addition, their duties under Health and Safety law are to ensure that their employees are working in a healthy and safe environment. If a member is experiencing harassment from a member of the public, an employer may be failing in their legal duties.

Remind the employer of their legal responsibilities and incorporate an agreed statement in the Equal Opportunities Policy that makes it clear that the employer will not tolerate harassment against an employee during the course of their duties by a member of the public. Negotiate with the employer to distribute leaflets or display posters with this information in the public areas of your workplace. It should also be possible to obtain a court injunction and to trace abusive phone calls if necessary.

## **What if the Harasser is a Known Racist?**

UNITE policy provides that:

Any member who is guilty of racism will be dealt with by the Union, in accordance with Rule 27

“27.1 A member may be charged with:

27.1.4 Inciting, espousing or practicing discrimination or intolerance amongst members on grounds of race, ethnic origin, religion, age, gender, disability or sexual orientation.”

## 6. MONITORING

### 6.1 What Is Monitoring and How to Monitor?

Ethnic Monitoring is an important way in which a workplace can identify whether or not their procedures and practices have led to fairness and equality of opportunity, resulting in Black, Asian and ethnic minority people being appointed, promoted and trained and therefore represented at every level of the organisation.

To monitor effectively information needs to be collected on all areas of the workplace including recruitment and selection, promotion, training, grading levels and then analysed by the ethnic background of the workers or applicants. This information must then be used to make an improvement for Black, Asian and ethnic minority workers.

Ethnic monitoring is an essential part of a workplace positive action programme and can help identify where discrimination may be happening and what its underlying causes are. Monitoring on a regular basis can measure whether progress is being made through positive action measures. At the same time as collecting information on race, you should also monitor gender, disability and other equality areas. In this way you can develop a full workforce profile.

#### Dealing with Concerns about Monitoring

Many people of all backgrounds are concerned about how the information they complete on a monitoring form is then used. The form should always make it clear that the information will only be used to ensure that everyone is treated fairly in the workplace and that it will not be used in a negative way. It must also highlight the confidentiality aspect of the process and that information on an individual will not be given to third parties. By regularly publicising an analysis of the monitoring information and what action has been taken when inequality issues are highlighted, this can help to show workers that the information is being used to good effect. Trade union negotiators have a key role to play in reassuring members in the benefits of monitoring.

## What to Monitor

The EHRC recommends monitoring:

- The ethnic composition of the workplace by working hours, length of service, rates of promotion, resignation rates and patterns and contractors versus 'in house' staff.
- The pay and grading structure. Over-representation of Black, Asian and ethnic minority workers in the lowest grades suggests that discrimination has occurred and is a powerful argument for positive action to rectify the situation.
- Those who are recruited and those who are not (monitored at every stage of the selection process), those who are involved in grievances, those who have disciplinary action taken against them and those who end their employment with the company

The EHRC recommends that you use the same ethnic categories as those used in the 2011 census.

In England and Wales these are:

### National Identity

English

Welsh

Scottish

Northern Irish

British

Irish

Other

### Ethnic Group

White

English

Other British

Irish

Any other white background

### Mixed

White and Black Caribbean

White and Black African

White and Asian

Any other mixed background

### **Asian or Asian British**

Indian  
Pakistani  
Bangladeshi  
Chinese  
Any other Asian background

### **Black or Black British**

Caribbean  
African  
Any other Black background

### **Other ethnic group**

Arab  
Gypsy/Romany/Irish Traveller

You may also find it useful to ask questions on language, religion and refugee status if you believe it would be relevant and beneficial to your workplace and regional circumstances.

## **How to Monitor**

It is important that the method that is used to collect the data is effective and that proper agreement is reached on its use. Information on a person's ethnic background should be supplied by the individual and not on their behalf, for example, by a manager.

## **6.2 Equality Audits**

An equality audit is a thorough review of the workplace that should highlight inequalities between people doing like work. Equality audits are conducted in order to highlight workplace differences between men and women and between Black, Asian and ethnic minority workers and their white counterparts.

The employer should be encouraged to initiate and co-operate with the equality audit as they will then be in a position to know whether or not they are in breach of the law. You may wish to conduct the audit one department/section at a time, concentrating on those sections where you suspect there may be a problem.

## 6.3 A Step-by-Step Race Equality Audit

1. Survey employees to find out as much information as you can about each worker's pay, grade and benefits broken down by ethnic origin, gender, age, etc. (see Model Race Equality Audit at the end of this section). The UNITE Pay Up pack includes useful information on auditing for equality.
2. In addition make sure you collect statistics on those who are recruited and those who are not (monitored at every stage of the selection process); those who have applied for and those who have received training, those who have applied for and those who have received promotion; those who have benefited or have suffered disadvantage as a result of performance assessments; those who are involved in grievances, those who have had disciplinary action taken against them and those who have ended their employment with the company and why.
3. Using this information check whether Black, Asian and ethnic minority workers disproportionately lose out in terms of recruitment, grading, training, assessments, grievance and disciplinary action and redundancies.
4. Check whether Black, Asian and ethnic minority workers are on the same pay as white workers doing the same or a similar job.
5. Check whether Black, Asian and ethnic minority workers who are doing different but equally demanding jobs to white workers are on the same pay.
6. Check whether it is mostly white workers who have access to overtime and bonuses.
7. Calculate what white workers earn on average and what Black, Asian and ethnic minority workers earn on average. Calculate the pay gap.
8. Where your audits have highlighted inequalities in the workplace, find out if there are any reasons for this other than race.
9. Using the evidence gathered, arrange a meeting with the employer to negotiate how these inequalities will be addressed, both in relation to individual cases and group cases. This should be done through normal negotiating channels, which may include your local officer. You may also find it useful to involve your Regional Women's & Equalities Organiser.
10. If the employer agrees to negotiate with you then continue to monitor and evaluate and put policies and practices in place to avoid similar problems in the future.

11. If the employer does not agree to address these problems then you may wish to consider taking a case against them using the Equality Act 2010 (see the section on 'Dealing with Race Discrimination').

## 6.4 Action Plans and Targets

Action plans are an excellent way to develop equal opportunities in the workplace. Once monitoring has been undertaken and problems identified you can set clear goals with deadlines and targets. Setting targets is a way of measuring whether positive action goals are being met over a period of time. Targets are not the same as 'quotas' which are unlawful in employment.

Recruitment targets can be tied to the percentage of black people in the local labour in Union can agree to set a target that the percentage of Black, Asian and ethnic minority people in Grade X should reflect the proportions in the local area by the year X. Progress made towards reaching that target should be reviewed regularly.

### CHECKLIST FOR NEGOTIATORS

- Find out if the employer monitors workers by ethnic background and if they do not, negotiate for this to take place
- Find out if race equality audits are being undertaken regularly and if not, negotiate to be involved in this process using the step by step equality audit
- Always reassure members that the union is involved in the process and that it will be beneficial to our members
- Make sure you are involved in setting action plans and targets
- Regularly consult with relevant members on action that should be taken to ensure equality and make progress
- Ask the Company for 6-monthly updates to report back to the members



**PROMOTION**

**Promotion ETHNIC BACKGROUND**

	WB	WI	WE	WO	BB	BC	BA	BO	I	P	B	C	O
	w/m												
Number applied for promotion													
Number interviewed for promotion													
Number appointed to promotion													
<b>Total</b>													

## TRAINING

### Training

### ETHNIC BACKGROUND

	WB w/m	WI w/m	WE w/m	WO w/m	BB w/m	BC w/m	BA w/m	BO w/m	I w/m	P w/m	B w/m	C w/m	O w/m
Number applied for training													
Number successful in receiving training													
<b>Total</b>													

**APPRAISALS**

**Results**

**ETHNIC BACKGROUND**

	WB	WI	WE	WO	BB	BC	BA	BO	I	P	B	C	O	Total	Total %	
	w/m	w/m														
Very high																
High																
Medium																
Low																
<b>Total %</b>																

## GRIEVANCES

### Grievances ETHNIC BACKGROUND

	WB	WI	WE	WO	BB	BC	BA	BO	I	P	B	C	O
	w m	w m	w m	w m	w m	w m	w m	w m	w m	w m	w m	w m	w m
Number of general grievances raised													
Number of grievances raised on race													
<b>Total</b>													

## DISCIPLINARIES

### Disciplinaries ETHNIC BACKGROUND

Stages Reached	WB	WI	WE	WO	BB	BC	BA	BO	I	P	B	C	O
	w m	w m	w m	w m	w m	w m	w m	w m	w m	w m	w m	w m	w m
1													
2													
3													
Final													
<b>Total</b>													

<b>RECRUITMENT</b>													
<b>Recruitment</b>	<b>ETHNIC BACKGROUND</b>												
	WB	WI	WE	WO	BB	BC	BA	BO	I	P	B	C	O
	w/m	w/m	w/m	w/m	w/m	w/m	w/m	w/m	w/m	w/m	w/m	w/m	w/m
Number applied for positions													
Number interviewed for positions													
<b>Total</b>													

**REDUNDANCIES/ENDED EMPLOYMENT**

**Redundancies /Ended Employment**

**ETHNIC BACKGROUND**

	WB	WI	WE	WO	BB	BC	BA	BO	I	P	B	C	O
Number made redundant	w/m												
Number left employment for other reasons													
<b>Total</b>													

# MONITORING RECRUITMENT, SELECTION, TRAINING AND PROMOTION

This is an example of a basic form to monitor equality in recruitment, selection, training and promotion and to identify issues to address.

JOB/TRAINING/PROMOTION APPLIED FOR .....

NUMBER APPLIED				NUMBER INTERVIEWED				NUMBER APPOINTED/TRAINED/PROMOTED			
White	BEAM	Total	White	BEAM	Total	White	BEAM	Total	White	BEAM	Total
No%	No%	w	No%	No%	w	No%	No%	No%	w	w	No%

**BAEM** = Black, Asian and Ethnic Minorities    **BAEM W** = Black, Asian and Ethnic Minority Women    **WHITE W** = White Women

# 7. ORGANISING AND RECRUITMENT

## Black, Asian and Ethnic Minority Members – Part of the Union

### 7.1 Organising in the Workplace

Black, Asian and ethnic minority workers are just as likely to be trade union members as other employees and some groups have a higher rate of union membership than white employees.

The workplace is often where trade union activity begins. Members join because they want to ensure that they are protected by the union in their place of work. As far as union involvement is concerned members need to be part of their union in the workplace. They need to know that their voices are being heard; that their concerns are raised and that their union representative is approachable and able to deal with their work problems. Black, Asian and ethnic minority members are no different in terms of what they want from their union, but they must also have different issues of concern. It is also key that Black, Asian and ethnic minority members become Union Representatives.

Union representatives have a key role to play in encouraging Black, Asian and ethnic minority workers to become involved in the union. Becoming a workplace representative is also an extremely useful opportunity for the individual concerned to build up their experience and skills and in ensuring issues affecting Black, Asian and ethnic minority members get onto the bargaining agenda. They are usually the first point of contact a member has with the union and it is important that representatives take discrimination seriously. Remember, discrimination can be indirect as well as direct and union representatives need to ensure that union practices in the workplace are welcoming to Black, Asian and ethnic minority members.

## CHECKLIST FOR NEGOTIATORS

- Find out where Black, Asian and ethnic minority workers are located within the workplace (See example of a workplace profile sheet at the end of this section). If you think that black workers fall far short of their representation in the locality – see section on recruitment and selection
- Talk to these members and find out about their issues of concern
- Make sure that all information given to workers is produced in a language that they find easy to understand (Remember – the Union produces general recruitment literature in other languages)
- Involve your Regional Black, Asian and Ethnic Minorities Committee in any specific race issues or in communicating with Black, Asian and ethnic minority workers/members
- Ensure that cultural needs are well understood and fully catered for, particularly the need to respect specific requirements of ethnic minority women (again, speak to your Regional Black, Asian and Ethnic Minorities Committee)
- Ensure that the bargaining agenda reflects the issues of all members, including Black, Asian and ethnic minority members
- Ensure that union representatives are representative of the whole diversity of the workplace, including Black, Asian and ethnic minority workers (see “Encouraging Black, Asian & Ethnic Minority Workplace Representatives” in this Section)
- Encourage and support individuals who show an interest in the union and allow the opportunity for them to ‘shadow’ current union representatives so they can know what the role entails and can later be nominated for union representative positions if they so wish
- Ensure that all union representatives have undertaken training in equal opportunities
- Ensure that information on UNITE education courses are widely publicised

## 7.2 Organising in Branches

As you know, branches are very important in our union structures. Branches have a crucial role to play in encouraging participation of Black, Asian and ethnic minority members in taking on a wider role within the union. It is through the branch that members often hear about education courses; can be elected onto other committees and can send motions to the Policy Conference. It is therefore extremely important to ensure that branches reach out to all members, including Black, Asian and ethnic minority members.

It is recommended that every branch elects a Branch Equality Representative. They can advise on equal opportunity issues, play a role in monitoring on equality in the branch/workplace and promote full representation in all union activities. If your branch does not currently have a Women, Race and Equality Rep, consider designating such a post. The Guide to “Represent and Involve Equality for all Members” has further information that may be useful.

### **CHECKLIST FOR NEGOTIATORS**

- **Find out where Black, Asian and ethnic minority members are located within the branch**
- **Communicate with Black, Asian and ethnic minority members in the branch to find out about local issues of concern to them**

## **BRANCH MEETINGS**

- **Make sure union meetings take place in venues and on days and at times that all can attend**
- **Produce agendas and minutes in appropriate languages**
- **Ensure racist comments are challenged at all meetings and members are aware of equal opportunities clauses in the standing orders**
- **Invite speakers to your branch to speak on anti-racist issues**
- **Invite representatives from your Regional BAEM Committee to attend your branch meetings to speak on their work**
- **Allocate resources at branch level for race equality issues to be pursued seriously**
- **Ensure you address the needs of Black, Asian and ethnic minority women, who can face both sexual and racial harassment**
- **Organise meetings of Black, Asian and ethnic minority members and publicise their agenda and decisions. Ensure that these reports are integrated into other committees**
- **Improve black representation on negotiating committees**
- **Elect a branch Women, Race & Equalities representative**
- **Involve the union branch in community activities such as local cultural festivals**
- **Ensure that information on education courses are passed on to all members**

## **7.3 Black, Asian and Ethnic Minority Women**

Black, Asian and ethnic minority women are even more under-represented than their male counterparts. Sections throughout this guide are particularly relevant to Black, Asian and ethnic minority women. In particular see the sections on Harassment, Equal Pay, Dress, Social Events, Health and Caring Responsibilities.

A survey by Equal Opportunities Commission, now part of the EHRC revealed

that Black, Asian and ethnic minority women have higher aspirations and better educational qualifications but this has not proved to be a guarantee of wider job opportunities or higher earnings. More likely that they get into a vicious circle of segregation with higher rates of unemployment, slower rates of progression and lower pay with a bigger pay gap. For many Black, Asian and ethnic minority women it is the actual discrimination as well as fear of discrimination that limits their career choices.

Black, Asian and ethnic minority women face discrimination at all levels for example they are three times more likely to be asked about plans for marriage and children at interviews. About one in five Pakistani and Bangladeshi women workers experience negative attitudes because of their religious dress and they are 50% more likely to have difficulty finding a job. We must challenge stereotypes that appear to be holding back their progress at work.

Nearly 60% of organisations employing more than 25 people in areas with higher- than-average numbers of Black, Asian and ethnic minority workers do not have a workforce that reflects the number of Black, Asian and ethnic minority women in or seeking work. Over 30% do not employ any Black, Asian and ethnic minority women. Employers must review their policies and practices to ensure support, involvement and inclusion of Black, Asian and ethnic minority women.

The UNITE agenda for Black, Asian and Ethnic Minority Women at work and in the union consists of the following:

- **Equality Audits** on job segregation and fair pay by gender and ethnic origin.
- **Organising to end discrimination** on grounds of gender and race.
- **Tackling under-representation** of Black, Asian and ethnic minority women at work, in the union and in public life.
- **Challenging stereotypes** of Black, Asian and ethnic minority women.
- **Awareness of harassment** both sexual and racial.
- **Ensuring education and training** opportunities actively include Black, Asian and ethnic minority women.
- **Campaigning for family policy** at work and in the community to reflect Black, Asian and ethnic minority women's lives.
- **Respect** for the voices of Black, Asian and ethnic minority women.

## 7.4 UNITE Structures – Black, Asian and Ethnic Minorities

As a union rep you will deal with race equality issues, as you would with any other workplace issues. However, there is additional support in the union including:

**The National Officer for Equalities** who co-ordinates the Union's national work on race equality.

**Regional Women's & Equalities Organisers** who are there to offer support, help and guidance. If you and the Regional Industrial Organiser should need additional help with taking up a race case or any other aspect of race equality you should contact your Regional Women's and Equalities Organiser.

**National Black, Asian and Ethnic Minorities Committee** that meets once a quarter to support and co-ordinate the work of the Regional Committees and to advise the Executive Council on initiatives and issues relevant to Black, Asian and ethnic minority members. Delegates are elected from Regional Black, Asian and Ethnic Minorities Committees onto the National Black, Asian and Ethnic Minorities Committee.

**“Rule 11.4** - There shall be Regional Committees for women members; black, Asian and ethnic minority members; disabled members; and lesbian, gay, bisexual and trans members, elected in constituencies at the appropriate regional conference in 11.3, to advance the area of equalities, and to represent and report to the Regional Industrial Sector Committees and Area Activists Committees where established in such proportion, as may be determined by the Executive Council. These committees shall each elect a delegate to their respective Regional Committee of the Union as a whole.”

**Regional Black, Asian and Ethnic Minorities Committees** whose remit is to examine the particular issues for Black, Asian and ethnic minority members, to raise awareness on these issues, to assist in building involvement of these members and to advise the regional committee on all areas of race equality. For information on how to be nominated for election onto your Regional Black, Asian and Ethnic Minorities Committee, contact your Regional Officer with responsibility for race equality.

**“Rule 11.6** - There shall be National Committees for women members; black, Asian and ethnic minority members; disabled members; and lesbian, gay, bisexual and trans members, elected from their respective Regional Committees in such proportion, as may be determined by the Executive Council.”

## **UNITE Rules on Proportionality**

“**Rule 11.2** - All constitutional conferences and committees of the Union shall have a gender and ethnic balance of elected representatives at least reflecting the proportion of the Black, Asian and ethnic minority and female membership which they represent. The Executive Council shall ensure the implementation of this rule and shall report on its implementation to the Policy Conference of the Union.”

## **ENCOURAGING BLACK, ASIAN AND ETHNIC MINORITY MEMBERS TO BECOME WORKPLACE UNION REPRESENTATIVES**

### **Finding the Right People**

Many Black, Asian and ethnic minority members, like other members, have the qualities to become a good Union Representative and are:

- respected and trusted by other workers
- experienced in challenging management and showing good judgement when it has been appropriate to do so
- good at organising social events and activities
- involved with outside community organisations
- turned to by other workers for support and advice
- specially skilled in communicating with other ethnic groups
- skilled at communicating with other areas of the workforce, such as shift workers etc.
- representative in terms of their fellow workers

### **Bringing the Right People Forward**

Black, Asian and ethnic minority members have often been excluded from trade union activity or have just not thought about taking a more active role in the union. It is therefore important that you approach and speak to them directly. Few people will volunteer their service out of the blue. This does not mean that they do not want to be active – it is just that people often wait to be asked. Asking people directly helps to build activity and activity builds commitment.

- Ask in person (rather than over the phone or through another person)
- Make it clear what job you are asking them to do
- Ask what they would like to know about the role
- Ask them how their job would fit in with the role. For example, would it be appropriate to job share. (Job sharing may also help to build confidence)
- If appropriate, suggest 'shadowing' an existing union representative in order to build confidence and experience
- Be enthusiastic about the importance of the work
- Let the member know that their particular help would be valuable, particularly as there may be under-representation of Black, Asian and ethnic minority union representatives
- Discuss any difficulties, which may or may not relate to race issues, and see how these can be overcome
- Give support – once elected as a union representative make sure you offer assistance where needed
- Ensure that they are sent to UNITE education courses, including shop stewards courses and other courses aimed specifically at Black, Asian and ethnic minority members
- Do not over-commit a new union representative. Sometimes, particularly when they are from under-represented groups, they are pushed forward too quickly into various roles, which may be too much too soon.



## USEFUL CONTACTS

### EQUALITY AND HUMAN RIGHTS COMMISSION (EHRC)

3 More London,  
Riverside Tooley Street,  
London SE1 2RG  
Tel: 020 3117 0235  
[www.equalityhumanrights.com/](http://www.equalityhumanrights.com/)

### TRADES UNION CONGRESS (TUC)

Congress House,  
Great Russell Street,  
London WC1B 3LS  
Tel: 020 7631 0728  
[www.tuc.org.uk](http://www.tuc.org.uk)

### SEARCHLIGHT

(anti-racism/fascism magazine)  
PO Box 1576,  
Ilford IG5 0NG  
Tel: 020 7681 8660  
[www.searchlightmagazine.com](http://www.searchlightmagazine.com)

### UNITE AGAINST FASCISM

PO Box 36871  
London WC1X 9XT  
Tel: 020 7801 2782  
<http://uaf.org.uk/>

### HOPE NOT HATE

PO Box 67476  
London NW3 9RF  
Tel: 020 7681 8660  
[www.hopenothate.org.uk](http://www.hopenothate.org.uk)

### JOINT COUNCIL FOR THE WELFARE OF IMMIGRANTS (JCWI)

115 Old Street,  
London EC1V 9RT  
Tel: 020 7251 8708  
[www.jcwi.org.uk](http://www.jcwi.org.uk)

### REFUGEE COUNCIL

240-250 Ferndale Road  
London SW9 8BB  
Tel: 020 7346 6700  
[www.refugeecouncil.org.uk](http://www.refugeecouncil.org.uk)

### LABOUR RESEARCH DEPARTMENT

78 Blackfriars Road,  
London SE1 8HF  
Tel: 020 7928 3649  
[www.lrd.org.uk](http://www.lrd.org.uk)

### THE RUNNYMEDE TRUST

7 Plough Yard  
Shoreditch  
London EC2A 3LP  
Tel: 020 7377 9222  
[www.runnymedetrust.org](http://www.runnymedetrust.org)

### THE SICKLE CELL SOCIETY

54 Station Road  
London NW10 4UA  
Tel: 020 8961 7795  
[www.sicklecellsociety.org](http://www.sicklecellsociety.org)

### U.K. Thalassaemia Society

19 The Broadway  
Southgate Circus  
London N14 6PH  
Tel: 020 8882 0011  
[www.ukts.org](http://www.ukts.org)

# APPENDIX 1

## Race Forward Campaign

Race discrimination in employment has been unlawful for over 30 years, yet we still have higher unemployment rates, a gap of 6.9%, lower hourly earnings and predominantly work in lower skilled jobs.

Research shows that unequal treatment by employers remains a significant barrier to ethnic minorities getting work and their treatment at work.

UNITE stands for fairness and equality. We believe that all workers should have equal access to the labour market, career progression, equal pay and fair treatment at work. We need to put an end to the 'ethnic penalty' which leads to disadvantage and must take action on our following key priorities:

- Closing ethnic minority employment gap
- Tackling pay gap for black workers
- Equality of opportunity in promotion
- Dealing effectively with racial harassment, discrimination & Bullying
- Fairness for black women workers
- Negotiation for Union Equality Reps
- Fair treatment for migrant workers
- Organising and recruiting BAEM workers

UNITE has produced a **Race Forward Campaign Action Pack** for local reps/officers which includes:

- 5 Step Action Plan for each key priority area
- Feedback Form
- What to do if the employer will not monitor or conduct an audit
- Sample Timeline Sheet
- Further information and contacts

For a copy please contact you Regional Women's & Equalities Organiser or go to UNITE website: <http://unitetheunion.org/equalities>

# APPENDIX 2

## Race Legislation in Ireland

### Race Legislation in Northern Ireland

#### Race Relations (NI) Order 1997

#### Race Relations Order (Amendment) Regulations (Northern Ireland) 2009

#### Race Relations Order (Amendment) Regulations (Northern Ireland) 2003

**The Race Relations (NI) Order 1997** closely follows the provisions of the British 1976 Race Relations Act. It outlaws discrimination on grounds of colour, race, nationality or ethnic or national origin. The Irish Traveller community is specifically mentioned as constituting a racial group and therefore covered by the Act. Religious Belief and Political Opinion are specifically excluded from the protection of the Race legislation as they are covered by The Fair Employment and Treatment (NI) Order 1998 as amended (see below). The Race Relations (Northern Ireland) Order 1997 was amended by the Race Relations Order (Amendment) Regulations (Northern Ireland) 2003 to implement requirements of the EU Race Directive 2003/43/EC. These amendments give people greater protection from unlawful racial discrimination and harassment on the grounds of race, ethnic or national origins.

### Definitions

The Order defines discrimination as less favourable treatment of a person on any of the grounds listed above. It also covers indirect discrimination, victimisation, harassment and segregation.

It should be noted that the definitions of harassment and indirect discrimination are somewhat different for complaints on the grounds of 'colour' and 'nationality' than the equivalent definitions in relation to complaints on the other grounds.

## Scope of the Order

The Order outlaws discrimination by employers against members of their existing workforce and in the recruitment of new employees. The Order also applies to those with statutory powers to select employees for others, for example, vocational organisations, trade unions, training providers, and those who have the power to confer qualifications. The Order also covers contract workers and partners of certain partnerships.

The Order prohibits discrimination in education at all levels. It also places a duty on educational bodies to ensure that their facilities are provided without racial discrimination.

The Order permits the granting of facilities and services to a particular racial group in order to meet the special needs of persons in that group with regard to their education, training or welfare. Also employers and training bodies can take positive action by way of training and encouragement to help members of under-represented racial groups compete on equal terms with others in the labour market.

The Order also extends to the provision of goods, facilities and services and in the management or disposal of land and premises.

## Exceptions

There are a number of exceptions to the general principle of race discrimination including:

- Genuine occupational requirement – employment where being part of a particular race or ethnic or national origin is a genuine requirement for particular employment including dramatic performance/entertainment/authenticity/artist's model/authenticity in restaurants or bars/personal services promoting welfare
- Access to facilities or services which meet the special needs of racial groups in relation to education, training or welfare
- Associations aimed at particular racial groups, defined other than by colour
- Representing country, place or area, or eligibility to compete, in sports or games
- Acts done to protect national security or to protect public safety or public order
- Small private clubs with less than 25 members
- Certain public service employment rules

- Certain acts done under statutory authority
- Certain acts in relation to the pay of seafarers recruited abroad
- Disposal of land without estate agent or advertisements
- Care provided in the home

## **Enforcement**

Industrial tribunals adjudicate on individual cases of discrimination in the employment field, unlimited compensation and/or order remedial action. Complaints must be made within 3 months of the date of the alleged discrimination. The tribunal can award unlimited compensation or order remedial action. Appeals against decisions of tribunals can be made on a point of law to the Court of Appeal.

The County Court deals with all other cases under the Order and complaints must be made within 6 months of the alleged discrimination.

The Equality Commission for Northern Ireland (see below) can issue codes of practice on employment and housing. Individuals can also seek free advice from the Commission and, in some cases, the Commission may provide assistance when taking cases to a Tribunal or to Court.

## **The Northern Ireland Act 1998**

### **The Equality Commission**

One function of the Northern Ireland Act 1998 was to merge the Equal Opportunities Commission for Northern Ireland; the Fair Employment Commission; and the Northern Ireland Disability Council, into the Equality Commission for Northern Ireland.

The Commission's general duties include:

- working towards the elimination of discrimination
- promoting equality of opportunity and encouraging good practice
- promoting affirmative/positive action
- promoting good relations between people of different racial groups
- overseeing the implementation and effectiveness of the statutory duty on public authorities.
- keeping the relevant legislation under review

## **Statutory Duties**

Section 75 and Schedule 9 of the Northern Ireland Act 1998, came into force on 1st January 2000. The provisions place a positive duty on public authorities across the UK to carry out their functions relating to Northern Ireland with regard to the need to promote equality of opportunity, including on grounds of religious belief, political opinion and racial group. It requires them to promote good relations between persons of different religious beliefs, political opinions and racial groups as well as promoting awareness of and enforcing anti-discrimination law on the following grounds: age, disability, race, sex (including marital and civil partner status), sexual orientation, religious belief and political opinion.

## **The Fair Employment and Treatment (NI) Order 1998**

The Fair Employment and Treatment Order (FETO) make it unlawful to discriminate against someone on the ground of religious belief or political opinion. This covers a person's supposed political or religious belief and the absence of any political or religious belief.

The Fair Employment and Treatment (Northern Ireland) Order 1998 was amended by the Fair Employment and Treatment Order (Amendment) Regulations (Northern Ireland) and the Fair Employment and Treatment (NI) Order [2003]. The regulations implement the requirements of the EU Employment Framework Directive 2000/78/EC which requires Member States to introduce laws to prohibit discrimination on several grounds including religion or belief.

## **Definitions**

FETO defines discrimination as less favourable treatment on grounds of religious belief or political opinion. This may be because a person is perceived to hold particular religious beliefs; or because they are perceived to be nationalist or unionist; or indeed individuals may be discriminated against because they do not hold any of these beliefs or opinions. Political opinion is not limited solely to Northern Ireland constitutional politics and may include political opinions relating to the government or matters of policy, e.g. conservative or socialist political opinions. A political opinion which includes approval or acceptance of the use of violence for political purpose in Northern Ireland is specifically excluded from protection. The Order outlaws 4 types of discrimination – Direct Discrimination (e.g. the best candidate is not given the job because of their religion); Indirect Discrimination (see below); Victimisation (e.g. an employee being treated badly because they have made a complaint

of unlawful discrimination) and Harassment (e.g. being subjected to sectarian comments). However, if this requirement can be justified on a ground other than religion or political opinion then it is not unlawful. The Order also covers direct, indirect discrimination and victimisation. It should be noted that the definitions of harassment and indirect discrimination are somewhat different for complaints on the grounds of 'colour' and 'nationality' than the equivalent definitions in relation to complaints on the other grounds.

### **Scope of the Order**

The Order covers the same aspects of employment, further and higher education, the provision of goods, facilities and services and the sale or management of land or property covered by the Race Relations Order (see above).

### **Exceptions**

There are a number of exceptions to the general principle of religious and political discrimination including:

- Essential nature of the job requires a person holding/not holding a particular religious belief or political opinion
- Minister of religion
- Recruitment as a school teacher
- Benefits conferred by charities on individuals of particular religion or political opinion
- Acts done to protect national security or to protect public safety or public order
- Training for, and measures to encourage applications from, an under-represented community where the employer is taking lawful affirmative action
- Selection for redundancy in certain circumstances where the employer is taking lawful affirmative action
- Acts done under statutory authority in the provision of goods, facilities and services and premises
- 50/50 recruitment provisions for Police Trainees and Police Support Staff
- Political opinions involving the approval or acceptance of the use of violence for political ends connected with the affairs of Northern Ireland

## **Duties on Employers**

In addition the Order places a number of duties on employers that extend much further than other UK anti-discrimination legislation.

All private sector employers with more than 10 full-time employees are required to register with the Equality Commission for Northern Ireland (see below). They must annually submit a monitoring return giving details of the community background, sex and occupational classification of their workforce. Community background refers to whether employees are treated as belonging to the Protestant or Catholic community. All registered employers must provide details of their employees, applicants and appointees. Those who employ more than 250 people and all public sector employers must, in addition, provide details of those being promoted and leavers.

All registered employers must review their recruitment, training and promotion practices at least once every three years in order to determine whether fair participation is being secured for both Protestants and Catholics. These are known as Article 55 Reviews. Where participation is not being secured, employers may voluntarily take Affirmative Action or be required to by the Equality Commission. FETO also introduced a new provision facilitating the recruitment of unemployed people.

## **Affirmative Action**

The Order permits employers to take positive action “to secure fair participation in employment by members of the Protestant, or members of the Catholic community in Northern Ireland by means including:

- The adoption of practices encouraging such participation; and
- The modification of existing practices that have or may have the effect of restricting or discouraging such participation.”

The affirmative action provisions allowed by the Order include:

- The encouragement of applications for employment or training for people from under-represented groups.
- Targeting training in a particular area or at a particular group of people.
- The amendment of redundancy procedures to help achieve fair participation.
- The provision of training for non-employees of a particular religious belief following approval by the Equality Commission.

## **Investigation and Enforcement**

The Fair Employment Tribunal deals with complaints of discrimination in employment. It has the power to award limited compensation and/or to specify action to correct discrimination. A complaint must be made within 3 months of the date on which the complainant first had knowledge of the act complained of, or 6 months from the date on which the act was done.

Appeals against decisions of the Fair Employment Tribunal are made to the Court of Appeal. Claims of unlawful discrimination under other provisions of the Order are dealt with by the County Court. They must be made within 6 months of the alleged discrimination.

The Equality Commission can investigate the employment practices of any Northern Ireland employer at any time. It can also ask employers to initiate affirmative action and if that is not complied with, can issue a legally enforceable direction. Individuals can also seek free advice from the Commission and, in some cases, the Commission may provide assistance when taking cases to a Tribunal or to Court.

It should be noted that, in most employment cases, if a person brings a claim to a Tribunal without having lodged a grievance with their employer, the Tribunal may reduce any award by up to 50%.

Employers who do not register or monitor their workforce face criminal penalties of up to £5,000 as well as economic sanctions, such as the loss of government grants and exclusion from public contracts.

## **Race Legislation in the Republic of Ireland**

### **The Employment Equality Acts 1998 and 2004**

The Equality Act 2004 seeks to implement the provisions of the amended Gender Equal Treatment Framework, Framework Employment Directive and Race Directive

### **The Equality Authority**

The Equality Authority is an independent body set up under the Employment Equality Acts 1998 and 2004. The Equality Authority replaced the Employment Equality Agency, and has a greatly expanded role and functions.

The Equality Authority's remit is to:

1. combat discrimination in employment
2. promote equality of opportunity in employment
3. provide information on the operation of the Acts
4. review the operation of the Acts and make recommendations to the Minister for Justice, Equality and Law Reform as appropriate

## **Discrimination in the Workplace**

The Employment Equality Acts 1998 and 2004 also prohibit discrimination in the workplace, including pay, access to employment, vocational training, conditions of employment, work experience, promotion and dismissal.

It covers nine grounds of discrimination:

- Gender
- Marital Status
- Family Status
- Sexual Orientation
- Religious Belief
- Age
- Disability
- Race
- Membership of the Traveller Community

Discrimination is described in the Acts as the treatment of a person in a less favourable way than another person is, has been or would be treated on any of the above grounds. It covers direct and indirect discrimination as well as victimisation.

The legislation applies to:

- public and private sector employment
- employment agencies
- vocational training bodies
- the publication of advertisements
- trade unions and professional bodies
- collective agreements

- full-time, part-time workers and temporary employees the self-employed
- partnerships
- people employed in another person's home

## **Exceptions**

There are some exceptions from the Act. For example, religious, educational and medical institutions run by religious bodies, are allowed to discriminate if this is in order to maintain the religious ethos of their institution, or prevent it from being undermined.

## **The Equal Status Acts 2000–2008**

The Equal Status Act 2000 was amended by the Equality Act 2004, the Disability Act 2005 and the Civil Law (Miscellaneous Provisions) Act 2008. They are known collectively as the Equal Status Acts 2000–2008. The Acts outlaw discrimination on ground of gender (including trans identity), marital status, family status, sexual orientation, religion, age, race and traveller community. They provide protection from discrimination in the provision of goods and services, accommodation, disposal of premises and education. It covers direct and indirect discrimination as well as victimisation and harassment.

## **Exceptions**

There are general exceptions (which apply to all the nine grounds) and some specific exemptions that apply to disability or various other aspects of the Act. Some of the most important general exemptions are:

- Actions required under statutory provision or court orders, or on the basis of EU law or international treaty are not covered.
- A provider of goods, services or accommodation can refuse service if "a reasonable individual" would believe there was otherwise a substantial risk of damage to property, or criminal or disorderly conduct.
- Decisions that arise solely from clinical judgements in connection with diagnosis of illness do not constitute discrimination.
- If it is "reasonable" to treat someone differently because they are incapable of giving informed consent or entering into an enforceable contract.
- Suppliers are allowed to give preferential rates to named couples, people with children, people of a certain age, disabled people and traveller communities.

## **Enforcement**

To make a claim, you must notify the person against whom you are claiming, in writing, within two months of the incident. You must identify the nature of the claim and the intent to seek redress. In exceptional circumstances the two-month time limit may be extended for up to another two months. If you want material information, you must request it with your written notification.

If there is no reply, or if the reply is unsatisfactory, you can refer it to the Equality Tribunal within six months of the incident. In exceptional circumstances this can be extended for up to a further six months.

The Director of the Equality Tribunal can investigate the matter or, with the consent of both parties, appoint a mediation officer. Compensation can be awarded if a complaint is upheld. If the mediation fails then the Director of the Equality Tribunal appoints an Equality Officer to investigate, hear and decide the claim. Decisions of the Equality Officer may be appealed to the Circuit Court within 42 days of the decision. There is no further right of appeal except to the High Court on a point of law.

There are special rules that cover clubs. For further information please contact the Equality Authority.

# APPENDIX 3

## Equality Act 2010 Discrimination and Other Prohibited Conduct Questions Form

The following is the summary of the Equality and Human Rights Commission's guidance on how to use the Equality Act 2010 Discrimination and Other Prohibited Conduct Questions Form.

### How to use the Equality Act 2010 Discrimination and Other Prohibited Conduct Questions Form

You use the race relations' questionnaire to find out more about how your employer thinks they have treated you. It can help you and your adviser decide if you should take your case to a tribunal, where the form may be used as evidence.

It may be the first step in going to an employment tribunal or may solve the problem without any further action.

The EHRC can help you complete the form. Questions need to be asked precisely, naming dates, places and people, and must be reasonable and justifiable.

- If you decide to take a case to tribunal, the race relations' questionnaire can help you to present your case more effectively.
- The questions and replies can show what is accepted or denied, and which are the main issues.
- Your employer will usually send any documents requested on the form, which you can then use if you take a case.
- The replies to the form can help you decide how strong your case is.
- The questions and replies can be used for cross-examination or comparison with what is said at the hearing.
- The tribunal can use the information in reaching a decision. This can be very important if yours is a case of discrimination, which can often be difficult to prove.
- Your employer does not have to answer the questionnaire, but failure to respond or any unclear answers may be used against them at a subsequent tribunal.

You need to send the form within three months of the most recent incident you are complaining about. If you have applied to an employment tribunal, you need to send the form within 21 days, or with the tribunal's permission if the 21-day period has passed.

You will find guidance attached to the form, which gives detailed advice on completing it, including definitions of discrimination.

You will need two copies of the form: one to send to your employer and one to keep. You can get further advice from your local race equality council, a complainant aid body, your union, a law centre, an advice centre or CAB, a solicitor, or the EHRC.

The Equality Act 2010 Discrimination and Other Prohibited Conduct Questions and Answer Forms come in two parts. Part 1 is for you to ask questions of the member's employer and Part 2 is the employer's answers to your questions. These forms and the guidance can be downloaded from the Government Equalities Office website and you can get them from some local Citizens Advice and the Equality and Human Rights Commission.

Visit

<http://www.homeoffice.gov.uk/publications/equalities/equality-act-publications/complaints-Equality-Act/guidance-prohibited-conduct?view=Binary>

# APPENDIX 4

## Glossary of terms

**Claim** – the written complaint against the employer, set out on an ET1 form, sent by a claimant to the employment tribunal

**Claimant/Complainant** – an employee or ex-employee making a claim to an employment tribunal or asks the employer for information

**Hearing** – the proceedings during which both employee and employer present their evidence and defend their claim in front of the employment tribunal, after which it reaches its judgment

**Respondent** – an employer against whom the claim is made

**Response** – the written reasons why the respondent will (or will not) be defending a claim

**Employment Tribunal** – the panel of people who listen to evidence and reach a decision during a hearing. It is like a court but it is not as formal; for example, nobody wears a wig or gown. However, like a court it must act independently and cannot give legal advice. Almost all hearings are open to the public.

Employment Tribunals hear claims about matters to do with employment including unfair dismissal, redundancy payments and discrimination. It also deals with a range of claims relating to wages and other payments.

**Advisory, Conciliation and Arbitration Service (ACAS)** is a non-departmental body, governed by an independent Council which was founded in 1975. It is largely funded by the Department for Business Innovation & Skills (BIS). It promotes best practice in the workplace through easily accessible advice and services.

Acas offers independent service for dealing with disputes (Collective conciliation) between groups of workers and their employers (collective disputes). Also deals with disputes where individuals claim their employer has denied them a legal right.

Acas provides authoritative advice and guidance on employment and work policies to the Government and social partners (trade unions and employers or their representative organisations).

# REGIONAL/NATIONAL CONTACTS

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0161 669 8699

South East  
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North East/Yorkshire and  
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