

# Equal Respect

The rights of officers to equal treatment and respect regardless of their race



## When is discrimination unlawful?

This fact sheet focuses on the provisions of the Race Relations Act 1976 and the Race Relations (Amendment) Regulations 2003 relating to race discrimination in employment. It is important to note that discrimination in other areas is also covered by the Act, such as discrimination in education or in the provision of services.

Additionally, since the Race Relations Amendment Act 2000 came into force, it is unlawful for a public authority to be discriminatory in carrying out any of its public functions.

To establish unlawful race discrimination at work, the officer must be able to prove that they were denied opportunities within or for employment (for example, opportunities for promotion, transfer, training or other benefits), or that they have been subjected to any other detriment. "Detriment" means being put at a disadvantage.

The legislation creates 4 types of discrimination:

- Direct
- Indirect
- Harassment
- Victimisation.

## Race Relations Act 1976: Direct discrimination

To prove direct discrimination within employment, it must be shown that a complainant:

- Has been less favourably treated than a person not of that race\* has or would have been treated, and
- That this treatment was on racial grounds\*
- That they were subject to a disadvantage caused by that treatment.

\*race/racial grounds in this context includes colour, race, nationality, national or ethnic origins

## Race Relations Act 1976 (Amendment) Regulations 2003

These regulations came into force on 19th July 2003 and introduced some new definitions and forms of discrimination within the Race Relations Act.

The regulations only cover cases based on race, ethnic or national origins. They do not cover cases where the discrimination is on the grounds of colour or nationality.

It is important that complainants receive expert advice before submitting a claim form to the Tribunal.

## Victimisation

Discrimination by way of victimisation occurs when a complainant is treated less favourably than another person has or would in similar circumstances, because the force believes or suspects the complainant has or is about to do a "protected act". A "protected act" is one where the complainant has:

- Brought proceedings against the discriminator or any other person under the Act; or
- Given evidence or information in connection with proceedings against the discriminator or any other person under the Act; or
- Otherwise done anything in relation to the discriminator or any other person under or by reference to the Act; or
- Made allegations that the discriminator or any other person has committed an act which contravenes the Act.

## Indirect discrimination

The definition of indirect discrimination is: A person also discriminates against another if he applies to that other a provision, criterion or practice which he applies or would apply equally to persons not of the same race or ethnic or national origins as that other but:

- Which puts or would put persons of the same race or ethnic or national origins as that other at a particular disadvantage when compared with other persons
- Which puts that other at a disadvantage, and
- Which he cannot show to be a proportionate means of achieving a legitimate aim.

This definition could extend to practices which tend to discriminate and the wording is arguably less restrictive than the wording "condition or requirement" found in the Race Relations Act 1976. The more restrictive definition of indirect discrimination applies to cases of discrimination on grounds of colour or nationality.

An example of indirect discrimination is a criteria for recruitment to a post where English is the first language or for qualifications only obtainable in the UK.

## Harassment

A complainant can only claim 'harassment' under the 2003 definition if their claim is on the grounds of race, ethnic or national origins. The definition does not apply if the complaint is on grounds of colour or nationality. In this case a claim of direct discrimination only can be brought.

Harassment is defined as occurring where, on the grounds of race or ethnic or national origins, a person engages in unwanted conduct which has the purpose or effect of:

- Violating that other person's dignity or
- Creating an intimidating, hostile, degrading, humiliating or offensive environment for her/him.

## Burden of Proof

It has long been recognised as difficult for those bringing discrimination claims to find evidence to support their case. To combat this, the 2003 regulations allow that if the Claimant provides clear facts which could enable the Tribunal to conclude that discrimination has occurred, in the absence of an adequate explanation from the force, the Tribunal must draw an inference of discrimination.

Where a force has failed to comply with relevant statutory Codes of Practice, the Tribunal may draw inferences from this failure. For example, a force may have failed to follow the Codes of Practice in relation to the way in which they have investigated the officer's grievance or recruited an individual to a post.

## Questionnaire

An individual can also serve a questionnaire on the force within 21 days of lodging a claim at an Employment Tribunal. The questionnaire can be used to ask the force useful questions about the allegations, statistics, policies and comparators. If the force fails to reply to the questionnaire within 8 weeks or is evasive in its replies, the Tribunal may draw an inference of unlawful race discrimination.

## Time Limits

A claim of discrimination needs to be lodged at the Employment Tribunal within three months less one day of the date of the act of discrimination complained about. This time limit applies even if you are already going through the force's internal grievance procedure.

An act of discrimination which extends over a period of time is treated as having been 'done' at the end of that period. An act may extend over a period of time if it takes the form of some policy, rule or practice. It can sometimes be possible to argue that a continuing campaign of harassment, or a continuing regime of discriminatory conduct, amounts to one act extending over a period of time.

A Tribunal does have the power to consider a claim that is brought out of time, if in all the circumstances of the case it considers it is just and equitable to do so.

## Remedies

If a complainant is successful in their complaint of unlawful discrimination, the Tribunal may grant whichever of the following remedies it considers "just and equitable":

- A declaration on the rights of the parties
- A recommendation that the Respondent takes a particular course of action
- Compensation (plus interest).

Compensation may include awards for injury to feelings, aggravated damages, loss of congenial employment, and any actual and/or future financial loss, for example loss of earnings and pension losses. There is no limit on the amount of compensation that can be awarded, but a complainant will only be compensated for the losses which they can show were directly caused by the unlawful discrimination as found by the Tribunal.

## Contact Us

*If you need further assistance, please contact your JBB in the first instance.*

Regulated by The Solicitors Regulation Authority.  
Prepared by Russell Jones & Walker Solicitors 2009.

This fact sheet is for general guidance only and should not be treated as a definitive guide or be regarded as legal advice. If you need more details or information about the matters referred to in this fact sheet please seek independent formal legal advice. This information was correct at time of going to press October 2009.