

ADVICE AND ASSISTANCE FROM THE CRE

If you think you have suffered racial discrimination, harassment or abuse, the CRE may be able to help you to bring a complaint before a court or tribunal.



What are my rights?

The Race Relations Act 1976 gives people who think they have been discriminated against on racial grounds the right to bring their case before a court or employment tribunal. Racial grounds include race, colour, nationality (including citizenship) and national or ethnic origin. In practice, most racial discrimination in Britain is against people from ethnic minorities, but people of every background, race, colour and nationality are protected by the law. The Act also offers protection from discrimination in cases where the 'racial grounds' refer to the race, colour or ethnic origin of someone else; for example, if a white person is refused entry because they are with someone from a different racial group.

Discrimination on grounds of religion is not expressly covered by the Race Relations Act. However, you may be able to bring a claim under the Act if the discrimination is also on the ground of your national or ethnic origin. You should seek advice as to whether your case comes within this category.

The Race Relations Act regulates only certain areas of activity, so you will need to show that the discrimination you have suffered comes within the areas covered by the Act (see below). Since 2 April 2001, the scope of the Act has been extended to include most activities of public bodies.

Cases relating to employment, vocational training or trade unions are heard in employment tribunals. Most other complaints of racial discrimination are heard in county courts (in England and Wales) or sheriff courts (in Scotland).

There are different, and very strict, time limits for registering cases brought under the Race Relations Act:

- ▶ **tribunal deadlines for employment cases: three months less one day from the date of the incident you are complaining about (see p 12)**

- ▶ county and sheriff court deadlines for other cases: six months less one day from the date of the incident you are complaining about (see p 12)

Note: Exceptionally, and only in very limited circumstances, the court or tribunal will consider a late application, when they believe it is 'just and equitable' to do so.

Remember, there may be other complaints that you can bring at the same time as a complaint of racial discrimination; such as unfair dismissal, sex or disability discrimination, other civil claims against public authorities and immigration appeals. You should therefore seek advice from your local citizens' advice bureau or law centre about your rights in these areas, too. The Equal Opportunities Commission can advise you on complaints involving sex discrimination and equal pay, and the Disability Rights Commission on complaints involving discrimination on grounds of disability.

The Commission for Racial Equality, which was set up under the Race Relations Act 1976, advises and assists people who believe they have been discriminated against on racial grounds. The CRE cannot itself rule on racial discrimination cases, only the courts and tribunals can do that.

What is racial discrimination?

The Race Relations Act is concerned with people's actions and the effects of their actions, not their opinions or beliefs. Racial discrimination is not the same as racial prejudice. It is not necessary to prove that the other person intended to discriminate against you: it is sufficient only to show that the outcome of their action was that you received less favourable treatment on racial grounds.

To bring a case under the Race Relations Act, you have to show you have been discriminated against in one or more ways that are unlawful under the Act:

Direct racial discrimination This occurs when you are able to show that you have been treated less favourably on racial grounds than others in similar circumstances.

To prove this, it will help if you can give an example of someone from a different racial group who, in similar circumstances, has been treated more favourably than you. Racist abuse and harassment are forms of direct discrimination.

Indirect racial discrimination This occurs when you or people from your racial group are less likely to be able to comply with a requirement or condition, and the requirement cannot be justified on non-racial grounds. For example, a requirement that employees or pupils must not wear headgear could exclude Sikh men and boys who wear a turban, Jewish men or boys who wear a *yarmulka* or Pakistani women and girls who wear a *hijab* (headscarf), in accordance with practice within their racial group.

Victimisation This has a special legal meaning in the Race Relations Act. It occurs if you are treated less favourably because you have complained about racial discrimination, or supported someone else who has.

What does the Race Relations Act cover?

The Race Relations Act protects you from racial discrimination in most situations, but you must show that your case comes within one of the areas of activity regulated by the Act.

Employment The Act applies to most employees, including vocational trainees (but see the exceptions below). The definition of employment in the Race Relations Act is very wide and includes self-employed people who personally undertake work for someone else, for example a plumber. The Act also applies to partnership in a firm with six or more partners.

All aspects of employment are covered, so that employers must not discriminate in recruitment, selection, promotion, transfer, training, pay and benefits, redundancy, dismissal and terms and conditions of work. The Act also protects contract workers.

Recruitment agencies, too, must not discriminate on

racial grounds against people seeking work. Unions are under a similar duty not to discriminate against their members or those wishing to become members. The Act also applies to bodies responsible for conferring qualifications or authorisation to enter a particular profession.

Note: these cases are dealt with by employment tribunals.

Exceptions: the Act does not apply to:

- ▶ certain jobs where the Crown is the employer; for example: the Bank of England, the British Museum, the British Council, embassies and consulates and certain jobs within the civil service – discrimination on the basis of nationality or ethnic or national origin is not unlawful, but discrimination based on colour is prohibited
- ▶ work that is for the purpose of a private household
- ▶ work where race is a 'genuine occupational qualification' for the job; such as acting, modelling or serving in cafés or restaurants, where people from a particular ethnic or racial background are needed for authenticity; or providing personal welfare services to people of a particular racial group which are best provided by a person from that racial group
- ▶ jobs that involve working outside Great Britain most of the time.

Education The Act applies to all schools and colleges maintained by local education authorities or education authorities (in Scotland), independent (fee paying) schools and colleges, further education colleges, special schools, early years providers and universities. It includes the governors of a school or college and school boards (in Scotland), and the local education authority or education authority (in Scotland).

The Act covers admission to the school, college or university, exclusion or expulsion, and treatment in the establishment while you are a pupil or student. Decisions by local education authorities and education authorities

(in Scotland) are also covered, such as decisions on special educational needs.

When proceedings are begun against any public sector educational institution, notice must be given to the Secretary of State for Education and Employment in England, the Minister for Children and Education in Scotland and the Assembly Secretary for Education and Children in Wales.

Note: these cases are dealt with in county or sheriff courts.

Housing The Act applies to the selling, letting or managing of property (including business premises), and makes it illegal to discriminate in the way any of these activities are conducted.

Note: these cases are dealt with in county or sheriff courts.

Exception: the Act does not apply to:

- ▶ rental accommodation in 'small premises' where the landlord/landlady or owner, or a member of his or her family, also live, and where they would have to share facilities with people who are not members of the household.

Goods and services The Act applies to anyone providing goods, facilities or services to the public; for example: hotels, shops, banks, insurance companies, financial services, cinemas, theatres, bars, restaurants, pubs, places of entertainment or refreshment, transport and travel services, and services provided by any local or public authority and by any profession or trade. It is unlawful to be refused a service altogether, or not to be given the same standard of service extended to others.

Note: these cases are dealt with in county or sheriff courts.

Exceptions: the Act does not apply to:

- ▶ taking in and caring for foster children or elderly people

- ▶ clubs, associations and charities set up especially for people from a particular ethnic or national group; discrimination on the basis of nationality or ethnic or national origin is not unlawful, but discrimination based on colour is prohibited.

Any public function From 2 April 2001, the Act applies to all functions of public authorities that were previously excluded. This brings within the scope of the Act the law enforcement or control functions of government agencies, including the police, the Crown Prosecution Service, the probation service, Customs and Excise, the immigration service and the prison service; and the regulatory functions of local authorities, including environmental health, trading standards, licensing, and child protection. If you believe you have been discriminated against, directly, indirectly or by way of victimisation, by any public authority since 2 April 2001, you have the right to bring a complaint in a county court in England and Wales or in a sheriff court in Scotland. Certain complaints of discrimination relating to decisions on immigration status will be considered as part of the one-stop immigration appeal procedure.

You are also protected against discrimination where a function of a public authority is being carried out by a private company or a voluntary organisation. This means the Act applies to prison discipline in private prisons as well as prisons run by the Prison Service.

Exceptions: the Act does not apply to:

- ▶ the work of the Houses of Parliament or the security services
- ▶ judicial or legislative acts and decisions not to prosecute
- ▶ certain immigration and nationality functions where discrimination is permitted on grounds of nationality or ethnic or national origin.

Additional areas outside the scope of the Act

- ▶ anything written, produced or broadcast by the media – the law of libel applies only to individuals, not to groups of people
- ▶ anything done under 'statutory authority' in order to comply with an Act of Parliament (whenever it was passed), or rules or regulations made by a government minister under any law; for example, a parent's choice of school may be racially discriminatory, but quite lawful under the education laws
- ▶ racist attacks or harassment on the street or in your home; these could be criminal offences and should be reported to the police (see below)
- ▶ discrimination that occurs in other countries of the EU; however, many countries have their own laws against racial discrimination (Note: the EU race directive, approved in June 2000, will require all EU countries to introduce laws outlawing racial discrimination by July 2003.)
- ▶ discrimination on grounds of religion; however, you may be protected by the Race Relations Act if the discrimination is also on the ground of your national or ethnic origin.

Are racial harassment, abuse and violence covered by the Race Relations Act?

You are protected by the Race Relations Act if you are abused or harassed on racial grounds in any situation covered by the Act. For example, you can take a case against your employer if you experience racist abuse from other employees, or from customers or clients, and your employer does nothing to put a stop to it or to protect you from such abuse. You may be able to take a case against your landlord or landlady if you are racially harassed by them or by their employees. If you are racially abused by police officers when you try to report a racist incident, or when you are stopped or arrested, you may be able to bring a case against the chief constable.

In situations not covered by the Race Relations Act, you may be able to use other laws to get the harassment or abuse stopped. For example, if you are racially harassed

by your neighbours, their visitors or others in the local community, you or your local council may be able to get a court order to stop the harassment. If the people who are harassing you live in a rented property, the landlord/landlady may be able to take action to evict them. Of course, you should also report all incidents to the police.

Racist attacks and violence are serious criminal offences and must be reported to the police. Under the Crime and Disorder Act 1998, there are new 'racially aggravated offences' of harassment, assault, grievous bodily harm, or criminal damage which carry significantly higher penalties. It is also a criminal offence under the Public Order Act 1986 to use threatening, abusive or insulting language or behaviour in order to stir up racial hatred. This includes distributing racist leaflets. All suspected criminal offences and any racist incident should be reported to the police.

Is it easy to bring a racial discrimination case?

Proving that racial discrimination has occurred is not easy. This is because:

- ▶ the person claiming discrimination has to prove it
- ▶ evidence of discrimination is difficult to find, and witnesses are often reluctant to come forward
- ▶ the law on racial discrimination is complex and you will probably need some specialist advice and assistance in preparing and presenting your case
- ▶ in some non-employment cases it can take up to two years before the case is heard
- ▶ public funding (formerly known as legal aid) is only available for representation in county court or sheriff court cases, not for hearings at employment tribunals. If you have a low income, you may be able to obtain advice at the early stages of your case (but not representation at the tribunal hearing) from a solicitor. Public funding is available for all the appeal stages of a case.

Pursuing a case can be very stressful and time-consuming. It is not a decision that should be taken lightly. If your complaint is about an employment matter, you should make full use of your employer's internal grievance procedures and your trade union's services (if you are a member). In non-employment cases there may be a complaints procedure that you can use. Litigation should be a last resort. However, it is important to seek advice about your complaint as soon as possible, as there are strict time limits for registering complaints in the courts and tribunals (see pp 2 and 12).

Where can I get advice about my case?

The agencies listed below can give you advice about your complaint. In some cases, they may also be able to give you legal assistance to help you to bring your case before a court or tribunal. You can get advice about your complaint from:

- ▶ your local racial equality council
- ▶ a citizens' advice bureau or another local advice service, a complainant aid body or a law centre
- ▶ your trade union (if the incident is related to work, there is a union at your workplace, and you are a member)
- ▶ your nearest CRE office (see p 16 for addresses).

Can my case be resolved out of court?

In general, it is best to resolve your case before it gets to a full hearing, if you can agree terms that a court or tribunal would consider reasonable in the circumstances. In practice, a significant proportion of all cases are settled on agreed terms. You may agree to settle your complaint by accepting a sum of money or an apology, for example, instead of going to court or tribunal. In employment cases, you will automatically be offered the services of ACAS (the Advisory, Conciliation and Arbitration Service), to help you to reach a settlement. ACAS is an independent body set up to act as a go-between in disputes. You are under no obligation to accept ACAS's advice, but if you do settle through ACAS, your complaint cannot go to the tribunal and must be withdrawn. ACAS cannot assist with settling county or sheriff court cases, but your adviser or representative should be able to help with these.

What are the likely outcomes if my case goes to a hearing?

EMPLOYMENT TRIBUNAL CASES

If you win, the tribunal can order compensation to be paid to you. The amount may include a sum for lost earnings and benefits and a sum for injury to feelings. There is no ceiling to the amount a tribunal can award, although it will normally follow guidelines and precedents from previous cases. If you win, the tribunal can also recommend that your employer take certain steps to enable you to work without further discrimination.

If you lose, you will not automatically be ordered to pay the other side's legal costs, but the tribunal may make you pay if they think you acted unreasonably in pursuing your case.

You or the employer can appeal against the tribunal's decision to the Employment Appeal Tribunal, but only on a point of law. You have 42 days to lodge an appeal. Appeal cases are eligible for public funding.

COUNTY COURT AND SHERIFF COURT CASES

If you win, the court can order compensation to be paid to you. The amount may include a sum to compensate you for any losses and a sum for injury to feelings. There is no ceiling to the compensation that a court can award, but awards tend to be lower than those made by tribunals. If the court is satisfied that further acts of discrimination are likely to occur, the court can grant an injunction or an order to prevent this.

If you lose, you will usually have to pay the other side's legal costs.

APPLYING TO THE CRE

Does the CRE help everyone?

All applicants to the CRE receive some advice about their complaint, but only a small proportion receive legal representation. The CRE has a duty to consider every application for assistance. However, it is only obliged to support cases which it thinks are suitable. Decisions are usually made on the basis of the strength of the case (see p 13), and whether or not the case meets the CRE's limited priorities. Other factors also come into play, such as whether the applicant already has, or could have, access to alternative representation, or if the CRE believes it is reasonable to expect an applicant to pursue their case without its help. The CRE expects trade unions to advise their members on discrimination claims and will refer applicants who are trade union members to their union, in the first instance. Remember, too, that the CRE can only help applicants whose complaints fall within the scope of the Race Relations Act, and are within the time limits for filing cases in a court or tribunal.

How do I apply for assistance?

You should apply in writing to your nearest CRE office (see addresses on p 16), which will send you a form for completion: Applying for Assistance from the CRE.

Is there a deadline for applying?

There is no legal deadline for applying to the CRE for assistance with your case. However, in practice it is unlikely that the CRE will agree to provide legal representation if you apply for assistance just before a hearing. You must therefore give the CRE as much notice as possible of your case, so that it can carry out an adequate assessment and, if necessary, prepare it properly for hearing.

Remember, your complaint to the employment tribunal or county or sheriff court must be lodged in accordance with the deadlines fixed by the Race Relations Act (not the CRE). Applying to the CRE does not affect the employment tribunal deadline, which is *always* three months less one day from the date of the incident you are complaining about. In county or sheriff court cases, an application to the CRE, if made within six months

of the incident, may extend the deadline by two or, possibly, three months.

Note: applying for assistance to the CRE is not the same as filing a complaint in a tribunal or court. Once you apply for assistance, we will advise you on how to file your complaint, but it is your responsibility to meet the time limits.

What happens next?

A CRE complaints officer will contact you shortly after your application has been received, to make an appointment for an interview, should this be necessary (we regret that the CRE cannot pay your travel expenses). The purpose of the interview is to get a fuller picture of the case, and to explain CRE and legal procedures. If you need an interpreter, or if you have other special needs, please tell the complaints officer in advance, so that the necessary arrangements can be made, as far as possible.

The CRE complaints officer can help you, if necessary, to complete the relevant forms and to collect the evidence you need to prove your case. If your case is against your employer, the complaints officer will also try to settle your case through ACAS on your behalf, should this be relevant (see p 10). Your case will be treated with strict confidentiality at all times.

How does the CRE decide which cases to support?

The Race Relations Act sets out three criteria for use by the CRE in deciding which cases to support. However, it also gives the CRE discretion over the final decision. The criteria are:

- ▶ cases that test a point of law
- ▶ cases that are too complex for an individual to deal with on their own
- ▶ cases that deserve any other special consideration.

In exercising its discretion, the CRE will also consider:

- ▶ whether the case has a reasonable chance of success
- ▶ whether the case falls within certain priority areas (CRE complaints officers can tell you what these are)
- ▶ the likely costs of supporting the case

- ▶ whether help is available from other sources
- ▶ whether the applicant is able to continue without CRE help.

When will I know whether the CRE can support my case?

All decisions on all applications are made by a committee of CRE commissioners (the Legal Committee), which meets every six weeks. Decisions by the committee are final. The committee usually makes two decisions on each application:

- ▶ An initial decision on advice and assistance – as long as your complaint falls within the scope of the Race Relations Act, and is not outside the time limits set by the tribunals and courts, you will initially be offered advice and assistance. You should hear within two months whether the CRE can offer you advice and assistance, pending a final decision on representation.
- ▶ A final decision on legal representation – this depends on the CRE's view of the merits of the case as demonstrated by the available evidence from both sides, and on fulfilment of the other criteria for supporting a case (see p 13). The CRE complaints officer will do her or his best to help you gather the evidence and prepare the case, but you should not mistake this assistance for legal representation. Nor should you regard the CRE as your formal representative during the application process. Until you receive a firm offer of legal representation from the CRE, it is your case, and you must be prepared to take full responsibility for its progress. Legal representation will be subject to certain conditions, which you will be asked to agree. In general, you should hear within four months whether the CRE can offer you legal representation. (However, delays can occur for various reasons; for example, where the other side fails to cooperate in responding to your allegations.)

If the CRE is unable to offer assistance or legal representation, you will be given a reason for this. Remember, you can always take your case to the tribunal or court

without the CRE's help. We can put you in touch with other agencies or solicitors who may be able to help.

The CRE will not assist clients who are aggressive, violent or abusive and reserves the right to withdraw representation at any time, or to change the terms on which it has been offered. This may happen, for example, if it emerges that the case has little chance of success; or if you fail to cooperate fully; or if the other side makes a reasonable offer to settle the case; or if new information becomes available.

OTHER SOURCES OF HELP

Racial equality councils

Racial equality councils, which are jointly funded by the CRE and local authorities, can provide advice and assistance about your complaint and, occasionally, legal representation. You will find the address and telephone number of your local REC in the phone book. A full, up-to-date list of racial equality councils is available from your nearest CRE office and at the CRE web site (www.cre.gov.uk).

Other CRE-funded organisations providing specialist tribunal representation

The CRE currently funds three organisations that specialise in representing applicants in racial discrimination cases.

Avon and Bristol Law Centre

2 Moon Street
Stokes Croft
Bristol BS2 8QE
☎ 0117 924 8662

Northern Complainant Aid Fund

Checkpoint 45 Westgate Bradford West Yorkshire BD1 2TH ☎ 01274 740340	Midlands Unit 70 Villa Road Handsworth Birmingham B19 1BL ☎ 0121 523 4411
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CRE OFFICES

HEAD OFFICE

Elliot House
10-12 Allington Street
London SW1E 5EH
☎ 0207 828 7022

BIRMINGHAM

Lancaster House (3rd Floor)
67 Newhall Street
Birmingham B31NA
☎ 0121 710 3000

MANCHESTER

Maybrook House (5th floor)
40 Blackfriars Street
Manchester M3 2EG
☎ 0161 835 5500

LEEDS

Yorkshire Bank Chambers
(1st floor)
Infirmity Street
Leeds LS1 2JP
☎ 0113 389 3600

SCOTLAND

45 Hanover Street
Edinburgh EH2 2PJ
☎ 0131 226 5186

WALES

Capital Tower (3rd floor)
Greyfriars Street
Cardiff CF1 3AG
☎ 0292038 8977

WEBSITE

www.cre.gov.uk

The Commission for Racial Equality works in partnership with individuals and organisations for a fair and just society which values diversity and gives everyone an equal chance to work, learn and live free from discrimination, prejudice and racism.



COMMISSION FOR
RACIAL EQUALITY

April 2001

North Lambeth Law Centre

14 Bowden Street (off Cleaver Street)
Kennington
London SE11 4DS
☎ 020 7582 4373 (office)
☎ 020 7582 4425 (advice line)

Other equality organisations

Equal Opportunities Commission

Overseas House
Quay Street
Manchester M3 3HN
☎ 0161 833 9244
www.eoc.org.uk

Disability Rights Commission

DRC Helpline
Freepost MID 02164
Stratford-upon Avon CV37 9BR
☎ 08457 622633
Textphone: 08457 622644
Fax: 08457 778878
www.drc.org.uk

Equality Commission for Northern Ireland

Andras House
60 Great Victoria Street
Belfast BT2 7BB
☎ 028 9050 0600
Freephone: 0808 100 33 00
Fax: 028 9031 5993
www.equalityni.org