

Racial Discrimination

Your legal rights



*Community
Legal Service*



You don't have to put up with discrimination or harassment because of the colour of your skin or your ethnic group. There are powerful laws to stop this happening. This leaflet explains your legal rights, and what to do if you are discriminated against.

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The leaflets in this series give you an outline of your legal rights. They are not a complete guide to the law and are not intended to be a guide to how the law will apply to you or to any specific situation. The leaflets are regularly updated but the law may have changed since this was printed, so information in it may be incorrect or out of date.

If you have a problem, you will need to get more information or personal advice to work out the best way to solve it. See 'Further help' on page 15 for sources of information and advice.

When discrimination can happen

Discrimination happens when someone is treated worse ('less favourably' in legal terms) than another person in the same or similar situation. This leaflet deals with your rights if you are discriminated against because of your:

- race;
- colour;
- nationality; or
- national or ethnic origin.

Throughout this leaflet, we use the words 'race' and 'racial' to cover all of these things.

People may suffer discrimination:

- at work;
- when buying or using goods and services;
- when trying to buy or rent somewhere to live;
- at a school or college; or
- when dealing with the authorities (for example, the police).

The law protects you from discrimination and gives you the right to take a claim to an employment tribunal or to a court if you think you have been treated unlawfully.

There are two other Community Legal Service Direct leaflets which you may also find useful:

- 'Equal Opportunities' looks in more detail at the laws on discrimination because of your sex, and also at your rights if you are discriminated against because of your age, your religious beliefs or if you are lesbian or gay.
- 'Rights for Disabled People' looks at dealing with discrimination if you have a disability.

You may find that you are discriminated against for more than one reason. If so, you may need to get advice about the best course of action. You can get advice from:

- a trade union;
- your local law centre;
- a Citizens Advice Bureau; or
- a solicitor.

Racial discrimination is not the same as racial abuse (being attacked, for example). Racial abuse is a crime, and if you have been a victim, you should report it to the police.

What the law says

The Race Relations Act protects you from racial discrimination and harassment and gives you the right to challenge negative discrimination in the courts or at an employment tribunal. Taking someone to court or to a tribunal may change the way an organisation behaves so other people are not discriminated against in future.

The Act also makes racial discrimination by public bodies (such as the police) unlawful and requires government departments and other public organisations to have policies to promote racial equality.

The law protects all racial groups – not just black and ethnic minority groups – from discrimination.

Discrimination

The law on equality talks about three types of discrimination:

- **Direct discrimination** – when you are treated less favourably because of race. This includes the situation where you are treated less favourably because of your race but also where you are treated less favourably because of someone else's race. For example, if you refuse to follow an instruction by your employer to discriminate against someone from a different race and are then dismissed, you can claim racial discrimination.
- **Indirect discrimination** – where rules or conditions apply without good reason and they have a worse effect on some racial groups than on others. For example, there could be indirect discrimination if a job had a requirement to have 'English as a mother tongue' because it might exclude some racial groups whose first language is not English, but who speak fluent English.
- **Victimisation** – when you are treated less favourably because you complained of racial discrimination or helped a colleague who did so.

Harassment

Harassment is unwanted behaviour that hurts your dignity or creates an intimidating, hostile or humiliating atmosphere for you.

This leaflet covers five main areas where discrimination or harassment may happen:

- At work (see page 6).
- When you have left your job (see page 6).
- When you are renting or buying somewhere to live (see page 7).
- At school or college (see page 7).
- When you are buying or using goods or services (see page 8).

Discrimination at work

It is against the law for an employer to discriminate against you because of your race, when choosing someone for a job, and when deciding which staff will be:

- promoted;
- given benefits at work, such as training;
- disciplined;
- dismissed; or
- made redundant.

Applying for a job

It is against the law for an employer to discriminate in the following cases:

- When deciding who should be offered a job. This includes the job description, the 'person specification' (the description of the skills, experience and qualifications needed to do the job), the application form, the short-listing process, interviewing and final selection.
- In the terms of the employment contract, such as pay, holidays or working conditions.
- By deliberately not considering your application.

The Race Relations Act protects the self-employed and permanent and contract workers. It also makes it unlawful for recruitment agencies, unions and partnerships to discriminate.

Harassment at work

It is against the law for your employer or a colleague to racially harass you. If the person harassing you does not stop after you have asked them to, you should complain to your employer.

Many employers treat racial harassment by their staff as a disciplinary offence, and they should discipline the person harassing you. If your employer does not do anything or does not do enough to prevent it, you can take a claim against them to an employment tribunal.

In many cases, you could also:

- take legal action against the person who is harassing you or against your employer, in court under the Protection from Harassment Act, 1977; or
- make a claim for negligence or breach of contract against your employer.

If you are attacked you should report it to the police. Under the Crime and Disorder Act 1998, harassment or assault that has a racist motive may carry a higher penalty for the person who has attacked you.

Discrimination or harassment after leaving your job

An employer must not racially discriminate against or harass you after you have left your job. An example of this might be refusing to give you a reference when other employees of a different racial group are given such a reference.

Responsibility of employers

The Race Relations Act says employers are responsible for acts of racial discrimination or harassment by their employees and agents, unless they have taken reasonable measures to prevent it.

You can take a case to an employment tribunal if you suffer discrimination or harassment (see 'Going to an employment tribunal' on page 11 for more information).

When an employer is allowed to discriminate

There are a few cases when an employer is allowed to discriminate.

- If a person's race, colour, nationality or ethnic or national origin is a genuine requirement or qualification for the job and there is no alternative other than for a person from that group to do the job.
- If there is a rule that restricts employment to people of a particular nationality or national origin. This applies only to employment by the Crown or a public body.
- If the matter is not covered by the Race Relations Act.

Discrimination when renting or buying a house or flat

It is against the law for an estate agent or landlord to discriminate against you or harass you when they are selling or letting property. So, for example, an estate agent could not refuse to show you a property because of your colour, nor could a landlord refuse to let a house to a black family for the same reason. It is also against the law for landlords to discriminate racially in the way they treat tenants. The law applies to business premises, too.

If you are a council or housing association tenant and you are racially harassed by other tenants, you should tell the council or housing association. Many organisations have policies to protect tenants against harassment. They may take out an 'injunction' through the courts to get the people to stop harassing you, or they may be able to evict them.

Discrimination at school or college

It is against the law for a school or college to discriminate against or harass you or your child:

- in the terms on which it offers to admit your child;
- when deciding whether to exclude your child; or
- in the way your child is taught.

The school or college must deal with any racial harassment or abuse by staff. It is also against the law for a local education authority to discriminate when assessing a child's special needs.

If you feel your child is facing racial discrimination, you should first try to discuss the problem with the teacher or head teacher. The Department for Education and Skills has information about dealing with this (see 'Further help' on page 15 for contact details).

If that doesn't work, complain to the school governors or the local education authority. If you need to, you can get advice on what to do from:

- the Commission for Racial Equality;
- your local Racial Equality Council; or
- the Advisory Centre for Education helpline.

See 'Further help' on page 15 for details.

If you are a student, your college or university should have an equal opportunities policy for students as well as staff.

Discrimination when buying and using goods and services

It is against the law for businesses or service providers to racially discriminate against or harass you by:

- refusing or deliberately failing to provide you with goods, facilities or services; or
- by not providing goods, facilities or services of the same quality, on the same terms and in the same way as they would to other people.

It covers things that are free, as well as those you pay for. It covers many businesses and services, including:

- shops;
- public places, such as hotels, restaurants, bars, nightclubs and leisure centres;
- bank accounts, loans, credit cards and insurance;
- travel and transport services that are either public or offered by private companies and travel agents; and
- services supplied by local authorities (such as leisure services).

When a business or service provider is allowed to discriminate

A business or service provider can discriminate on some grounds if:

- it is a charity whose main purpose is to provide services to a particular racial group (though it still can't discriminate on the grounds of colour);
- the matter is not covered by the Race Relations Act;
- there is an exemption under the Race Relations Act. An example might be a club with more than 25 members whose main purpose is to provide services to a particular racial group (though it still can't discriminate on the grounds of a person's colour).

Discrimination by public authorities

It is against the law for public bodies to racially discriminate in the way they carry out their functions. Examples of bodies and functions which are included are:

- the police (stops and searches);
- local authorities (environmental health inspections);
- the prison service (prison discipline);
- Inland Revenue (tax inspections); and

- Customs and Excise (searches).

Also, public bodies have a duty when carrying out such functions to consider how they can:

- eliminate racial discrimination; and
- promote equality of opportunity and good race relations.

You might be able to take legal action against a public body that does not comply with this duty. Some public authorities must also have a Race Equality Scheme (called a Race Equality Policy in educational institutions), which sets out how their policies meet these criteria or what arrangements will be put in place to meet the criteria. If they do not have a Race Equality Scheme or Policy, the Commission for Racial Equality can take action against them.

What you can do about discrimination

If you have been discriminated against, first think about what you want to be done. Depending on how you were discriminated against, you may want:

- your job back;
- compensation;
- an apology; or
- a clear sign that an organisation won't discriminate in the same way in future.

Whatever you want, you must try to sort out the matter first with the person or organisation that has discriminated against or harassed you. If the problem is with your employer, this means you must use the organisation's grievance procedure or make a written statement to the employer. If the problem is with a service provider, you must write to them with details of the complaint and the amount of compensation you're seeking.

If this doesn't get you what you want, you may be able to take your case to:

- an employment tribunal if it is about a job; or
- the county court.

The Commission for Racial Equality (CRE) was set up by the government to promote racial equality. It can advise and help you if you have been discriminated against because of your race. You can also get help from:

- your union if you have one (if it is about a job);
- your local law centre;
- a Citizens Advice Bureau;
- your local Racial Equality Council; or
- a solicitor or adviser displaying the Community Legal Service logo (see 'The Community Legal Service' on page 15 for more about this).

See 'Further help' on page 15 for how to contact these organisations.

The CRE can sometimes give you legal help to take your case to court, so that you don't have to pay a solicitor to do this for you. To get this, you need to apply on a special form, available from the CRE. If it cannot give you legal representation, it may be able to put you in touch with other agencies or solicitors that deal with claims of discrimination.

If your case is about discrimination at work, the Advisory, Conciliation and Arbitration Service (ACAS) may also be able to help. It can try and help you reach agreement with your employer (about a promotion or compensation, for example) without you having to go to a hearing. If you cannot reach agreement with your employer (or former employer), you can still take your case to an employment tribunal. However, there are time limits for doing this (see 'Going to an employment tribunal' right).

If the tribunal or court rules that you have been unlawfully discriminated against, it can award you compensation for:

- loss of earnings or other financial loss;
- injury to your feelings; and
- personal injury caused by the discrimination.

Going to an employment tribunal

If you want to make a complaint under the Race Relations Act, you must send your complaint either on form ET1 or in a letter to the Regional Office of Employment Tribunals. You can get this form from:

- Jobcentres;
- the CRE; or
- a local employment tribunal.

You must make your complaint within three months, less one day, from the date when the discrimination first happened. If you use the employer's internal grievance procedure, the time limit is six months less one day.

However, you must give your employer at least one month to resolve your grievance before taking a complaint to the tribunal, so you should complain to your employer as soon as you can.

The cost of going to a tribunal is low. The employment tribunal will decide whether you have suffered discrimination. It may also consider whether it is reasonable to make a claim. Even if you lose your case, you will not have to pay the other side's costs unless the tribunal decides your claim was unreasonable.

If you do want to take a complaint to an employment tribunal, you would normally send a special form, called a 'Section 65' questionnaire, to the employer. You can get this form from:

- Jobcentres;
- your local benefits office; or
- the CRE.

The form lets you ask the employer about the treatment you received. For example, if you believe that you didn't get a job because of your race, you can ask the employer for details of the selection procedures and of the qualifications and experience of the person who got the job, to see how they compare with your own. You can also ask about the racial group of the person who got the job.

You must send the form to the employer within three months of when you first knew about the discrimination, or no more than 21 days after your complaint was received by the employment tribunal.

You don't have to use the Section 65 procedure, but it could help your case. The employer doesn't legally have to reply to the questionnaire form, but if they don't, the tribunal could decide that the employer discriminated against you. If you do use the procedure you can still go ahead with your complaint or withdraw it before the tribunal deals with your case.

You or the employer can appeal against the tribunal's decision to the Employment Appeals Tribunal within 42 days after the tribunal's decision. You can only appeal if the tribunal did not apply the law correctly, not because you think the tribunal's decision was unfair.

Going to court

If you want to take a case to a county court, you must start your case within six months less one day from the date when you first knew about the discrimination. There are specially selected courts for dealing with discrimination cases, which can give you copies of the claim form (N1) and more information about procedures. You should be able to get details of courts that deal with discrimination cases from

- any county court; or
- the CRE.

How will I pay for my case?

If you are claiming less than £5,000, your case can be dealt with fairly simply and cheaply on the 'small claims track'. If you do this, you won't need a solicitor to represent you, but you should get advice before starting your claim.

If you are claiming more than £5,000, you need to think carefully about how you will pay for your case, because the costs can be very high. If you cannot afford to pay for court action yourself, there are several ways you may be able to pay for your case:

- The CRE may take on your case, for example, as a 'test case'.
- You may be able to get funding from the Community Legal Service (formerly called Legal Aid), provided you meet certain conditions. See 'The Community Legal Service' on page 15 for how to find out more about this.
- You may be able to find a solicitor who will take on your case under a 'no-win, no-fee' agreement. See the Community Legal Service Direct leaflet 'No-win, No-fee Actions' for more about this.

The Human Rights Act

The Human Rights Act protects against wide-ranging discrimination – including many types that are not covered by other discrimination laws. However, you can only use it as part of one of the other 'articles' (the specific principles) of the act, such as the right to 'respect for private and family life'.

Also, rights under the Human Rights Act can only be used against a public authority (for example, the police, a local council or the Benefits Agency), and not a private company. However, court decisions on discrimination will generally have to take into account what the Human Rights Act says.

Further help

Community Legal Service Direct

A free, easy-to-use service to help you solve your legal problems.

Call: 0845 345 4 345

to speak to a qualified legal adviser about Welfare Benefits, Debt or Education or find local advice services for other problems.

Log on at: www.clsdirect.org.uk to search for a quality local legal adviser or solicitor or find links to other sources of online information and help.

Commission for Racial Equality (CRE)

phone: 020 7939 0000

www.cre.gov.uk

For your nearest Racial Equality Council, contact the Commission for Racial Equality or see the phone book.

The Advisory, Conciliation and Arbitration Service (ACAS)

To find your nearest public inquiry point phone: 08457 47 47 47

www.acas.org.uk

Advisory Centre for Education (ACE)

For advice about racial discrimination at school

phone: 0808 800 5793

www.ace-ed.org.uk

Department for Education and Skills (DfES)

For the leaflet 'Social Inclusion: Pupil Support Circular 10/99'

phone: 0845 6022260 or download it from:

www.dfes.gov.uk

The Community Legal Service

The Community Legal Service has been set up to help you find the right legal information and advice to solve your problems.

You can get help through a national network of organisations including Citizens Advice Bureaux, Law Centres, many independent advice centres and thousands of high street solicitors. All of these services meet quality standards set by the Legal Services Commission. Look for the Community Legal Service logo, shown below.

Many of the organisations offer some or all of their services for free. If you cannot afford to pay for advice you may be eligible for financial support through the Community Legal Service Fund (Legal Aid). You can order leaflets about funding from the LSC Leaflet line on 0845 3000 343. You can also use a Legal Aid eligibility calculator on the CLS Direct website at www.clsdirect.org.uk

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The Legal Services Commission (LSC)

The Community Legal Service and the Community Legal Service Fund are managed by the Legal Services Commission. To find out more about us visit our website at www.legalservices.gov.uk or find the details for your local Legal Services Commission office in the phone book.

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The leaflets are also available online at: www.clsdirect.org.uk

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The leaflets are also available in Welsh, Braille and Audio

To order any of these leaflets contact the LSC leaflet line on **0845 3000 343**
or email LSCleaflets@ecgroup.uk.com or Fax 020 8867 3225



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