

**RACIAL
HARASSMENT
AT WORK**



*what
employers
can do
about it*



COMMISSION FOR
RACIAL EQUALITY
FOR NORTHERN IRELAND

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The Commission for Racial Equality for Northern Ireland was set up by the Race Relations (Northern Ireland) Order 1997 with the duties of:

- Working towards the elimination of discrimination
- Promoting equality of opportunity and good relations between people of different racial groups.
- Keeping under review the working of the Order, and, when required by the Department of Economic Development or when it otherwise thinks it is necessary, drawing up and submitting to the Department proposals for amending it.



COMMISSION FOR
RACIAL EQUALITY
FOR NORTHERN IRELAND

3RD FLOOR
SCOTTISH LEGAL HOUSE
65-67 CHICHESTER STREET
BELFAST BT1 4JT

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FOREWORD

To be the target of racial harassment at any time is a terrible thing. But to experience it at work means being in a permanent state of dread, unable to concentrate properly and failing to achieve one's potential. Such tension is contagious and invariably affects others, with potentially damaging consequences for the whole organisation. Often complaints brought forward are just the tip of the iceberg because most of the people who experience racial harassment at work put up with it. There may be several reasons for this: sometimes it is just because they do not want to make a fuss; sometimes because they think they will be blamed for 'ratting' on their colleagues; and sometimes, worst of all, because they do not believe their complaints will be taken seriously.

The Commission for Racial Equality for Northern Ireland (the 'Commission') therefore urges all employers, large and small, in their own interests as well as those of their employees, to ensure no one has to endure the indignity and humiliation of racial harassment at work. Employers have both a legal and moral responsibility to make clear that making racial slurs and insults is not part of the working environment and that such behaviour is unacceptable both to the recipients and the wider workforce. Such harassment in the workplace may constitute unlawful racial discrimination with serious consequences for both the person doing the harassing and his/her employer.

INTRODUCTION

Discrimination on grounds of race, colour, nationality or ethnic and national origin is unlawful under the Race Relations (Northern Ireland) Order 1997 ('the Order'). Anyone can be a target of racial harassment at work, be they Asians, African-Caribbeans, Jews, Irish Travellers or others.

This booklet has been produced to draw employers' attention to the mounting evidence of racial harassment at work and to advise them on the policies and procedures they need, both to prevent racial harassment and to deal with it when it happens. The booklet explains what racial harassment means, gives examples of recent industrial tribunal cases and outlines the legal duties employers have under the Order.

Given that the Order has only recently come into operation, there are not yet sufficient local cases on which to draw by way of illustration. The examples contained in the text are drawn from cases brought in Great Britain under the Race Relations Act 1976¹. A section on resources suggests other useful guides and training materials.

All employers, big or small, whatever their line of business, should read this booklet carefully. Every employer should have a clear policy on racial harassment, about which everyone in the organisation knows. It should be backed by fair and effective procedures for investigating and resolving complaints. This is the best way of avoiding the individual and business costs of grievances and possible industrial tribunal proceedings.

¹ The provisions of the Race Relations Act and those of the Order are the same in the areas covered by the examples

WHAT IS RACIAL HARASSMENT?

There is no hard and fast definition of racial harassment. It is a general term covering a wide range of unacceptable and often unlawful behaviour. The horrifying, persistent racial abuse and harassment that Mr Hussain complained about at Westcroft Castings Ltd (see Case 1) left the Leeds industrial tribunal in no doubt that the company had discriminated against him on racial grounds.

But there are other, subtler forms of harassment that are equally distressing and that can create an intimidating and unpleasant atmosphere at work: racist 'jokes', banter, insults, taunts, gibes, literature and graffiti; shunning people because of their race, colour, nationality or ethnic background; excluding them from conversations; making racist insinuations; being condescending or deprecating about the way they dress or speak; picking on them unnecessarily; and so on.

CASE 1: MR A HUSSAIN V WESTCROFT CASTINGS LTD, MR A SCOTSON AND MR H IRVINE [1995]

The vicious abuse and harassment that finally drove Mr Hussain to seek redress in the Leeds industrial tribunal was a regular feature of his three years with the company, a small metal castings foundry employing 33 employees at the time.

The first major incident occurred when a pig's head was 'shoved in his face' as he was coming out of the shower, with a number of colleagues standing around laughing. As a Muslim, nothing could have been more insulting or humiliating for Mr Hussain. When he complained to Mr Scotson the next morning, Mr Scotson assured him that 'he would sort it out'.

Some time later, Mr Hussain was again standing in the shower when he felt something warm on his leg. He turned around to find Mr Irvine urinating on his leg, again to everyone's amusement. Mr Hussain said that Mr Irvine told him: 'That's all you Pakis are worth: a piece of piss'. Mr Scotson's reaction was to ask Mr Hussain what he had done 'to stir this up' but he took no action against Mr Irvine.

The tribunal found Mr Scotson's responses 'deplorably inadequate'. They did not 'accept for one moment' that the abuse Mr Hussain had to put up with was merely 'jocular banter' and ruled unanimously that he had been a victim of racial discrimination.

The tribunal also made clear that the size of a company has no bearing on 'the standards expected of reasonable employers when handling disciplinary matters'.

CASE 2: MR T MCAULEY V AUTO ALLOYS FOUNDRY LTD [1994]

After weeks of being told that he was 'a typical thick paddy', Mr McAuley complained. He was told to ignore the comments because they were just jokes. Mr McAuley was finally dismissed, 'principally', the tribunal subsequently thought 'because he was an Irishman who would not take Irish jokes lying down'; in other words, he did not 'fit in'.

The industrial tribunal found that derogatory remarks about the Irish were being made daily and that the foundry could not satisfactorily explain why it had not done all it could to stop the comments. The tribunal had no hesitation in saying that Mr McAuley had been directly discriminated against on racial grounds, which include grounds of nationality or ethnic or national origin. Mr McAuley was awarded compensation totalling £8,000.

- **Racial harassment is unwanted conduct of a racial nature, or other conduct based on race affecting the dignity of women and men at work.**

The definition of sexual harassment provided in the European Commission's Code of Practice on Sexual Harassment (there is at present no equivalent for racial harassment) can usefully be extended to racial harassment. The Code defines sexual harassment as 'unwanted conduct of a sexual nature, or other conduct based on sex affecting the dignity of women and men at work'.

Racial harassment may be deliberate and conscious. But it can also be unintentional; 'I meant no offence', or 'it was just a joke' is a common, sometimes genuine, protest when someone has been oblivious to another person's feelings or sensitivities (see Case 2). Unlawful discrimination as defined by the Order need not be conscious and as a tribunal once remarked, 'it certainly does not need to be motivated; the great majority of people believe they have no prejudices'. While the intention of the perpetrator may provide an explanation for the harassment, it can never be an excuse.

The industrial tribunals have consistently ruled that there can be 'no degree of acceptability' for racist banter in the workplace. The context is irrelevant and any use of it is an expression of racial prejudice (see Case 3).

The most important rule for employers faced with complaints of racial harassment is that the perception and interpretation of the person who feels harassed must be *central* to the consideration of any complaint of harassment. As the tribunal in the case of *Clarke v BTR Fatati Ltd* (see Case 4) summed up:

It is not what a bystander might consider to be a disadvantage, or anyone else other than the applicant, but what the applicant himself considered..... It was not material that other employees might shrug off being called racist names.....or that things were said without malice; [but that] the applicant was upset and thought he was being singled out.

A recent case of sexual harassment, *Mrs Doreen Heads v Insitu Cleaning Co Ltd and Mr Michael Brown*, heard in the Employment Appeal Tribunal, throws further light on the question of acceptable conduct in the workplace and sets a very useful benchmark for racial harassment cases. The argument put by Mr Brown and the company was that a single act can never amount to harassment because, until it has happened and been rejected, it cannot be said that the conduct was 'unwanted'. The Honourable Mr Justice Morrison firmly rejected their point as 'specious', explaining that:

If it were correct, it would mean that a man was always entitled to argue that every act of harassment was different from the first and that he was testing to see if it was unwanted: in other words it would amount to a licence for harassment.

The evidence shows that what was said by Brown was unwanted. If intention were irrelevant, *and it is not* (emphasis added), any sensible adult would know that the remark made would be unwanted, unless there were very exceptional circumstances. The word 'unwanted' is essentially the same as 'unwelcome' or 'uninvited'. No-one other than a person used to indulging in loutish behaviour could think that the remark made in this case was other than obviously unwanted.

Of course each case will be different and tribunals will base their decisions on the particular facts before them.

- **There are no excuses for racial banter and abuse at work. There can be no degree of acceptability.**

CASE 3: MR SURINDER SINGH V NOTTINGHAMSHIRE CONSTABULARY [1990]

In 1987, Surinder Singh began working as an aide in the CID where he had to face regular racial abuse and was treated unfairly. He complained to a senior officer but nothing was done about it. When he finished his aideship, he made a detailed report to his Chief Superintendent alleging racial abuse. The report was considered by the Assistant Chief Constable but Mr Singh was still not satisfied.

In 1990, the Nottingham industrial tribunal confirmed Mr Singh's allegations. It found that racist language was widespread throughout the constabulary and condemned it forcefully:

There are no excuses - there can be no acceptability. It does not matter in what context it was used. Any use displays racial prejudice. It offends ethnic minority officers and diminishes them. There is little evidence that senior officers reprimanded anyone heard using such language.

Mr Singh received a total of £30,000 in compensation.

CASE 4: MR P CLARKE V BTR FATATI LTD [1992]

Mr Clarke, who is of Afro-Caribbean origin, had worked at Fatatis, a company making carpets for cars, since March 1989. Mr Clarke's complaint to the tribunal was about racist language on the shopfloor and by some managers, what the company did about it and his dismissal a few months later.

Supported by his union, GMB, Mr Clarke had a meeting with Mr Howell, the director, who agreed to investigate the allegations. Mr Howell only talked to the managers about whom Mr Clarke was complaining and took their word against his 'because they were members of management and honest'. Nor did he change his mind when, a short time later, a racist note was left on the machine where Mr Clarke worked. 'Banter, the environment of the shopfloor was all it was' he said in his evidence to the tribunal.

The tribunal found that the racial abuse Mr Clarke suffered constituted a detriment under the Race Relations Act:

.....it was not material that other employees might shrug off being called racist names...or that things were said without malice [but that] the applicant was upset and thought he was being singled out.

The tribunal also criticised the fact that there was no follow-up meeting with Mr Clarke or the union to explain the outcome of the investigation and found that the company's failure to take action amounted to unlawful discrimination because Mr Clarke was 'deprived of the benefit of having his complaints adequately investigated and pursued'.

The tribunal awarded Mr Clarke a total of £11,350 in compensation.

THE COSTS OF RACIAL HARASSMENT AT WORK

- **In 1990-1, tribunal proceedings in sex and racial discrimination cases cost employers in Great Britain £5 million altogether.**

Racial harassment at work can be a nightmare for those who are its victims. Spending seven hours a day, five days a week, in a state of permanent anxiety can destroy someone's self-confidence, their powers of concentration, their health, their peace of mind and their trust in the people they work with (see Case 5).

Racial harassment also has damaging consequences for the organisation as a whole. It sows divisions and poisons the atmosphere for everyone. As the Institute of Personnel Directors' statement on Harassment at Work warns:

No employer should underestimate the damage, tension and conflict within the workplace which harassment creates. The result is not just poor morale but higher staff turnover, reduced productivity, lower efficiency and divided teams. Although the effects may be difficult to quantify, this will eventually show through in the performance of the organisation.

Recent research published in the Employment Gazette (January 1994) shows that tribunal proceedings in sex and racial discrimination cases in 1990-91 cost employers in Great Britain £5 million. That was when there was an upper limit to the compensation that tribunals could award to successful applicants. As a result of the decision of the European Court of Justice in a gender case, the Order has no such ceiling.

CASE 5: MR Z MILOVANOVIC V HEBDEN DYEING & FINISHING COMPANY LTD AND OTHERS [1995]

Mr Milovanovic, who is of Serbian origin, has lived in England for the last 41 years. He was one of 25 employees at Hebden Dyeing Company and began to work there in 1991. Mr Milovanovic complained of numerous incidents of persistent harassment based on his ethnic and national origin, especially after the Bosnian war began -

'We don't use number 7 like that. You're not in fucking Bosnia now. You're in England.'

'Don't you think it would be a good idea, Zoran, to go back to Bosnia or wherever you belong and fight and die like a dog instead of our lads.'

'If all the foreigners and blacks go back to their own country we would have a better environment in this country'.

It all finally became too much for Mr Milovanovic. He left the dyehouse and phoned to say he was giving a week's notice.

The tribunal found that Mr Milovanovic had to put up with not only what he regarded as racist jokes but also with remarks that would only be addressed to someone of foreign extraction. They believed that the discrimination was continuous and accepted that Mr Milovanovic was very hurt and distressed by what had happened:

[He] ultimately felt so oppressed by what happened that he felt quite unable to continue in his employment, since the relationship of trust and confidence between him and the employers had been destroyed.

Mr Milovanovic was awarded a total of £3,825 in compensation.

The case is an important one because it shows that, however long people from minorities may have lived in Britain, the chances are high that they will suffer persecution and discrimination because of their national or ethnic or racial origin, especially when there are international conflicts.

CASE 6: MR PATEL AND MR HAREWOOD V T & K HOME IMPROVEMENTS LTD AND MR JOHNSON [1994]

Mr Patel and Mr Harewood worked for the company as PVC fabricators. The working environment was regarded as friendly and informal but two incidents led to complaints of racial discrimination. First, a notice appeared on the factory notice board carrying the headline: Application for Employment, Minorities Division. It was a mock application form which the Bedford tribunal described as 'the most offensive, insulting and degrading' it had ever seen. But the foreman treated it as a joke and did nothing about it.

The second incident took place a week later when Mr Johnson, the production director, gave the applicants a notice reading 'Help wanted - a small black man for mudflap - must be flexible and willing to travel'. Both Mr Patel and Mr Harewood were hurt and extremely upset by this.

The tribunal found this to be 'a most appalling case of discrimination' and rejected the respondents' explanation that the notices were a joke and part of normal work-place banter.

It defies all belief that such offensive material could be considered to be humorous.

The applicants were awarded a total of £3,250 each in compensation. This included a sum of £1,500 for aggravated damages awarded because:

.....the respondents have made matters worse by the attitude which they have displayed, both before the tribunal and indeed throughout these proceedings. They have maintained their position that this was a joke. Not once has any form of apology been offered.

All the indications are that the tribunals felt constrained by the limit on the awards they could make (see Case 6) and it is very likely the compensation in cases of sex and racial discrimination will be much higher than in the past.

THE RACE RELATIONS (NORTHERN IRELAND) ORDER 1997

Less favourable treatment

The Order does not use the term 'racial harassment' but experience in Great Britain has shown that industrial tribunals are increasingly willing to conclude that racial harassment and abuse at work is 'less favourable treatment on racial grounds' and therefore constitutes unlawful racial discrimination.

Article 3(1)(a) of the Order says that:

A person discriminates against another ...if on racial grounds he treats that other less favourably than he treats or would treat other persons.

The question is whether the person complaining of racial harassment would have been treated differently if race, colour, nationality, or ethnic or national origin had not been an issue.

Women from ethnic minorities may experience harassment that is both racial and sexual and may have claims under both the Order and the Sex Discrimination (Northern Ireland) Order 1976. The Commission can give advice and assistance on complaints of racial harassment while the Equal Opportunities Commission for Northern Ireland is the equivalent body set up to deal with complaints of sexual harassment.

Detriment

- **A racial insult, in itself, may be a detriment.**

Article 6(2)(c) of the Order says that:

It is unlawful for a person...to discriminate against [an] employee...by dismissing him, or subjecting him to any other treatment.

The case of *De Souza v The Automobile Association* [1986], which was heard in the Court of Appeal, established the principle that a racial insult in itself may be a detriment under the Race Relations Act 1976 (the corresponding GB legislation) or, in other words, a disadvantage in the circumstances in which someone has to work. Any *other* detriment the complainant might experience therefore, such as blocked promotion, compulsory transfer, refusal of leave or dismissal, would be an *additional* detriment.

Victimisation

Article 4 of the Order makes it unlawful to penalise someone for making a complaint of racial discrimination whether or not the complaint is upheld, or for giving evidence in a racial discrimination case.

Mr Stanley Jenkins (see Case 7) had made a complaint of victimisation as well as racial discrimination. He won on both counts. The industrial tribunal said that it was satisfied 'beyond any doubt' that the reason the college had taken disciplinary action against Mr Jenkins in 1992 was to victimise him for having brought legal proceedings and to obstruct his case by encouraging prejudice against him.

Who is liable for racial harassment in the workplace?

Complaints of racial harassment may be made against the employer as well as the harasser. Under the Order employers are liable for any discriminatory acts committed by their employees in the course of employment. It is no defence for employers to say that they did not know about the discrimination, or that they would not have approved of it if they had known.

CASE 7: MR S JENKINS V BURNEY AND OTHERS [1993]

For eight years Mr Stanley Jenkins, a black lecturer, complained to the authorities at Thanet Technical College where he had worked that he was being racially abused by students. Each time the college authorities refused to believe him, passed off his complaints as 'misunderstandings' and, as the tribunal subsequently said, 'failed to take decisive, firm and sensitive action'.

Mr Jenkins finally decided to ask an industrial tribunal whether his experiences were in fact 'misunderstandings' or, as he believed, persistent racial harassment. He brought three complaints against the college, two of racial discrimination and one of victimisation.

The tribunal's unanimous decision was that the investigations which the college authorities had carried out into Mr Stanley's complaints were so biased and unreasonable that they inevitably reached the wrong conclusions. 'The way Mr Jenkins was treated was, in the truest sense, institutional discrimination and victimisation rather than the wayward behaviour of particular individuals' concluded the tribunal. Mr Jenkins's treatment 'had been endorsed at the highest levels of the college and the institution must carry responsibility for it'. Mr Jenkins received compensation totalling £12,000.

Do employers have a defence?

- **Tribunals can set time limits on the action employers are required to take.**

If employers can show that they have taken reasonably practicable steps to prevent racial discrimination by their employees, as required under Article 33(3) of the Order, tribunals will take this into account when considering the question of liability in any complaint of racial discrimination brought against the organisation. The recommendations of the Commission's Code of Practice for Employers are used by tribunals as a benchmark for evaluating the action taken by employers.

In a recent decision (*Mr E Ruizo v Tesco Stores Ltd*), the tribunal made recommendations on the particular steps Tesco Stores should take to implement its racial harassment policy. Significantly, the tribunal set time limits for the measures: Tesco was given twelve weeks to review its equal opportunity policies and eight weeks to make sure its managers took positive steps to encourage victims of racial abuse to come forward, to take general measures against racial abuse, and to review the company's disciplinary procedure.

CASE 8: MS GRAHAM V ROYAL MAIL AND MR S NICOLSON [1993]

The incident which led to Ms Graham's complaint took place when she and a colleague, Mr Nicolson, were leaving work. Ms Graham, referring to Mr Nicolson's receding hairline, shouted 'I'll see you later, you white, bald-headed bastard'. Stung, Mr Nicolson shot back that he preferred to be a white, bald-headed bastard than a black bastard. Ms Graham took exception to his remark and, although Mr Nicolson apologised straightaway, and once again the next day, she reported the matter to her supervisor.

In line with Royal Mail's procedures for dealing with harassment, Mr Nicolson was immediately transferred to another area and given a written warning.

The tribunal did not find any racial discrimination. Bearing in mind that Mr Nicolson and Ms Graham had a fairly relaxed and informal relationship at work, which included occasional racial banter, the tribunal thought that Mr Nicolson had been provoked into making his remark, and that while Ms Graham was understandably offended, what did she expect? However, the tribunal took pains to point out that, 'in most cases of racist banter in the workplace, there can be no degree of acceptability'.

The tribunal specifically commended Royal Mail on its policy and the speed with which it acted. The case is noteworthy because, even if the tribunal had found racial discrimination, it is unlikely that it would have held Royal Mail liable for its employees' discriminatory actions.

CASE 9: MR COOLEY V BRITISH ROAD SERVICES LTD [1994]

When Mr Cooley first made a complaint of racial harassment to British Road Services Ltd, where he worked, he was told to 'forget it'. The second time he complained, his grievance was heard formally. But the company thought that the 'jokes' were not malicious and decided not to take any disciplinary action.

British Road Services Ltd had published what the industrial tribunal described as an 'excellent' equal opportunity policy. When it came to applying it, however, the company's performance failed to measure up. The tribunal concluded that British Road Services Ltd did not have a defence under Section 32(3) of the Race Relations Act, because they had not taken steps to put the policy into practice. The company was ordered to pay Mr Cooley £1000.

The case of *Graham v Royal Mail and Nicolson* (see Case 8) is a good example of a company whose policy and actions persuaded the tribunal that it had done all it could to prevent racial discrimination and deal with it effectively; while British Road Services' 'excellent' equal opportunity policy (see Case 9) counted for little with the industrial tribunal because it had not been put into practice.

PREVENTING RACIAL HARASSMENT AT WORK

- **Employers have a legal and moral responsibility to protect employees from the humiliation of harassment.**

Many employers assume that if there are no problems of racial harassment, there is no problem in their organisation. But most incidents of harassment are never reported and employers should understand why their employees may be putting up with it:

- They may feel too intimidated to do anything about it
- They may be afraid of reprisals
- They may not want to make a fuss
- They may think they will not be believed or understood
- They may think that nothing will be done about their complaint
- They may not know how to go about making a complaint, or to whom, especially if the harassment is coming from their line manager or supervisor

Racial harassment can occur wherever people of different ethnic, racial or national backgrounds work together: in offices, schools, shops, hotels, banks, hospitals, factories, building sites, police stations, the corridors of government and so on.

In some areas, such as hospitals, where the organisation provides services to the public, there is the additional risk of harassment by customers and clients. Employers have a legal and moral responsibility to protect their employees from the humiliation and indignity of harassment.

ADOPTING A POLICY

- **In bad cases racial harassment means dismissal; in all cases it means an apology and conciliation.**

The first step in preventing racial harassment in the workplace is for employers to acknowledge that it might happen or could be happening in their organisation and to decide to take a stand on it. The policy adopted may cover several forms of harassment but the detailed procedures drawn up to implement it need to address the specific difficulties associated with each type of harassment.

Harassment policies are most effective when they are part of an overall equal opportunity policy for the organisation, drawn up in close consultation with any workplace trade unions. The racial harassment policy and procedures should be set out clearly in notices, staff newsletters, manuals and annual reports and reinforced at every opportunity through training, discussion and regular monitoring. Employees should understand that one of the essential conditions of their employment is to treat everyone with dignity and respect and to expect such treatment themselves. They should also be aware that racial harassment is a disciplinary matter and that they could be dismissed for such behaviour.

Properly communicated, the policy should become part of the ethos of the organisation, giving anyone who thinks they are being harassed, and those who may witness harassment of others, the confidence to raise the matter through the organisation's procedures and the courage to speak out against such behaviour.

SMALL FIRMS

Small firms are equally bound by the provisions of the Order, even if they may not need very sophisticated equal opportunity procedures (see Cases 1, 5 and 10). Being in close personal contact with their employees, employers in small firms have every opportunity of knowing what is going on and taking action to stop any unacceptable behaviour from their staff. The tribunal in the case of *Mr S J Bee v F White and Alan Dodd t/a Five Minute Car Wash* made it clear that:

...employers, whatever their size or business, must be alert to racially motivated ill treatment and be ready to take appropriate measures to stop it. In bad cases that means dismissal. In all cases it means apology and conciliation. At stake is the dignity of the respondents' workers and their effectiveness as employers.

CASE 10: MR S J BEE V MR A WHITE AND MR F DODDS T/A FIVE MINUTE CAR WASH [1994]

Mr Bee, who is of mixed race, was 16 when he worked for the car wash company. In the two months he was there, he was subjected to a battery of increasingly provocative racial insults by the other men working with him. Mr Bee finally became ill and was advised by his doctor to stay away from work for two days.

He rang Mr Dodd to tell him this but was told not to bother coming back as his job had already gone to someone else. Mr Dodd's explanation that the problem was Mr Bee's attitude to work was rejected by the tribunal.

It was clear at the tribunal hearing that both the young men working at the car wash company and their supervisor thought that racial insults and banter were quite acceptable in the workplace. The tribunal held the company liable for its employees' discriminatory actions and dismissed its argument that the size and nature of the business should be seen as a mitigating factor in respect of equal opportunities matters. The company was ordered to pay Mr Bee a total of £2,766 in compensation.

TRAINING

- **All staff should receive training in what employers mean by unacceptable behaviour at work.**

Training is essential to explain to employees why the organisation has adopted a policy against racial harassment and to make sure that everyone is clear about the procedures they must follow if they want to make a complaint. The policy should be discussed in any induction training for new staff and be included as a standard element in all other training programmes. Employers must ensure that all staff receive training in what is meant by unacceptable behaviour at work.

Managers and supervisors will need more intensive courses on the policy, laws against discrimination, the relevant statutory codes of practice and the organisation's procedures for considering complaints, with role-play sessions and detailed exercises on sample harassment cases. Managers and supervisors should understand that it is their responsibility to ensure that the workplace is free of racist jokes and banter and that it is unacceptable to shrug off complaints (see Cases 9 and 11). The section on resources gives details of useful training materials (see p. 26).

The importance of training in communicating an organisation's policy was referred to when an industrial tribunal upheld a complaint of racial discrimination against a line manager who had used racially offensive language. The tribunal in *Mann v Moody and the Department of Social Security* [1992] said that no managers who had been trained properly would have said what Mrs Moody said, 'even on a jocular basis' and it criticised the Department for failing to give its managers practical training in 'racial awareness'.

Yet a survey of racial harassment policies by the *Equal Opportunities Review* found that only 16 per cent of the organisations in the study thought that the staff who handled complaints of harassment should be trained; and only one or two of the policies made such training compulsory.

CASE 11: MR K BOWEN V BRADMERES ENGINEERING LTD [1993]

Mr Bowen, who is of mixed race, worked as a fitter and supervisor for Bradmeres Engineering Ltd, a maintenance firm. His Managing Director made racially offensive remarks in his presence and refused to apologise. Mr Allan, another Director, told Mr Bowen that sort of thing was usual in the engineering industry and quite acceptable and that he would have to 'grin and bear it'. Relations grew progressively worse and Mr Bowen was first demoted and then sacked.

The tribunal found that the original incident was aggravated by the inept and offensive way in which Mr Bowen's disciplinary hearing was conducted by Mr Allen. Mr Bowen was awarded £2,500 for injury to his feelings and £9,009 for unfair dismissal.

DEALING WITH COMPLAINTS OF RACIAL HARASSMENT AT WORK

- **Employers owe it to their staff to treat all complaints of harassment seriously and sympathetically and to take action promptly.**

It is important not to underestimate the destructive effects of racial discrimination and harassment. One of the main problems in the cases reaching industrial tribunals has been managers who refuse to take complaints seriously, or hope that the problem will go away by itself and tell the injured person to 'forget it' (see Case 9).

Women, in particular, may experience bullying and humiliation on account of their sex as well as their ethnic origin and may need to be able to talk to someone who can sympathise with their experience and give them support. The case of Sarah Locker, a female police officer who was of Turkish origin and a Muslim, is instructive. She was refused promotion, subjected to racist and sexist taunts and abused in offensive letters circulated to staff. Ms Locker settled her case out of Court for a total of £32,500.

It takes courage to make a complaint and employers owe it to their staff to treat all complaints of harassment seriously and sympathetically and to take action promptly.

THE COMPLAINTS PROCESS

The policy should make clear how complaints of racial harassment will be dealt with.

1. The procedures should be set out clearly, step by step, and in plain English, so that a person wishing to make a complaint knows what to do and whom to approach.
2. Employees should know to whom they can turn if they want to talk about a problem informally and in confidence and want to discuss their rights; for example, this might be the personnel manager, or an equal opportunities officer, or some other person who is given this specific responsibility.
3. Time limits should be set for every stage of the investigation and the whole process should be perfectly transparent.
4. Investigations can be either informal or formal and the complainant should be allowed to decide how he or she wants to proceed. The most important thing, however, is to act quickly once a complaint of racial harassment has been received.

A Model Harassment Policy and Procedure has been drawn up jointly by the Equal Opportunities Commission for Northern Ireland, the Fair Employment Commission for Northern Ireland and the Commission for Racial Equality for Northern Ireland. Copies are available from any of the Commissions. Employers are encouraged to amend and apply the model policy and procedure in a way that is appropriate to the size and structure of their organisation.

Informal action

If at all possible, it is obviously better to try to resolve matters informally. Informal discussions with a trained counsellor can be invaluable in helping to pinpoint the problem and sometimes even to sort it out without having to go through the formal procedures. The complainant should, of course, agree to this approach.

Wherever possible, the counsellor should be from the same ethnic background as the complainant. A survey by the *Equal Opportunities Review* showed that, while employers had no difficulty in appreciating that women who had been harassed might prefer to talk about their experience to a female counsellor or adviser, they did not think of extending the same consideration to ethnic minority staff.

It is not necessary to keep records about this stage, unless the complainant decides to pursue the matter further. The complainant should be allowed to have a representative or friend at all discussions.

Formal action

If the informal approach fails -

1. The complainant should make a formal complaint, in writing, identifying (and, if the complainant is a witness) the person who has been harassed.
2. The policy should set a time limit for settling complaints. If a complaint is not dealt with swiftly and decisively, there is every chance that the harassment will continue and that the person who has brought the complaint will be victimised for having done so. It may help the employers to know, when setting the limits for investigations of harassment complaints, that the industrial tribunal hearing the case of *Clarke v BTR Fatati Ltd* (see Case 4) found a month to be too long.
3. The complaint should be acknowledged in writing as soon as possible and the alleged harasser given written notification of it at the same time, with full details of the allegations.

4. Confidentiality is essential. Employers should make it clear to line managers and everyone involved in the complaint that they should not talk openly about it at work until the investigation is over.
5. Royal Mail (see Case 9), which was commended for its action by the industrial tribunal, had a policy of immediately separating the parties to a harassment complaint. As this may not always be possible, employers should make sure that the complainant is not victimised in any way while the matter is being investigated and receives full support.
6. Some organisations use their standard grievance procedure to deal with complaints of harassment. This may be a problem, especially if the procedure does not allow the complaint to be made directly 'to a more senior manager' and it is the supervisor or line manager who is the subject of the complaint.

This is equally likely to be a problem with other forms of grievance and is not good practice. Employers should therefore ensure that their grievance procedure takes account of this possibility. If the organisation deals with complaints of harassment through a separate procedure rather than the grievance and disciplinary procedures and a complaint of racial harassment is being considered at the same time as disciplinary procedures are being taken against the complainant, the harassment complaint should take precedence and the disciplinary action be temporarily suspended.

7. The complaint should be heard as quickly as possible by a panel, or by an independent person, preferably someone outside the departments where the parties concerned work.
8. The person or panel members should be fully trained in handling complaints of racial discrimination and harassment.
9. As racial harassment is a disciplinary matter, the panel investigating a complaint must be reasonably satisfied that the incident took place.
10. Both parties should be allowed to choose their representatives; interpreting services should be provided if necessary.
11. The complainant should receive a decision in writing from management as soon as the investigation is complete. Where necessary, disciplinary action should be taken as quickly as possible. If the disciplinary action involves separating the parties to the complaint, it is the harasser who should be moved or transferred or suspended, not the person who has been harassed, as this would amount to additional detriment.

12. Every effort should be made to prevent further harassment and the complainant should be given a written undertaking that he or she will not be victimised or suffer further detriment.

MONITORING AND REVIEW

Case after case shows employers appearing before industrial tribunals because they have ignored or flouted their own policies. In the case of *Clarke v BTR Fatati Ltd* (see Case 4), apart from the time taken to conduct an investigation, the company did not even report the results of the investigation to the complainant or tell him what action they were (or were not) taking. In the case of *Stanley Jenkins v Burney and Others* (see Case 7), the tribunal found that the investigations were themselves so biased and unreasonable that they were thoroughly unreliable.

The only way an organisation can know whether its policy and procedures are working is to keep careful track of all complaints of harassment and how they are resolved. An employer should be able to say how many complaints of racial harassment have been made in a year, how many were resolved informally, how many were investigated formally, how long each investigation took and what the outcomes were.

This monitoring information should be used to evaluate the policy and procedures at regular intervals, with changes recommended when something is not working well. If the information also reveals a greater incidence of harassment complaints in certain departments or branches, action should be taken straightaway to investigate them and deal with any problems.

HARASSMENT BY CONTRACTORS, CUSTOMERS OR CLIENTS

The harassment policy should make it clear to contractors and users of any services that the organisation provides that racial harassment towards its employees will not be tolerated. Stanley Jenkins (see case 7) was racially insulted and harassed persistently by his students but the college said on each occasion that he had 'misheard' or 'misunderstood' their remarks and repeatedly ignored his complaints. The tribunal had no hesitation in saying that the college had adopted the prejudiced standpoint of the students in the position it took.

The policy should set out clearly the sanctions that might be taken if any complaint is upheld. These could include refusal to provide services for a period, and then only if there are no further incidents, or termination of the contract.

Complaints by customers and clients of harassment by employees should be subject to the same procedures used for incidents between employees.

CONCLUSIONS

Employers have a duty to ensure that all staff, whatever their ethnic origin, can expect equal conditions of work in an environment that is free from humiliation and intimidation and in which their performance, career prospects and job satisfaction are not affected by racial prejudice, discrimination and harassment.

Employers who ignore this duty have nothing to gain and everything to lose. Productivity levels will drop as good employees are unable to give their best to the organisation. Some employees will vote with their feet and take their skills elsewhere. Others will stand up for their rights and make complaints, going as far as taking poor employers to industrial tribunals, with all the negative publicity this can bring.

APPENDIX

COMPLAINTS UNDER THE RACE RELATIONS (NORTHERN IRELAND) ORDER 1997

The Order gives anyone who thinks they have been discriminated against in employment and training on grounds of race, colour, nationality or ethnic or national origin the right to seek justice in an industrial tribunal.

The Commission was set up by the Order and one of its main duties is to provide advice and assistance to complainants.

The Order covers almost all aspects of work and training and protects people against racial discrimination irrespective of their age, whether they work part-time or full-time, whether they work from home or are self-employed and whether they are on permanent or temporary contracts.

The Order applies to all employers, big and small, to trade unions, employers' organisations, employment agencies (including job centres), vocational training bodies, qualifying or licensing bodies (such as the Law Society or the British Medical Association) and subcontractors.

There is a strict deadline for lodging complaints of racial discrimination with the industrial tribunal. Applicants have **three months** from the date of the incident to register an application form with the Office of Industrial Tribunals. Applicants who are pursuing their complaints through their employers' grievance procedures should not delay filing an application in the industrial tribunal, lest they miss the deadline. They can always withdraw their case at any time if they reach a satisfactory agreement with their employer. Lodging a case in time is primarily to protect the applicant's legal position and is not a bar to the negotiation of a satisfactory settlement.

Application forms for assistance from the Commission are available from its office.

USEFUL ORGANISATIONS

Office of Industrial Tribunals and Fair Employment Tribunals (OITFET)

Long Bridge House
20-24 Waring Street
Belfast
BT1 2EB
Tel: 01232 - 327666

Commission for Racial Equality for Northern Ireland

Scottish Legal House
65-67 Chichester Street
Belfast
BT1 4JT
Tel: 01232 - 315996

Confederation of British Industry (CBI)

Fanum House
108-110 Great Victoria Street
Belfast
BT2 7PD
Tel: 01232 - 326658

Equal Opportunities Commission for Northern Ireland

Chamber of Commerce House
22 Great Victoria Street
Belfast
BT2 7BA
Tel: 01232 - 242752

Fair Employment Commission for Northern Ireland

Andras House
60 Great Victoria Street
Belfast
BT2 7BB
Tel: 01232 - 240020

Institute of Personnel and Development (IPD)

IPD House
Camp Road
Wimbledon
London
SW19 4UX
Tel: 0181- 946 9100

Northern Ireland Association of Citizens Advice Bureau (CAB)

Regional Office
11 Upper Crescent
Belfast
BT7 1NT
Tel: 01232 - 231120

Northern Ireland Committee Irish Congress of Trade Unions (NIC-ICTU)

3 Wellington Park
Belfast
BT9 5DS
Tel: 01232 - 681726

Trades Union Congress (TUC)

Congress House
Great Russell Street
London
WC1B 3LS
Tel: 0171 - 636 4030

RESOURCES

1. Commission for Racial Equality for Northern Ireland, *Code of Practice for Employers for the elimination of racial discrimination and the promotion of equal opportunities in employment*, 1998.
2. Commission for Racial Equality, *Racial Equality Means Business: A standard for racial equality for employers*, 1995.
3. Commission for Racial Equality for Northern Ireland, *Advice and Assistance from the Commission*, 1998.
4. Commission for Racial Equality, *The CRE and respondents in racial discrimination cases*, 1995.
5. Commission for Racial Equality, *Are Employers Complying?*, 1989.
6. Commission for Racial Equality, *Racial Discrimination and Grievance Procedures: A practical guide for employers*, 1989.
7. Department of Employment, *Employment Gazette*, January 1994.
8. Equal Opportunities Commission, *Sexual Harassment at Work*, 1994.
9. *Equal Opportunities Review*, No.48, 1993.
10. European Commission, *Code of Practice on Sexual Harassment*, 1991.
11. Institute of Personnel Development, *Statement on Harassment at Work*.
12. *Pest Control* 1994. A training manual, with six videos and a resource pack on harassment at work. Available from Angel Productions, 11 Gladsmuir Road, London N19 3JY.
13. Trades Union Congress, *Racial Harassment at Work: A TUC guide and workplace programme for trade unionists*, 1990.

Racial harassment has a deep and harmful impact on those who suffer from it. It can also damage the entire workplace by creating tension and conflict, driving away good workers, sapping morale, alienating customers and damaging productivity.

Industrial tribunals in Great Britain now have little hesitation in finding that racial harassment is unacceptable in the workplace and unlawful under the Race Relations Act 1976. There is no longer a limit to the amount industrial tribunals can award as compensation for unlawful race discrimination and the awards may be large.

Now that similar legislation has been introduced in Northern Ireland, this booklet will be an invaluable guide to all employers, big and small. It defines racial harassment in the workplace and gives examples of recent industrial tribunal cases in Britain. It explains the duties employers have under the Race Relations Order and advises them of the policies and procedures they will need, both to prevent racial harassment in the workplace and to deal with it when it happens.



COMMISSION FOR
RACIAL EQUALITY
FOR NORTHERN IRELAND

3RD FLOOR, SCOTTISH LEGAL HOUSE, 65-67 CHICHESTER STREET, BELFAST BT1 4JT
TELEPHONE 01232 315996 FAX 01232 315993