



Racial Discrimination Law in Northern Ireland - A Short Guide

Equality Commission

FOR NORTHERN IRELAND

Racial discrimination law in Northern Ireland - a short guide

This short guide provides some information about racial discrimination law in Northern Ireland. It does not attempt to describe every detail, and should not be taken as an authoritative statement of the law. Further information is available from the Equality Commission. Details of some of our other publications and how to contact us are given at the back of this booklet.

The Equality Commission for Northern Ireland

The Equality Commission has responsibility for enforcing the **Race Relations (Northern Ireland) Order 1997 (as amended)** and has a duty to keep the legislation under review. It is also under a duty to promote equality of opportunity, to work to eliminate unlawful discrimination and to promote good relations between persons of different racial groups.

The law

The **Race Relations (Northern Ireland) Order 1997 (as amended)** makes racial discrimination unlawful in the following areas:-

- employment
- goods, facilities and services
- education
- housing and accommodation
- management and disposal of premises.

What is racial discrimination?

The Race Relations (NI) Order defines racial discrimination as discrimination on the grounds of colour, race, nationality, or ethnic or national origins¹. The Irish Traveller community is specifically identified in the Order as a racial group.

There are three types of racial discrimination:

Direct Discrimination arises where one person treats another less favourably, on racial grounds, than he or she treats (or would treat) someone else in the same or similar circumstances.

An example of direct discrimination would be if an Asian worker was not appointed to a job because of the racial group to which she/he belongs. Segregating a person from others on racial grounds can also amount to less favourable treatment.

¹ Please note, however, that some 2003 amendments to the 1997 Order, which relate to employment, apply only to race and ethnic origin.

Indirect Discrimination occurs where a provision, criterion or practice is applied which, although applied equally to others, has the effect of disadvantaging a particular racial group and it cannot be justified on non-racial grounds.

Possible examples are a rule about clothing or uniforms which disproportionately disadvantages a racial group and cannot be justified; or an employer who requires higher language standards than are needed for the safe and effective performance of the job.

Victimisation is also an unlawful form of discrimination under the Order. This is when someone is treated less favourably because they have, for instance, complained of racial discrimination or have assisted someone else to do so. For example, if an employee is dismissed because he/she has made an allegation of racial discrimination to his/her employer then, provided the complaint is made in good faith and not false, they have been victimised contrary to the Order.

People who believe that they may have suffered unlawful discrimination may take legal action. Legal proceedings are determined by an independent Industrial Tribunal or Court.

Employment provisions

The Order applies to all employers, including sub contractors and franchises, regardless of size.

It is unlawful for an employer to discriminate:

- in **recruitment and selection**, including arrangements for deciding who should be offered employment; in the terms on which employment is offered; or by refusing or deliberately omitting to offer a person employment
 - in the **terms and conditions of employment**
 - in relation to **access to benefits**, including opportunities for promotion, transfer, training or any other benefits, or the refusal of those opportunities
 - by **dismissing** an employee or causing him/her any other detriment
 - after the employment relationship has ended.
-

Racial harassment

Racial harassment or abuse in the workplace is a form of direct discrimination. It occurs when unwanted conduct, based on race, has the purpose or effect of violating someone's dignity or creating an environment that is intimidating, hostile, degrading, humiliating or offensive. Racial harassment can include racist jokes, banter, insults, literature, isolating individuals, being condescending or deprecating about the way they dress or speak, picking on them unnecessarily, or generally creating a hostile or intimidating atmosphere because of the person's race.

Complaints of racial harassment may be made against the employer as well as the harasser. In certain circumstances, individual employees can be held personally liable to pay compensation awards.

Employers may be liable for any racial harassment committed by their employees in the course of their employment even if they did not know about the harassment or would not have approved of it had they known. Employers can successfully defend a racial harassment case only if they can show they took such steps as were reasonably practicable to prevent harassment happening.

For further information on what reasonably practicable steps an employer can take, see *Racial Harassment at Work, What Employers Can Do About It* and the *Model Harassment Policy*, both of which are available from the Equality Commission or on our website – www.equalityni.org

Do these provisions only apply to employers?

No. Bodies and organisations other than employers are also prohibited from discriminating on racial grounds, including:

- vocational organisations (for example, trade unions and professional bodies)
- employment agencies and bodies conferring qualifications which are needed for or facilitate employment
- people providing vocational training services
- partnerships
- people for whom work is done under contract
- people with statutory power to select employees for others.

For further information on recommended good practice for employers, trade unions and employment agencies, see the *Code of Practice for Employers for the elimination of Racial Discrimination and the promotion of Equality of Opportunity in Employment* and the *Model Equal Opportunities Policy*, both of which are available from the Equality Commission and on our website – www.equalityni.org

Are there any exceptions to the Order in relation to employment?

Yes. The employment provisions of the Order do not apply where being a member of a particular racial group is a **Genuine Occupational Requirement (GOR)**. For example:

- where a person of a particular racial group is required for a job involving participation in a dramatic performance or as a photographic model for reasons of authenticity
- where a job involves working in a place where food or drink is provided to the public, and a person of a particular racial group is required for reasons of authenticity
- where the jobholder provides persons of a particular racial group with personal services promoting their welfare and those services can most effectively be provided by a person of the same racial group.

The employment provisions do not apply jobs which are wholly or mainly outside Northern Ireland. There are also exceptions in relation to certain specified employers.

Education

Schools, colleges and other educational establishments cannot discriminate on racial grounds.

They cannot refuse admission or refuse to provide the same education and services on the grounds of a person's race, colour, nationality (including citizenship) or national or ethnic origin. For further information refer to *Racial Equality in Education – Good Practice Guidance* published by the Equality Commission.

Housing and accommodation

The Order also makes it unlawful to discriminate against a person on racial grounds in connection with the selling, letting or management of premises. This provision applies to the Northern Ireland Housing Executive, housing associations, hostels, private landlords, estate agents, property developers, managing agents, owner-occupiers, banks and building societies. Certain types of property are exempt from the Order. For further information contact the Equality Commission.

Goods, facilities and services

It is unlawful for service providers who offer services to the public to discriminate against a person on racial grounds in relation to the provision of goods, facilities and services. A service provider cannot refuse to provide goods, facilities or services (either for payment or not) or offer them at lower quality on racial grounds. Service providers include hotels, insurance companies, pubs, certain types of clubs, cinemas and restaurants.

Regulatory activities by Government are not covered by the Order. This means that the police service, the Director of Public Prosecutions, the probation service, the courts and the prison service are exempt from the Order unless the goods, facilities or services they provide are similar to those provided by the private sector. Public authorities in Northern Ireland, however, are under a duty to have due regard to the need to promote equality of opportunity between persons of different racial groups and are also under a duty to have regard to the desirability of promoting good relations between persons of different racial groups.

Positive action

Employers and training bodies can take **positive action** to help members of under-represented racial groups compete on equal terms with others in the labour market.

An employer or training body may, for example, encourage members of a particular racial group to apply for particular work; or may provide a particular racial group with access to facilities for training to help to fit them for particular work. These provisions apply where a particular racial group is under-represented in that work.

The Order also permits the granting of facilities and services to a particular racial group in order to meet the special needs of persons in that group with regard to their education, training or welfare.

Making a complaint

People who believe that they have been subjected to racial discrimination in employment have the right to make a complaint to an Industrial Tribunal. Complaints about discrimination in other fields covered by the Order are heard in the County Court.

Anyone who believes they may have been the victim of unlawful discrimination should seek advice as soon as possible, as **time limits** apply to legal proceedings.

In most cases, complaints relating to discrimination in **employment** should be made to an **Industrial Tribunal** within **3 months** of the date of the act of discrimination. In certain exceptional cases, the tribunal might extend this deadline, but simply not knowing that there were deadlines is insufficient reason for an extension of the deadlines. Complainants should seek advice as soon as possible.

Complaints relating to discrimination in the field of goods, facilities, services and premises must be made to the **County Court** within **6 months** of the date the discrimination took place.

Complaints about racial discrimination in **education** must be made to the County court, normally within 6 months. In certain cases, a complaint must first go to the Department of Education for Northern Ireland.

The Equality Commission can provide **free and confidential advice and assistance** to people who believe that they have been discriminated against for a reason related to their race. Assistance by the Equality Commission ranges from simply giving advice to arranging for legal representation in some cases. The Equality Commission does not decide whether discrimination has in fact occurred; this is for an independent Industrial Tribunal or Court to decide.

Help for employers and service providers

The Equality Commission provides free general advice to employers and service providers on recommended good practice under the race legislation and Codes of Practice. It can also provide free training to employers on race issues and has a range of information leaflets to help employers and service providers understand their responsibilities in this area. The Commission also has a library service which is available to the general public.

Further information

The following publications are all available free of charge from the Equality Commission:

- *Code of Practice for employers for the elimination of racial discrimination and the promotion of equality of opportunity in employment*
- *Racial Equality – Advice and Assistance*
- *Racial Discrimination – How can we help?*
- *Model Equal Opportunities Policy*
- *Model Harassment Policy and Procedure*
- *Racial Harassment at Work – What Employers Can Do About It*

The Equality Commission also provides a wide range of publications in other areas of equality and discrimination law:

- Religious and Political opinion discrimination
- Sex discrimination and Equal Pay
- Disability discrimination
- Sexual Orientation discrimination
- Statutory duty on the public sector

For full details, see our website – **www.equalityni.org** or contact our Information and Advice team.

Contacting the Commission

If you need help or advice or would like to find out more about the Equality Commission and its work, contact us at

The Equality Commission for Northern Ireland
Equality House
7-9 Shaftesbury Square
Belfast
BT2 7DP

Telephone: 028 90 500 600

Fax: 028 90 248 687

Textphone: 028 90 500 589

Email: information@equalityni.org

Website: www.equalityni.org

You can also use **Typetalk** to contact us.

