

Equality Commission

FOR NORTHERN IRELAND

Code of Practice for employers

Code of Practice for the elimination of Racial Discrimination and the promotion of equality of opportunity in employment

**Issued under the Race Relations (Northern Ireland) Order 1997.
First published by the Commission for Racial Equality for
Northern Ireland in August 1999.**

**Reproduced for website publication by the Equality Commission
for Northern Ireland.**

Code of Practice (for employers) for the elimination of Racial Discrimination and the promotion of equality of opportunity in employment

IMPORTANT NOTICE

This Code of Practice was first published in August 1999 by the former Commission for Racial Equality for Northern Ireland (CRENI). In October 1999, the Equality Commission for Northern Ireland was established and it took over all the powers and functions previously exercised by the CRENI. All references to 'Commission' in this document should, therefore, be interpreted as referring to the Equality Commission.

This Code of Practice was issued pursuant to Article 45(1)(a) and (b) of the Race Relations (Northern Ireland) Order 1997. The Code came into effect by order of the Department of Economic Development on 2 August 1999. The former CRENI acknowledged the assistance of the Commission for Racial Equality (Great Britain) in the preparation of the Code.

Changes to the Race Relations (NI) Order 1997

Since this Code was approved and published, there have been significant changes to the Race Relations (NI) Order 1997 and other anti-discrimination law. Changes were required to implement the EU Race and Framework Employment Directives. The text of the original Code remains unchanged but some important changes are highlighted in footnotes. While the good practice guidance in this document still stands, readers should ensure that they take advice from the Equality Commission (or from another professional body) about changes to race discrimination law since 1999 before relying on the content.

The Equality Commission provides free and confidential information and advice for employers, service providers and employees about their obligations and rights under race discrimination law. The Commission's statutory remit also covers age, sex, disability, religious belief, political opinion and sexual orientation. For further guidance on any aspect of the legislation or the contents of this Code, please contact the Commission's Enquiry Line – 028 90 890 890 or information@equalityni.org or via website www.equalityni.org

CONTENTS	Page
PART 1	
Introduction	6
Purpose and status of the Code	6
Application of the Code	7
Small firms	7
Unlawful discrimination	8
The Code and good employment practice	9
Positive action	9
PART 2	
The Responsibilities of Employers	10
Equal Opportunities policies	10
Sources of recruitment	11
Sources for promotion and training	12
Selection procedures	13
Treatment of applicants	14
Genuine occupational qualifications	15
Transfers and training	15
Dismissal (including redundancy) and other detriment	16
Performance appraisals	16

Terms of employment, benefits, facilities and services	16
Grievance disputes and disciplinary procedures	17
Cultural and religious needs	17
Communications and language training for employees	18
Instructions and pressure to discriminate	19
Victimisation	20
Monitoring equality of opportunity	20
Positive action	22

PART 3

The Responsibilities of Individual Employees	24
---	-----------

PART 4

The Responsibilities of Trade Unions	26
---	-----------

Admission of members	26
Treatment of members	26
Disciplining members who discriminate	27
Positive action	27
Training and information	28
Pressure to discriminate	29
Victimisation	29

Avoidance of discrimination	29
Trade Union involvement in equality of opportunity	30
PART 5	
The Responsibilities of Employment Agencies	31
Useful Addresses	34

PART 1

INTRODUCTION

Purpose and Status of the Code

This Code, which has been prepared by the Commission for Racial Equality for Northern Ireland¹ (the 'Commission'), aims to give practical guidance which will help employers, trade unions, employment agencies and employees to understand not only the provisions of the Race Relations (Northern Ireland) Order 1997 ('the Order'), but also how best they can implement policies to eliminate racial discrimination and to enhance equality of opportunity

The Code does not impose any legal obligations itself, nor is it an authoritative statement of the law - that can only be provided by the courts and tribunals. However, its provisions are admissible in evidence in any proceedings under the Order before an industrial tribunal and, if any provision appears to the tribunal to be relevant to a question arising in the proceedings, it must be taken into account in determining that question. If employers take the steps that are set out in the Code to prevent their employees from doing acts of unlawful discrimination, they may avoid liability for such acts in any legal proceedings brought against them.

Employees of all racial groups have a right to equality of opportunity. Employers ought to provide it. To do so is likely to involve some expenditure, at least in staff time and effort. But if a coherent and effective equal opportunities programme is developed it will help industry to make full use of the abilities of its entire workforce. It is therefore particularly important for all those concerned - employers, trade unions and employees alike - to co-operate with goodwill in adopting and giving effect to measures for securing such equality.

¹This code of practice was published by the Commission for Racial Equality for Northern Ireland in August 1999. In October 1999, the functions and powers previously exercised by the CRENI were taken over by the Equality Commission for Northern Ireland. All references to "the Commission" in this document should therefore be taken to mean the "Equality Commission for Northern Ireland".

We welcome the commitment already made by the CBI and NIC/ICTU to the principle of equality of opportunity. The NIC/ICTU has been actively involved in promoting equality of opportunity at work for many years. Many of its affiliates have negotiated equal opportunities statements with employers. Given the introduction of the Order and the establishment of the Commission, the NIC/ICTU has recommended to affiliates that they should take the earliest opportunity to review their agreements to include racial equality. The CBI has published a statement favouring the application by companies of constructive equal opportunities policies.

A concerted policy to eliminate discrimination on grounds of race, religion or politics, sex and disability often provides the best approach. Guidance on equality of opportunity between men and women is the responsibility of the Equal Opportunities Commission for Northern Ireland. Guidance on religious or political discrimination in employment is the responsibility of the Fair Employment Commission. Guidance on discrimination on grounds of disability is available from the Northern Ireland Disability Council².

Application of the Code

The Order applies to all employers. The Code itself is not restricted to what is required by law but contains recommendations as well. Some of its detailed provisions may need to be adapted to suit particular circumstances. Any adaptations that are made, however, should be fully consistent with the Code's general intentions.

Small firms

In many small firms employers have close contact with their staff and therefore there is less need for formality in assessing whether equality of opportunity is being achieved. However, note the obligations on employers to register, monitor and review under fair employment legislation. In complying with the Order small firms should ensure that their practices are

² On 1 October 1999, the Equality Commission took over all functions and powers previously exercised by the Equal Opportunities Commission, the Fair Employment Commission, the Commission for Racial Equality for NI and for the NI Disability Council. The Equality Commission is also responsible for the legislation on age and sexual orientation.

consistent with the Code's general intentions. If in doubt, check with the Commission.

Unlawful discrimination

The Order makes it unlawful to discriminate against a person, directly or indirectly, in the field of employment.

Direct discrimination consists of treating a person, on racial grounds³, less favourably than others are or would be treated in the same or similar circumstances.

Segregating a person from others on racial grounds constitutes less favourable treatment.

Indirect discrimination⁴ consists of applying, in any circumstances covered by the Order, a requirement or condition which, although applied equally to persons of all racial groups, is such that a considerably smaller proportion of a particular racial group can comply with it, it cannot be shown to be justifiable on other than racial grounds and it is to the individual's detriment. Possible examples are:

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

The definition of indirect discrimination is complex and it will not be spelt out in full in every relevant section of the Code. Reference will only be made to the terms 'indirect discrimination' or 'discriminate indirectly'.

³ Racial grounds are the grounds of race, colour, nationality - including citizenship - or ethnic or national origin. Groups defined by reference to these grounds are referred to as racial groups as are persons belonging to the Irish Traveller community.

⁴ Please note that the definition of indirect discrimination was changed by the Race Relations Order (Amended) Regulations (Northern Ireland) 2003. Since 2003, harassment has also been defined explicitly in the legislation. For more information contact the Equality Commission.

Discrimination by **victimisation** is also unlawful under the Order. For example, a person is victimised if he or she is given less favourable treatment than others in the same circumstances because it is suspected or known that he or she has brought proceedings under the Order, or given evidence or information relating to such proceedings, or alleged that discrimination has occurred.

The Code and good employment practice

Many of the Code's provisions show the close link between equality of opportunity and good employment practice. For example, selection criteria which are relevant to job requirements and carefully observed selection procedures not only help to ensure that individuals are appointed according to their suitability for the job without regard to racial group, they are also good employment practice. In the absence of consistent selection procedures and criteria, decisions are often too subjective and there is greater potential for racial discrimination to occur.

Positive action

Opportunities for employees to develop their potential through encouragement, training and careful assessment are also part of good employment practice. Many employees from racial minorities have potential which, perhaps because of previous discrimination and other causes of disadvantage, they have not been able to realise and which is not reflected in their qualifications and experience. Where members of particular racial groups have been under-represented over the previous twelve months in particular work, employers and training bodies are allowed, under the Order, to encourage them to take advantage of opportunities for doing that work and to provide training to enable them to attain the skills needed for it. In the case of employers, such training can be provided for persons currently in their employment (as defined by the Order) and in certain circumstances for others too, for example training bodies. This Code encourages employers to make use of these provisions, which are covered in detail in paragraphs 2.41 and 2.42.

PART 2

THE RESPONSIBILITIES OF EMPLOYERS

- 2.1 Responsibility for providing and maintaining equality of opportunity for all job applicants and employees rests primarily with employers. To this end it is recommended that they should adopt, implement and monitor an equal opportunities policy to ensure that equality of opportunity is genuinely available.
- 2.2 This policy should be clearly communicated to all employees e.g. through notice boards, circulars, contracts of employment, written notifications to individual employees and by way of race awareness training.
- 2.3 An equal opportunities policy aims to ensure that:
 - a. no job applicant or employee receives less favourable treatment than another on racial grounds;
 - b. no applicant or employee is placed at a disadvantage by requirements or conditions which have a disproportionately adverse effect on his or her racial group and which cannot be shown to be justifiable;
 - c. where appropriate, and where permissible under the Order, employees of under-represented racial groups are given training and encouragement to achieve equality of opportunity within the organisation.
- 2.4 It is important to maintain a working environment which is free from racism and racial harassment. In order to ensure that an equal opportunities policy is fully effective, the following action by employers is recommended:
 - a. allocating overall responsibility for the policy to a member of senior management;
 - b. discussing and agreeing with the recognised trade union or employee representatives, as appropriate, the policy's contents and implementation;

- c. ensuring that the policy is made known to all employees and, if possible, to all job applicants;
- d. providing training and guidance for staff to ensure that they understand their position in law and under company policy;
- e. making it clear that breaches of policy and practice will be regarded as misconduct and could lead to disciplinary proceedings;
- f. examining and regularly reviewing existing procedures and criteria and changing them where they find that they are actually or potentially unlawfully discriminatory;
- g. promoting a good and harmonious working environment and atmosphere free from racism and racial harassment;
- h. making an initial analysis of the workforce and regularly monitoring the application of the policy with the aid of analyses of the ethnic origins of the workforce and of job applicants in accordance with the guidance in paragraphs 2.35 – 2.36.

Sources of recruitment

Advertising

2.5 When advertising job vacancies **it is unlawful** for employers to publish an advertisement which indicates, or could reasonably be understood to indicate, an intention to discriminate against applicants from a particular racial group. (For exceptions and further guidance contact the Commission)

2.6 It is therefore recommended that:

- a. employers should not confine advertisements unjustifiably to those areas or publications which would exclude or disproportionately reduce the numbers of applicants of a particular racial group;
- b. employers should ensure that any requirement or condition is job related and can be justified. Where a particular qualification is required, employers should accept a qualification of an equivalent standard obtained overseas.

- 2.7 In order to demonstrate their commitment to equality of opportunity it is recommended that, where employers send literature to applicants, this should include a statement that they are an equal opportunities employer, or are working to become an equal opportunities employer.

Employment Agencies

- 2.8 When recruiting through employment agencies, T&EA offices, and schools **it is unlawful** for employers:
- a. to give instructions to discriminate, for example by indicating that certain groups will or will not be preferred;
 - b. to bring pressure on them to discriminate against members of a particular racial group. (For exceptions and further guidance contact the Commission)

Other Sources

- 2.9 **It is unlawful** to use recruitment methods which exclude or disproportionately reduce the numbers of applicants of a particular racial group and which cannot be shown to be justifiable. It is therefore recommended that employers should not recruit through the following methods:
- a. the recommendations of existing employees;
 - b. procedures by which applicants are mainly or wholly supplied through trade unions where this means that only members of a particular racial group, or a disproportionately high number of them, come forward.

Sources for promotion and training

- 2.10 **It is unlawful** for employers to restrict access to opportunities for promotion or training in a way which is discriminatory. It is therefore recommended that:

- a. job and training vacancies should be made known to all eligible employees, and not in such a way as to exclude or disproportionately reduce the number of applicants from a particular racial group;
- b. employers seek employees through the use of media which is accessible to all potential applicants.

Selection procedures

2.11 It is unlawful to discriminate

- a. in recruitment and in the arrangements made for determining who should be offered employment;
- b. in promotion, transfer and training and in the ways of affording access to opportunities for promotion, transfer or training.

Selection criteria and tests

2.12 In order to avoid direct or indirect discrimination, it is recommended that selection criteria and tests are examined to ensure that they are related to job requirements and are not unlawfully discriminatory. For example:

- a. a standard of English or a clearly demonstrable career pattern higher than that needed for the safe and effective performance of the job should not be required, or a higher level of education qualification than is needed;
- b. in particular, employers should not disqualify applicants because they are unable to complete an application form unassisted unless personal completion of the form is a valid test of the standard of English required for safe and effective performance of the job;
- c. overseas degrees, diplomas and other qualifications which are of an equivalent standard to UK qualifications should be accepted as such;

- d. selection tests which contain irrelevant questions or exercises on matters which may be unfamiliar to racial minority applicants should not be used (for example, general knowledge questions on matters more likely to be familiar to indigenous applicants);
- e. selection tests should be checked to ensure that they are related to the job's requirements, i.e. an individual's test marking should measure ability to do or train for the job in question. (For further information contact the Commission)

Treatment of applicants

Shortlisting, interviewing and selection

2.13 In order to avoid direct or indirect discrimination it is recommended that:

- a. staff should be instructed not to treat applicants from particular racial groups less favourably than others. Accepting application forms in response to casual requests when no job vacancies exist can create problems and this practice should be avoided. These instructions should be confirmed in writing;
- b. a job description (including job title, duties and responsibilities, conditions of work, pay, prospects, etc) and a personnel specification (including educational standards/qualifications (essential and preferred), training (essential and preferred), etc) should be prepared before recruitment commences;
- c. staff responsible for shortlisting, interviewing and selecting candidates should be:
 - agreed on the selection criteria and of the need for their consistent application
 - given guidance on training on the effects which generalised assumptions and prejudices about race can have on selection decisions
 - made aware of the possible misunderstandings that can occur in interviews between persons of different cultural background;

- d. shortlisting, interviewing and selection panels should comprise two or more people.

Genuine occupational qualifications

- 2.14 Selection on racial grounds is allowed in certain jobs where being of a particular racial group is a genuine occupational qualification⁵ for that job. An example is where the holder of a particular job provides persons of a racial group with personal services promoting their welfare, and those services can most effectively be provided by a person of that group.

Transfers and training

- 2.15 In order to avoid direct or indirect discrimination it is recommended training that:

- a. staff responsible for selecting employees for transfer or other jobs should be instructed to apply selection criteria without unlawful discrimination;
- b. industry or company agreements and arrangements of custom and practice on job transfers should be examined and amended if they are found to contain requirements or conditions which appear to be indirectly discriminatory. For example, if employees of a particular racial group are concentrated in particular sections, the transfer arrangements should be examined to see if they are unjustifiably and unlawfully restrictive and amended if necessary;
- c. staff responsible for selecting employees for training, whether induction, promotion or skill training should be instructed not to discriminate on racial grounds and appropriate training should be provided;
- d. selection criteria for training opportunities should be examined to ensure that they are not indirectly discriminatory.

⁵ Since the Race Relations Order was amended in 2003, also referred to as 'genuine occupational requirement'. For further information contact the Equality Commission.

Dismissal (including redundancy and other detriment)

2.16 **It is unlawful** to discriminate on racial grounds in dismissal, or by subjecting an employee to any other detriment. It is therefore recommended that:

- a. staff responsible for selecting employees for dismissal, including redundancy, should be instructed not to discriminate on racial grounds;
- b. selection criteria for redundancies should be examined to ensure that they are not indirectly discriminatory.

Performance appraisals

2.17 **It is unlawful** to discriminate on racial grounds in appraisals of employee performance.

2.18 It is recommended that:

- a. staff responsible for performance appraisals should be instructed not to discriminate on racial grounds;
- b. assessment criteria should be examined to ensure that they are not unlawfully discriminatory.

Terms of employment, benefits, facilities and services

2.19 **It is unlawful** to discriminate on racial grounds in the terms of employment which are afforded and in the provision of benefits, facilities and services for employees.

It is therefore recommended that:

- a. all staff concerned with these aspects of employment should be instructed accordingly;
- b. the criteria governing eligibility should be examined to ensure that they are not unlawfully discriminatory.

2.20 In addition, employees may request extended leave from time to time in order to visit relatives in their countries of origin or who have emigrated to other countries. Many employers have policies that allow annual leave entitlement to be accumulated, or extra unpaid leave to be taken to meet these circumstances. Employers should take care to apply such policies consistently and without unlawful discrimination.

Grievance, disputes and disciplinary procedures

2.21 **It is unlawful** to discriminate in the operation of grievance disputes and disciplinary procedures, for example by victimising an individual through disciplinary measures because he or she has complained of racial discrimination, or given evidence about such a complaint. Employers should not ignore or treat lightly grievances for members of particular racial groups on the assumption that they are over-sensitive about discrimination. (For further guidance on dealing with racial harassment see the Commission's Model Harassment Policy and Procedure.)

2.22 It is recommended that in applying disciplinary procedures consideration should be given to the possible effect on an employee's behaviour of the following:

- racial abuse or other racial provocation
- communication and comprehension difficulties
- differences in cultural background or customs.

Cultural and religious needs

2.23 Where employees have particular cultural and religious needs which conflict with existing work requirements, it is recommended that employers should consider whether it is reasonably practicable to vary or adapt these requirements to enable such needs to be met. For example, it is recommended that they should not refuse employment to a turbaned Sikh because he could not comply with unjustifiable uniform requirements.⁶

⁶ Article 13 of the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1990 exempts turban wearing Sikhs from any requirements to wear safety helmets on a construction site. Where a turban wearing Sikh is injured on a construction site liability for injuries is restricted to the injuries that would have been sustained if the Sikh had been wearing a safety helmet.

Other examples of such needs are:

- observance of prayer times and religious holidays
- wearing of dress such as saris or the trousers worn by Asian women.

2.24 Although the Order does not specifically cover religious discrimination, work requirements would generally be unlawful if they have a disproportionately adverse effect on particular racial groups and cannot be shown to be justifiable.⁷ The provisions of the Fair Employment and Treatment legislation apply in cases of religious discrimination.

Communications and language training for employees

2.25 Although there is no legal requirement to provide language training, difficulties in communication can create barriers to the provision of equality of opportunity in the workplace. Good communications can improve efficiency, promotion prospects, health and safety and create a better understanding between employers, employees and unions. Where the workforce includes current employees whose English is limited it is recommended that steps are taken to ensure that communications are as effective as possible.

2.26 These should include, where reasonably practicable:

- a. provision of interpretation and translation facilities, for example, in the communication of grievance and other procedures, and in terms of employment;
- b. training in English language and in communication skills;
- c. training for managers and supervisors in the background and culture of racial groups;

⁷ Genuinely necessary safety requirements may not constitute unlawful discrimination.

- d. the use of alternative or additional methods of communication, where employees find it difficult to understand health and safety requirements, for example:
- translations of safety signs and notices
 - instructions through interpreters
 - instruction combined with industrial language training
- e. training in equal opportunities and in relation to terms and conditions of employment.

Instructions and pressure to discriminate

2.27 **It is unlawful** to instruct or put pressure on others to discriminate on racial grounds.

a. An example of unlawful instruction is:

- an instruction from a personnel or line manager to junior staff to restrict the numbers of employees from a particular racial group in any particular work

b. An example of pressure to discriminate is:

- an attempt by a shop steward or group of workers to induce an employer not to recruit workers of particular racial groups, for example by threatening industrial action.

2.28 **It is also unlawful** to discriminate in response to such instructions or pressure.

2.29 To avoid unlawful instructions and pressure to discriminate it is recommended that:

- a. guidance should be given to all employees, and particularly those in positions of authority or influence, on the relevant provisions of the law and on company policy for assisting those coming under such pressure;

- b. decision-makers should be instructed not to give way to pressure to discriminate;
- c. giving instructions or bringing pressure to discriminate should be treated as a serious disciplinary offence.

Victimisation

- 2.30 **It is unlawful** to victimise individuals who have made allegations or complaints of racial discrimination or provided information about such discrimination, for example, by disciplining them or dismissing them.
- 2.31 It is recommended that guidance on this aspect of the law should be given to all employees and particularly to those in positions of influence or authority.

Monitoring equality of opportunity

- 2.32 Whilst it is not a legal requirement of the Order, it is recommended that employers should regularly monitor the outcome of selection decisions and effects of personnel practices and procedures in order to assess whether equality of opportunity is being achieved.
- 2.33 The information needed for effective monitoring may be obtained in a number of ways. It will best be provided by records showing the racial groupings of existing employees and job applicants. It is recognised that the need for detailed information and the methods of collecting it will vary according to the circumstances of individual establishments. For example in small firms a simple method of collecting the information would suffice. The Commission recommends that the following categories are used:

Bangladeshi
Black African
Black Caribbean
Chinese
Indian
Irish Traveller
Pakistani
White

Mixed ethnic group
Other (please specify)
Nationality (please specify)

For further assistance contact the Commission⁸.

- 2.34 It is open to employers to adopt the method of monitoring which is best suited to their needs and circumstances but, whichever method is adopted, they should be able to show that it is effective. In order to achieve the full commitment of all concerned, the chosen method should be discussed and agreed, where appropriate, with trade union or employee representatives.
- 2.35 Employers should ensure that information on individuals' racial groups is collected for the purpose of equal opportunities monitoring only, is confidential and is protected from misuse.
- 2.36 The following is the comprehensive method recommended by the Commission.

Analyses should be carried out of:

- a. the racial composition of the workforce of each premises under each of the following major groups of the Standard Occupational Classification as specified in the Index for Classifying Job Titles published by the Department of Economic Development in December 1989:
 - 1 Managers and administrators
 - 2 Professional occupations
 - 3 Associate professional and technical occupations
 - 4 Clerical and secretarial occupations
 - 5 Crafts and skilled manual occupations
 - 6 Personal and protective service occupations
 - 7 Sales occupations
 - 8 Plant and machine operatives
 - 9 Other occupations

⁸ Monitoring practices have developed considerably since this Code was first published in 1999. The Equality Commission can provide guidance on monitoring job applicants and employees on the range of grounds covered by equality legislation. Contact the Commission's enquiry line – 028 90 890 890.

- b. selection decisions for recruitment, promotion, transfer and training, by the racial group of candidates, and reasons for these decisions.

2.37 Reasons for selection and rejection should be recorded at each stage of the selection process.

2.38 Selection criteria and personnel procedures should be reviewed regularly to ensure that they do not include requirements or conditions that constitute or may lead to unlawful indirect discrimination.

2.39 This information should be carefully and regularly analysed and, in order to identify areas that may need particular attention, a number of key questions should be asked. Is there evidence that individuals from any particular racial group:

- a. do not apply for employment or promotion, or that fewer apply than might be expected?
- b. are not recruited or promoted at all, or are appointed in a significantly lower proportion than their rate of application?
- c. are under-represented in training or in jobs carrying higher pay, status or authority?
- d. are concentrated in certain shifts, sections or departments?

2.40 If the answer to any of these questions is yes, the reasons for this should be investigated. If direct or indirect discrimination is found, action must be taken to end it immediately. It is recommended that acts of unlawful discrimination by employees are treated as disciplinary offences.

Positive action

2.41 Although they are not legally required, positive measures are allowed by the law to encourage employees and potential employees and to provide training for employees who are members of particular racial groups which have been under-represented in particular work. Discrimination at the point of selection for work, however, is not permissible in these circumstances.

2.42 Positive action measures are important for the development of equality of opportunity. It is therefore recommended that, where there is under-representation of particular racial groups in particular work, the following measures should be taken wherever appropriate and reasonably practicable:

- a. use job advertisements designed to attract members of racial groups and encourage their applications. Advertisements could include a statement that applications are particularly welcomed from the appropriate under-represented racial group;
- b. use recruitment and training schemes for school leavers designed to reach members of racial groups;
- c. encourage employees from minority ethnic groups to apply for promotion or transfer opportunities;
- d. provide training for promotion or particular skills for employees from racial groups who lack particular expertise but show potential: supervisory training may include language training.

The Commission can provide a list of contacts for those employees who wish to contact minority ethnic communities in Northern Ireland.⁹

⁹ The Commission can also provide guidance and advice on taking positive action. Contact our enquiry line – 028 90 890 890.

PART 3

THE RESPONSIBILITIES OF INDIVIDUAL EMPLOYEES

- 3.1 While the primary responsibility for providing equality of opportunity rests with the employer, individual employees at all levels and of all racial groups have responsibilities too. Good race relations depend on them as much as on management, and so their attitudes and activities are very important.
- 3.2 The following actions by individual employees would be **unlawful**:
- a. discrimination in the course of their employment against fellow employees or job applicants on racial grounds, for example, in selection decisions for recruitment, promotion transfer and training;
 - b. racial harassment;
 - c. inducing or attempting to induce other employees, unions or management to practise unlawful discrimination. For example, they should not refuse to accept other employees from particular racial groups or refuse to work with a supervisor of a particular racial group;
 - d. victimising individuals who have made allegations or complaints of racial discrimination or provided information about such discrimination.
- 3.3 To assist in preventing racial discrimination, including harassment, and promoting equality of opportunity it is recommended that individual employees should:
- a. co-operate in measures introduced by management designed to ensure equality of opportunity and non-discrimination and to create a good and harmonious working environment free from racism and racial harassment;
 - b. where such measures have not been introduced, press for their introduction (through trade unions where appropriate);

- c. draw the attention of management and, where appropriate, trade unions to suspected discriminatory acts or practices;
- d. refrain from harassment or intimidation of other employees on racial grounds, for example, by attempting to discourage them from continuing employment.

Responsibilities of individual employees from racial groups

3.4 In addition to the responsibilities set out above, individual employees from racial groups should recognise that in many occupations advancement may be dependent on an appropriate standard of English. Similarly an understanding of the industrial relations procedures which apply is often essential for good working relationships.

3.5 They should therefore:

- a. where appropriate, seek to improve their standards of English;
- b. co-operate in industrial language training schemes introduced by employers and/or unions;
- c. co-operate in training or other schemes designed to inform them of any industrial relations procedures, company agreements, work rules, etc;
- d. where appropriate, participate in discussions with employers and unions, to find solutions to conflicts between cultural or religious needs or customs and operational requirements.

PART 4

THE RESPONSIBILITIES OF TRADE UNIONS

- 4.1 Trade unions, in common with a number of other organisations, have a dual role as employers and providers of services specifically covered by the Order.
- 4.2 In their role as employer, unions have the responsibilities set out in Part 2 of the Code. They also have a responsibility to ensure that their representatives and members do not discriminate against any particular racial group in the admission or treatment of members, or as colleagues, supervisors or subordinates.
- 4.3 In addition, trade union officials at national, regional and local level and shop floor representatives have an important part to play on behalf of their members in preventing unlawful discrimination and in promoting equality of opportunity and good race relations. Trade unions should encourage and press for equal opportunities policies so that measures to prevent discrimination in the workplace can be introduced with the clear commitment of both management and trade unions.

Admission of members

- 4.4 **It is unlawful** for trade unions to discriminate on racial grounds:
- a. by refusing membership;
 - b. by offering less favourable terms of membership.

Treatment of members

- 4.5 **It is unlawful** for trade unions to discriminate on racial grounds against existing members:
- a. by varying their terms of membership, depriving them of membership or subjecting them to any other detriment;
 - b. by treating them less favourably in the benefits, facilities or services provided. These may include:

- training
- welfare and insurance schemes
- entertainment and social events
- negotiations
- advice, representation and assistance in disciplinary or dismissal procedures.

4.6 In addition, it is recommended that unions ensure that in cases where members of particular racial groups believe that they are suffering racial discrimination, complaints are taken seriously and dealt with immediately and any discrimination which may be occurring place is stopped.

Disciplining members who discriminate

4.7 It is recommended that acts of unlawful discrimination by union members are treated as a disciplinary offence.

Positive action

4.8 Although they are not legally required, positive measures are allowed by the law to encourage and provide training for members of particular racial groups which have been under-represented¹⁰ in trade union membership or in trade union posts. Discrimination at the point of selection, however, is not permissible in these circumstances.

¹⁰ A racial group is under-represented in trade union membership if, at any time during the previous twelve months, no person of that group was a member, or there were disproportionately few in comparison with the proportion of persons of that group among those eligible for membership.

4.9 It is recommended that, wherever appropriate and reasonably practicable, trade unions should:

- a. encourage individuals from these groups to join the union. Where appropriate, recruitment material should be translated into the main languages of the racial groups here in Northern Ireland;
- b. encourage individuals from these groups to apply for union posts and provide training to help fit them for such posts.

Training and information

4.10 Training and information play a major part in the avoidance of discrimination and the promotion of equality of opportunity. It is recommended that trade unions should:

- a. provide training and information for officers, shop stewards and representatives on their responsibilities for equal opportunity. This training should cover:
 - the Order and the nature of causes of discrimination
 - the backgrounds of racial minority groups and communication needs
 - the effects of prejudice
 - avoiding discrimination when representing members.
- b. ensure that members and representatives, whatever their racial group, are informed of their role in the union, and of industrial relations and union procedures and structures. This may be done, for example:
 - through the translation of material
 - through encouraging participation in industrial relations courses and industrial language training.

Pressure to discriminate

4.11 **It is unlawful** for trade union members or representatives to induce or to attempt to induce those responsible for employment decisions to discriminate:

- a. in the recruitment, promotion, transfer, training or dismissal of employees;
- b. in the terms of employment, benefits, facilities or services.

4.12 For example, they should not:

- a. restrict the numbers of a particular racial group in a section, grade or department;
- b. resist changes designed to remove indirect discrimination, such as those in craft apprentice schemes, or in agreements concerning seniority rights or mobility between departments.

Victimisation

4.13 **It is unlawful** to victimise individuals who have made allegations or complaints of racial discrimination, are suspected of having done so or have provided information about such discrimination.

Avoidance of discrimination

4.14 Where unions are involved in selection decisions for recruitment, promotion, training or transfer, for example through recommendation or veto, **it is unlawful** for them to discriminate on racial grounds.

4.15 It is recommended that they should instruct their members accordingly and examine their procedures and joint agreements to ensure that they do not contain indirectly discriminatory requirements or conditions, such as:

- unjustifiable restrictions on transfers between departments
- irrelevant and unjustifiable selection criteria which have a disproportionately adverse effect on particular racial groups.

Trade union involvement in equality of opportunity

4.16 It is recommended that:

- a. unions should co-operate in the introduction and implementation of equal opportunities and anti-harassment policies and procedures; (see paragraphs 2.3 and 2.4)
- b. unions should negotiate the adoption of such policies where they have not been introduced or the extension of existing policies where these are too narrow as well as organisational-wide racial awareness training programmes;
- c. unions should co-operate with measures to monitor the progress of equal opportunities policies, or encourage management to introduce them where they do not already exist. Where appropriate (see paragraphs 2.32 – 2.40) this may be done through analysis of the distribution of employees and job applicants according to racial grouping;
- d. where monitoring shows that there is a lack of equality of opportunity, unions should co-operate in measures to tackle it;
- e. although positive action is not legally required, unions should encourage management to take positive action where there is under-representation of particular racial groups in particular jobs, and where management itself introduces positive action, unions should support it;
- f. similarly, where there are communication difficulties, management should be asked to take whatever action is appropriate to overcome them.

PART 5

THE RESPONSIBILITIES OF EMPLOYMENT AGENCIES

- 5.1 Employment agencies, in their role as employers, have the responsibilities outlined in Part 2 of the Code. In addition, they have responsibilities as suppliers of job applicants to other employers.
- 5.2 **It is unlawful** for employment agencies
- a. to discriminate on racial grounds in providing services to clients;
 - b. to publish job advertisements indicating, or which might be understood to indicate, that applications from any particular group will not be considered or will be treated more favourably or less favourably than others;
 - c. to act on directly discriminatory instructions from employers to the effect that applicants from a particular racial group will be rejected or preferred or that their numbers should be restricted;
 - d. to act on indirectly discriminatory instructions from employers i.e. that requirements or conditions should be applied that would have a disproportionately adverse effect on applicants of a particular racial group and which cannot be shown to be justifiable.

(For exceptions contact the Commission)

- 5.3 It is recommended that agencies should also avoid indicating such conditions or requirements in job advertisements unless they can be shown to be justifiable. Examples in each case may be those relating to educational qualifications or residence.
- 5.4 It is recommended that staff should be given guidance on their duty not to discriminate and on the effect which generalised assumptions and prejudices can have on their treatment of members of particular racial groups. This could include anti-racism and racial awareness training.

- 5.5 In particular, staff should be instructed:
- a. not to ask employers for racial preferences;
 - b. not to draw attention to racial origin when recommending applicants unless the employer is trying to attract applicants of a particular racial group under the exceptions in the Order;
 - c. to report to a supervisor a client's refusal to interview an applicant for reasons that are directly or indirectly discriminatory. The supervisor should inform the client that discrimination is unlawful. If the client still refuses the agency should inform the applicant of his or her right to complain to an industrial tribunal, of the time limits which apply and to apply to the Commission for assistance. There should be an internal procedure for recording such cases;
 - d. to inform their supervisor if they believe that an applicant, though interviewed, has been rejected on racial grounds. If the supervisor is satisfied that there are grounds for this belief, he or she should arrange for the applicant to be informed of the right to complain to an industrial tribunal and to apply to the Commission for assistance. An internal procedure for recording such cases should be operated;
 - e. to treat job applicants without discrimination. For example, they should not send applicants from particular racial groups to only those employers who are believed to be willing to accept them, or restrict the range of job opportunities for such applicants because of assumptions about their abilities based on race, colour, ethnic or national origins, or nationality.
- 5.6 It is recommended that employment agencies should discontinue their services to employers who give unlawful discriminatory instructions and who refuse to withdraw them.
- 5.7 Regardless of whether employment agencies recruit from the labour market as a whole or from some form of register, careful regard should be paid to the active promotion of equality of opportunity.
- 5.8 It is recommended that employment agencies should monitor the effectiveness of the measures they take for ensuring that no unlawful

discrimination occurs. For example, where reasonably practicable they should make periodic checks to ensure that applicants from particular racial groups are being referred for suitable jobs for which they are qualified at a similar rate to that for other comparable applicants. The Commission recommends that the following categories are used:

- Bangladeshi
- Black African
- Black Caribbean
- Chinese
- Indian
- Irish Traveller
- Pakistani
- White
- Mixed Ethnic group
- Other (please specify)
- Nationality (please specify)

[PLEASE NOTE: The Equality Commission can provide further advice and guidance to employment agencies on all aspects of recruitment and selection good practice under race relations law and other anti-discrimination law.]

Useful Addresses

Equality Commission for Northern Ireland

7-9 Shaftesbury Square

Belfast

BT2 7DP

Tel: 028 90 890 890 (enquiry line for information & advice)

Email: information@equalityni.org

www.equalityni.org

Labour Relations Agency

2-8 Gordon Street

Belfast

BT1 2LG

Tel: 028 90 321 442

1-3 Guildhall Street

Londonderry

BT48 6BJ

Tel: 028 71 269 639

Email: info@lra.org.uk

www.lra.org.uk

Multi-Cultural Resource Centre

9 Lower Crescent

Belfast

BT7 1NR

Tel: 028 90 244 639

Email: info@mcrc-ni.org

www.mcrc-ni.org

**Northern Ireland Council
For Ethnic Minorities**

3rd Floor

Ascot House

24-31 Shaftesbury Square

Belfast

BT2 7DB

Tel: 028 90 238 645

Email: info@nicem.org.uk

www.nicem.org.uk

**Office of the Industrial Tribunals
and the Fair Employment Tribunal**

Long Bridge House

20-24 Waring Street

Belfast

BT1 2EB

Tel: 028 90 327 666

Email: mail@employmenttribunalsni.org

www.employmenttribunalsni.co.uk

This Code was first issued in August 1999 – ISBN: 0 9534120 2 4.
Reproduced for website publication by the Equality Commission,
7-9 Shaftesbury Square, Belfast BT2 7DP Tel: 028 90 890 890.