

Statutory

**CODE OF PRACTICE
ON RACIAL EQUALITY
IN EMPLOYMENT**



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1

Introduction

Introduction

- 1.1 This code replaces the statutory *Code of Practice For the Elimination of Racial Discrimination and the Promotion of Equality of Opportunity in Employment*, issued by the Commission for Racial Equality (CRE) in 1984 under the Race Relations Act 1976 (RRA).
- 1.2 References in this code to the RRA include all subsequent amending legislation.
- 1.3 The RRA gives the CRE a legal duty to:
 - a. work towards the elimination of racial discrimination and harassment;
 - b. promote equality of opportunity and good relations between people from different racial groups; and
 - c. keep under review the way the RRA is working, and, if necessary, make proposals to the secretary of state for amending it.
- 1.4 Section 47 of the RRA gives the CRE the power to issue codes of practice in the field of employment (see the glossary at Appendix 7), and to give such practical guidance as it sees fit.

Purpose of the code

- 1.5 The purpose of this code is to:
 - a. give employers and principals (referred to in this code as 'employers'; see the glossary at Appendix 7) practical guidance on how to prevent unlawful racial discrimination, and achieve equality of opportunity in the field of employment;
 - b. help employers and others who have duties under the employment provisions of the RRA to understand their responsibilities and rights;
 - c. help lawyers and other advisers to advise their clients;
 - d. give employment tribunals and courts clear guidelines on good equal opportunities practice in employment; and
 - e. make sure anyone who is considering bringing legal proceedings under the RRA, or attempting to negotiate in the workplace, understands the legislation and is aware of good practice in the field of employment.

Status of the code

- 1.6 This code is a statutory code. This means it has been approved by the secretary of state and laid before parliament. The code does not impose any legal obligations.

Nor is it an authoritative statement of the law; only the courts and employment tribunals can provide this. However, the code can be used in evidence in legal proceedings brought under the RRA. Courts and tribunals must take account of any part of the code that might be relevant to a question arising during those proceedings.

- 1.7 Employers are liable for acts of unlawful racial discrimination or harassment by their workers (see the glossary at Appendix 7). However, employers should be able to defend themselves better in any case of alleged racial discrimination brought against the organisation, if they can show they have taken the steps recommended in this code.

Application of the code

- 1.8 The RRA and this code apply to:
 - a. all employers in England, Scotland and Wales, whatever their size, resources or number of workers; Northern Ireland is covered by separate legislation;
 - b. certain organisations, such as employment and recruitment agencies, (including online agencies), trade unions, professional associations, partnerships, accrediting bodies and vocational training organisations, in relation to their role as providers of services specifically covered by the RRA; and
 - c. applicants for employment, workers and former workers.

Public authorities

- 1.9 While the RRA applies to all employers, section 71(1) gives public authorities additional statutory duties (see paras 2.28 – 2.29). The aim is to make the promotion of racial equality central to their work. However, it should be emphasised that much of the guidance and good practice associated with these duties is relevant to all employers.

Smaller organisations

- 1.10 Some employers in smaller organisations may not need detailed procedures, such as some of those recommended in this code; for example, in the arrangements they make to monitor workers and applicants by racial group. The guidance may therefore need to be adapted, occasionally, to suit an organisation's individual circumstances. However, smaller organisations should note that employment tribunals have dismissed the argument that they should make allowance for the size or nature of a business in considering its liability for acts of unlawful racial discrimination or harassment by its workers. It is recommended that smaller organisations make sure their policies and practices are consistent with the RRA, and that they follow the general spirit and intentions of this code.

- 1.11 The CRE has produced a practical guide for this sector: *Racial Equality and the Smaller Business: A practical guide* (see Appendix 6). This guide recognises the heavy demands on the time and resources of smaller organisations, and suggests simple but effective procedures that should help ensure that everyone is treated fairly and equally.

Benefits of the code

- 1.12 This code should help employers to:
- a. understand and meet their legal obligations;
 - b. adopt and put into practice effective policies, designed to prevent unlawful racial discrimination or harassment, and ensure equality of opportunity for all;
 - c. draw on the talents, skills, experience, networks and different cultural perspectives of a diverse workforce;
 - d. create a working environment where people feel they are respected and valued;
 - e. reduce the risks of legal liability, costly and time-consuming grievances and damage to productivity, staff morale and the organisation's reputation; and
 - f. foster good race relations in the workplace.
- 1.13 The code should also help workers and their representatives understand their rights under the RRA, and what constitutes good practice in the field of employment.

Other areas of equality

- 1.14 This code is restricted by the terms of the RRA to matters concerning racial discrimination, and equality of opportunity in employment, between people from different racial groups. However, the principles of good practice may also be useful when promoting equality of opportunity generally, though the statutory requirements differ in other areas of equality.
- 1.15 Discrimination in employment on grounds of religion or belief is unlawful under the Employment Equality (Religion or Belief) Regulations 2003. However, if people affected by religious discrimination are from a particular racial group (see the glossary at Appendix 7), the discrimination might also amount to indirect racial discrimination (see para 2.9 and Example 20, p 64).

How to use the code

- 1.16 The code has six chapters and seven appendices, as described below.
- a. Following this introduction, Chapter 2 looks at the legal context and explains briefly the basic legal concepts used in the RRA.

- b. Chapter 3 recommends a framework for action, based on drawing up an equal opportunities policy, and putting it into practice. The chapter concludes with advice for employers on promoting equality of opportunity in their roles as purchasers and suppliers of goods, facilities and services.
- c. Chapter 4 makes recommendations on good employment practice in the main areas of employment, from recruitment to employers' responsibilities to former workers.
- d. Chapter 5 considers the additional responsibilities that certain organisations, including trade unions, professional associations, employment and recruitment agencies, partnerships, accrediting bodies and vocational training organisations, have under the RRA in relation to the services they provide for their members, and for the public.
- e. Chapter 6 is aimed at workers and draws together the corresponding rights and responsibilities they have under the RRA.

1.17 The seven appendices contain:

- a. more detailed explanation of positive action and genuine occupational requirements and qualifications;
- b. a sample policy on equal opportunities in employment;
- c. a sample anti-harassment policy;
- d. guidelines on job application forms;
- e. a list of relevant organisations and websites;
- f. a list of CRE publications; and
- g. a glossary.

1.18 The examples in text boxes refer to cases that have been heard in employment tribunals or courts. The cases have been chosen because they illustrate a point, not because they have been won or lost. Other examples illustrate how a concept or policy is likely to be applied in practice, and should not be treated as complete or authoritative statements of the law.

1.19 Each chapter of the code forms part of an overall explanation of the RRA's provisions on employment. It is therefore important to read the code as a whole, in order to understand the law properly. The code should not be read too narrowly or literally. It is intended to explain the principles of the law, to illustrate how the RRA might operate in certain situations and to provide general guidance on good practice. The code should also not be seen as a substitute for seeking specialist advice on the possible legal consequences of particular situations.

2

The legal context

2

The legal context

- 2.1 The Race Relations Act 1976 (RRA) makes it unlawful to discriminate against, or harass, applicants for employment, workers (see the glossary at Appendix 7) and former workers, on racial grounds.

Racial grounds and racial groups

- 2.2 The RRA defines racial grounds as including race, colour, nationality (including citizenship) or ethnic or national origins. Racial groups (see the glossary at Appendix 7) are groups defined by those grounds. All racial groups are protected from unlawful racial discrimination or harassment under the RRA (see Example 1, p 16).
- 2.3 To comply with the EC Race Directive (2000/43/EC), the government introduced the Race Relations Act (Amendment) Regulations 2003, which give legal protection from racial discrimination and harassment on grounds of race or ethnic or national origins. Since the grounds protected under the original RRA (see para 2.2) differ from those protected under the Regulations, the amended RRA contains disparities in certain definitions and standards, such as indirect discrimination and harassment. However, this does not substantially affect the practical guidance given in this code.

Types of discrimination

- 2.4 The RRA defines four main types of unlawful discrimination:
- a. direct discrimination;
 - b. indirect discrimination;
 - c. victimisation; and
 - d. harassment.

Direct discrimination [Section 1 (1) (a) of the RRA]

- 2.5 Direct discrimination occurs when a person is treated less favourably, on racial grounds, than another person is or would be treated in the same or similar circumstances (see Example 2, p 17). Apart from limited exceptions (see paras 2.33 – 2.36) to the general prohibition of discrimination in the RRA, direct discrimination is automatically unlawful, whatever the reason for it. There can be no justification for the difference in treatment.

Example 1: Racial groups

BBC v Souster [2001] IRLR 150

Mr Souster, a presenter for BBC Scotland's Rugby Special, complained that he had lost his job because he was English and the BBC wanted a Scottish person. Mr Souster claimed that being English was a matter of national origins, while the BBC argued that, since both the Scots and the English share a British passport, there could be no unlawful discrimination between different parts of the one nation. The Scottish Court of Session, which had to decide whether the RRA applies to discrimination between the Scots and the English, ruled that national origins should be interpreted more broadly and flexibly than just by reference to a passport. As England and Scotland were once separate nations, the English and the Scots have separate national origins and therefore the RRA does cover discrimination between them.

On the question of whether the English and Scots are part of a 'racial group', the Court of Session followed the House of Lords' ruling in an earlier case (*Mandla v Dowell-Lee*, 1983 IRLR 209), to the effect that '... it is possible for a person to fall into a particular racial group either by birth or by adherence'. The court also observed that, if the way the discriminator treats someone is based on her or his perception of that person's national or ethnic origins, then their actual origins, let alone their passport nationality, are irrelevant.

This definition of racial grounds clearly takes into account the complex reality of national identity, where a person may change their nationality by marriage or geographical migration or indeed simply by association, as well as the complexity of racial prejudice, where a person who discriminates may do so in complete ignorance of the victim's actual nationality or national background.

- 2.6 In considering whether there has been less favourable treatment, the employment tribunal will examine evidence of any disadvantage the complainant has suffered as a result of the alleged act of discrimination. This may include evidence that the person has been disciplined or dismissed, or any other evidence that shows that the circumstances in which the complainant has to continue to work are to her or his disadvantage (see Example 3, p 17).
- 2.7 In cases alleging direct racial discrimination, the way a person has been treated will be compared with the way a person from a different racial group has been, or would be, treated in the same or similar circumstances. The courts have recognised that it may not always be possible to compare the alleged treatment with the treatment of an actual other person, and that a hypothetical comparison

Example 2: Direct discrimination

Hussain v Alfred Brown (Worsted Mills) Ltd, Case No. 1805479/98

An Asian with 15 years' experience in textile work applied, for the fourth time, for a job as a warper at a textile mill, close to where he lived in Bradford. As before, he did not receive a reply to his application. However, his son, who had applied at the same time, in the name of J A Taylor, and as someone with ten years' experience, was called in for a trial. The employment tribunal upheld his father's claim that he had been discriminated against on racial grounds. The tribunal took account of the fact that, in four years, not one of the company's 70 workers had been from an ethnic minority group, even though the mill was very near Bradford, with its large ethnic minority population, many of whom had considerable skills in the textile trade. The complainant was awarded a total of around £7,000 in compensation, including £2,500 for injury to feelings.

Example 3: Proving less favourable treatment

Shamoon v Chief Constable of the Royal Ulster Constabulary (RUC) [2003] IRLR 285

When complaints were made about the appraisal reports written by a chief inspector at the RUC, her appraisal duties were withdrawn. Meanwhile, the other two chief inspectors at her grade continued to carry out appraisals. The RUC argued that carrying out appraisals was not a right, but, at most, a practice; that it was a small part of the complainant's duties; and that she did not suffer loss of rank or any financial disadvantage when the function was removed from her. The chief inspector brought legal proceedings under the Sex Discrimination Act 1975.

In an important case for all discrimination law, the House of Lords held that a reasonable employee might well feel demeaned, both in the eyes of those whom she managed and in the eyes of her colleagues, once it was known that a part of her normal duties had been taken away from her following a complaint. The House of Lords concluded that, if an employee reasonably believes that the circumstances in which they would have to continue to work would put them at a disadvantage, this would be sufficient to prove they had suffered a detriment.

Example 4: A hypothetical comparator

Balamoody v UK Central Council for Nursing, Midwifery and Health Visiting [2002] IRLR 288

The complainant, a Mauritian, was the owner of a nursing home. He was convicted in a magistrates' court of failures in relation to the administration of drugs and staffing at the home. As a result, the UK Central Council for Nursing, Midwifery and Health Visiting found him guilty of professional misconduct and struck him off its register. The complainant blamed his matron, a white woman, for the offences he had been convicted for. He complained that the disparity in their treatment – she had not faced disciplinary proceedings – was due to his race.

In a case of direct discrimination, one has to compare like with like (section 3(4) of the RRA). If the complainant can point to an actual person whose circumstances are sufficiently similar to his or her own, so much the better. In this case, the employment tribunal found that the matron was not an appropriate comparator, and dismissed the claim. The Employment Appeals Tribunal went on to uphold the tribunal's decision. However, the Court of Appeal held that both tribunals had made an error of principle: in those circumstances where it was not possible to find an actual comparator who had been treated less favourably, the tribunal would have to construct a hypothetical comparator, as a benchmark, to show how a person from other racial groups would have been treated. In this case, the court felt there was evidence to allow an inference that the council's refusal to reinstate the applicant on the register was racially discriminatory.

might have to be made with a person from a different racial group in a similar situation. The question to be asked is: 'how would a person from a different racial group be treated, in circumstances that are not identical, but not too dissimilar?' (see Example 4, p 18).

Segregation [Section 1 (2) of the RRA]

- 2.8 Segregating a person from others, on racial grounds, automatically means treating her or him less favourably, and constitutes unlawful direct discrimination. The segregation of workers, by racial group, will be unlawful even if they have the same access to promotion, training or pay and conditions as other workers.

Indirect discrimination [Sections 1 (1) (b) and 1 (1A) of the RRA]

- 2.9 The RRA contains two definitions of indirect discrimination, depending on the grounds of discrimination. The definition of indirect discrimination introduced

Example 5: Indirect discrimination

Aina v Employment Service [2002] DCLD 103D

A Black African employee applied for the post of equal opportunities manager in his organisation. He was assessed as having the skills and ability for the job. However, his application was rejected because, unknown to him, the post was open only to permanent staff at higher grades than his. Monitoring data showed that the organisation had no permanent Black African employees at the grades in question. The employment tribunal held that there was no justification for the requirement, and that it amounted to indirect discrimination on racial grounds.

under section 1(1A) to comply with the EC Race Directive applies when the discrimination is on grounds of race or ethnic or national origins, but not colour or nationality. When the discrimination is on grounds of colour or nationality, the original definition under section 1(1)(b) applies (see Example 5).

a. *Grounds of race or ethnic or national origins [section 1(1A) of the RRA]*

This occurs when a provision, criterion or practice which, on the face of it has nothing to do with race or ethnic or national origin, and is applied equally to everyone –

- i. puts or would put people of a certain race or ethnic or national origins at a particular disadvantage when compared with others; *and*
- ii. puts a person of that race or ethnic or national origins at that disadvantage; *and*
- iii. cannot be shown to be a 'proportionate means of achieving a legitimate aim'.

b. *Grounds of colour or nationality [section 1 (1)(b) of the RRA]*

This occurs when an apparently non-discriminatory requirement or condition which applies equally to everyone –

- i. can only be met by a considerably smaller proportion of people from a particular racial group than the proportion not from that group who can meet it; *and*
- ii. cannot be justified on non-racial grounds; *and*
- iii. puts a person from that group at a disadvantage because he or she cannot meet it.

2.10 Although the definition of indirect discrimination introduced to meet the EC Race Directive does not apply to grounds of colour or nationality, in practice,

a criterion that disadvantaged someone because of his or her colour would also be likely to disadvantage that person because of his or her race or ethnic or national origins.

■ **Example A.** A prohibition on workers wearing their hair in locks would disproportionately disadvantage black people, compared with white people, but this prohibition could also be challenged on grounds of ethnic or national origins, for example, Jamaican.

2.11 'Proportionate means' may be defined as means that are appropriate and necessary to achieve a legitimate business or other objective, such as meeting health and safety requirements (see also para 2.12).

■ **Example B.** A blanket ban on beards in a food packaging factory might not be a proportionate means of meeting health and safety requirements, if face masks could be used satisfactorily instead.

■ **Example C.** Y, a white English woman, applies for a job as a receptionist with a hospital trust in Wales. Under the Welsh Language Act 1993, the trust has drawn up a Welsh Language Scheme, which permits the trust to require applicants for posts involving the provision of services to the public to be able to speak Welsh, or to be prepared to learn it to an acceptable degree within six months. Y does not speak Welsh and is not prepared to learn it. She does not get the job and her complaint that she has been discriminated against on grounds of national origins fails, because the requirement is considered to be a reasonable means of achieving a legitimate aim. It should be noted that Y might have had a stronger case if the post she had applied for had been one of many receptionist posts at the hospital trust, or, if the trust had had enough Welsh-speaking receptionists to do the work. Meanwhile, W, a man of Pakistani origin, who also does not speak Welsh, successfully applies for a post in the trust's finance department; as the post does not involve contact with the public, it carries no Welsh language requirement.

2.12 The test of indirect discrimination is the same under both definitions; it involves drawing an objective balance between the discriminatory effects of the provision, criterion, practice, requirement or condition and the employer's reasonable need to apply it. When assessing the justification for policies and practices that could have a disproportionate effect on some racial groups, it would be useful to consider the following questions:

- a. Does the provision, criterion, practice, requirement or condition correspond to a real need?
- b. Does the need pursue a legitimate aim, for example health and safety?
- c. Are the means used to achieve the aim appropriate and necessary?
- d. Is there any other way of achieving the aim in question?
- e. Is there a way of reducing any potentially unlawful discriminatory effect?

Example 6: Victimisation

Mann v Gloucester County Council Fire and Rescue Services (1) and Gibb (2) [1997] Case No. 1400859/96

A complaint by an Asian fire fighter that the sub-officer in charge of the station had made racially derogatory remarks was initially upheld during the informal stage of an investigation, but later dismissed. The fire station's divisional officer made recommendations, to make sure there were no recriminations. However, almost immediately, the Asian fire fighter was 'sent to Coventry' and his colleagues refused to speak to him. The tribunal upheld his claim of unlawful victimisation, rejecting the fire authority's claim that it had taken all reasonably practicable steps to prevent this. The tribunal thought it was unrealistic of the authority to expect either of the parties, and everybody else concerned, to rise above the situation before a good deal of skilled counselling had been given to them all.

- 2.13 The concept of 'provision, criterion or practice', which was introduced to comply with the EC Race Directive, is broader and less restrictive than the concept of 'requirement or condition' in the original definition of indirect discrimination in the RRA. The concept of 'provision, criterion or practice' covers the full breadth of formal and informal practices in employment.

■ **Example D.** M, who is of Nigerian origin, is informed of a vacancy for a managing director. M phones and is told that the company's normal practice is to use head-hunters for recruitment to senior management posts. If M can show that this practice makes it more difficult for people of Nigerian origin than others to get senior management jobs in this company, and that this puts her at a disadvantage, the practice could amount to unlawful indirect discrimination.

Victimisation [Section 2 of the RRA]

- 2.14 It is unlawful to treat a person less favourably on racial grounds because he or she has:
- a. brought proceedings under the RRA; or
 - b. given evidence or information in connection with any proceedings under the RRA; or
 - c. alleged that an act of unlawful discrimination has been committed; or
 - d. done anything under the RRA in relation to someone, or intends to do so, or is suspected of having done or intending to do so.

- 2.15 For a claim of victimisation under the RRA to succeed, a complainant would also have to show that:
- a. he or she has been or would have been treated less favourably, on racial grounds, than others in those circumstances; and
 - b. the treatment was a result of his or her action in relation to allegations or proceedings under the RRA.

Harassment [Section 3A(1) of the RRA]

- 2.16 The definition of harassment introduced by the 2003 Race Regulations applies when the conduct in question is on grounds of race or ethnic or national origins, but not colour or nationality. Harassment on grounds of colour or nationality involves less favourable treatment and may constitute unlawful direct discrimination (see Example 7, and Examples 19 and 20, p 64).
- 2.17 A person harasses another on grounds of race or ethnic or national origins when he or she engages in unwanted conduct that has the purpose or effect of:
- a. violating the other person's dignity; or
 - b. creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.

Harassment on grounds of colour or nationality may be recognisable by the same type of behaviour.

Example 7: Harassment

Anisetti v Tokyo-Mitsubishi International plc Case No. 6002429/98

The Indian-born head of credit derivatives at an international Japanese bank in London resigned, claiming he had been made to feel like a 'second-class citizen' by his Japanese employers. He said he had been humiliated, excluded by workers speaking Japanese and underpaid, simply because he was not Japanese. The bank argued that it was 'natural' for Japanese staff to use their own language among themselves.

An employment tribunal upheld the complainant's claim that he had been discriminated against unlawfully, not because of his Indian national origins, but because he was not Japanese. The tribunal noted that the bank had maintained a practice which had effectively excluded the complainant from various activities, and treated him less favourably than others. The complainant was awarded around £1 million in compensation.

- 2.18 The definition of what is intimidating, hostile, degrading, humiliating or offensive is mainly a subjective one. In considering a claim of harassment, unless the conduct was intentionally hostile, it would only be considered to have the effects described above (see para 2.17) if, after considering all the circumstances, including, especially, the perceptions of the person affected, it was reasonable to do so. This means a court could decide that a complainant was oversensitive and had unreasonably taken offence.
- 2.19 While the statutory definition of harassment in the RRA applies only to grounds of race or ethnic or national origins, and not to those of colour and nationality, in cases where abuse is overtly directed at a person's skin colour, employment tribunals and courts may interpret 'race' widely, to include colour.
- 2.20 Similarly, offensive behaviour in relation to a person's nationality may also be regarded as offensive on the grounds of that person's actual or perceived national origins (see Example 1, p 16), and would therefore be covered by the statutory definition of harassment in the RRA.
- 2.21 Employers should note that a single incident, for example a racist joke, on any racial grounds, could be sufficient to cause a person to feel harassed.

Discriminatory advertisements [Section 29 of the RRA]

- 2.22 It is unlawful to publish, or to be responsible for publishing, any advertisement (see the glossary at Appendix 7) that indicates, or may reasonably be understood to indicate, an intention to discriminate, even if the act of discrimination were lawful.
- **Example E.** An advertisement in a local newspaper for a Turkish machinist for a dress manufacturing company would be unlawful.
- 2.23 The test for deciding whether an advertisement indicates an intention to discriminate is whether a reasonable person would consider it to be discriminatory. The definition of advertisement is very wide and includes any form of advertisement or notice, whether public or not; for example, internal circulars or newsletters announcing staff vacancies, emails, displays on notice boards or shop windows, and job advertisements, banners and pop-up windows on websites.
- 2.24 The RRA allows a small number of limited exceptions, where the advertisement refers to a situation where discrimination is not unlawful; for example, a lawful positive action training measure (see paras 2.33 and 3.43 – 3.45 and Appendix 1) or a genuine occupational qualification (see para 2.36 and Appendix 1). The advertisement should make it clear that the employer is making use of the exception.

Example 8: Instructions to discriminate

Weatherfield Ltd t/a Van and Truck Rentals v Sargent [1999] IRLR 94

A white woman was told as part of an induction course for her new job as a receptionist that the company, a van and truck rental firm, had a special policy on ethnic minority customers. She was instructed to identify 'coloured or Asian callers' by the sound of their voice and to tell them there were no vehicles available. The woman was so upset by this that she resigned, giving her reasons in a letter. The Court of Appeal ruled that she had been discriminated against on racial grounds when she resigned in response to being given an instruction to discriminate against black and Asian customers.

Pressure to discriminate [Section 31 of the RRA]

- 2.25 It is unlawful to induce, or attempt to induce, a person to discriminate against, or harass, someone on racial grounds. The pressure may amount to no more than persuasion, and need not necessarily involve a benefit or loss. Nor does the pressure have to be applied directly; it is unlawful if it is applied in such a way that the other person is likely to hear of it. And it is unlawful in itself, even if the person who was put under pressure does not go on to commit an unlawful act of discrimination.

Instructions to discriminate [Section 30 of the RRA]

- 2.26 It is unlawful for a person who has authority over another person, or whose wishes that person normally follows, to instruct him or her to discriminate against, or harass, someone on racial grounds (see Example 8).

Aiding unlawful acts [Section 33 of the RRA]

- 2.27 A person who knowingly helps another person to discriminate against, or harass, someone unlawfully, on racial grounds, will be treated as having discriminated similarly themselves. Their only defence would be that they had been told the act would not be unlawful, and it was reasonable for them to believe that statement – it is an offence to make a reckless statement on such matters. In an employment situation, anything a worker does in the course of his or her employment is treated as having been done by his or her employer as well, whether or not the employer knew about it or approved of it. A person who knowingly takes part in an act of unlawful discrimination or harassment will therefore be deemed to have helped his or her employer in acting unlawfully.

Public authorities [Section 71 of the RRA]

- 2.28 Section 71(1) of the RRA gives public authorities listed in schedule 1A of the RRA a statutory general duty to have 'due regard' to the need to eliminate unlawful racial discrimination, and to promote equality of opportunity and good relations between people from different racial groups, in carrying out all their functions.
- 2.29 Most public authorities bound by the general duty must also meet certain specific duties:
- a. to prepare and publish a race equality scheme or policy, which states how they will meet the general duty in the areas of policy and service delivery; and
 - b. to monitor specified employment procedures and practices, by racial group (see paras 3.32 – 3.35).
- 2.30 The duty to promote race equality also applies to the procurement (see the glossary at Appendix 7) of goods, facilities and services. Where a public authority's function is carried out, wholly or in part, by an external supplier on its behalf, the authority remains responsible for meeting the duty. Contractors themselves must not discriminate unlawfully on racial grounds, but they do not have the same legal duty to promote equality of opportunity. This means public authorities should build racial equality considerations into the procurement process, to make sure any function that is relevant to the duty meets the requirements of the RRA, regardless of who is carrying out the function.
- 2.31 A statutory *Code of Practice on the Duty to Promote Race Equality* was laid before parliament, and came into effect in May 2002 (see Appendix 6).

Burden of proof [Section 54A of the RRA]

- 2.32 As a result of the amendments required by the EC Race Directive, the burden of proof used by employment tribunals and courts will vary according to the grounds of the discrimination.
- a. *Grounds of race or ethnic or national origins [section 54A of the RRA]*

If a complainant can establish the facts from which an employment tribunal can conclude that an act of racial discrimination or harassment on grounds of race or ethnic or national origins has occurred, the employer will have to prove that any difference in treatment was not due in any way to discrimination or harassment. If the explanation is inadequate or unsatisfactory, the tribunal *must* find that unlawful discrimination or harassment has occurred.

b. *Grounds of colour or nationality*

In cases where the discrimination is on grounds of colour or nationality, and section 54A does not therefore apply, if the complainant establishes facts from which an employment tribunal could conclude that he or she has suffered racial discrimination, the tribunal will ask the employer for an explanation. If the explanation is unsatisfactory, the tribunal *may* find that discrimination has occurred.

When racial discrimination is not unlawful

Positive action [Sections 35, 37 and 38 of the RRA]

- 2.33 The term ‘positive action’ refers to the measures that employers may lawfully take to provide access to facilities that meet special needs in relation to education and training or welfare, or to train or encourage people from a particular racial group that is under-represented in particular work (see also paras 3.43 – 3.45, Appendix 1 and Example 10, p 34).

National security [Section 42 of the RRA]

- 2.34 An act of discrimination in employment, on racial grounds, may be permitted if it is done to safeguard national security, and if it can be justified.

Employment for training in skills to be used outside Britain [Section 6 of the RRA]

- 2.35 Employers may discriminate on grounds of colour or nationality, but not race or ethnic or national origins, in employing a person who does not normally live in Britain for work at an establishment in Britain (see the glossary at Appendix 7), in order to train him or her in skills that will only be used outside Britain.

Genuine occupational requirement and genuine occupational qualification [Sections 4A and 5 of the RRA]

- 2.36 It is lawful for an employer to discriminate on racial grounds in recruiting people for jobs where being of a particular race or ethnic or national origin is a ‘genuine occupational requirement’ (GOR), or being of a particular colour or nationality is a ‘genuine occupational qualification’ (GOQ) (see Appendix 1).

3

*The responsibilities
of employers:
A framework
for action*

3

The responsibilities of employers: A framework for action

- 3.1 The Race Relations Act 1976 (RRA) gives employers a legal duty not to discriminate against or harass applicants for employment, workers (see the glossary at Appendix 7) and former workers, on racial grounds.

What the law says [Sections 4 and 4A of the RRA]

- 3.2 Employers must not discriminate on racial grounds or subject a person to harassment in:
- the arrangements they make to decide who should be offered employment; or
 - the terms on which they offer to employ a person; or
 - by refusing or deliberately failing to offer employment.
- 3.3 It is also unlawful for employers to discriminate on racial grounds against a worker, or to subject him or her to harassment:
- in the terms of employment provided; or
 - in the way they make opportunities for training, promotion or transfer, or other benefits, facilities or services, available; or
 - by refusing access to such opportunities or benefits, facilities or services; or
 - by dismissing the worker or subjecting him or her to some other detriment.

Legal responsibility for discrimination

[Sections 32 and 33 of the RRA]

- 3.4 Legal responsibility for unlawful racial discrimination rests with employers. Discriminatory acts or conduct by workers or agents (for example, contractors) 'in the course of their employment' are treated as having been done by their employer (see also para 2.27), unless the employer can show he or she has taken all reasonably practicable steps to prevent such acts. Employers may be held liable whether or not those acts were done with their knowledge or approval. An employer's liability for racial discrimination may extend to a worker's behaviour when 'off duty', but in a work-related situation, such as a social event for staff, for example a Christmas party. In relation to the police, chief officers will be liable for acts of unlawful racial discrimination or harassment by police officers.

- 3.5 A worker who discriminates against, or harasses, someone, on racial grounds, in the course of his or her employment may be personally liable for his or her actions. Under the RRA, the employer will also be liable, unless he or she can show that all reasonably practical steps were taken to prevent unlawful racial discrimination or harassment. In this case, the worker may be solely liable for the unlawful act.
- 3.6 It is unlawful to discriminate against a former worker, on racial grounds, or to subject him or her to harassment, after the employment relationship has come to an end, if the discrimination or harassment has arisen from, or is closely connected with, the employment.

A FRAMEWORK FOR ACTION

- 3.7 Good employment practice is the key to employers meeting their legal responsibilities, and avoiding claims of racial discrimination or harassment. Employers need to make sure no worker (past, present or future) is treated less favourably than others, on racial grounds.
- 3.8 A systematic approach to developing and maintaining good practice is the best way of showing that an organisation is taking its legal responsibilities seriously. To help employers and others meet their legal obligations, it is recommended that they:
- a. draw up an equal opportunities policy in employment; and
 - b. put the equal opportunities policy in employment into practice.
- 3.9 The policy may apply to all types of equality of opportunity covered by legislation, but it needs to make explicit reference to racial equality and consider all the ways in which employers are likely to be affected by the provisions of the RRA.

A. Draw up an equal opportunities policy on employment

- 3.10 The aim of an equal opportunities policy in employment is to make sure that:
- a. no job applicant or worker receives less favourable treatment than another, on racial grounds;
 - b. no job applicant or worker is placed at a disadvantage by requirements, provisions, criteria, conditions or practices, unless they can be justified as a necessary and appropriate means of achieving a legitimate aim; and
 - c. people from under-represented racial groups are given training and encouragement to take equal advantage of opportunities in the organisation.

- 3.11 An equal opportunities policy in employment should be a written policy, which sets out:
- a. the employer's commitment to the principle of equality;
 - b. the organisation's ethos and values;
 - c. how the policy applies to the organisation's procedures and practice;
 - d. what is and what is not acceptable behaviour at work;
 - e. how to use the organisation's complaints procedure to raise any concerns or complaints workers might have about discrimination or harassment;
 - f. the rights and responsibilities of all; and
 - g. how the organisation will deal with any breaches of the policy.
- 3.12 The policy should cover all aspects of employment, including recruitment, terms and conditions of work, training and development, promotion, performance, grievance, discipline and treatment of workers when their contract of employment ends.
- 3.13 As far as possible, the equal opportunities policy should be drawn up and agreed in consultation with workers and any recognised trade unions or other workplace representatives.
- 3.14 Appendix 2 contains a sample equal opportunities policy in employment. It sets standards of good practice for all employers. Smaller organisations may only need a simple policy, and procedures and practices that are appropriate to their size and resources.

B. Put the equal opportunities policy into practice

- 3.15 Employment tribunals have made it clear that statements of intent or paper policies and procedures alone are unlikely to provide employers with a defence in legal proceedings under the RRA. This means employers need to be able to show that they take their equal opportunities policy seriously, and put it into operation in all aspects of employment in the organisation (see Examples 9 and 10, pp 32 and 33).
- 3.16 The most systematic, practical and effective way of approaching this is to draw up an equal opportunities action plan. Its aims should be to:
- a. promote the equal opportunities policy;
 - b. make sure all workers understand the policy, and provide training for those who have particular responsibilities under it;

Example 9: Putting policy into practice

Baptiste v Westminster Press Ltd t/a Bradford and District Newspapers, Case No. 35945/96 [1996] DCLD 30

An unsuccessful black applicant for a post in the advertising department of a newspaper was told at the interview for the job that the phrase 'black bastard' was commonly used in the organisation. The tribunal dismissed the company's two-page equal opportunities policy and one-page code of practice as a classic example of employers believing that the preparation of such documents alone, without any supporting advice or instructions to managers on implementing or monitoring them, was sufficient to meet their legal obligations. The complainant was awarded a total of around £12,000 in compensation.

- c. monitor workers and applicants for employment, promotion and training, by racial group, and review all employment policies, procedures and practices, to see if they are potentially discriminatory or obstruct equality of opportunity; and
- d. take steps to remove potentially unlawful discrimination, and reduce any significant disparities between racial groups.

Promote the equal opportunities policy

- 3.17 The equal opportunities policy in employment should be publicised as widely as possible, for example through office notice boards, circulars, email bulletins, contracts of employment, training on equality, induction, internal and external websites, annual reports and staff newsletters and handbooks.
- 3.18 The policy should be a priority for the organisation, and an essential part of its business or corporate plan. The policy will carry greater force if it has the explicit backing of the chair or director or proprietor, and the board and senior management (where applicable).
- 3.19 Overall responsibility for the policy, and for reporting regularly on its effectiveness, should rest with a senior manager (where applicable).

Train workers on the equal opportunities policy

- 3.20 Employers should make sure all their workers understand the organisation's equal opportunities policy, and how it affects them, and that they are aware of any plans for putting it into practice. This could be done by providing basic training and providing written information and guidance on the policy and plan. Some workers may need more advanced training, depending on their jobs. Equal opportunities should also be a standard component of other training courses, at all levels.

Example 10: Interview

Umerji v Blackburn Borough Council, Case No. 29273/94 [1995] DCLD 47

An Asian part-time worker on a short-term contract with a local council was one of six candidates interviewed by a panel for the full-time post of welfare officer with the council. He performed better than any of the other candidates, scoring higher than a white council worker. The panel agreed to offer the Asian applicant the job. The panel subsequently reversed its decision and decided to offer the post to the white worker. According to the council, the Asian applicant was not selected because he had failed to meet the criterion of 'written communication' skills, which only became apparent when the application forms were considered after the interview process.

The tribunal upheld the Asian worker's claim of unlawful racial discrimination. It found that he had not only achieved the highest score in both the test of his technical ability and in the interview as a whole, but had also overcome the 'hurdle' of the application form, by being put on the shortlist in the first place. Further, as a council worker, 'his written communication skills were well known to his employer. The tribunal found the council's replies to the race relations questionnaire (see the glossary at Appendix 7) to be 'evasive and/or equivocal', and rejected its explanations as 'a cover-up'.

The tribunal criticised the council for failing to follow its own equal opportunities and selection procedures: 'It is quite pointless for the respondent to go to the trouble and expense of creating an elaborate selection procedure and an elaborate equal opportunities policy, if it then breaches that procedure and the policy by following an entirely separate procedure, directed apparently by events, and by the personal whim of individual officers.' The tribunal awarded compensation of around £14,000.

- 3.21 The training will benefit from consulting workers and their representatives about their needs, and incorporating feedback from any training into future courses.
- 3.22 Employers should make sure in-house trainers are themselves trained before running courses for other staff. External trainers also need to be fully informed about the organisation's policies, including its equal opportunities policy.
- 3.23 Employers will find it helpful to give a named manager responsibility for equal opportunities training in the organisation.
- 3.24 In the event of legal proceedings being brought against them under the RRA, employers may find it easier to defend themselves if they are able to show that

Example 11: Monitoring

Richards v Brighton Borough Council [1992] Case No. 14213/91 and EAT 431/92 [1993] DCLD 19

A black woman, who had been turned down for the post of information officer in a council's housing department, in favour of a white woman with much less relevant work experience, won her claim of racial discrimination against the council. The tribunal noted the council's failure to monitor its equal opportunities policy.

the basic equal opportunities training all workers receive includes the following:

- a. the law against racial discrimination and harassment;
- b. the organisation's equal opportunities policy, why it has been introduced and how it will be put into practice;
- c. what is acceptable and unacceptable conduct in the workplace;
- d. workers' responsibilities under the equal opportunities policy to maintain and promote a workplace free of unlawful racial discrimination and harassment; and
- e. how prejudice can affect the way an organisation functions, and the effects that generalisations about racial groups, and bias in day-to-day operations, can have on people's chances of obtaining work, promotion, recognition and respect.

Monitor workers and applicants by racial group, and review all employment policies, procedures and practices

- 3.25 Monitoring, by racial group, gives employers the information they need to understand how their policies, practices and procedures in the field of employment affect people from different racial groups.
- 3.26 Monitoring is a process that involves collecting, analysing and evaluating information, to measure performance, progress and change. It can be done in several ways, including questionnaires, surveys, consultation and feedback. Monitoring, by racial group, will allow employers to:
 - a. determine the composition of their workforce, by racial group, and compare this information with benchmarks, such as census data;
 - b. know how their workforce is distributed across the organisation, by location, type of job and grade;
 - c. uncover any disparities between racial groups, in the workforce as a whole and at different levels of the organisation, and investigate the underlying causes;

- d. find out whether people from certain racial groups are typically taking longer to obtain promotion;
- e. examine whether the practices, provisions, criteria, requirements or conditions used to select candidates for employment, training and promotion might be indirectly discriminatory, and why, and consider how they might be changed to avoid any negative effects on candidates from a particular racial group (or groups);
- f. set realistic targets and timetables for reducing any significant racial disparities, both within the workforce as a whole, and at different levels of the organisation;
- g. send a clear message to its workers, and to job seekers, that the organisation is serious about achieving fair and equitable participation, and encourage them to cooperate fully; and
- h. judge whether the equal opportunities policy is achieving its aims.

3.27 Monitoring, by racial group, should cover the following:

- a. applications for jobs, temporary and permanent, advertised and non-advertised, and success rates at each stage of the process;
- b. distribution of workers in the organisation, by type of job, location, and grade;
- c. applications for promotion, transfer and training, and success rates for each;
- d. results of performance appraisals;
- e. grievances and disciplinary action, including the results, and tribunal decisions involving claims of racial discrimination or harassment; and
- f. terminations of contract (for whatever reason).

3.28 Section 8 of the RRA gives the meaning of employment at an establishment in Great Britain (see 'employment' in the glossary at Appendix 7). Employers who have operations or subsidiaries in other countries, or who have outsourced functions to other countries, need to make arrangements to keep their monitoring data for workers at establishments in Great Britain separate (or in a form that is readily identifiable).

■ **Example F.** A bank outsources its payroll function to a company in Manila. It transfers a senior manager to Manila from its office in London, to oversee the work. The bank would include the senior manager, but not the payroll workers in Manila, in the monitoring data it keeps to meet the recommendations of this code.

3.29 The information needed for effective monitoring may be obtained in a number of ways. The best course is to ask workers and applicants for jobs, training and promotion to select the racial group they want to be associated with from a list of

categories. The 2001 census provides the most comprehensive and reliable data about the population in England, Scotland and Wales, increasingly supplemented by the Labour Force Survey and other survey statistics (see the Office for National Statistics in Appendix 5). Employers should therefore use categories that are compatible with those used in the 2001 census. Employers who wish to include a group that is not separately listed in the census classification should add the group as a sub-group of the appropriate main group in the census classification system. For example, Somali would be a sub-group of Other in the broad Black or Black British category, Sikh a sub-group of Indian in the Asian or Asian British category, and Roma/Gypsy a sub-group of Other in the White category. In response to increasing national consciousness in England, Scotland and Wales, employers may also want to consider offering workers and applicants the opportunity to classify themselves in terms of a national identity. It is important to remember that any aggregation of data, especially when the numbers are small, risks masking significant disparities between sub-groups, for example between Indian and Bangladeshi, if they are considered only as part of the broad Asian group.

- 3.30 Smaller organisations may only need a simple method of collecting information about workers' and job applicants' racial groups, such as a questionnaire. Larger organisations are likely to need more sophisticated procedures and computerised systems as well, to capture the full picture across their subsidiaries and branches in Britain.
- 3.31 To ensure the integrity of their monitoring systems, employers should consider the following steps:
- a. consult workers, trade unions and other representatives in the workplace, and make sure they understand the reasons for introducing monitoring, before asking workers for information about their racial group;
 - b. assure everyone concerned that information about ethnic or racial background will be treated in the strictest confidence;
 - c. analyse the information regularly, preferably together with other available information, for example, on sex, sexual orientation, disability, religion or belief, or age;
 - d. review the information periodically, and make sure it is current; and
 - e. make sure managers responsible for monitoring, and anyone else involved in the process, are properly trained in data protection and sensitive data processing.

Public authorities and monitoring

- 3.32 Most of the public authorities bound by the statutory general duty to promote race equality (see paras 2.28 – 2.29) also have a specific duty to monitor, by

racial group, all their workers, and all applicants for jobs, promotion and training. Public authorities with 150 or more full-time-equivalent workers must also monitor the number of workers from each racial group who:

- a. receive training;
- b. benefit or suffer detriment from performance assessment;
- c. are involved in grievances;
- d. are subject to disciplinary action; and
- e. end employment with the organisation (for whatever reason).

- 3.33 Public authorities must publish the results of this monitoring each year.
- 3.34 Educational institutions are not bound by the specific duty for public authorities as employers. However, schools do have to give their local education authorities (education authorities in Scotland) information about staff, so that the authorities can meet their duty to monitor, by racial group, employment in the schools they manage, and publish a report on it each year. Further and higher education institutions have a specific duty to monitor, by racial group, the recruitment of staff and their career progress. They are also expected to take reasonable and practicable steps to publish the results of their monitoring each year.
- 3.35 A statutory *Code of Practice on the Duty to Promote Race Equality* was laid before parliament and came into effect in May 2002. The CRE has also produced non-statutory guidance for public authorities on different aspects of the duty (see Appendix 6).

Take steps to prevent unlawful discrimination, and reduce any significant disparities between racial groups

- 3.36 If the monitoring data show significant disparities between racial groups, employers should investigate the possible causes, and examine all the arrangements, procedures and practices that give effect to their policies in the field of employment, including recruitment, training, promotion, grievance and discipline, performance assessment and dismissal. The absence of disparities for ethnic minorities as a whole, or for one racial group in particular (see para 3.29), should not be taken as evidence that 'discrimination is not a problem'. The aim should be to make sure none of the rules, requirements, procedures or practices used, formally or informally, put *any* racial groups at a significant disadvantage; for example, indirectly discriminatory eligibility rules for promotion, or restrictive advertising techniques. It is recommended that employers approach this as systematically as possible, taking the following steps:
- a. review the selection criteria used, to make sure they are strictly related to the job or training opportunity, and do not have an unjustifiable adverse effect on any racial groups;

- b. examine all decision-making processes, to make sure they are fair, and are followed consistently across the full range of recruitment and assessment exercises;
- c. review the policy on advertising jobs, and training and promotion opportunities, to make sure the information is reaching any under-represented groups, and that people from these groups feel encouraged to apply;
- d. reassess the labour markets from which they traditionally recruit;
- e. set targets (see paras 3.38 – 3.42) for employment, training and promotion, as part of a programme of action to reduce any significant disparities between racial groups, and regularly review progress; and
- f. consider whether lawful positive action (see Appendix 1) might be appropriate.

3.37 Larger employers may find it useful to:

- a. nominate a person with specialist knowledge of discrimination and equality to monitor the effectiveness of the organisation's equal opportunities policy, conduct independent investigations of complaints of discrimination and harassment, and advise on, and coordinate, action; and
- b. encourage their branches or subsidiaries to draw up and implement their own equal opportunities action plan, against standards set and controlled centrally.

Racial equality targets

- 3.38 Employers could consider setting racial equality targets as a means of planning the reduction of any significant disparities between racial groups. A racial equality target could represent improvements in representation for particular racial groups or progress towards equality of treatment. For example, it could show the percentage of workers from a particular racial group (or groups) that an organisation is aiming to have in particular areas or types of work within a certain period of time; or a reduction or elimination of any unfavourable disparity in assessment ratings between racial groups over a certain period of time.
- 3.39 Racial equality targets are *not* quotas. Restricting recruitment to people from particular racial groups, in order to improve their representation in the workforce, would be positive discrimination. This is unlawful in Britain. All selection for employment must be, and be seen to be, fair, and based solely on merit.
- 3.40 Racial equality targets for recruitment, promotion and training should be based on the ethnic and racial composition of the area from which an organisation decides to recruit for particular jobs, and on the ethnic and racial composition of

its own workforce. Progress towards racial equality targets can then be monitored against the steps being taken, including positive action training and encouragement (see paras 3.43 – 3.45 and Appendix 1), to make recruitment and other employment policies and practices fairer and more equal.

- 3.41 Employers should consider publishing their racial equality targets, for example, in their annual reports, to show how their organisation is working towards fair participation.
- 3.42 Employers should base their corporate priorities, objectives, approaches and any racial equality targets on the outcomes listed below.
- a. The ethnic and racial composition of the workforce, at each location and level, reflects the composition of the labour markets used for different types of work.
 - b. Vacancies attract applications from the full range of qualified candidates in the relevant labour markets, including candidates from ethnic minorities.
 - c. The ratio of appointments to applications is proportionate across all racial groups.
 - d. The organisation's board and senior management team (where applicable) reflect the ethnic and racial backgrounds of all potential candidates, both internally and externally.
 - e. Workers from all racial groups are equally likely to apply for, and be offered, training.
 - f. Applications for promotion and deputising are received from across the full spectrum of workers, irrespective of racial group.
 - g. Workers spend the same length of time at a particular grade, on average, irrespective of racial group.
 - h. Progress from one grade to another is unaffected by workers' racial groups.
 - i. Workers are not disproportionately subject to disciplinary proceedings, because of their racial group.
 - j. Workers from all racial groups benefit equally from bonuses or performance pay.
 - k. Grievances are not more likely to be brought by workers from particular racial groups.
 - l. The number of complaints alleging racial discrimination or harassment is negligible.
 - m. There are no significant disparities between racial groups among staff leaving the organisation, for whatever reason.

Positive action [Sections 35, 37 and 38 of the RRA]

- 3.43 The RRA recognises that, due to past discrimination or other disadvantages, people from particular racial groups may not have fully realised their potential, and may not have the qualifications or experience to make them eligible for particular jobs. The aim of positive action, as permitted under the RRA, is to give people from a particular racial group (or groups) the opportunity to compete for work in which they have been under-represented or absent. The RRA also allows action to be taken to make facilities or services, such as language classes or training or education in basic work skills, available for people from a particular racial group (or groups) who would otherwise be excluded from opportunities.
- 3.44 If the results of monitoring show under-representation, or the complete absence of a racial group (or groups) in particular work (see Appendix 1), for example among senior managers or shop floor supervisors, it is recommended that employers take the following steps:
- a. consider positive action training or encouragement;
 - b. make sure the positive action scheme offers only training or encouragement, and not employment – employers making use of the positive action provisions of the RRA should be especially careful that the training or encouragement provided as a form of positive action does not constitute employment, or lead automatically to employment; for example, ‘on-the-job’ training or apprenticeships, which are defined as employment, and not training, cannot form part of a positive action programme (see Example 12 below); and
 - c. inform workers, trade unions and other workplace representatives about their plans, explaining that the aim of positive action training or encouragement is to help create a level playing field, not to favour any particular racial group.

Example 12: Positive action

Hughes and others v London Borough of Hackney (unreported) [1986]

A local authority included a statement in an advertisement for gardening apprentices encouraging young people from ‘black and ethnic minorities’ to apply, and referring to section 38 of the RRA. Three white people applied for the jobs and were told they were open only to people from ethnic minorities. The employment tribunal upheld their claims that they had been unlawfully discriminated against on racial grounds, pointing out that ‘encouragement’ under the positive action provisions of the RRA did not extend to providing job opportunities for any section of the community.

■ **Example G.** A national broadcaster used section 37 of the RRA to set up a mentoring scheme for would-be sports journalists. The scheme gave 12 young people from ethnic minorities a year's training and work placements in the sports broadcasting department, leading to a postgraduate certificate in broadcast journalism from a leading institution. Twelve specially selected and trained senior managers from the sports department were matched with the trainees.

- 3.45 Positive action may, and should, be used to encourage or train workers to compete for jobs where they are under-represented (section 38 of the RRA).

Equal opportunities conditions in contracts

- 3.46 Employers should encourage companies and other organisations, with whom they have, or propose to enter into, contracts for goods, facilities or services, to take practical steps to promote equality of opportunity in their employment practices. Employers should therefore:
- a. make acceptance on tender lists, and the award or renewal of a contract, conditional on the organisation's providing information about any findings of racial discrimination or harassment, and adopting the recommendations of this code;
 - b. include terms and conditions in contracts that require contractors to follow the recommendations of this code; and
 - c. encourage individuals and organisations from under-represented racial groups to tender or compete for contracts.
- 3.47 Most public authorities have a legal duty to promote race equality when carrying out their functions (see also paras 2.28 – 2.31). The duty applies whether they carry out these functions themselves or contract them out to private businesses or voluntary organisations. While bound by the RRA's general prohibition of unlawful racial discrimination, private businesses and voluntary organisations are not bound by the duty. Public authorities therefore need to make arrangements during the tendering process, and through the contract itself, to make sure contractors are able to meet the duty on their behalf, if it applies to the goods, works, facilities or services being contracted out. The CRE has produced guides to procurement for local authorities and other public authorities (see Appendix 6).

4

*The responsibilities
of employers:
Equality of
opportunity and good
employment practice*

4

The responsibilities of employers: Equality of opportunity and good employment practice

What the law says [Sections 4 and 4A of the RRA]

- 4.1 The Race Relations Act 1976 (RRA) makes it unlawful for employers to discriminate against a person on racial grounds, or subject them to harassment, in the arrangements they make for recruitment and selection, and in the terms and conditions on which they offer employment, training or promotion.
- 4.2 Employers must therefore make sure their policies, procedures and practices in the field of employment are not potentially discriminatory, and that they promote equality of opportunity, not obstruct it.
- 4.3 The framework for action (see Chapter 3) emphasises the importance of applying the organisation's equal opportunities policy to all aspects of employment, from recruitment to termination of the employment contract. This chapter of the code makes recommendations on good equal opportunities procedures and practice in key areas of employment.

RECRUITMENT

Principles of good practice

- 4.4 The following principles apply to all aspects of recruitment for employment, including promotion, and training.
 - a. Recruitment policies, procedures and practices should meet all the terms and objectives of the organisation's equal opportunities policy and action plan.
 - b. All staff responsible for recruitment should receive training in the equal opportunities policy.
 - c. Opportunities for employment, including promotion, and training should be equally open to all eligible candidates, and selection should be based solely on merit (except where the positive action exception applies to training; see Appendix 1).

- d. No applicant or worker should be placed at a disadvantage by rules, requirements, conditions or practices that have a disproportionately adverse effect on his or her racial group.

Planning

Job descriptions

- 4.5 It is recommended that employers prepare a job description for any vacant post they decide to fill.
- 4.6 To avoid claims that a job description includes a requirement that might be indirectly discriminatory on racial grounds, employers need to make sure that:
 - a. they are able to justify each duty or task as being necessary;
 - b. the job description does not overstate a duty, or the responsibilities attached to it; and
 - c. the job description is written in plain English (or Welsh in Wales), and is free of jargon.
- 4.7 A helpful way of drawing up a job description might be to describe the duties and the tasks a person would be expected to carry out over a certain period of time, for example an average working day or week, in order to get a clear picture of what the job actually entails.

Person specifications

- 4.8 A person specification describes the skills, knowledge, abilities, qualifications, experience and qualities that are considered necessary or desirable in a candidate, in order to perform all the duties in the job description satisfactorily. It is recommended that employers prepare a written person specification to accompany the job description.
- 4.9 To avoid claims that a person specification includes potentially discriminatory requirements, criteria or conditions, employers need to make sure of the following.
 - a. The person specification includes only the criteria needed to perform the duties in the job description satisfactorily.
 - b. The person specification does not overstate the requirements; for example, by calling for 'excellent knowledge of English' (or Welsh in Wales) when 'good understanding' is more appropriate, or by asking for higher qualifications than are actually needed to do the job satisfactorily.
 - c. The person specification makes clear the relative importance placed on each criterion, and whether it is necessary or desirable.

- d. As far as possible, all the criteria are capable of being tested objectively. This means avoiding vague or subjective qualities. Attributes such as 'leadership', which are widely used in the selection process, need to be precisely and objectively defined in terms of the measurable skills and qualities that contribute to it; for example, fairness, knowledge, diplomacy, imagination and decisiveness.
 - e. The person specification makes clear that degrees or diplomas obtained abroad are acceptable, if they are of an equivalent standard to UK qualifications (see Appendix 5 for details of UK National Academic Recognition Information Centre).
 - f. To reduce the risk of including criteria that reflect personal preferences rather than justifiable requirements, as far as possible, the manager responsible for the post obtains approval of the person specification from the person responsible for equal opportunities in the organisation (in smaller organisations, this might be the director or proprietor).
- 4.10 Employers should consider reviewing the person specifications they have used over a period of time, or a representative sample of them, as part of their equal opportunities review of the recruitment process, to make sure the requirements and criteria applied do not contribute to any significant disparities between the success rates for different racial groups.

Job advertisements

- 4.11 It is recommended that employers take the following steps, to make sure all opportunities for employment or training are advertised widely, fairly and openly.
- a. Employers should avoid recruitment, solely or in the first instance, on the basis of recommendations by existing staff, particularly when the workforce is wholly or predominantly from one racial group.
 - b. The advertisement, in all its forms (including signs in shop windows, and on notice boards and recruitment websites), must not indicate an intention to discriminate unlawfully (see paras 2.22 – 2.24). Nor should it be possible for an ordinary member of the public to understand the advertisement as discriminating against people from a particular racial group (or groups), unless a statutory exception to discriminate applies (see paras 2.33 – 2.36), and this is clearly stated in the advertisement.
 - c. Employers should consider including a reference to the organisation's equal opportunities policy in the advertisement. However, statements encouraging applicants from particular racial groups to apply should not be used, unless the job in question meets the conditions for taking positive action (see paras 3.43 – 3.45 and Appendix 1). Advertisements for a job relying on a genuine occupational requirement or qualification should make clear how the exception applies to the duties of the job (see Appendix 1).

Example 13: Job advertisements

Gulsher v Gateway Foodmarkets Ltd, Case No. 17036/92 [1994]
DCLD 19

An employer promoted a worker to a new post without advertising the vacancy internally. As a result, no one in the organisation was given the opportunity to apply. The tribunal ruled that the employer had unlawfully discriminated against a black worker who was qualified for the post, and would have applied for it if he had known about it. The complainant was awarded £500 for injury to feelings.

- d. Every effort should be made to ensure that the advertisement accurately reflects the job description and the requirements listed in the person specification.
- e. Employers should remember, when recruiting through recruitment agencies, job centres, careers offices, schools or online agencies, that it is unlawful to:
 - i. instruct them to discriminate, for example by suggesting that certain groups would (or would not) be preferred; or
 - ii. put pressure on them to discriminate against people from a particular racial group (or groups).
- f. Recruitment and other agencies should be made aware of the employer's equal opportunities policy, as well as other relevant policies. They should also be given copies of the job descriptions and person specifications for posts they are helping the employer to fill.
- g. To avoid indirect discrimination, employers should not unjustifiably restrict job advertisements or information about vacant posts to areas, publications, recruitment agencies, job centres, careers offices and schools that would result in excluding or disproportionately reducing the number of applicants from a particular racial group (or groups). All staff should be informed of any opportunities for promotion or career development (see Example 13 above).
- h. Employers should consider reviewing the job advertisements they have placed over a period of time, or a representative sample of advertisements, as part of their equal opportunities review of the recruitment process, to make sure the advertisements, and where they were placed, did not contribute to any significant disparities between the success rates for different racial groups.

Application forms

- 4.12 It is recommended that, where practicable, all employers should use a standard application form (see Appendix 4). This has the following advantages.

- a. It reduces the time spent in sifting through a great deal of information that is not relevant to the job, which is usually the case with CVs and application letters.
 - b. It helps employers obtain the information they need, and in the form in which they need it, to make an objective assessment of the applicant's ability to do the job.
 - c. It makes it easier to obtain information about applicants' racial groups; this is mandatory for public authorities under their legal duty to monitor various aspects of employment, by racial group (see paras 3.32 – 3.34).
 - d. It provides employers with evidence that they have tried to meet their legal obligations, should they face legal proceedings under the RRA.
 - e. It gives all applicants the opportunity to compete on equal terms.
- 4.13 To reduce the risk of unlawful racial discrimination, employers should follow the guidelines below; smaller organisations may adapt these to their particular circumstances.
- a. The section of the application form requesting personal information (including information about racial group) should be detachable from the rest of the form, and not made known to members of the selection panel before the interview.
 - b. The question about an applicant's racial group should include a clear explanation as to why this information is needed, and an assurance that the information will be treated in strictest confidence, and will not be used to assess suitability for the job, or in the selection decision.
 - c. Information about eligibility to work in the UK, which employers are required to obtain under the Asylum and Immigration Act 1996, should preferably be verified in the final stages of the selection process, to make sure the appointment is based on merit alone, and is not influenced by other factors. Employers can apply for work permits and should not exclude potentially suitable candidates from the selection process. Depending on the employer's recruitment process, and the type of job being filled, candidates might be asked for the relevant documents when they are invited to an interview, or when an offer of employment is made. It is important to carry out these checks before the person's employment begins. The Home Office (see Appendix 5) has published a code of practice for employers on how to avoid unlawful racial discrimination when complying with this requirement.
 - d. Only information that is relevant to the job, and to the skills and qualifications listed in the person specification, should be requested in the application form (apart from the questions in the personal details section of the form).

- e. Applicants should not be asked to provide photographs, unless a genuine occupational requirement or qualification applies (see Appendix 1).
 - f. Applicants should be assured that their referees will not be approached unless they are offered the job.
 - g. Recruitment and employment agencies acting on behalf of an organisation should have copies of its equal opportunities policy, and understand its recruitment policies, and the role of the application form in the selection process.
- 4.14 Employers who accept CVs might consider publishing guidance on their websites, to help applicants organise their CVs as closely as possible to the organisation's job application form (if they use one), or the form in which employers would prefer to receive the information.
- 4.15 Employers should review their job application form periodically, as part of their equal opportunities review of the recruitment process, to make sure it does not contribute to any significant disparities between the success rates for different racial groups.

The selection process

- 4.16 Employers are responsible for making sure their selection procedures are fair, and operate consistently, to ensure the appointment of the best person for the job, irrespective of race, colour, nationality (including citizenship) or ethnic or national origins.
- 4.17 Every selection decision, from short-listing to appointment, is equally important and it is recommended that employers keep records that will allow them to justify each decision, and the process by which it was reached. Employers need to be able to show that:
- a. each selection decision was based on objective evidence of the candidate's ability to do the job satisfactorily, and not on assumptions or prejudices about the capabilities of people from certain racial groups; and
 - b. all staff involved in the selection process had received training on the equal opportunities policy, and its application to recruitment.
- 4.18 Actual selection procedures will vary from one organisation to another, depending on size and administrative resources – for example, some organisations may be able to ensure that a member of staff with expertise in personnel matters is involved in the selection process – but the principles of fair selection apply to all.

- 4.19 As far as possible, to ensure consistency, it would be best if the same staff were responsible for selection decisions at all stages of the recruitment process for each vacancy.
- 4.20 Employers should make sure the arrangements they make for holding tests or interviews, or using assessment centres, do not put any candidates at a disadvantage, on racial grounds; for example, because the dates or times coincide with religious festivals or observance, or because they fail to take account of dietary needs or cultural norms.

Shortlisting

- 4.21 It is recommended that employers build the following guidelines for good practice into their selection procedures and practice.
- a. Wherever possible, more than one person should be involved in shortlisting candidates, to reduce the chance of one individual's bias prejudicing an applicant's chances of being selected.
 - b. The marking system, including the cut-off score for selection, should be agreed before the applications are assessed, and applied consistently to all applications.
 - c. Each person involved in the selection should mark the applications separately, before meeting to agree a final mark.
 - d. Assumptions about candidates as members of particular racial groups, and the type of work they would be able or willing to do, should play no part in the process. Selection should be based only on information provided in the application form (where one is used), or in any formal performance assessment reports, in the case of internal applicants.
 - e. The weight given to each item in the person specification should not be changed during shortlisting; for example, in order to include someone who would otherwise not be shortlisted.
- 4.22 As part of their equal opportunities review of the recruitment process, employers should use the information they have collected about applicants' racial groups to see whether decisions at the shortlisting stage might have contributed to any significant disparities between the success rates for different racial groups. If so, they should investigate further, and take steps to remove any barriers.

Selection tests and assessment centres

- 4.23 It is recommended that ability tests and personality questionnaires should only be used as one of several assessment methods.

Example 14: Selection tests

Mallidi v The Post Office, Case No. 2403719/98 [2001] DCLD 47

An Asian woman who had worked for the Post Office on a casual basis for a number of years was asked to take a written aptitude test in order to remain in employment on a contractual basis. She failed the test, and her employment was terminated. Her complaint, when she found that white workers in the same situation had been given temporary or permanent contracts without having to take a test, was not investigated, and she brought legal proceedings claiming racial discrimination.

The tribunal found that whole batches of casual workers were given contracts without passing a test. Nor was the Post Office able to explain why workers had to sit the test at certain times, and in certain cases but not in others. The tribunal inferred that the only explanation for the Asian woman's dismissal was her race (the tribunal also found that the aptitude test was indirectly discriminatory). It also found no evidence that the Post Office's 'intention to operate an equal opportunities policy ... was actually implemented on a day-to-day basis'. The tribunal awarded compensation of nearly £20,000, including £10,000 for injury to feelings.

- 4.24 Well-designed, properly administered and professionally validated ability tests can be a useful method of predicting candidates' performance in a particular job. However, this depends critically on the design of the test; its validation (see the glossary at Appendix 7) as a reliable predictor of performance, irrespective of racial group; and its fair administration by professionals trained in assessment and in the organisation's equal opportunities policy. (See Appendix 5 for details of the British Psychological Centre, the representative body for psychologists and psychology in the UK, and its online Psychological Testing Centre.)
- 4.25 If tests and assessment centres are used as part of the selection process, it is recommended that employers take account of the following guidelines.
- a. Tests should correspond to the job in question, and measure as closely as possible the appropriate levels of the skills and abilities included in the person specification.
 - b. Special care should be taken to make sure candidates whose first language is not English (or Welsh in Wales) understand the instructions. Tests that are fair for speakers of English (or Welsh) as a first language may present problems for people who are less proficient in the language. The Welsh Language Act 1993 puts Welsh and English on an equal basis in the delivery of public services in Wales and bilingual tests may need to be used for recruitment to some public sector jobs, where the ability to speak Welsh is deemed to be essential or desirable.

- c. All the candidates, without exception, should take the same test (see Example 14 above).
 - d. Test papers, assessment notes and records of decisions should be kept on file for at least 12 months.
- 4.26 As part of their equal opportunities review of the recruitment process, employers should use the information they have received about applicants' racial groups to see whether the tests and assessment methods used might have contributed to any significant disparities between the success rates for different racial groups. If so, they should investigate further and take steps to remove any barriers.

Interviews

- 4.27 For many employers, the interview is the decisive stage of the selection process. It is also the stage when it is easiest to make judgements about a candidate based on instant, subjective and, sometimes, wholly irrelevant impressions. If assumptions about the capabilities or characteristics of people from a particular racial group contribute to an unfavourable impression, this could lead to an unlawful, racially discriminatory selection decision.
- 4.28 To strengthen their legal defence in any proceedings alleging unlawful racial discrimination, it is recommended that employers take steps to make sure all job interviews are conducted strictly on the basis of the application form, the job description, the person specification, the agreed weight given to each criterion, and the results of any selection tests, so that all applicants are assessed objectively, and solely on their ability to do the job satisfactorily.
- 4.29 Staff involved in selection panels would benefit especially from equal opportunities training in interviewing techniques, to help them:
- a. recognise when they are making stereotyped assumptions about people;
 - b. apply a scoring method objectively;
 - c. prepare questions based on the person specification, and the information in the application form; and
 - d. avoid questions about hobbies, social activities or religious or cultural beliefs or practices, unless these are demonstrably relevant to the job.
- 4.30 Employers need to make arrangements to keep application forms, and documents relating to each stage of the recruitment process, for 12 months, in case of any complaints about decisions or procedures, or requests for the information under the Data Protection Act 1998, or, where appropriate, the Freedom of Information Act 2000. The documentation should include:
- a. records of discussions and decisions by members of the selection panel; for example, on marking standards or interview questions;

- b. notes taken by each member of the panel during the interviews; and
 - c. each panel member's marks at each stage of the process; for example, on the application form, any selection tests and each interview question.
- 4.31 Employers should remind gate, reception and personnel staff that it would be unlawful to treat people from a particular racial group (or groups) less favourably than others, and should consider issuing written guidance to this effect.
- 4.32 Evidence of good practice throughout the recruitment process will help avoid litigation, or end it at an early stage. Employers will be in a better position to show that they took reasonably practicable steps to prevent unlawful racial discrimination or harassment, should the matter reach an employment tribunal.
- 4.33 As part of their equal opportunities review of the recruitment process, employers should use the information they have received about applicants' racial groups to see whether selection decisions at the interview stage might have contributed to any significant disparities between the success rates for different racial groups. If so, they should investigate further and take steps to remove any barriers.

References

- 4.34 To make sure the selection decision is based strictly on the application form, the job description, the person specification, any selection tests and interviews, and is not influenced by other factors, such as potentially subjective judgements about a candidate by referees, employers should avoid making references part of the selection process. It is recommended that references should only be obtained, and circulated to members of the selection panel, after a selection decision has been reached.
- 4.35 Employers will find it more useful to avoid asking for general character references, and to send referees copies of the job description and person specification instead, requesting evidence of the candidate's ability to meet the specific requirements of the job. This is more likely to ensure that the reference focuses on information that is relevant to the job.

Eligibility to work in the UK

- 4.36 Under the Asylum and Immigration Act 1996, employers have to carry out checks of a job applicant's eligibility to work in the UK. Employers should preferably do this in the final stages of the selection process, to ensure appointment on the basis of merit alone (see para 4.13c).

Terms and conditions

- 4.37 It is unlawful for employers to discriminate, on racial grounds, in the terms and conditions of work they offer, including pay, hours of work, overtime, bonuses, holiday entitlement, sickness leave, and maternity and paternity leave.

- 4.38 It is recommended that employers make sure their rules and requirements on access to any benefits, facilities or services, such as luncheon vouchers, discount travel services or membership of a gym, do not unlawfully discriminate against a particular racial group (or groups) (see paras 2.9 – 2.13).
- 4.39 When employees' cultural or religious practices, such as those expressed in dress codes, conflict with an employer's policies or workplace requirements, it is recommended that the employer consider whether it is practicable to vary or adapt these requirements. Employers should consult staff, trades unions and other workplace representatives on practical ways in which they can accommodate workers' needs. Discrimination in the field of employment on grounds of religion or belief is unlawful under the Employment Equality (Religion or Belief) Regulations 2003. If the policy or requirement affects people from a particular racial group (or groups), it might also amount to unlawful indirect racial discrimination (see paras 2.9 – 2.13).

Induction

- 4.40 Induction is an opportunity for employers to make sure all new staff understand the organisation's commitment to equality of opportunity. Employers might consider providing translations or interpreters, if necessary.
- 4.41 As a minimum, good employment practice would see employers using the induction process to make new recruits familiar with:
- a. equal opportunities principles and workers' legal rights and responsibilities under the RRA;
 - b. what is acceptable and unacceptable conduct in the workplace, in the light of the organisation's policies on harassment, discipline and grievances; and
 - c. the organisation's procedures for bringing complaints of racial discrimination or harassment against colleagues or managers.
- 4.42 For permanent or long-term workers, it is recommended that employers include training on the organisation's equal opportunities policy and action plan (see para 3.20). Employers might consider asking new recruits to sign a statement, affirming that they have read and understood all the policies covered during the induction. This may serve as evidence that they have taken reasonably practicable steps to prevent unlawful racial discrimination or harassment, should they face legal proceedings under the RRA.
- 4.43 Staff responsible for induction will need to be trained on the organisation's equal opportunities policy, and on how assumptions about new recruits, based on their racial group, can affect the degree to which they are informed, for example, about their rights at work, access to staff facilities and benefits, and the complaints procedure.

Probation

- 4.44 The RRA protects all workers from unlawful discrimination or harassment on racial grounds during any probationary period.
- 4.45 To strengthen their legal defence in any proceedings alleging unlawful racial discrimination or harassment, employers are advised to make sure that:
- a. any job plan agreed with the probationer includes:
 - i. what the probationer is expected to achieve during the probation period; and
 - ii. the standards by which performance will be assessed – as far as possible, these should be objectively measurable;
 - b. managers carry out regular supervision and keep written records of all supervision meetings held during the probation period;
 - c. any concerns about performance are put in writing, following discussions with the probationer, and a copy sent to the probationer and the personnel office (if the organisation has one); and
 - d. training on the equal opportunities policy includes guidance for managers on how to avoid judgements about a new worker based on fixed ideas of what it means to ‘get on’ with other members of staff, or ‘fit in’.

IN THE COURSE OF EMPLOYMENT

Language in the workplace

- 4.46 There is a clear business interest in having a common language in the workplace, to avoid misunderstandings, with all the risks these can entail, whether legal, financial or in relation to health and safety. It is also a matter of courtesy, conducive to good working relations, not to exclude people from conversations that might concern them, when they are present. In the main, English is the language of business in Britain and is likely to be the preferred language of communication in most workplaces (see Example 15 on p 57), unless other languages are specifically required.
- 4.47 The situation is different in Wales, where Welsh, as an indigenous language, is protected by the Welsh Language Act 1993, and promoted by *Iaith Pawb (Everyone’s Language)*, the Welsh Assembly Government’s *Action Plan for a Bilingual Wales*. Many organisations in the public, private and voluntary sectors in Wales operate through the medium of Welsh, or bilingually in Welsh and English. It is therefore recommended that employers in Wales seek advice from the Welsh Language Board in relation to the use of Welsh in the workplace, as well as following the recommendations of this code.

- 4.48 However, employers should make sure that any rules, requirements, conditions, policies or practices involving the use of a particular language during or outside working hours, for example during work breaks, do not amount to unlawful racial discrimination or harassment against a worker or job applicant (see Example 7, p 22). Employers should be able to justify these as being a reasonable means of achieving a legitimate business end. Blanket rules, requirements or practices involving the use of a particular language are often unlikely to be justifiable. Even during working hours, most types of work permit casual conversation at the same time, for example while picking fruit, or filing papers. An employer who prohibits workers from talking casually to each other in a language they do not share with all colleagues, or uses occasions when this happens to trigger disciplinary or capability procedures or impede progress, may be considered to be acting unreasonably.
- 4.49 Employers should always consult workers, trade unions and other workplace representatives before drawing up any proposals on the use of language in the workplace.
- 4.50 Where the workforce includes people who are not proficient in the language of the workplace, employers should consider taking reasonable steps to improve communication (see Example I at para 4.58). These might include providing:

Example 15: Language

Shah v George Grassic t/a The Suite Factory [1995] DCLD 24

An Asian worker in a furniture factory (where there were eight Asians in a workforce of 40) came out of a disciplinary meeting onto the shop floor and, in the owner's presence, began to speak to other Asian workers in their own language. The owner instructed him to speak English, so that he knew what was being said. The worker refused and was warned that if he did not do as he had been instructed he would be dismissed immediately. The worker said he could speak in any language he wished and continued to ignore the instruction. He was then summarily dismissed.

The tribunal dismissed the worker's complaint that he had been discriminated against on racial grounds, and ruled that, whether or not it is discriminatory to forbid people to speak in their native language depends on the circumstances: 'If the worker had been told not to speak in his native tongue at all on any occasion at work, in any circumstances, then that, in our view, would clearly be a discriminatory instruction. ... [but in these circumstances] It was not unreasonable for [the owner] to expect the common courtesy of being spoken to, or about, in a way in which he could understand.'

- a. interpreting and translation facilities; for example, multilingual safety signs and notices, to make sure workers understand health and safety requirements;
- b. training in language and communication skills; and
- c. training for managers and supervisors on the various populations and cultures that make up Britain today.

Language requirements for a job

- 4.51 A language requirement for a job may be indirectly discriminatory and unlawful unless it is necessary for the satisfactory performance of the job.
- 4.52 Under the Welsh Language Act 1993, public bodies providing services to the public in Wales must make their services available in Welsh as well as English. This means a wide range of posts in public bodies in Wales, and some in public bodies outside Wales, will need workers who can speak, write and read Welsh sufficiently well for the post in question. In some cases, this may make Welsh language skills an essential requirement for appointment, in others it may require the applicant to agree to learn the language to the required level within a reasonable period of time after appointment (see Example C, para 2.11).

Performance assessment

- 4.53 It is unlawful to discriminate against, or harass, a worker, on racial grounds in assessing his or her performance.
- 4.54 To strengthen their legal defence in any proceedings alleging unlawful racial discrimination, employers need to make sure that performance assessments are not used to pass judgements about the person, based on assumptions about their capabilities as members of certain racial groups. Employers will find it helpful to base all assessments on actual performance of specific tasks, measured by impartial and objective standards. This is particularly important when performance is linked to promotion or a benefit, such as pay or bonuses (see Example 16, p 59).
- 4.55 It is recommended that training courses for managers on the equal opportunities policy (see para 3.20) should include guidance on objective performance assessment. Equally, any training on assessment methods should take the organisation's equal opportunities policy fully into account.
- 4.56 To be sure workers are being assessed fairly, and consistently, employers will find it helpful to monitor the results of performance assessments, by racial group (see paras 3.25 – 3.31), and use the data to inform their review of the organisation's policies, procedures and practices in this area. Any significant disparities in assessment marks between racial groups should be investigated, and steps taken to deal with possible causes.

Example 16: Performance assessment

Nasr v Salisbury Health Care NHS Trust, Case No. 3102492/99

A consultant of Egyptian origin was not awarded a discretionary point to take his salary above the standard, whereas his 12 colleagues, who were white and of British origin, had each been awarded at least one point. The tribunal upheld his claim of unlawful direct discrimination. It found that the members of the discretionary points committee did not independently record their assessment of each of the candidates against the appropriate criteria and guidelines. Nor were any notes kept of the discussions or the assessment process. The tribunal concluded that 'such a high level of subjectivity is anathema to the successful application of equal opportunity guidelines, since it works to the disadvantage of ethnic minorities, both in operation and perception'. The complainant was awarded £18,000 in exemplary damages.

■ **Example H.** A large-scale study of appraisal in 13 civil service departments in 2000 found that staff from white racial groups were consistently awarded higher marks than staff from other racial groups. This was true across grades, age groups, and length-of-service bands. The researchers found no evidence of significant differences in education or training between the groups that were likely to affect performance. Interviews with staff from all racial groups revealed common concerns about the appraisal system itself. Staff from 'non-white' groups were concerned that their performance reviews and appraisal markings reflected stereotyped attitudes about their racial groups. The researchers produced reports and made recommendations for each department. Departments are now acting on these and are themselves monitoring appraisal results and carrying out further investigations and analyses, for example of the language used in appraisal reports, depending on the racial groups concerned.

Training and development

- 4.57 It is unlawful for employers to discriminate against, or harass, a person, on racial grounds, in the arrangements they make for training, transfer and other development opportunities, or by deliberately refusing to make these available to all workers (see Example 17, p 60). The RRA permits some exceptions, including an exception for training provided as part of a positive action initiative (see paras 3.43 – 3.45 and Appendix 1).
- 4.58 Employers should consider adopting a policy on training, transfer and development, linked to the organisation's business plan (if it has one), and based on regularly updated audits of workers' skills and training needs. The policy

Example 17: Training and development

Bath v Bedfordshire County Council, Case No. 36632/91 [1993]
DCLD 17

An Asian careers officer found that, although he had been employed to spend one-third of his time counselling pupils about careers, the council refused to let him do this, because he did not have a diploma in careers guidance. No qualifications had been specified in either the job advertisement or the job description. Three years later, five candidates – two white, and three Asian or African Caribbean – were interviewed for one place on a diploma course. The Asian officer was the best qualified academically and the successful white candidate the least qualified. The tribunal ruled that the interviews had been conducted ‘for the sake of form’ and that the result was a foregone conclusion that amounted to unlawful racial discrimination.

should describe the range of development opportunities open to all staff, such as mentoring and shadowing schemes, and to any support its staff will receive.

■ **Example I.** Employers might consider providing language training for workers whose language skills are weak. Even when their skills are adequate for the job they are doing, a better command of the language will open the door to better career prospects. Good communication in the workplace also improves overall efficiency, and health and safety, and contributes to better understanding between workers from all racial groups as well as between managers and workers and their representatives.

- 4.59 To help avoid claims of unlawful discrimination or harassment on racial grounds, it is recommended that employers ensure that managers and supervisors responsible for selecting workers for training and other development opportunities are themselves trained to:
- a. understand their legal responsibilities under the RRA, and how the organisation’s equal opportunities policy applies to matters of training and career development;
 - b. recognise workers’ training needs, regardless of racial group;
 - c. encourage all workers to apply for training and other development opportunities, so that no one is overlooked as a result of subjective judgements about their abilities as members of particular racial groups;
 - d. monitor the take-up of training and other development opportunities, by racial group, and take steps to deal with any significant disparities in take-up between racial groups;

- e. regularly review the selection criteria for training and other development opportunities, to make sure they are not potentially discriminatory on racial grounds; and
- f. advertise all training and other development opportunities as widely as possible throughout the organisation, for example, through notice boards, and internal websites and bulletins.

Promotion

- 4.60 It is unlawful for employers to discriminate against, or harass, workers on racial grounds in the way they make opportunities for promotion available, or by refusing or deliberately failing to make them available (see Example 18 below).
- 4.61 It is recommended that all promotion opportunities, including development opportunities that could lead to permanent promotion, should be advertised widely throughout the organisation, and filled in line with the organisation's

Example 18: Promotion

Dr Halim v Moray College, Case No. S/200267/02

The complainant, who was a lecturer at a college in Scotland, was twice overlooked for promotion, even though he was better qualified than those who were promoted. He believed this was because he had complained to the college principal that his line manager was racist and that he had given him unfair appraisals. The principal had advised the complainant to raise the matter directly with his line manager.

There were nine applicants for the first post, including the complainant and his line manager, and the panel included the principal. The principal's sole comment on the complainant was 'This man's not for shortlisting'. At the tribunal hearing, he said he did not consider the application to be 'a serious one' and thought it was all 'part of a sad ruse'. The complainant's line manager was appointed to the post. The panel for the second promotion included the complainant's line manager and the principal and deputy principal. This time he was rejected because the panel said he did not meet some of the essential criteria. The principal also told the tribunal that the complainant 'did not understand what the job was about'.

The tribunal found the college's explanations unconvincing. In upholding the complainant's claim, it took into account the following: unlike the shortlisted candidates, the complainant had met some of the essential criteria; the panel members had been aware of the complainant's grievance; and the person who was the subject of the grievance had been a member of the panel. The tribunal awarded £14,000 in damages.

equal opportunities and recruitment policies and procedures. This would mean using the organisation's standard job application form (if it has one) to fill all promotion and development opportunities, and making sure that selection is based strictly on demonstrable merit.

- 4.62 Employers should avoid by-passing their recruitment procedures, unless a temporary promotion is absolutely necessary. In this case, the promotion should last no longer than the time needed to fill the post permanently, and openly, through the organisation's recruitment procedures.
- 4.63 Employers will find it helpful to build the following guidelines into their policies and procedures for promotion and career development.
- a. Where posts are advertised internally and externally, the same selection procedures and criteria should apply to both internal and external candidates. Discussions about candidates, particularly internal candidates, should not be based on rumours or unsubstantiated opinions.
 - b. As far as possible, selection decisions based on performance assessments should be endorsed by the organisation's personnel department (if it has one).
 - c. No assumptions should be made about the eligibility of staff, based on their grade, current post or racial group, and information about all promotion and other development opportunities that could lead to permanent promotion, such as deputising and secondments, should be communicated to all staff; restricting applications for promotion and other development opportunities to staff at a particular grade or level could indirectly discriminate against some racial groups.
 - d. Records should be kept, by racial group, of who is taking up different types of opportunities, and who is not (see paras 3.25 – 3.31); who is successful, and who is not.
- 4.64 As part of their equal opportunities review of the recruitment process, employers should use the monitoring data on promotions to see if there are significant disparities between racial groups in the take-up of promotion and other development opportunities, success rates and length of time spent at a particular grade. If disparities are found, employers should investigate the possible causes in each case and take steps to remove any barriers.

Discipline and grievance

- 4.65 Employers must not discriminate on racial grounds in the way they respond to grievances, or invoke disciplinary measures. Disciplinary action is an extreme measure and should be taken fairly and consistently, regardless of the worker's racial group. Equally, allegations of racial discrimination or harassment must always be taken seriously and investigated promptly, not dismissed as 'over-sensitivity' on a worker's part.

- 4.66 All employers (irrespective of their size) must now have minimum statutory procedures in place for dealing with dismissal, disciplinary action and grievances in the workplace (section 3 of the Employment Rights Act 1996, as amended by the Employment Act 2002) (see 'disciplinary procedure' and 'grievance procedure' in the glossary at Appendix 7, and ACAS in Appendix 5). These provisions apply only to employees (see the glossary at Appendix 7).
- 4.67 It is in the interests of employers to attempt, wherever possible, to resolve grievances as they arise, and before they become major problems, through mediation. Grievance procedures can provide an open and fair way for complainants to make their concerns known, and for their grievances to be resolved quickly, without having to bring legal proceedings.
- 4.68 It is recommended that employers monitor, by racial group, the number of workers who have brought grievances or been subjected to disciplinary action (public authorities with at least 150 full-time-equivalent workers have a legal duty to do this; see paras 3.32 – 3.34), and the outcomes of each case. It will also be useful to be able to match the data with information about the workers' grades, their managers and the areas of the organisation where they work.
- 4.69 If an investigation into a grievance or disciplinary matter finds evidence that the grievance was brought in bad faith, for example, to get another worker into trouble, the employer should take steps to make sure this does not happen again, either by recommending training or taking disciplinary action against the worker in question, as appropriate. However, employers must be careful not to punish someone for having made a complaint that proves to have been unfounded, but that was made in good faith, as that could amount to unlawful victimisation (see paras 2.14 – 2.15).
- 4.70 It is recommended that, before taking disciplinary action, employers should consider the possible effect on a worker's behaviour of the following:
- a. racist abuse or other provocation on racial grounds;
 - b. difficulty in communicating with, or understanding, colleagues; and
 - c. different cultural norms.
- 4.71 As part of their equal opportunities review, employers should use the monitoring data on grievances and disciplinary action to see if there are significant disparities between racial groups, investigate the possible causes in each case, and take steps to deal with them.

Harassment

- 4.72 It is unlawful for employers to engage in, or condone, unwanted conduct that will violate the dignity of workers or job applicants, or create an intimidating, hostile,

Example 19: Harassment

Milovanovic v Hebden Dyeing and Finishing Co Ltd, Case No. 29691/94 [1995] DCLD No. 24

A Serbian worker, who had lived in Britain for over 40 years, was one of 25 workers in a dyeing company. He complained in vain of persistent harassment based on his ethnic background, especially after the war in Bosnia began. He faced comments such as 'Go back to Bosnia or wherever you belong, and fight and die like a dog instead of our lads'; and 'If all foreigners and blacks go back to their own country, we will have a better environment in this country'. He handed in his notice and brought a successful claim of direct racial discrimination against the company (see para 2.16). The complainant was awarded around £4,000 in damages.

Example 20: Harassment

Mohammed Wahid Zia v Killermont Polo Club (Scotland) Ltd, Case No. S/105430/2001

A Muslim of Pakistani origin, who was employed as a part-time waiter in Glasgow, claimed that his employers, who were Indian Sikhs, harassed, humiliated and demeaned him on racial grounds, and that they also made derogatory remarks about his religion. The tribunal upheld his claims of direct racial discrimination (see para 2.16), victimisation and unfair dismissal. The application was made before 19 July 2003, when it became unlawful to treat a worker or a job applicant less favourably on grounds of religion or belief. Since then, in similar circumstances, the case could have been brought on religious as well as racial grounds. The complainant was awarded a total of around £33,000 in compensation, including £22,000 for injury to feelings.

degrading, offensive or humiliating atmosphere for that person (see Example 7, p 22, and Examples 19 and 20 above).

- 4.73 It is recommended that employers introduce a policy for dealing with racial harassment. The policy could be part of a wider anti-harassment policy or the organisation's policies on discipline and grievance, or a policy covering dignity in the workplace. Whatever form the policy takes, it should make clear what is and what is not acceptable behaviour in the organisation (see the sample policy at Appendix 3).
- 4.74 To make sure the policy is effective, it is recommended that employers:

- a. publicise the policy through the organisation's websites, notice boards and other forms of communication, so that all staff know about it and understand why it has been adopted, how it will work and how it affects them;
 - b. make both the policy for dealing with racial harassment and the equal opportunities policy standard components of all training, including induction and specialist courses; and
 - c. offer an informal route to resolving a grievance as well as the formal one of an investigation.
- 4.75 If an allegation of racial harassment or discrimination is upheld, it is in the interest of good workplace relations for the employer to make sure that:
- a. the harassment has actually stopped, particularly if the parties continue to work together, and
 - b. the complainant is not victimised for having brought the grievance.

Dismissal and termination of employment

- 4.76 It is unlawful for employers to discriminate against, or harass, workers on racial grounds, by dismissing them or subjecting them to any other detriment (see Example 21 below and Example 22, p 66). Dismissal includes termination of a contract by the employer (with or without notice), and non-renewal or expiry of a fixed-term contract, unless a genuine occupational requirement applies (see para 2.36 and Appendix 1).
- 4.77 It is recommended that employers make sure the criteria they use for dismissal (including redundancies) are not indirectly discriminatory, and that their procedures are fair and objective, and are followed consistently.
- 4.78 Dismissal, or any other detriment – such as demotion or compulsory transfer – must always be fair and reasonable. Employers should make sure such decisions are based on a worker's actual performance or conduct during his or her

Example 21: Dismissal

Birdi v Waites (1) and Waites Architecture (2), Case No. 37708/95 [1996] DCLD 30

A tribunal found that a firm of architects had a record of dismissing black and Asian professional staff after short service, and that this amounted to unlawful racial discrimination. It found that an Asian architect had been criticised without reason during his employment with the firm, marginalised and then dismissed after nine months, for poor performance. He was the third consecutive ethnic minority worker to be dismissed in under 12 months.

Example 22: Redundancy

Sahota and ORS v Shareporter Ltd, [1983] COIT 1414/148

Three sewing machinists, each with less than a year's service, claimed compensation for their selection for redundancy. Two were of Indian origin and the third was an Italian. The machine room supervisor, whose views of black and Asian workers were known to be both strong and derogatory, had made the selection.

The tribunal did not accept the company's claim that the machinists had been selected objectively, on the grounds of skill, as one of the machinists was a high bonus earner of some speed and reliability. The tribunal ruled that all three complainants had been dismissed in a redundancy situation because of their race.

employment, as reflected in any performance assessments. Any aptitude tests designed to select people for redundancy should be objective, and fairly and consistently administered (see paras 4.23 – 4.26). Wherever possible, employers should consult their workers, and trade unions and other workplace representatives, about proposed redundancies, and the criteria for selection.

- 4.79 Staff responsible for selecting workers for dismissal should be instructed not to discriminate on racial grounds, and trained in the organisation's equal opportunities policy, and how it might apply to dismissal and redundancy.
- 4.80 Workers who are eligible for redeployment should be given the chance to show they have the skills or abilities required in alternative jobs. Employers should use their normal recruitment policy to fill these jobs.
- 4.81 It is recommended that employers monitor all dismissals, by racial group (see also paras 3.25 and 3.31). They will find it useful to be able to match this data with information about the workers' grades, the areas of the organisation where they work, and their managers.
- 4.82 As well as the guidelines proposed in relation to disciplinary action (see paras 4.65 – 4.71), employers will find it helpful to:
 - a. make sure the decision to dismiss is not made by one individual, but, as far as possible, in discussion with a senior member of staff in the personnel department (if the organisation has one);
 - b. keep written records of all decisions to dismiss; and
 - c. encourage leavers to give feedback about their employment.

- 4.83 Employers should use the monitoring data to see if policies, procedures or practices that might have been criticised in the feedback could be contributing to any significant disparities between racial groups, for example in performance ratings or promotion.

RESPONSIBILITIES TO FORMER EMPLOYEES

[Section 27A of the RRA]

- 4.84 It is unlawful for employers to discriminate against, or harass, former workers, on racial grounds.

■ **Example J.** Employers will find themselves in a stronger position, should they face legal proceedings under the RRA, if they can show that they gave their staff clear guidance on supplying references to former workers. References need to be true and accurate, and give a fair representation of the worker's performance, based on evidence of the work they actually did, and not on rumours or assumptions based on their racial group. Best practice would consist of giving the worker a copy of the reference.

5

*Additional responsibilities
of trade unions,
employers' associations,
professional and
trade associations
and employment and
recruitment agencies*

5

Additional responsibilities of trade unions, employers' associations, professional and trade associations and employment and recruitment agencies

TRADE UNIONS, EMPLOYERS' ASSOCIATIONS AND PROFESSIONAL AND TRADE ASSOCIATIONS

[Section 11 of the RRA]

- 5.1 For the purposes of the Race Relations Act (RRA), trade unions, employers' associations and professional and trade associations (referred to as trade unions and other membership organisations) are both employers (see the glossary at Appendix 7) and providers of services specifically covered by the RRA. In their role as employers, these organisations have all the responsibilities outlined in Chapters 3 and 4 of this code. They are also responsible for making sure their representatives do not discriminate unlawfully on racial grounds.
- 5.2 National, regional and local trade union officials and shop floor representatives have an important role to play on behalf of their members in preventing unlawful racial discrimination or harassment in the workplace, and in promoting equality of opportunity and good relations between people from different racial groups. Trade unions are in a strong position to negotiate changes in policies, procedures and practices, when needed, and to support measures that will prevent unlawful racial discrimination or harassment in the workplace, and promote equality of opportunity. It is recommended that trade unions and other membership organisations also make their members aware of the importance of racial equality, and of their responsibilities under the RRA.
- 5.3 As providers of services for their members, trade unions and other membership organisations must make sure services are provided without unlawful racial discrimination or harassment.

What the law says

Admission of members

- 5.4 It is unlawful for trade unions and other membership organisations to discriminate against a person, on racial grounds, in the terms on which they offer membership, or by refusing membership.

Treatment of members

- 5.5 It is unlawful for trade unions and other membership organisations to discriminate against members, on racial grounds:
- a. in the way they make benefits, facilities or services available, or by refusing or deliberately failing to make them available; these may include:
 - i. training facilities;
 - ii. welfare and insurance schemes;
 - iii. entertainment and social events;
 - iv. being involved in negotiations; and
 - v. advice, representation and assistance in grievance, disciplinary or dismissal procedures (see Examples 23 and 24, p 73).
 - b. by depriving them of membership, or varying the terms on which they are a member;
 - c. by subjecting them to some other detriment.
- 5.6 Trade unions and other membership organisations must not harass members or potential members on racial grounds.

Preventing unlawful racial discrimination and harassment

- 5.7 It is recommended that trade unions and other membership organisations adopt the following guidelines.
- a. Make it clear that unlawful discrimination or harassment by members, on racial grounds, brings the organisation into disrepute, and will be dealt with through sanctions ranging from training and counselling to disciplinary action, and possibly even expulsion.
 - b. Make it clear to members that they may be personally liable for acts or deliberate omissions amounting to unlawful racial discrimination or harassment in the course of their employment.
 - c. Remind members involved in selection decisions on recruitment, promotion, training or transfer:

Example 23: Providing services to members

Oliver v Unison, Case No. 2800830/00

A black trade union member claimed at a tribunal that the branch secretary had discriminated against her by refusing to represent her in a formal grievance she had brought against two of her colleagues for bullying and racial harassment, having said that he was too busy. When she later found that he was representing the alleged harassers, also union members, she made a formal complaint to the union, which failed to investigate it properly and dismissed it. The tribunal unanimously decided that the union had discriminated against her in its provision of services, as well as by dismissing her complaint against one of its officials.

Example 24: Providing services to members

Short v Greater London Unison, Case No. 2301192/98 [2000] DCLD 46

A tribunal found that a trade union had discriminated on grounds of race and sex when it refused to support one of its members, a white man, in his discrimination action against his council employer. The claim against the council arose when the man failed to get the only remaining job in his section following a restructuring. He claimed discrimination when three black women on the interview panel appointed a black woman to the post. The branch secretary refused to support his discrimination claim against the council because he could not see the relevance of an interview panel being made up entirely of black women to any complaint of either race or sex discrimination. The tribunal said there was not the slightest doubt that had the request come from a black woman complaining of rejection by an all white, all male panel, she would have received representation.

- i. not to discriminate against, or harass, someone, on racial grounds; and
 - ii. to examine their procedures and joint agreements for any indirectly discriminatory requirements, conditions, criteria, provisions or practices, such as unjustifiable restrictions on transfers between departments, or irrelevant or subjective selection criteria that could exclude or disadvantage applicants from some racial groups.
- d. Encourage members to cooperate with management in measures such as monitoring, and positive action (see Appendix 1).

- e. Make sure members observe the organisation's equal opportunities policy.
- f. Monitor membership, by racial group.
- g. Represent members, irrespective of race, colour, nationality (including citizenship) or ethnic or national origins.
- h. Consider positive action measures (see Appendix 1), to encourage and train members from racial groups that have been under-represented.
- i. Provide training, information and literature (in different languages and formats (when needed) for officers, shop stewards, representatives and members. The training and information could cover the following:
 - i. the RRA, and the nature and causes of unlawful racial discrimination and harassment;
 - ii. the cultural and historical backgrounds of the diverse racial groups in Britain;
 - iii. the effects of racial prejudice;
 - iv. the organisation's equal opportunities policy;
 - v. how to play a full part in the organisation, and stand for election; and
 - vi. how to avoid unlawful racial discrimination or harassment when representing members.

Pressure or instructions to discriminate

- 5.8 It is unlawful for members of trade unions and other membership organisations, or their representatives, to put pressure on workers or employers (see the glossary at Appendix 7) or to induce or instruct them to discriminate against, or harass, someone, on racial grounds, in the decisions they make:
- a. when recruiting, promoting, transferring, training or dismissing staff; for example, by resisting an employer's attempts to stop the practice of using internal trawls for promotions at a local office where workers from some racial groups are in a minority; or
 - b. in the terms of employment, benefits, facilities or services; for example, by restricting the numbers of workers from a particular racial group in a section, grade or department; or
 - c. by resisting changes to practices that are designed to remove indirect discrimination, such as mobility between departments, or rights of seniority.
- 5.9 It is unlawful to discriminate against, or harass, a person because he or she has complained of unlawful racial discrimination or brought legal proceedings under the RRA, or provided information or evidence in connection with such proceedings, or has otherwise done (or intended to do) anything else under the RRA (see also paras 2.14 – 2.15).

Promoting equal opportunities

- 5.10 It is recommended that trade unions and other membership organisations consider the following guidelines, to help them play a full part in achieving equality of opportunity in employment.
- a. Cooperate with management in introducing equal opportunities and anti-harassment policies, and putting them into practice.
 - b. Negotiate the adoption of these policies, if they have not been introduced, or their extension, if they are too narrow.
 - c. Use their influence to press for changes, if there is evidence that particular procedures and practices might be leading to unlawful racial discrimination; for example, practices such as:
 - i. rights of seniority in promotion, especially when all senior posts are occupied by people from a particular racial group;
 - ii. unjustifiable restrictions on transfers between areas of an organisation;
 - iii. use of transfers as a penalty;
 - iv. arbitrary changes to job descriptions, without consultation;
 - v. failure to advertise opportunities internally; and
 - vi. disregard of policies, in order to favour friends or favourites.
 - d. Encourage management to take steps to ensure that all workers understand their rights and responsibilities under the organisation's equal opportunities policy, for example, by providing written guidance and training on good equal opportunities practice in different aspects of employment.
 - e. Cooperate with measures to monitor and ensure the effectiveness of the equal opportunities policy, or encourage the organisation to take them if they have not already.
 - f. Encourage members to fill out monitoring questionnaires accurately.
 - g. Encourage employers to review their policies, procedures and practices in the light of the results of monitoring, assess their effects on workers from different racial groups, and take action to reduce or eliminate any significant racial disparities.
 - h. Make sure employers consult workers before introducing policies or making changes to procedures and practice.
 - i. Cooperate with employers in finding ways of reducing any significant disparities between racial groups, as revealed through monitoring, assessments and reviews.
 - j. Encourage employers to tackle under-representation of a particular racial group (or groups) in the workforce as a whole, or in particular work, and support any positive action training or encouragement (see Appendix 1).

EMPLOYMENT AND RECRUITMENT AGENCIES

[Sections 14 and 29 of the RRA]

What the law says

- 5.11 In their role as employers, employment and recruitment agencies, including online recruitment agencies, have all the responsibilities outlined in Chapters 3 and 4 of this code. They also have responsibilities as suppliers of job applicants and workers to other employers.
- 5.12 It is unlawful for employment and recruitment agencies to:
- a. discriminate against, or harass, a person, on racial grounds, in the way they provide any of their services;
 - **Example K.** An employment agency put forward white job seekers for managerial jobs and black job seekers for cleaning and security jobs.
 - b. publish job advertisements that suggest or could be taken to suggest that applications from certain racial groups will not be considered, or will be treated more favourably or less favourably than others;
 - **Example L.** An unlawful advertisement reads: 'Admin worker required. Must be a German national'.
 - c. act on instructions or pressure from employers, to reject, prefer or restrict the numbers of applicants from certain racial groups, unless a statutory exception applies (see para 2.24, Appendix 1 and Example 25, p 77);
 - **Example M.** A recruitment agency followed an employer's instruction to recommend only Scottish candidates for telesales vacancies.
 - d. act on indirectly discriminatory instructions from employers, so that applicants have to meet requirements or conditions that could unreasonably exclude or significantly reduce the number of applicants from a particular racial group (or groups);
 - **Example N.** An employment agency received a potentially discriminatory instruction from one of its clients to send only applicants who had been resident in the UK for five years. In another case, the employer wanted the agency to give preference to candidates with qualifications from Oxford or Cambridge; this could have disproportionately and adversely affected any ethnic minority job applicant who was eligible in all other respects, as statistics show that people from ethnic minorities are less likely to have studied at 'traditional' universities.
 - e. knowingly aid an employer in an act of unlawful racial discrimination or harassment (see paras 2.27 and 3.4).

Example 25: Pressure to discriminate

Britannia Products Ltd, Brook Street Bureau (Bradford), and Network Industrial Recruitment, CRE Formal Investigation [1994]

A CRE formal investigation of an employment agency and one of its clients found evidence of pressure having been brought on the agency to discriminate unlawfully. The investigation also found that the company was more likely to lay off ethnic minority than white workers, and that the agency's records showed that Asian job applicants received lower marks for appearance, speech and personality than other applicants. The CRE issued a non-discrimination notice (see the glossary at Appendix 7) against both the organisation and the agency.

- 5.13 To avoid unlawful racial discrimination, or harassment, employment and recruitment agencies are advised to ensure that they are not:
- a. making assumptions about the type of work some racial groups do better than others, and screening applicants on that basis;
 - b. making 'business' assumptions about their clients' racial preferences; and
 - c. treating clients from certain racial groups less favourably than others.

Pressure or instructions to discriminate

- 5.14 Employment and recruitment agencies, or their representatives, should not put pressure on workers or clients or employers (see the glossary at Appendix 7), or induce or instruct them, to discriminate unlawfully against, or harass, someone, on racial grounds.
- 5.15 It is unlawful for employment and recruitment agencies, or their representatives, to discriminate against, or harass, a person because he or she has complained of unlawful racial discrimination or brought legal proceedings under the RRA, or provided information or evidence in connection with such proceedings, or has otherwise done (or intended to do) anything else under the RRA (see also paras 2.14-2.15).

Promoting equal opportunities

- 5.16 It is recommended that employment and recruitment agencies:
- a. adopt an equal opportunities policy that makes it clear that no job applicant will be treated less favourably on racial grounds; in addition, no job applicant will be placed at a disadvantage by requirements, provisions, criteria, conditions or practices, unless they can be justified as a necessary and appropriate means of achieving a legitimate objective;

- b. give anyone registering with the agency a copy of the policy, and include the policy in the terms of business sent to clients, suppliers and subcontractors;
- c. make sure all staff understand that it is against the law to discriminate on racial grounds, or harass clients, and that stereotypes and generalisations about racial groups can affect the way they treat people from these groups; and
- d. keep records of applicants' racial groups, and monitor the effectiveness of any measures they take to prevent unlawful racial discrimination and harassment; for example, by checking periodically that qualified applicants from ethnic minority groups are being referred for suitable jobs at a similar rate to qualified applicants from other groups.

5.17 It is also recommended that agencies instruct their staff:

- a. not to ask clients for racial preferences;
- b. to follow the agency's equal opportunities policy;
- c. to report to a supervisor any employer who gives them instructions to discriminate on racial grounds, or who tries to persuade them to discriminate in this way;
- d. to explain to employers the requirements of the law, and the agency's obligations, and to send them a copy of the agency's equal opportunities policy;
- e. not to draw attention to job applicants' racial groups when recommending them for a vacancy, unless the employer is properly relying on a statutory exception to the RRA (see paras 2.33 – 2.36), and has given a written statement to this effect;
- f. to report to a manager or supervisor any employer's refusal to interview an applicant, on racial grounds, or any evidence that an applicant has been rejected for a job on racial grounds; the manager or supervisor should inform the employer that his or her refusal could be unlawfully discriminatory; if the employer does not cooperate, the agency should inform the applicant of his or her right to take a complaint to an employment tribunal; and
- g. to inform a manager or supervisor if they believe that a job applicant, although interviewed, has been rejected on racial grounds. If the manager or supervisor is satisfied that there are grounds for this belief, the applicant should be informed of his or her right to make a complaint before an employment tribunal. Agencies should keep written records of such cases.

5.18 Employment or recruitment agencies should also consider the following guidelines.

- a. Make it clear to all job applicants, employers and other clients, subcontractors or franchises that the agency is committed to equality of opportunity.

- b. As part of the duty to promote race equality (see paras 2.28 – 2.31), public authorities that recruit workers through an agency may make it a term of the contract between them that the agency has an equal opportunities policy, and that it should monitor the selection process by applicants' racial groups.
 - c. Issue all staff with written instructions that they must treat all job seekers equally, irrespective of race, colour, nationality (including citizenship), or ethnic or national origins.
 - d. Inform employers of the agency's equal opportunities policy, and remind them that it is unlawful to discriminate against, or harass, someone on racial grounds in the selection process.
- 5.19 Although organisations in the private and voluntary sectors are not bound by the duty placed on public authorities to promote race equality (see paras 2.28 – 2.31), the CRE would recommend that they encourage the organisations with whom they have (or propose to enter into) contracts for work to take practical steps to ensure equality of opportunity in their employment practices.

6

*Rights and
responsibilities
of workers*

6

Rights and responsibilities of workers

Rights

- 6.1 All workers (see the glossary at Appendix 7) have the right to work free from unlawful racial discrimination and harassment. They have the right not to be treated less favourably on racial grounds than a worker from another racial group:
- a. in access to job opportunities;
 - b. in the terms and conditions on which they are employed;
 - c. in the opportunities they have for promotion, transfer or training; or in the access they have to benefits, facilities or services; and
 - d. in matters of dismissal or redundancy, or through exposure to any other detriment.
- 6.2 Workers also have other rights, including the following:
- a. not to be subjected to unwanted behaviour that violates their dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for them;
 - b. not to be victimised for claiming unlawful racial discrimination or harassment, or for backing someone else's complaint under the Race Relations Act 1976 (RRA);
 - c. not to be instructed to discriminate unlawfully against, or harass, someone, on racial grounds, or to be put under any pressure, or inducement, to do so; and
 - d. to take their complaint to an employment tribunal, if they are not satisfied with the way their employer has dealt with it; employees have the right to have their complaint considered under statutory grievance and disciplinary procedures (see para 4.66).
- 6.3 Workers who believe their employer or a colleague is harassing or discriminating unlawfully against them, on racial grounds, have several options. They can:
- a. consult their trade union (if there is one where they work and they are a member of it) or workplace representative;

- b. report the matter to their manager (unless this person is the alleged discriminator) and/or to someone in the personnel department (if there is one);
 - c. use informal procedures, such as mediation, and, if unsuccessful, the employer's grievance procedure, which must be followed if the employee is considering taking the matter to an employment tribunal (see paras 4.65 – 4.71); and
 - d. seek legal advice about pursuing their claim in an employment tribunal, if they are not satisfied with the result of the grievance procedure.
- 6.4 Employment tribunals have wide powers to order compensation, following a finding of unlawful racial discrimination. Awards of compensation may include:
- a. past loss of earnings or other financial loss, including future loss;
 - b. injury to feelings;
 - c. personal injury, physical or psychological, caused by the discrimination or harassment; and
 - d. a further award for injury to feelings, in exceptional circumstances, to reflect the way in which the person bringing the claim of discrimination or harassment has been treated.
- 6.5 Employment tribunals can also make a declaration about the rights of the parties, or recommend that the employer take steps to reduce the effects of the discrimination on the complainant.

Responsibilities

- 6.6 Responsibility for preventing unlawful racial discrimination or harassment and promoting equality of opportunity between people of different racial groups rests principally with employers. Employers are also liable for any unlawful acts of racial discrimination or harassment by their workers, unless they can show they have taken reasonably practicable steps to prevent such acts (see para 3.4 and Example 26, p 85.) However, individual workers do not escape responsibility: a worker, whatever his or her grade or racial group, may be held personally liable for his or her actions, if they are proved to be unlawful, even if the employer has a strong defence against liability (see paras 2.27 and 3.4).

■ **Example O.** A manager, who discriminates unlawfully on racial grounds against another worker, may be held personally liable and made to pay compensation to that worker, especially if the employer can persuade an employment tribunal that the organisation took reasonable steps to prevent the manager from discriminating unlawfully.

Example 26: Worker's liability

Hussain v Westcroft Castings Ltd (1), Mr A Scotson (2) and Mr H Irvine (3), Case No. 21858/94

A Pakistani worker at a small metal castings foundry, unable to cope any longer with the vicious abuse and harassment directed at him, brought racial discrimination claims against the company, one of the workers and his manager. His manager, having promised when he first complained that he would sort things out, responded the next time by asking him what he had done 'to stir this up'. He took no action whatever against the culprit. The tribunal found the manager's responses 'deplorably inadequate' and dismissed the company's defence that what had happened was merely 'jocular banter'. The tribunal also made clear that the size of the company has no bearing on 'the standards expected of reasonable employers when handling disciplinary matters'. Findings of unlawful direct discrimination were made against the company and the two named individuals.

- 6.7 Workers are responsible for respecting the rights of their fellow workers, including their right to work free from unlawful racial discrimination or harassment.
- 6.8 The following actions by individual workers would be unlawful:
- a. discriminating on racial grounds against colleagues, junior staff, agency staff, contractors, or job applicants in the course of their employment;
 - **Example P.** A manager prefers to work with people whom he has worked with before on other jobs. Most of them are Asian. This could be indirectly discriminatory if teams are regularly put together on this basis and suitable workers from other racial groups are excluded as a result.
 - b. harassing someone at work because of their racial group, by behaving in a way that violates their dignity, or creates a hostile, humiliating, offensive, degrading or intimidating environment;
 - c. attempting to induce, pressurise or persuade other workers to discriminate unlawfully on racial grounds;
 - **Example Q.** A worker refused to be part of a team that included workers from particular racial groups, and induced other workers to refuse as well.
 - d. helping someone to plan or carry out an act of unlawful racial discrimination or harassment;
 - **Example R.** A manager gave one of her workers advice on getting a colleague from a particular racial group demoted.

- e. victimising a worker who has complained in good faith about racial discrimination or harassment, or taken legal action about it, or given evidence or information in a case of racial discrimination, even if the complaint is not upheld.

6.9 It is recommended that workers:

- a. cooperate with measures taken by management to promote equal opportunities and prevent unlawful racial discrimination and harassment, such as monitoring or positive action training; or work through their trade union or other workplace representatives to encourage management to take such measures;
- b. take part in training on the organisation's equal opportunities policy;
- c. follow the organisation's equal opportunities and anti-harassment policies;
- d. alert management, and trade unions or other workplace representatives, to incidents of racial discrimination or harassment;
- e. avoid infringing workers' rights to work in an environment free of unlawful racial discrimination or harassment; and
- f. be alert to the possibility that apparently non-discriminatory rules, requirements, conditions, practices, provisions and criteria could put people from some racial groups at a particular disadvantage.

6.10 As recruitment becomes more competitive, it is in the interests of *all* workers to take advantage of any training programmes their employers or trade unions provide, such as language training schemes, communication courses, courses on industrial relations and courses designed to improve negotiation skills. Effective communication, and the ability to be flexible and accommodating about the different ways in which people may need to balance the conflicting demands of their personal life, cultural background and work, lie at the heart of good relations at work.



Appendices

APPENDIX 1

Positive action and genuine occupational requirements or qualifications

Positive action [Sections 35, 37 and 38 of the RRA]

The term ‘positive action’ refers to measures that may lawfully be taken to meet special needs or to train or encourage people from a racial group that is under-represented in particular work, or among the post-holders of membership organisations (see also paras 3.43 – 3.46).

Section 35

This section of the Race Relations Act 1976 (RRA) makes it lawful to provide people from a particular racial group with access to facilities or services, in order to meet any special needs they might have in respect of education, training or welfare, or to any ancillary benefits. Schemes with an industrial language training component, language courses and access courses designed to meet special needs have all been developed under this section.

Section 37

Section 37 allows training or encouragement to be provided for a particular racial group that is under-represented in particular work – that is, in one of the following situations.

1. **Where there is national under-representation** – that is, where, during the previous 12 months, no one from a particular racial group has done the work in question in Great Britain, or where the proportion of people from that group doing that work was small compared to its proportion of the population of Great Britain. In this case, training or encouragement can be provided exclusively for the racial group (or groups) in question.
2. **Where there is local under-representation** – that is, during the previous 12 months, no one from a particular racial group has done the work in question in that area, or where the proportion of people from that group doing that work was small compared to its proportion of the population of that area. In this case, training or encouragement cannot be provided exclusively for the racial group in question but:
 - posts or places on training courses may be reserved for that group; or
 - as long as an opportunity is made available and known to all, applications may be encouraged from the under-represented group.

Section 38

Section 38 allows training or encouragement to be provided for a particular racial group that is under-represented in a particular type of work in a workplace, or among the post-holders of a membership organisation – that is, in one of the following situations:

1. **Workplace** – where, during the previous 12 months, no one from a particular racial group was doing a particular type of work in a workplace, or where the proportion of employees from that racial group doing that work there was small, compared to its proportion in the workforce or in the population of the area from which the employer recruits for that type of work. In this case, employers may:
 - provide training exclusively for employees (but not non-employees) from that racial group; or
 - encourage people from that group alone (whether or not they are employees), to take advantage of opportunities for doing that work there.
2. **Membership organisation** – where, during the previous 12 months, no one from a particular racial group has held a post in that organisation, or where the proportion of people from that racial group holding such a post was small, compared to the proportion of people from that racial group. In this case, the organisation may:
 - provide training for people from that racial group that will help equip them to hold such a post; or
 - encourage people from that racial group alone to take advantage of opportunities to hold such a post.

Encouragement means making it easier for people from a racial group under-represented in particular work to take advantage of job opportunities. It can take the form of explicit encouragement to apply; for example, in advertisements for jobs, mentoring opportunities, shadowing schemes, open days, and career fairs; and in information about careers and vacancies provided to schools in areas with large ethnic minority populations.

The RRA also allows employers, trade unions, employers' associations and trade or professional organisations (but not other organisations) to provide training or encouragement *exclusively* for employees or members from a particular racial group (or groups), to equip them to do particular work or hold particular posts.

Genuine occupational requirements and genuine occupational qualifications

[Sections 4A and 5 of the RRA]

Discrimination on racial grounds is allowed in certain limited circumstances, when being from a particular racial group is a 'genuine occupational requirement' (GOR) or a 'genuine occupational qualification' (GOQ).

GOR and GOQ exceptions are very restrictively defined and it is for the employer to justify selecting or promoting or (in the case of GORs only) dismissing in a way that would otherwise be unlawfully discriminatory.

Employers are strongly advised to seek legal advice on using a GOR or GOQ exception, before advertising the post. All advertisements indicating an intention to discriminate are unlawful, unless a statutory exception applies.

Genuine occupational requirements (GOR)

Any job may be restricted to a person from a particular race or ethnic or national origin, if one of these characteristics is a GOR for the job or the context within which the job is to be carried out. This means an employer may lawfully discriminate on these grounds in recruitment, and in training for promotion or transfer to that job, if he or she can show that the use of a GOR is a reasonable means of achieving a legitimate aim.

The RRA also permits dismissal, in order to meet a GOR. In other words, if an employer reasonably believes a person does not meet the GOR that applies to the post, he or she may then be dismissed. If a person were appointed to meet a GOR and the job came to an end, then normal redundancy rules would apply.

■ **Example S.** A local council has a health project worker of Bangladeshi origin who is responsible for encouraging people of Bangladeshi origin to make more use of the council's health services. The project has been a success, with marked improvements in the use of health services by Bangladeshis. The council now wants to repeat the exercise for its growing local Somali community and to recruit a person of Somali national origin for the post, as the person best equipped for the duties of the post. Some of these involve visiting the homes of elderly people and people with disabilities and the worker will therefore need to have a good knowledge of the culture and language of the Somali community. The council does not have the resources for two posts and has decided, following a review of the Bengali project, that it is now less necessary than the Somali project. The council does not have other Somali workers who can do the job. The council could rely on the GOR exception when advertising the vacancy to recruit a person of Somali national origin, and to redeploy the Bangladeshi worker or end her or his contract. If the contract has lasted for two years or more, the council would need to take into account the statutory redundancy payment due for non-renewal of the contract, which amounts to a dismissal in law.

Genuine occupational qualifications (GOQ)

The GOR exception may not be used to discriminate on grounds of colour or nationality. Discrimination on grounds of colour or nationality is only possible for specific types of jobs.

- a. To achieve authenticity in a dramatic performance or similar entertainment or in modelling or photographic or artistic work.

■ **Example T.** A theatre director may decide that only a black person can convincingly play the part of Dr Martin Luther King, while a painter working on a scene from the Mahabharata may ask an employment agency to send only Indian models.

- b. To achieve authenticity in bars and restaurants.
- c. To provide personal services to people from a particular racial group, defined by colour or nationality, in order to promote their welfare, which only a person of the same colour or nationality can do 'most effectively'.

Genuine occupational qualifications and requirements		
Nature of exception	GOR	GOQ
Discrimination on grounds of race or ethnic or national origins	✓	
Discrimination on grounds of colour or nationality		✓
<i>Purpose of exception</i>		
Promotion	✓	✓
Transfer	✓	✓
Recruitment	✓	✓
Termination of contract	✓	
Any job	✓	
Certain types of jobs		✓

APPENDIX 2

Sample policy on equal opportunities in employment

_____ [organisation's name] is committed to building an organisation that makes full use of the talents, skills, experience, and different cultural perspectives available in a multi-ethnic society, and where people feel they are respected and valued, and can achieve their potential regardless of race, colour, nationality, national or ethnic origins.

_____ will follow the recommendations of the CRE's statutory *Code of Practice on Racial Equality in Employment* in all its employment policies, procedures and practices.

The aims of this policy are to ensure that:

- no one receives less favourable treatment, on grounds of race, colour, nationality, or ethnic or national origins, or is disadvantaged by any conditions, requirements, provisions, criteria, procedures or practices that cannot be justified on non-racial grounds, or victimised for taking action against racial discrimination or harassment, or instructed or put under pressure to discriminate against, or harass, someone on racial grounds;
- the organisation is free of unwanted conduct that violates the dignity of workers or creates an intimidating, hostile, degrading, offensive or humiliating environment;
- opportunities for employment, training and promotion are equally open to candidates from all racial groups; and
- selection for employment, promotion, transfer and training, and access to benefits, facilities and services, will be fair and equitable, and based solely on merit.

This policy applies to all aspects of employment, from recruitment to dismissal and former workers' rights.

We will take the following steps to put the policy into practice and make sure it is achieving its ends.

- The policy will be a priority for the organisation.
- ___ (named senior manager and job title) will be responsible for the day-to-day operation of the policy.
- The policy will be communicated to all workers and job applicants, and will be placed on the organisation's intranet and website.
- Workers and their representatives and trade unions will be consulted regularly about the policy, and about related action plans and strategies.
- All workers will be trained on the policy; on their rights and responsibilities under the policy, and on how the policy will affect the way they carry out their duties. No one will be in any doubt about what constitutes acceptable and unacceptable conduct in the organisation.

- Managers and workers in key decision-making areas will be trained on the discriminatory effects that provisions, practices, requirements, conditions, and criteria can have on some racial groups, and the importance of being able to justify decisions to apply them.
- Complaints about racial discrimination or harassment in the course of employment will be regarded seriously, and may result in disciplinary sanctions, and even dismissal. The complaints procedure will be published in a form that is easily accessible.
- Opportunities for employment, promotion, transfer and training will be advertised widely, internally and externally, and all applicants will be welcomed, irrespective of race, colour, nationality or ethnic or national origins.
- All workers will be encouraged to develop their skills and qualifications, and to take advantage of promotion and development opportunities in the organisation.
- Selection criteria will be entirely related to the job or training opportunity.
- Information on the ethnic and racial backgrounds of workers and applicants for employment, promotion and training will be collected and analysed, to monitor each stage of the recruitment process. The information will be held in strictest confidence and will only be used to promote equality of opportunity and prevent unlawful racial discrimination.
- If the data show that people from a particular racial group are under-represented in particular areas of work, lawful positive action training and encouragement will be considered for workers and others from that group, to improve their chances of applying successfully for vacancies in these areas.
- Grievances, disciplinary action, performance assessment, and terminations of employment, for whatever reason, will also be monitored by racial group
- Requirements, conditions, provisions, criteria and practices will be reviewed regularly, in the light of the monitoring results, and revised, if they are found to, or might, discriminate unlawfully on racial grounds.
- All contracts between ____ and contractors to supply goods, materials or services will include a clause prohibiting unlawful racial discrimination or harassment by contractors and their staff, and by any sub-contractors and their staff. The clause will also encourage contractors and potential contractors to provide equality of opportunity in their employment practices.
- An equal opportunities action plan will be drawn up, with racial equality targets and timetables, to show what steps the organisation plans to take to achieve equality of opportunity.
- The effectiveness of the policy and the plan will be monitored regularly. A report on progress will be produced each year, and published via the intranet, the website, the staff newsletter, notice boards, and the annual report.
- Customers and clients will be made aware of the policy, and of their right to fair and equal treatment, irrespective of race, colour, nationality or ethnic or national origins.

This policy has been endorsed by ____ [an appropriate senior person] and has the full support of the management/board.

The policy was approved on ____ [insert date], following consultation with senior managers, workers, workers' representatives and trade unions.

Overall responsibility for the effectiveness of this policy lies with ____ [an appropriate senior person].

All staff are responsible for familiarising themselves with this policy. Managers must also make sure their workers know about, and follow, the policy.

For further information, please contact [insert name and details].

APPENDIX 3

Sample anti-harassment policy

As part of its equal opportunities policy, the company is committed to promoting a harmonious working environment, where every worker is treated with respect and dignity. No one should feel threatened, intimidated or degraded on grounds of race, colour, nationality, ethnic or national origins, sex, married status, sexual orientation, disability, physical characteristics, health, age, or religion or belief.

The policy also covers harassment that falls outside the categories referred to above, and that can be classed as bullying.

Harassment at work is unacceptable and will not be permitted or condoned. Examples might include:

- racially derogatory remarks or insults;
- graffiti or slogans;
- racist 'jokes', banter, ridicule or taunts;
- using a disparaging or offensive tone when communicating with people from certain racial groups;
- avoiding people because of their racial group;
- having unrealistic expectations of performance or imposing excessive workloads on people, based on their racial group; and
- unnecessarily picking on individuals from particular racial groups.

All workers have a right to work in an environment that:

- is free from abuse or insults;
- is safe;
- promotes dignity at work;
- encourages individuals to treat each other with respect;
- values politeness;
- is open and fair; and
- encourages individuals to support each other.

All workers should:

- encourage a person who says they have been bullied or harassed to seek help, and be sensitive to their feelings; and
- refrain from taking part in, or encouraging or condoning, gossip about cases of alleged or actual harassment or bullying.

All complaints of harassment or racial discrimination will be treated seriously and dealt with promptly through the complaints procedure.

Disciplinary action, including dismissal, may be taken against any worker found responsible for unlawful racial discrimination or harassment.

All workers must follow this policy.

APPENDIX 4

Guidelines on job application forms

Personal details

- First name(s) and surname.
- Address and contact number.
- Racial group (select from categories).
- Other equality information being sought, for example, on sex, disability, sexual orientation, religion or belief, or age.

Education and training

- Details of qualifications, wherever they were obtained (only if relevant).

Employment

- Job history or other related experience.

Suitability for the job

- How the applicant meets the requirements of the job description and person specification. To make it easier to evaluate and compare applications, candidates should be asked to consider each requirement of the person specification, in turn, and to relate their answers to the duties listed in the job description.

References

- Names and contact details of two referees, one of whom should be the current or most recent employer (where applicable). Applicants should be assured that referees will only be approached if they are offered the job.

All the personal details in the relevant section of the application form (including information about racial group and other equality characteristics) should be detachable from the rest of the form, and not made known to members of the selection panel before the interview.

The request for information about an applicant's racial group should be accompanied by a clear explanation of the reasons for requesting this and how the information will be used, with an assurance that it will be treated in strictest confidence, and will not be used to assess suitability for the job or in the selection decision.

The application form should state clearly that candidates will be offered the job on the understanding that they are eligible to work in the UK (see also para 4.13c).

APPENDIX 5

Relevant organisations

ACAS (Advisory, Conciliation and Arbitration Service)

An independent employment relations service, providing free and confidential advice to employers and others on equal opportunities policies and practices in employment. ACAS also runs Equality Direct, a helpline for managing equality in the workplace. ACAS has produced a *Code of Practice on Disciplinary and Grievance Procedures*.

Website: www.acas.org.uk
National helpline: 08457 474747
Equality Direct: 08456 003444

Age Positive

A website set up by the government to help employers tackle issues raised by the forthcoming legislation providing protection from discrimination in employment and training on grounds of age.

Website: www.agepositive.gov.uk

British Chambers of Commerce

A national network of quality-accredited chambers of commerce in the UK, representing businesses of all sizes and in all sectors.

Tel: 020 7654 5800
Website: www.chamberonline.co.uk

British Psychological Society

The representative body for psychologists and psychology in the UK. In March 2002, the Society launched the Psychological Testing Centre (PTC). The PTC website is a useful source of information for users of tests and test takers.

Tel: 0116 254 9568
PTC website: www.psychtesting.org.uk

Business Link

An online service, managed by the Department of Trade and Industry, which provides support, advice and information for businesses in England and Wales.

Website: www.businesslink.org
Tel: 0845 600 9006 (Minicom 0845 606 2666) to connect you to your nearest Business Link

Business Gateway

An online service, managed by the Department of Trade and Industry, which provides support, advice and information for businesses in Scotland.

Website: www.bgateway.com

Chartered Institute of Personnel and Development (CIPD)

The professional body for people working in the field of human resources and staff development.

Website: www.cipd.co.uk
Tel: 0208 971 9000

Commission for Racial Equality (CRE)

A statutory body set up under the Race Relations Act 1976 to help eliminate racial discrimination, and promote equality of opportunity and good relations between people from different racial groups. Provides information, advice, guidance and legal assistance on matters concerning racial discrimination and racial equality.

Website: www.cre.gov.uk

London (head office): 020 7939 0000

Birmingham: 0121 710 3000

Manchester: 0161 835 5500

Commission for Racial Equality (CRE Scotland)

Provides information, advice, guidance and legal assistance on matters concerning racial discrimination and racial equality, with special reference to Scotland.

Website: www.cre.gov.uk

Tel: 0131 524 2000

Commission for Racial Equality (CRE Wales)

Provides information, advice, guidance and legal assistance on matters concerning racial discrimination and racial equality, with special reference to Wales.

Website: www.cre.gov.uk

Tel: 02920 729200

Community Legal Service (CLS)

Helps people who are eligible for legal aid, to protect their rights.

Website: www.clsdirect.org.uk

Tel: 0845 345 4345

Confederation of British Industry (CBI)

A lobbying organisation for UK business on national and international issues. The CBI works with the UK government, international legislators and policy-makers to help UK businesses compete effectively.

Website: www.cbi.org.uk

Tel: See the website for local CBI offices

Department of Trade and Industry (DTI)

The department's Employment Relations website covers employment law and equality legislation, including religion or belief and sexual orientation.

Website: www.dti.gov.uk/er

Tel: 020 7215 5000 (Enquiry Unit)

Small Business Service (www.sbs.gov.uk): 0845 001 0031

Disability Rights Commission (DRC)

Provides information, advice and guidance on matters concerning disability discrimination.

Website: www.drc-gb.org

Helpline: 08457 622633

Minicom: 08457 622644

Email: enquiry@drc-gb.org

Fax: 08457 778878

Employment Tribunal Service (ETS)

Provides information about the role and functions of the employment tribunal service.

Website: <http://www.ets.gov.uk>

Equal Opportunities Commission (EOC)

Provides information on matters concerning sex discrimination and equal pay.

Website: www.eoc.org.uk

Tel: 0845 601 5901

Email: info@eoc.org.uk

Email in Wales: wales@eoc.org.uk

Equality Law and Practice Online (EORdirect)

Provides information about discrimination law and equal opportunities practice for personnel and legal professionals, including news, analysis, reference tools and materials, case law reports, the full text of legislation, and sample policies and procedures.

Website: www.eordirect.com

Equal Opportunities Review: a monthly journal covering legislative developments, equal opportunities practice, equality statistics and law reports on equality issues.

Federation of Small Businesses (FSB)

A lobbying and benefits group for small businesses

Website: www.fsb.org.uk

Tel: 01253 336000

Home Office

Through its Race Equality Unit, the Home Office, as the sponsor department of the CRE, authorises and oversees payment of the CRE's grant in aid, approves its corporate plan and monitors delivery of its key performance indicators.

Website: www.homeoffice.gov.uk

Home Office - working in the UK

For information and guidance on how to avoid unlawful racial discrimination when checking job applicants' eligibility to work in the UK, see:

www.workingintheuk.gov.uk/ind/en/home/0/preventing_illegal.html

International Labour Organisation (ILO)

A specialised agency of the United Nations, which works to promote social justice and internationally recognised human and labour rights.

Website: www.ilo.org

Tel: +41 22 7996111

National Association of Citizens Advice Bureaux (NACAB)

Provides free, confidential legal advice and information to individuals and organisations on a wide range of matters.

Website: www.nacab.org.uk / www.adviceguide.org.uk

Tel: Check the phone book for the local CAB

National Council for Voluntary Sector Organisations (NCVO)

The umbrella body for the voluntary sector in England.
Website: www.ncvo-vol.org.uk

Office for National Statistics

The official UK statistics site.
Website: www.statistics.gov.uk
Tel: 0845 601 3034

Recruitment and Employment Confederation

A representative body for the recruitment industry.
Website: www.rec.uk.com
Tel: 020 7462 3260

Racial Equality Councils (RECs)

Local organisations, set up to help promote equality of opportunity, tackle racial discrimination and promote good race relations. RECs are jointly funded by local authorities and the CRE.
Website: www.cre.gov.uk/about/gr_funded_orgs.html
Check the phone book to find the nearest REC.

Scottish Trades Union Congress (STUC)

STUC represents around 630,000 working people in Scotland, the members of 46 affiliated trade unions. STUC's purpose is to coordinate, develop and articulate the views and policies of the trade union movement in Scotland, and to promote trade unionism, equality and social justice, the creation and maintenance of high quality jobs, and effective public services.
Website: www.stuc.org.uk
Tel: 0141 337 8100

Stonewall

A lesbian, gay, bisexual and transgendered campaign group. Stonewall provides information, advice and guidance on issues concerning discrimination on grounds of sexual orientation.
Website: www.stonewall.org.uk
Tel: 0207 881 9440

Trades Union Congress (TUC)

The TUC represents nearly seven million working people in Britain, the members of 70 affiliated trade unions. It campaigns for better terms and conditions at work and for social justice at home and abroad.
Website: www.tuc.org.uk
Tel: 020 7636 4030

UK NARIC (National Academic Recognition Information Centre)

The official source of information and advice on the comparability of international qualifications from over 180 countries with qualifications awarded in the UK.
Website: www.naric.org.uk
Tel: 0870 990 4088

Welsh Language Board (WLB)

Set up in December 1993 under the Welsh Language Act, the WLB's main function is to promote and facilitate the use of the Welsh language in Wales.

Website: www.bwrdd-yr-iaith.org.uk

Tel: 029 2087 8000

Wales Trades Union Congress (Wales TUC)

Wales TUC represents just under half a million working people in Wales, the members of 50 affiliated trade unions. Wales TUC is an integral part of the TUC, and campaigns to ensure that the TUC's role is undertaken effectively in Wales.

Website: www.wtuc.org.uk

Tel: 029 2034 7010

APPENDIX 6

CRE publications

A Fair Test? Selecting train drivers at British Rail (1996)

Equal Opportunities and Private Sector Employment in Scotland (2000)

Tackling Racial Harassment in Scotland: A caseworker's handbook (2001)

Statutory Code of Practice on the Duty to Promote Race Equality (2002)

The Duty to Promote Race Equality: A guide for public authorities (2002)

The Duty to Promote Race Equality: A guide for schools (2002)

The Duty to Promote Race Equality: A guide for further and higher education institutions (2002)

Ethnic Monitoring: A guide for public authorities (2002)

The Duty to Promote Race Equality: A framework for inspectorates (2002)

Racial Equality and Public Procurement (2003)

Racial Equality and Procurement in Local Government (2003)

Racial Equality and the Smaller Business: A practical guide (CD-ROM. 2004)

This guide can be downloaded in PDF or RTF large print format from
www.cre.gov.uk/smallbusiness

Public Authorities and Partnerships (2004)

Racial Harassment at Work: What employers can do about it (1995 – revised edition forthcoming)

Equal Opportunities Is Your Business Too (revised edition, 2004)

Published jointly by the Commission for Racial Equality, the Disability Rights Commission, the Equal Opportunities Commission and the Department of Trade and Industry. This leaflet can be downloaded from the publications section of the CRE website: www.cre.gov.uk/publs/cat_employ.html

**For a full list of all CRE publications please see the CRE website:
www.cre.gov.uk/publs.html**

APPENDIX 7

Glossary

IN THIS CODE, THE WORDS BELOW HAVE THE MEANINGS GIVEN BENEATH THEM.

Adverse impact

A significant difference in patterns of representation or outcomes between racial groups, with the difference amounting to a detriment for one or more racial groups.

Advertisement

Any form of advertisement or notice, including signs, labels, show cards or goods, samples, circulars, catalogues, price lists or other material and exhibitions of pictures, models or films, whether public or not, and disseminated through means such as the internet, newspapers or other publications, television or radio, displays, or in any other way.

Citizenship

See 'nationality' below. In general, the rights, duties and responsibilities of a good citizen, of any state.

Commission for Racial Equality

A non-departmental public body, set up under the RRA to work towards the elimination of unlawful racial discrimination, to promote equality of opportunity and good relations between people from different racial groups, and to keep under review the working of the RRA and make proposals for amending it.

Complainant

A person with a complaint of racial discrimination or harassment under the RRA.

Contract of employment

A contract of employment, like any other contract, is an agreement enforceable by law reached between two parties.

Contract worker

An individual who does work for a person (known as a principal), but is employed by another person, who supplies the individual under a contract made with the principal.

Data use

Data can be lawfully processed, with appropriate safeguards for the rights and freedoms of data subjects, in order to identify or keep under review the existence or absence of equality of opportunity or treatment between people from different racial groups.

Direct discrimination

Less favourable treatment of a person on racial grounds compared with the treatment or likely treatment of a person from another racial group in the same or similar circumstances.

Disciplinary procedure

An arrangement or procedure for disciplining workers. This may include informal and formal disciplinary measures. Under the Employment Act 2002, employers must have a written disciplinary procedure. The statutory procedure is implied in contracts of employment and amounts to a minimum standard required of employers. The ACAS *Code of Practice on Disciplinary and Grievance Procedures* provides detailed guidance for employers.

Dispute resolution

Minimum statutory procedures under the Employment Act 2002 for dealing with dismissal, disciplinary action and grievances in the workplace.

Employee

An individual who carries out work for a person at an establishment in Great Britain under a contract of service or of apprenticeship or a contract personally to execute any work or labour. The contract may be written down or agreed orally or implied by the nature of the relationship. Many casual workers are likely to be employees with short-term contracts.

Employer / Principal

A person who makes work available to an individual under a contract of service or of apprenticeship, or, for the purposes of this code, to a contract worker.

Employment

Being employed under a contract of service or of apprenticeship, or a contract personally to carry out any work or labour.

Employment at an establishment in Great Britain

For the purposes of the RRA, employment is to be regarded as being at an establishment in Great Britain if a worker:

- a. does his or her work wholly or partly in Great Britain; or
- b. does his or her work wholly outside Great Britain, and
 1. the case involves discrimination on grounds of race or ethnic or national origins);
 2. the employer has a place of business at an establishment in Great Britain;
 3. the work is for the purposes of the business carried on at that establishment; and
 4. the worker is ordinarily resident in Great Britain –
 - i. at the time he or she applies for or is offered employment; or
 - ii. at any time during the course of the employment.

Employment agency

A person or organisation (including employment businesses, as defined by the Employment Agencies Act 1973 and Regulations) who, for profit or not, provides services for the purpose of finding employment for job seekers or supplying employers with workers. Employment agencies have specific provisions under section 14 of the RRA.

Equal opportunities action plan

A practical and realistic plan, with an agreed timetable and targets, showing how an employer is planning to achieve the aims of an equal opportunities policy.

Equal opportunities policy in employment

A statement of an organisation's commitment to the principle of equality of opportunity in employment. The policy should include what the organisation intends to do to prevent unlawful discrimination and promote equality of opportunity between people from different racial groups in the field of employment.

Ethnic group

Defined by the House of Lords as a group that regards itself or is regarded by others as a distinct community by virtue of certain characteristics that will help to distinguish the group from the surrounding community. Two of these characteristics are essential:

1. a long shared history, of which the group is conscious as distinguishing it from other groups, and the memory of which it keeps alive; and
2. a cultural tradition of its own, including family and social customs and manners, often but not necessarily associated with religious observance.

Other relevant characteristics (one or more of which will commonly be found) are:

- a. either a common geographical origin or descent from a small number of common ancestors;
- b. a common language, not necessarily peculiar to the group;
- c. a common literature peculiar to the group;
- d. a common religion different from that of neighbouring groups or from the general community surrounding it; and
- e. being a minority or being an oppressed or a dominant group within a larger community. Both a conquered people (say, the inhabitants of England shortly after the Norman conquest) and their conquerors might be ethnic groups.

Although the House of Lords emphasised the need to interpret the word 'ethnic' 'relatively widely, in a broad, cultural/historic sense', it also observed that 'the word "ethnic" still retains a racial flavour'. On this basis, tribunals and courts have proceeded to rule that the English, Scots and Welsh, among others, are not racial groups by virtue of distinct 'ethnic origins' (see also 'national origins' below and Example 1, p 16).

Formal investigation

An investigation by the CRE under sections 49 – 52 of the RRA. The investigation may be of a 'named person', who the CRE suspects might be discriminating unlawfully on racial grounds, or a general investigation to examine practice in an area of activity. The CRE can make recommendations and, in the case of a named investigation, issue a non-discrimination notice (see below) for five years.

Functions

The full range of a public authority's duties and powers.

General duty

The duty given to public authorities, under section 71(1) of the Race Relations Act 1976, to have due regard to the need to eliminate unlawful racial discrimination and to promote equality of opportunity and good relations between people from different racial groups.

Genuine occupational qualification (GOQ)

An employer may discriminate on grounds of colour or nationality only in respect of certain types of work, where being from a particular racial group is a GOQ for the job.

Genuine occupational requirement (GOR)

An employer may discriminate on grounds of race or ethnic or national origins only in situations where, because of the nature of the employment or the context in which it is carried out, being of a particular race or ethnic or national origin is a genuine and determining occupational requirement.

Grievance procedure

An arrangement or procedure for dealing with grievances about practice or conduct in the workplace, such as bullying or harassment or racial discrimination, or appeals against decisions on promotion or, in some cases, appraisal marks. From October 2004, under the Employment Act 2002, employees must invoke a statutory grievance procedure if they wish subsequently to use the grievance as the basis of certain applications to an employment tribunal. The new statutory procedure will not be implied in contracts of employment until further notification from the Department of Trade and Industry). The ACAS *Code of Practice on Disciplinary and Grievance Procedures* provides detailed guidance for employers.

Harassment

Unwanted behaviour that has the purpose or effect of violating a person's dignity or creates a degrading, humiliating, hostile, intimidating or offensive working environment. Harassment on grounds of race or ethnic or national origins is a specific unlawful act under the RRA. Harassment on other grounds may involve less favourable treatment and may be unlawful direct discrimination.

Indirect discrimination

Grounds of race or ethnic or national origins – the use of an apparently non-discriminatory 'provision, criterion or practice' which puts people from a particular race or ethnic or national origin at a particular disadvantage compared with others, unless it can be shown that the provision, criterion or practice is a proportionate means of achieving a legitimate end.

All racial grounds (but effectively grounds of colour or nationality) – the use of an apparently non-discriminatory requirement or condition which applies equally to everyone, but can only be met by a considerably smaller proportion of people from a particular racial group, is to the detriment of someone from that group, and cannot be objectively justified.

Large business

A business with over 250 employees.

Monitoring

A process that involves collecting, storing, analysing and evaluating information, to measure performance, progress or change. Monitoring racial equality involves collecting, storing, analysing and evaluating information about the racial groups to which people say they belong.

National origins

National origins are not limited to 'nationality' in the legal sense of citizenship of a nation state, which an individual acquires at birth or through naturalisation. The Scottish Court of Session defined 'national origins' as 'identifiable elements, both historically and geographically, which at least at some point in time reveals the existence of a nation' (see Example 1, p 16). National origins may include origins in a nation that no longer exists (Czechoslovakia, for example), or in a 'nation' that was never a nation state in the modern sense, such as 'the Basque nation' or 'the Iroquois nation'.

Nationality

An aspect of a person's identity (see 'citizenship' above), conveying rights and duties, and defined by a specific legal relationship between an individual and a state, through birth or naturalisation, which is recognised by that state. Article 2 of the European Convention on Nationality defines 'nationality' as 'the legal bond between a person and a state' which 'does not indicate the person's ethnic origin'.

Non-discrimination notice

A notice which the CRE may serve on an organisation in the course of a 'named person' formal investigation (see 'Formal investigation'), if it finds evidence of unlawful racial discrimination or harassment.

Performance assessment

Formal and informal staff appraisals that are likely to affect career development, pay and benefits.

Policies

The sets of principles or criteria that define the different ways in which an organisation carries out its role or functions and meets its duties. Policies also include formal and informal decisions made in the course of their implementation.

Positive action

Measures that employers may lawfully take under the RRA to meet special needs or to train or encourage people from a racial group that is under-represented in particular work. See also Appendix 1.

Procurement

The process by which a person enters into a contract with an external supplier to carry out work or provide goods or services. The term encompasses the full range of contracts including private finance initiative (PFI) projects and public private partnerships (PPP). It does not include the decision to 'buy' from an external supplier.

Proportionate means

Means that are appropriate and necessary to achieve a legitimate business or other objective, such as meeting health and safety requirements.

Practices

The customary ways in which intentions or policies are actually carried out. They include attitudes and behaviour that could amount to unlawful racial discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping.

Probation

A trial period before a person's employment position is confirmed.

Public authority

For the purposes of this code, a body named, defined or described in schedule 1A to the Race Relations Act 1976 or, depending on the context, a body named, defined or described in one of the schedules to the Race Relations Act 1976 (Statutory Duties) Order 2001 or the Race Relations Act 1976 (General Statutory Duty) Order 2003. The term includes all central government departments and their executive agencies and non-departmental public bodies, all NHS institutions, the governing bodies of schools and of further and higher education institutions, the Scottish Executive and the Welsh Assembly Government.

Race

The Race Relations Act uses 'race' both to describe the catch-all class that receives protection under the Act, that is, 'racial group', and as one of five sub-classes that fall within it. The courts and employment tribunals have not so far been called on to define the term.

Race relations questionnaire

A procedure involving a questionnaire (better known as the RR65 form) which workers who believe they have been discriminated against unlawfully, or harassed, on racial grounds, can use to ask their employer questions, before deciding whether to bring a claim in an employment tribunal.

Race equality scheme

A timetabled plan setting out how a public authority intends to meet its statutory general duty to eliminate unlawful racial discrimination and promote equality of opportunity and good relations between different racial groups. The scheme should indicate the functions and policies that have been assessed as being relevant to meeting the duty, and the arrangements that have been made to assess, consult on and monitor present and proposed policies for any implications they might have for promoting racial equality.

Race Relations Act (RRA)

The Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000 and the Race Relations Act 1976 (Amendment) Regulations 2003.

Racial grounds

Grounds of race, colour, nationality (including citizenship) or ethnic or national origins.

Racial group

- Racial groups are groups defined by racial grounds i.e. race, colour, nationality (including citizenship) or ethnic or national origins. All racial groups are protected from unlawful racial discrimination under the RRA. Romany Gypsies, Irish Travellers, Jews and Sikhs have been explicitly recognised by the courts as constituting racial groups for the purposes of the RRA.
- A person may fall into more than one racial group; for example, a 'Nigerian' may be defined by 'race', 'colour', 'ethnic or national origins' and 'nationality'. See also 'ethnic group' above.
- The courts have held that a person's actual racial group may be irrelevant to the way they are treated, and that their racial group may be defined by a discriminator's perception of, or (incorrect) assumptions about, their ethnic or national origins (see also Example 1, p 16).

Religious discrimination

The RRA does not apply to discrimination on grounds of religion or belief, unless a person who has been discriminated against on grounds of religion or belief has also been discriminated against on racial grounds. Religious discrimination in employment and training is unlawful under the Employment Equality (Religion or Belief) Regulations 2003.

Secondment

The temporary transfer, on loan, of an employee to another department or (host) organisation for a fixed period, to complete an agreed assignment for the benefit of all parties. The secondee remains an employee of the lending organisation, and a contract worker (see above) with the host organisation.

Segregation

Segregation on racial grounds is automatically regarded as treating the segregated person less favourably than others. It constitutes unlawful direct racial discrimination.

Small business

A business with 1 – 49 employees.

Specific duties

Duties placed on selected public authorities bound by the general duty (see above) under the Race Relations Act 1976 (Statutory Duties) Order 2001 or the Race Relations Act 1976 (Statutory Duties) Order 2003. In Scotland, additional public authorities are listed in the Race Relations Act 1976 (Statutory Duties)(Scotland) Order 2002 (SSI No 62) and the Race Relations Act 1976 (Statutory Duties)(Scotland) Amendment Order 2003 (SSI No 566). The current list of authorities is available on the Home Office and CRE websites. The duties include the production and publication of a 'race equality scheme' (see above), and the monitoring, by racial group, of specified aspects of employment.

Statutory code of practice

Practical guidance which has been approved by the secretary of state and laid before parliament. A statutory code of practice is admissible in evidence in a tribunal or court of law, and must be taken into account when it is relevant to any question arising in proceedings under the relevant legislation, in this case the RRA.

Targets

Numerical benchmarks for planning progress towards a goal. Racial equality targets measure progress towards eliminating under-representation of a particular racial group (or groups) in an organisation.

Training

A wide range of career development opportunities, which could include informal in-house training as well as more formal courses.

Validation

A process used to check the relationship between scores produced by a test or other assessment method and scores produced by other measures. In the case of psychometric tests, the other measures may be other tests of the same attribute, or the performance assessment measures used for the job in question.

Victimisation

Less favourable treatment of a person because they have brought legal proceedings under the Race Relations Act 1976, or are suspected of having done so; or because they have alleged that a person has committed an act which would amount to unlawful discrimination; or because they have given evidence or information in connection with proceedings brought under the RRA; or because they have otherwise done anything under the RRA in relation to any person, or because they have intended or intend to do any of these acts.

Worker

For the purposes of this code, the term 'worker' includes employees, contract workers (see above) and police constables.



**COMMISSION FOR
RACIAL EQUALITY**

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CRE mission statement

We work for a just and integrated society, where diversity is valued. We use both persuasion and our powers under the law to give everyone an equal chance to live free from fear, discrimination, prejudice and racism.

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