

The University of Manchester

Race Equality Policy
Guidance for Staff
(Consultation Draft)

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1 Introduction

This guidance document is intended to help all members of staff deal with any incident of racial harassment, and to develop a working environment in which racial harassment is known to be unacceptable and where individuals are confident enough to bring complaints without fear of ridicule or reprisal.

Any incident of racial harassment, discrimination or bullying will be regarded very seriously and may lead to disciplinary action up to and including dismissal.

2 Racial Discrimination and Harassment

2.1 What is racial discrimination?

The Race Relations Act is concerned with people's actions and the effects of their actions, not their opinions or beliefs. Racial discrimination is not the same as racial prejudice. It is not necessary to prove that the other person intended to discriminate against you: you only have to show that you received less favourable treatment as a result of what they did.

Under the Race Relations Act, it is unlawful for a person to discriminate on racial grounds against another. The Act defines racial grounds as including race, colour, nationality or ethnic or national origins.

There are four main types of racial discrimination: direct, indirect, victimisation and harassment. The following text describes each in turn.

2.2 Direct racial discrimination

This occurs when you are able to show that you have been treated less favourably on racial grounds than others in similar circumstances. To prove this, it will help if you can give an example of someone from a different racial group who, in similar circumstances, has been, or would have been, treated more favourably than you. Racist abuse and harassment are forms of direct discrimination.

2.3 Indirect racial discrimination

Indirect racial discrimination may fall into one of two categories depending on the racial grounds of discrimination.

The first is on grounds of colour or nationality, under the original definition in the Race Relations Act.

The second is on grounds of race, ethnic or national origin. This was introduced by the race Relations Act (Amendment) Regulations 2003 to comply with the EC Race Directive.

2.3.1 On grounds of colour or nationality

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

- can only be met by a considerably smaller proportion of people from a particular racial group; and
- which is to the detriment of a person from that group because he or she cannot meet it; and
- the requirement or condition cannot be justified on non-racial grounds.

For example, a rule that employees or pupils must not wear headgear could exclude Sikh men and boys who wear a turban, or Jewish men or boys who wear a yarmulka, in accordance with practice within their racial group.

2.3.2 On grounds of race, ethnic or national origin

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

- puts or would put people of the same race or ethnic or national origins at a particular disadvantage when compared with others; and

- puts a person of that race or ethnic or national origin at that disadvantage; and
- cannot be shown to be a proportionate means of achieving a legitimate aim.

The definition of indirect discrimination on the grounds of race, ethnic or national origin is in general terms broader than on the grounds of colour or nationality and as a result it may be easier to establish racial discrimination than previously on that ground.

3 Victimization

This has a special legal meaning under the Race Relations Act. It occurs if you are treated less favourably than others in the same circumstances because you have complained about racial discrimination, or supported someone else who has. A complaint of racial discrimination means that someone has:

- brought proceedings under the Race Relations Act against the discriminator or anyone else; or
- given evidence or information in connection with proceedings brought by another person under the Race Relations Act; or
- done anything under the Race Relations Act or with reference to it; or
- alleged that a person has acted in a way which would breach the Race Relations Act. The complaint does not need to expressly claim discrimination when making the complaint.

4 Harassment

The definition of harassment introduced by the Race Relations Act 1976 (Amendment) Regulations 2003 applies when the discrimination is on grounds of race or ethnic or national origins, but not colour or nationality. Harassment on grounds of colour or nationality amounts to less favourable treatment and may be unlawful direct discrimination.

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:

- violating that other person's dignity; or
- creating an intimidating or hostile, degrading, humiliating or offensive environment for them.

Harassment is unlawful not only in the context of employment, but also within:

- partnerships
- trade unions
- qualifying bodies
- vocational training; and
- employment agencies

It is also an unlawful form of discrimination in education, training, within public authorities, in the provision of goods, facilities, services and premises, and in relation to the training and employment of barristers and advocates.

5 What to do if you feel you are being harassed or discriminated against

If someone harasses you, try to tell them that you do not like their behaviour and that you want them to stop. You might want to ask one of your colleagues, or your union representative – someone you feel you can trust – to accompany you to give you moral support. If necessary, they could also act as a witness.

- If you feel you can't face the harasser, you might prefer to write to them to explain that their behaviour is upsetting you and to ask them to stop. Let them know that you will take the matter further if they carry on. You should keep a copy of this letter.
- Note down all the behaviour that offends you in a diary. Record the date, time and place and the names of any other people who are there. This will help you to remember details if you decide to make a complaint.
- If the harassment is affecting your health, causing symptoms of stress or depression you may wish to make an appointment with either the Counselling Service or the

Occupational Health Unit. If this is in working hours please ensure that you get permission for the time off.

- Report the harassment to the University. You should go to Human Resources or you might wish to go to your union representative. Make a record of the date you complained about the harassment, to whom you spoke, what was said and what action was agreed on. This will be important if you decide later that you want to go to an employment tribunal.

6 Racial Equality Good Practice

6.1 Inclusive Language

We can all recognise the power of language, in both verbal and written communication. We all have an individual responsibility to use language that respects and includes all communities. If we fail to exercise this responsibility, language could discriminate and exclude people, and may, regardless of intent, cause offence.

Language which causes offence, is not only unacceptable in itself, but may also be contrary to the University of Manchester's policies. For example, the Harassment, Discrimination and Bullying Policy lists unacceptable actions and behaviours which could be deemed to amount to harassment, bullying or discrimination, including:

- Derogatory name-calling, verbal abuse, threats
- Insults and racist jokes
- Racist graffiti
- Lewd comments about dress or appearance

The policy goes on to state that where harassment, bullying or discrimination has been found to have taken place, disciplinary action will be taken as appropriate, including dismissal. Furthermore, various pieces of legislation could make the use of discriminatory language unlawful.

However, this is not just an issue of adhering to rules and regulations. It is about our individual responsibility to use inclusive language to communicate accurately and effectively, and to ensure that we do not exclude groups of individuals, or cause offence.

In conclusion, we should all be aware of the impact that our language has on others, and we should always use acceptable and appropriate language.

6.2 CULTURAL DIVERSITY

Avoid terms such as 'coloured', 'half-caste' and 'non-white', as they define race from a white perspective. The Commission for Racial Equality now uses the terms 'Black', 'Asian' and 'mixed race'.

However, people often choose to self-identify, and where it is relevant to refer to a person's cultural background, use the term preferred by the individual eg. Asian, Irish, Afro-Caribbean, etc.

Do not assume that a person's appearance defines their nationality or cultural background.

Terms such as black-market, black sheep, black spot, black list and black mark, may imply negative references to some racial groups.

7 The Procedures

7.1 Informal Procedures

This stage is appropriate to use when you simply want the behaviour to stop, where the racial harassment is not serious, or where it has not been repeated. It should be noted that you are not obliged to try to resolve the matter informally.

You can seek to resolve matters informally in the following ways:

- Approaching the alleged harasser directly making it clear to the person(s) harassing that the behaviour in question is offensive, is not welcome and should be stopped.
- Approaching the alleged harasser with the support of a work colleague or Trade Union representative.
- Approaching the alleged harasser with the support of a supervisor or manager.

- You can discuss the issue with Human Resources and/or Equality and Diversity where an informal solution may be reached.

If it is too difficult and too embarrassing to do this personally, you may request a supervisor or manager to approach the alleged harasser/bully on your behalf.

7.2 The formal complaints and investigation procedure

Where you have been unable to resolve the matter through informal channels, you have the right to seek redress through this formal procedure. Where the conduct of the member of staff against whom the complaint is made appears to the Head of Department and/or the Human Resources Manager to constitute misconduct, the appropriate University disciplinary procedure will be applicable. Investigations will be undertaken as quickly as possible and in confidence.

- Where it has not proved possible to resolve the matter through informal means, you can contact the Human Resources Manager who will meet with you wherever possible within 5 working days to determine the nature and detail of the complaint. You will have the right to be accompanied at all stages in this procedure either by a Trade Union representative or a colleague.

The Human Resources Manager will act only with your consent.

A written record will be maintained of the meeting, which will be agreed by **both parties** as an accurate description of the circumstances.

- The Human Resources Manager will discuss the matter with the Head of Department of the person who is the subject of the complaint or his/her representative as soon as possible and within 5 working days of the meeting with you.

If at this stage it is determined that no further action will be taken, you will be notified as soon as possible.

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- The Head of Department will write to the person against whom the complaint is made, informing him/her of the nature of the complaint and that the matter is being formally investigated. The person will be required to attend for interview with the Head of Department and the Human Resources Manager at which she/he may be accompanied by a Trade Union representative or a colleague. A written record will be maintained of the interview.
- The person who is the subject of the complaint will have the right to be accompanied by a Trade Union representative or colleague throughout this procedure.
- If, following this interview, it is determined by the Head of Department in consultation with the Human Resources Manager or by the Human Resources Manager that no further action will be taken, both parties will be informed of the decision in writing within 24 hours of the decision having been made.
- You will have the right, if you are dissatisfied with the decision to take no further action, to appeal. The written appeal must be received within 5 working days of notification of the investigating officers' decision. The Director of Human Resources will determine the matter having reviewed the documents related to the complaint.
- Where disciplinary action is determined to be a necessary course of action, the appropriate staff disciplinary procedure will take effect.

8 What to do if you are a member of staff to whom complaints of harassment are made.

- If you are a manager or supervisor, you have a responsibility to ensure that the member of staff for whom you have responsibility are not subjected to harassment.
- Where a member of staff asks to see you about an alleged case of harassment, set sufficient time aside in order to give

attention to the matter. Arrange to hold the meeting in a place which ensures privacy.

- Listen carefully and discuss with the individual what action, if any, she/he wishes to take.
- Remember that because she/he comes to see you it does not follow that the individual wishes formal action to be taken.
- Ensure that the individual is aware of the options for action available to her/him.
- You should contact the Human Resources Manager for support or advice. If the individual requires confidentiality then, in seeking advice or support, the individual may remain anonymous.
- Maintain confidentiality at all times.

9 What to do if you are a person against whom an allegation of harassment has been made

- You may contact the Office of the Director of Human Resources for advice.
- You may contact your Trade Union Representative.
- Proper investigation will protect you and the person who makes the complaint. Principles of natural justice will inform any investigation and subsequent disciplinary action.
- You will have the right to be accompanied by a Trade Union Representative or work colleague at all stages of the investigation.
- Staff against whom an allegation of harassment is made will not be victimised.

6 Counselling support

Whether you choose to deal with the matter informally or formally you may need help and support in resolving the situation and coping with any stress that the situation has caused.

The University has a confidential Counselling Service for staff. These can be accessed by self referral or via line manager. All staff employed by the Counselling Service are fully qualified and adhere to rules of professional conduct.

It is important to remember that if you have self-referred and your appointment is during working hours then you must seek permission from your line manager to leave the workplace.

You may feel nervous about accessing Counselling Service because they you are afraid that this will be recorded on your personal/HR file. It should be noted that Counselling Services maintain a policy of complete confidentiality.

7 Criminal offences

Many forms of harassment, discrimination or bullying can amount to criminal behaviour. For example, any kind of unwanted physical contact, or the apprehension of it, could constitute an assault or indecent assault, or persistent and unwanted contact by someone could be deemed to be 'stalking'.

You are urged to consider reporting such behaviour to the police without delay, so that a criminal investigation can be carried out and the due judicial processes followed.

The University may also take separate action in cases of gross misconduct, although it reserves the right to suspend internal disciplinary action pending the outcome of any criminal charges.

8 Malicious or vexatious complaints

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Making false or unsubstantiated allegations with malicious intent, could if proven, lead to disciplinary being taken, up to and including dismissal.

Investigating complaints – reference to this document