Tackling Racial Harassment At Work

An Advice Guide

USDAW EQUALITIES

Racial Harassment at Work

Racial harassment takes many different forms but the result is the same – stress, health problems, loss of confidence, psychological and physical injury. It can affect every aspect of a person's life, leaving them feeling isolated, marginalised and unable to exercise their rights or live their lives as they choose. It often results in workers finding it impossible to continue in their job.

Racial harassment is a form of direct race discrimination. It is widespread, happens all over the country and thousands of Usdaw members are affected by it. Racism divides workers one from another and undermines our collective strength. All workers have the right to work in an environment free from harassment. Including racial harassment.

It is the employer's responsibility to ensure, as far as is reasonably possible, that the working environment is free from racial harassment. This means that employers are responsible not only for their own actions, but for the actions of their employees.

If employers fail to take reasonable steps to prevent racial harassment, they may be held legally liable.

This guide has been produced to provide back-up information and support to Usdaw reps who are supporting members experiencing racial harassment. It explains what racial harassment is and how to tackle harassment in the workplace.

For further information and support, get in touch with your nearest Usdaw office or Area Organiser on **0800 030 80 30** or visit: **www.usdaw.org.uk/contactus**

What is Racial Harassment?

Racial harassment can take many forms. However, one thing is clear; it is behaviour of a racial nature which is unwanted and personally offensive to the recipient. It is the perception of the person targeted that determines whether harassment has taken place, not the intention of the perpetrator.

Racial harassment can involve a manager, a supervisor, work colleagues, customers, suppliers or contractors. It can include:

- Abusive language, including racist 'jokes' and banter.
- The display of racially offensive written material, graffiti, etc.
- Physical attacks, threatened assaults.
- Unfair allocation of work.
- Exclusion from normal workplace conversation and workplace events.

Racial harassment is widespread. Too often people do not report incidents of racial harassment because they fear that they will be disbelieved, their complaints will not be taken seriously and addressed, it will make the situation worse or they do not know how to make a complaint. People making complaints are often made to feel that they are rocking the boat, are oversensitive or have no sense of humour, and they can end up feeling isolated and victimised.

Women workers can often experience a combination of racial harassment and sexual harassment.

It is not unusual for work colleagues and management to see racial abuse at work as something that just has to be put up with. This is not the case, and racism should always be challenged.

A Word on Terminology

The Union uses the term Black members to describe anyone who is subject to racism or discrimination on the basis of their skin colour. This term therefore includes a wide range of people including African, Chinese and Asian people, people of mixed heritage and anyone whose ethnic origins are from countries outside of Europe.

The word is an 'umbrella' term and has been adopted by Black trade unionists as an acceptable way of describing people who share the common experience of racism.

Usdaw recognises that whilst the term Black is not always an accurate description (just like the term white is not), it is the right one to use as it emphasises a shared experience of racism and gives a sense of collective solidarity.

Racial Harassment and the Law

The Equality Act 2010

The Equality Act implemented in England, Wales and Scotland in 2010 has strengthened the law on harassment. It makes harassment related to race unlawful. Race includes nationality (including citizenship), colour, ethnic or national origins. Workers are also protected from discrimination and harassment for reasons relating to religious belief.

Similar protections exist in Northern Ireland under the Race Relations (Northern Ireland) Order 1997 (RRO) and the Fair Employment and Treatment (NI) Order 1998 (FETO).

Definition of Harassment

Harassment is defined in the Equality Act as:

Where a person engages in unwanted conduct which is related to race and which has the purpose or effect of:

- Violating the worker's dignity; or
- Creating an intimidating, hostile, degrading, humiliating or offensive environment for that worker.

The word 'unwanted' means essentially the same as 'unwelcome' or 'uninvited'.

Harassment can be a series of incidents but a 'one-off' incident might also amount to harassment if it is serious. Case law has shown this to be the case on many occasions.

For example, in Briscoe vs The Organic Pharmacy Ltd, a one-off comment made by a white line manager to a Black employee was found by a Tribunal to be racist and offensive. The claimant was awarded £1,500 in damages.

Who Decides if It Is Harassment?

It is harassment if a person perceives it so, even if another person would not, although with the condition that it must 'reasonably' be considered as such.

When deciding whether or not someone's behaviour amounts to harassment, a tribunal must take into account the effect that behaviour had on the person on the receiving end. The intention or purpose of the person committing the behaviour or making the remark is not as important. This prevents people from trying to defend their actions by saying things like "I didn't mean it" or "It was just a joke".

Remember

The Code of Practice to the Equality Act makes it clear that a person may still be guilty of harassment if they are making racially offensive comments that are not aimed at any one worker in particular. Equally, the abuse does not need to be aimed at you for you to bring a claim of harassment.

The Scope of Protection

The conduct does not have to be on the grounds of someone's race, but simply related to it. This means that the abuse does not necessarily have to be aimed at you for you to make a complaint of harassment.

The Code of Practice gives the following example to illustrate this point:

"A manager racially abuses a Black worker. As a result of the racial abuse, the Black worker's white colleague is offended and could bring a claim of racial harassment."

The Equality Act 2010 also extends protection to people who might experience harassment because they associate with someone who is Black or Asian.

Third Parties

The Tory Government repealed the section of the Act related specifically to third-party harassment (eg from customers, suppliers etc). However, in circumstances where an employer fails to prevent third-party harassment, there are still two potential claims which can be lodged under the Equality Act 2010:

Harassment – Employees may still be able to bring a claim for third-party harassment under the general harassment provisions in the Act. This will involve arguing that the employer's inaction is causing a hostile, intimidating or degrading environment.

Indirect discrimination – Employers could also face indirect discrimination claims. An employee might argue that the employer's inaction is a provision, criterion or practice (PCP) that places them at a substantial disadvantage because of their race/ethnicity.

In short, this means that employers still have a duty to take steps to protect employees from third-party harassment.

Victimisation

The Act also protects anyone bringing proceedings, making allegations or giving information concerning race discrimination (including harassment cases). This doesn't only cover the person bringing the complaint but could cover witnesses as well.

Northern Ireland – The Race Relations (Northern Ireland) Order 1997

The Equality Act has not been implemented in Northern Ireland; however, almost all of what is said above applies equally in Northern Ireland as it does elsewhere in the UK. The definition of harassment is the same.

The law in Northern Ireland also specifically covers members of the Irish traveller community.

For more information about the Race Relations Order in Northern Ireland, contact the Equalities Section, or visit the Equality Commission for Northern Ireland website and download their 'Code of Practice for the elimination of racial discrimination' (visit: **www.equalityni.org** and search for 'racial discrimination code of practice').

The Protection from Harassment Act

This Act prohibits a course of conduct by a person which amounts to harassment of another person, and which the harasser knows, or ought to know, amounts to harassment of the other. Serious and repeated harassment may be an offence under this Act and you may need to consider informing the police with a view to bringing a criminal prosecution under the Act. This Act can also be used to bring a civil claim against an employer.

It is also possible to apply to the civil court for an injunction under the Act. This is particularly useful in stalking cases.

Sexual Harassment – Indecent Assault

Where the harassment includes indecent assault then you may consider informing the police with a view to bringing a criminal prosecution.

Employer's Responsibility

Under the Act, an employer can be held liable for the actions of an employee when they occur in the course of their employment and their employer knows, or ought to know, that harassment is taking place and fails to take reasonable steps to prevent it.

As well as obligations under the Equality Act, employers have a duty to provide a safe and healthy working environment.

Where racial harassment results in an injury to an employee's health or places them under stress, the employer might be held in breach of their obligations under the Health and Safety at Work Act and the Management of Health and Safety at Work Regulations. This could potentially give rise to a personal injury claim.

Individual Responsibility

Anyone engaged in unwanted conduct can be held personally liable for their actions, and may face consequences ranging from disciplinary action at work to legal proceedings and a potential criminal record.

Collective Responsibility

Everyone has a collective responsibility to challenge racism when they witness it. Simply ignoring it, or expecting the victim to speak out, is not enough. If you witness racism at work, don't let it go unchallenged – speak to the perpetrator to explain why their behaviour is unacceptable. You should also report any racist incidents to a manager.

One of the most powerful steps we can take to support a member facing racial harassment at work is to be a supportive bystander. Anyone can do this. You don't have to be a rep or to have been on any training courses. If it's left up to one person to challenge the jokes and banter, they just end up feeling more isolated and alone.

If it feels safe, you could use the statements below to point out that what they are saying and doing may be upsetting and embarrassing to others.

- I'm not happy with what you said.
- I don't agree.
- I don't think that's funny.
- A lot of people would find that offensive.

Racism is on the Rise

The disproportionate impact of the coronavirus pandemic shone a spotlight on the entrenched institutional racism experienced by Black communities in the UK.

Research into racism in the UK published in 2023, the most extensive study since 1997, found that:

- Nearly a third of people from ethnic and religious minority groups reported racial discrimination in education (29%) and employment (29%), and nearly a fifth said they experienced discrimination when looking for housing.
- More than a fifth of all minorities reported experience of discrimination from the police, though this rose to 43% of Black Caribbean groups and more than a third of Gypsy, Traveller and Roma groups.
- Ethnic minority groups were more likely to live in overcrowded housing – including 60% of Roma families and a quarter of Pakistani and Arab people – and far more likely than white British people to be without access to outdoor space at home.

In the workplace, TUC research has shown that Black workers are more likely than white workers to:

- **Be unemployed**

  Between late-2019 and late-2020, the unemployment rate 'for BME workers' rose at more than double the rate of white workers.

- **Work in insecure and temporary forms of employment and be employed on short-hours contracts**

  Almost double the number of BME employees were in temporary employment in 2021 (10.3%), compared to 5.5% of white employees.

  60% of all BME workers want more hours of work, compared to less than 50% of white workers.

- **Work more than one job**

  Furthermore, Home Office statistics published on an annual basis consistently show that the overwhelming majority of hate crimes are racially motivated.

  In 2021, racist hate crimes passed 100,000 in England and Wales for the first time ever.

Usdaw Members' Experience of Racism

Usdaw has conducted its own research into racism at work.

We found that:

- One in six of our members feel isolated at work because of the colour of their skin.
- Over half of our Black members have experienced racist abuse at work.
- One in five of our Black members have been racially abused by their manager.
- More than half of our Black members did not come to the Union for help about racism at work.
- Those members who did ask the Union for help were happy with the support they received.
- Two-thirds of our Black members reported that they had experienced between one and three incidents of racist abuse in the previous twelve months.

For more information about the experience of Usdaw members, see Usdaw's NEC Statement *Together Against Racism* which is available at: **www.usdaw.org.uk/ECtar2022** or from Usdaw's Head Office on **0161 224 2804**.

Black people are much more likely to be the victims of racially motivated crime than white people, according to police statistics. They are ten times more likely than white people to experience racist abuse and harassment, according to research conducted by the Equality and Human Rights Commission.

Remember, these are reported crimes and so represent the tip of the iceberg. Research suggests that hate crime is hugely under-reported.

Tackling Racial Harassment

It is clear that racism is a problem not only in society as a whole, but also in Usdaw organised workplaces, so it is important that we take steps to challenge it.

In addition, we can't and shouldn't pretend that racism doesn't exist within our own ranks – ignoring racism is dangerous as it undermines our collective strength as a trade union, creating even deeper divisions in our workplaces. Therefore, it is vitally important that it is challenged.

There is a duty on all of us to tackle racial harassment. The law places a duty on employers to ensure that their employees are not racially harassed at work. As a trade union, we also have a duty to challenge racism wherever it occurs.

Harassment is rarely an isolated, one-off event. Working in an environment where harassment is allowed to go unchecked has a detrimental effect on the health, safety and productivity of all employees. Research has shown that failure to address harassment has serious consequences for businesses, including:

- Increased sickness absence.
- Reduced productivity.
- High staff turnover.
- Costly retraining.
- Low staff morale/demotivation.
- Costly lawsuits over stress and bullying.
- Risk to public image of the company.
- Loss of client/customer confidence.

Along with Union pressure, there are a number of factors that are making employers feel the need to take action on racial harassment:

- The global Black Lives Matter movement has raised awareness of the scale and impact of racism in the workplace and beyond.
- The Covid-19 pandemic highlighted how inequality is built into our economy and society.
- The knowledge that, since 1994, there has been no ceiling on the compensation an employer may have to pay if a case succeeds at Tribunal.
- A growing awareness of their responsibilities to deal with racial harassment under the Equality Act 2010 (in England, Wales and Scotland) and the Race Relations (Northern Ireland) Order 1997 in Northern Ireland, and the Health and Safety at Work Act.
- A growing recognition of the consequences of harassment for business (see above).
- The enactment of the Protection from Harassment Act in June 1997.

Supporting a Member Experiencing Racial Harassment

Union reps play a central role in tackling racism – they are often the first point of contact for members experiencing racism, therefore it is important that if a member approaches you with concerns, you take them seriously.

Reps should recognise that making a complaint of racism is not an easy step to take. Black members may be reluctant to report harassment for a wide range of reasons, including:

- A negative or unhelpful response when they have raised issues in the past (eg in another workplace or outside of work).
- Fear of not being taken seriously.
- Fear of being blamed for creating the problem.
- Fear of being told that they have 'a chip on their shoulder' or are 'playing the race card'.
- Feelings of guilt, demoralisation or trauma.
- Concerns about damage to their reputation.
- Fears of victimisation and damaging the workplace environment.
- Fear of losing their job.
- Feeling unsure about workplace policy on raising complaints and confidentiality.

Given the nature of the issue, it is important to:

- Treat cases of racial harassment seriously and support the members involved both during and after the investigation.
- Take cases up as quickly as possible.
- Handle complaints with sensitivity, speed and confidentiality.
- Discuss with the member what action they wish to take and the options available. This may include, depending on the grievance procedures within your company:
  - An informal approach of speaking to the harasser directly.
  - Invoking the informal grievance procedure, and involving management.
  - A formal grievance.
- Establish whether other workers have experienced the problem.
- Report the incident(s) to management.
- Keep a record of each occurrence of the offending conduct, copies of any letters sent to the alleged harasser about their conduct and notes of any meetings about the incident(s).

- Advise the member that if the matter is not resolved through the procedures, they may be able to take the matter to an Employment Tribunal. Tribunal claims must be lodged within strict time limits – normally three months less one day from the date of cause of complaint. You should seek the support of your Area Organiser if a case gets to this stage.
- Remember to always follow company grievance and appeal procedures.
- Seek the support, with the member's agreement, of other workers in order to reduce the risks of isolation and victimisation.

Taking up cases of racial harassment and supporting members can be difficult. Contact your Area Organiser or local Usdaw office if you need help or support.

Organising Against Racism

Tackling racism doesn't begin and end with supporting members who take the step of approaching reps for help. Because of the nature of racism, it can be difficult for members to speak out. Therefore, it helps to be proactive and take positive steps to create safe workplaces for all members.

Reps have a key role to play in:

- Making the Union accessible for everyone – providing a service to all members.
- Monitoring the workplace to ensure fair treatment of everyone.
- Involving all members and ensuring that the Union provides everyone with the opportunity to be active within the Union.

There are a number of things that reps can do in the workplace to create an environment in which racism is not accepted and Black members feel supported.

Workplace Policies

Most employers have bullying and harassment policies. Being familiar with these policies will help you when challenging racist comments or behaviour.

Displaying the Union's *No Room For Racism* posters and leaflets can help to send a message to Black employees that the Union is on their side and acting on their behalf. It can also help to create a workplace culture in which racism is not seen as acceptable, and sends a strong signal that harassment or bullying of any kind will be challenged.

Campaign Days

Anti-racism campaigns are a good way to demonstrate the Union's commitment to tackling racism, to challenge racist behaviour and bring different sections of the workforce together. They are also a good opportunity to work together with management to change how workers and the management think about the issue.

Usdaw's *No Room For Racism* campaign offers reps the resources they need to make a difference in their workplace.

You can order campaign materials by visiting the website at: **www.usdaw.org.uk/noroomforracism**

Usdaw also works closely with the national anti-racist charity, Show Racism the Red Card, who campaign to tackle racism at football matches, in schools and workplaces.

Maria Barber, an Academy 2 rep, organised a campaign day after identifying an issue in one of her stores. She said:

"I organised a *No Room For Racism* campaign in one of our stores, as a direct response to multiple incidents of racism aimed at Black members as well as those from Central and Eastern Europe.

It's an area with a very diverse population and we wanted the members there to know that the Union takes racism seriously and that if they raise any concerns, they will get the right support.

We had a fantastic response. The store manager and personnel manager welcomed the campaign and gave us their backing.

We ran a No Room For Racism survey and talked to members and non-members about racism and why people don't feel confident to raise concerns about it or to challenge it. Hopefully, staff can see that this is an issue we can work together on to make a difference to our members."

If you would like to arrange a campaign in store, you should speak to your Regional Equalities Coordinator, who will be able to help (details on the back page).

Recruiting and Involving Black Members

It is important that the Union takes up the issues that matter to Black members so that we remain relevant and welcoming to them.

The Union has a number of initiatives aimed at increasing the involvement of Black members; for example, there are seats for Black members on the Regional Equalities Forums and National Equality Advisory Group. There are also regular Regional Black Members' get-togethers and an annual National Black Members' Weekend Workshop.

In 2023, the Union also opened applications for a new education and skills programme for Black members. The programme is called Breaking Down Barriers and it aims to support Black members to develop the knowledge and experience they need to become more visible and active in the Union.

This is a positive-action measure Usdaw is taking to address the underrepresentation of Black members in Union roles, such as branch officer and shop steward, and at mainstream Union conferences and events.

To find out more about the programme, visit: **www.usdaw.org.uk/breakingdownbarriers**

Reps' Meetings/Branch Meetings

Reps' meetings are a good opportunity to discuss any problems in store and agree steps to address these. Even if no-one has complained about racism, this doesn't mean it isn't a problem.

Why not run a *No Room For Racism* campaign survey in your workplace to find out how members and non-members feel? Visit: **www.usdaw.org.uk/noroomforracism** for more information. This is also a good time to identify areas of the store or groups with low membership that would benefit from targeted recruitment.

The issue of tackling racism can also be discussed at branch meetings, as these can be a good chance to share experiences and good practice.

Wider Trade Union Responsibility

Usdaw recognises that the Union has a wider responsibility to ensure that members attending Union meetings or conferences, or representing the Union, are not exposed to racial harassment.

The Education Department, for example, issues guidelines to all members and officials participating in residential Union training courses. Guidance is also given at the Annual Delegate Meeting. Ultimately, branches have the right to expel a member who deliberately behaves in a racist or sexist manner.

Usdaw Legal Plus Service

Usdaw aims to resolve employment matters using workplace procedures; however, occasionally this is not possible and it may be necessary to follow a legal route.

Racial discrimination; including direct or indirect harassment, and victimisation in the workplace; is an employment issue which is covered by the Union's Legal Services.

Employment matters are usually dealt with by Usdaw representatives in the workplace supported by the Area Organisers (full-time Union officials); Usdaw's Legal Department supports and advises the reps and officials.

If a grievance or disciplinary matter cannot be resolved using workplace procedures then the member may wish to pursue this matter in an Employment Tribunal; before this step is taken, the member **must** contact ACAS, who help to resolve workplace disputes between employers and employees, prior to making an application in the Employment Tribunal.

Employment Tribunal matters are assessed by the Legal Department Employment team initially and then referred to the Union officials to conduct, where necessary.

Occasionally, the Legal Department will send out Employment claims to the Union's Panel of Solicitors; for example, if a member has a linked personal injury claim which is already being dealt with by the Union's Panel of Solicitors.

If a member needs employment advice or assistance then it is important the member contacts their Regional office in the first instance to speak with their Area Organiser for further support in this process.

For more information, contact the Usdaw Legal Department on **0161 249 2477** or visit: **www.usdaw.org.uk/legalplus**

Crimes of Violence

If you are a victim of violence and suffer an injury, then under Usdaw Legal Plus we help members to claim compensation from the Criminal Injuries Compensation Authority (CICA), which is a State-funded scheme.

In order to be eligible under the State-funded scheme, you must ensure that you personally report the matter to the police within 48 hours of the incident occurring and see a doctor straightaway to receive appropriate treatment. The claim must be brought within two years of the assault.

Register your claim through Usdaw Injury Assist at: **www.usdaw.org.uk/ia**

Making a Personal Injury Claim

If you or a member are injured (physically or psychologically) due to racial discrimination, you may also be able to make a personal injury claim. The Union's Panel of Solicitors will provide you with free, no obligation advice and assistance with this.

Register your claim through Usdaw Injury Assist at: **www.usdaw.org.uk/ia**

More Information

Usdaw Nationwide

Wherever you work, an Usdaw rep or official (Area Organiser) is not far away. For further information or assistance, contact your Usdaw rep or local Usdaw office. Alternatively, you can phone our Freephone Helpline **0800 030 80 30** to connect you to your regional office or visit our website: **www.usdaw.org.uk**
You can also write to the Union's Head Office. Just write **FREEPOST USDAW** on the envelope and put it in the post.

Join Usdaw

You can join online at:
www.usdaw.org.uk/JoinUs

Scan the QR code to join today

What Happens Next

Once we process your application, you will receive a membership card with our Helpline telephone number and a New Member's Pack giving details of all the benefits and professional services available to you.

Lft 288 January 2025
Stock photography, posed by models

USDAW

Our publications are regularly updated, view the latest version at: **www.usdaw.org.uk/288**