



SiSTREN
LEGAL COLLECTIVE

RACISM

At Work

A Practical Guide to
Your Rights and Options

*A Community Legal Toolkit
for Navigating Workplace
Race Discrimination*

a world
without... 

SPARK!
COMMUNITY

“The function, the very serious function of racism is distraction. It keeps you from doing your work. It keeps you explaining, over and over again, your reason for being.”¹

Toni Morrison

“You were not just born to centre your entire existence on work and labour. You were born to heal, to grow, to be of service to yourself and community, to practice, to experiment, to create, to have space, to dream, and to connect.”²

Tricia Hersey

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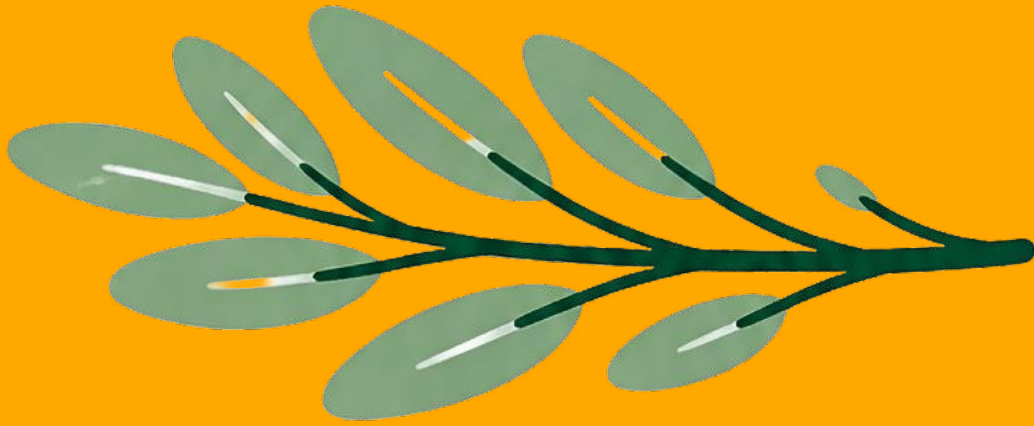
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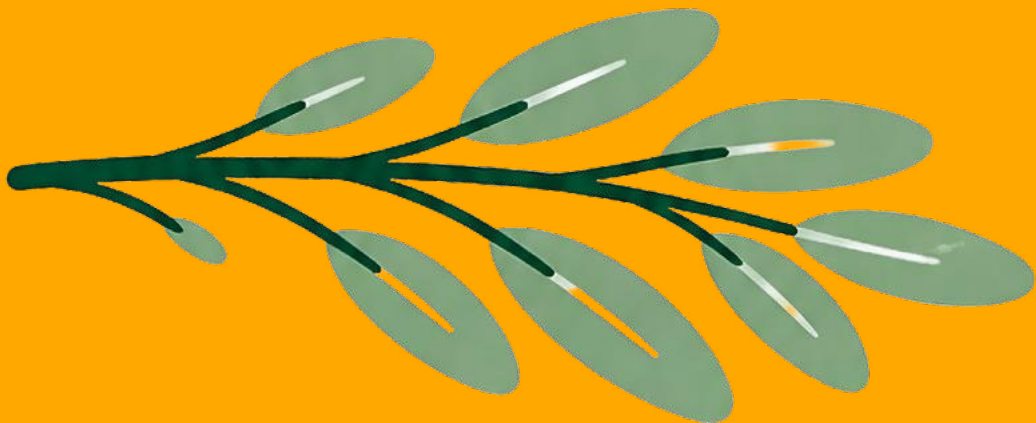


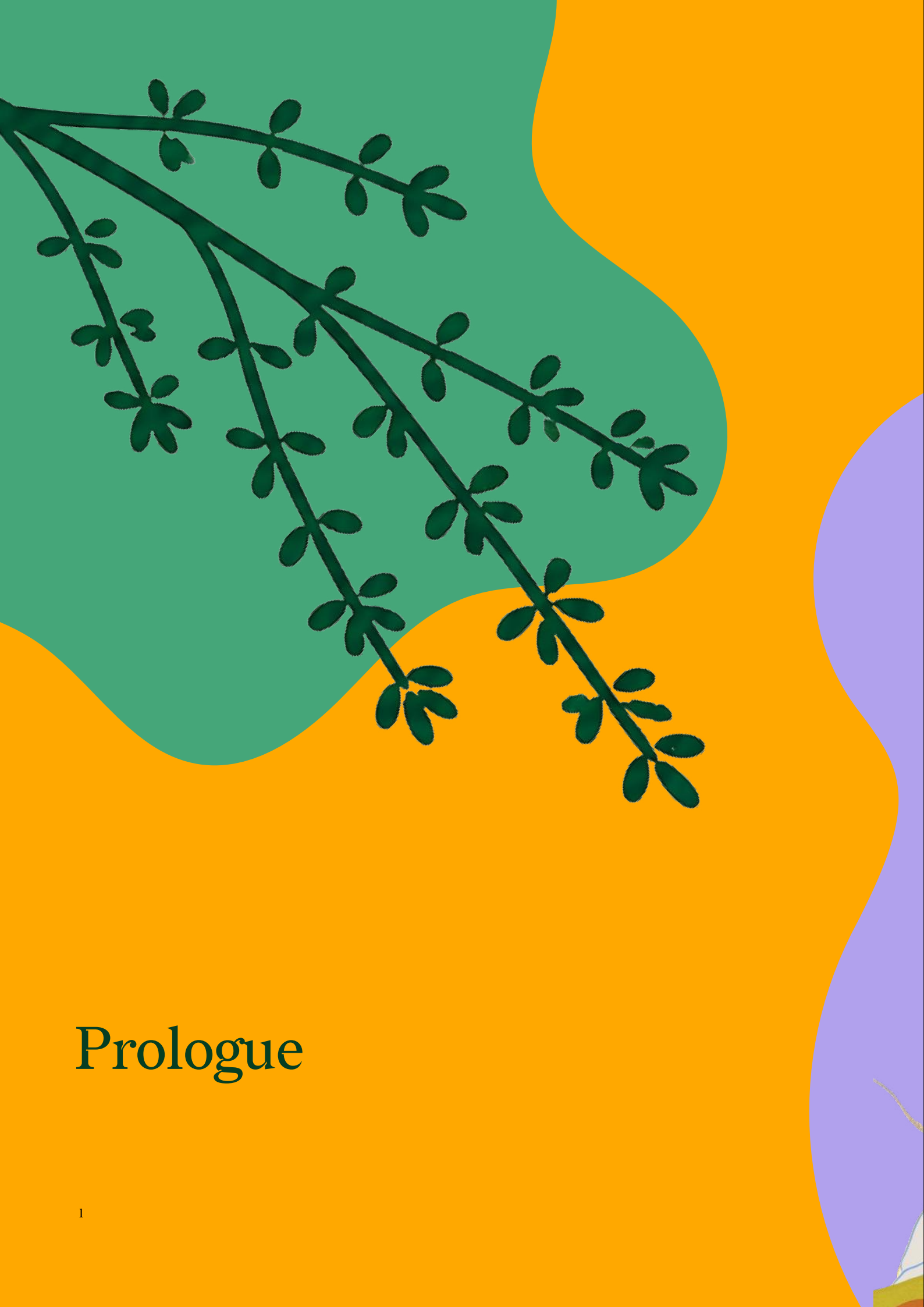
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**This toolkit is for information only
and is not legal advice.**

**Sistren Legal Collective and the individuals and
organisations who contributed to this toolkit
cannot provide employment law advice. Please
refer to the other resources signposted within
the toolkit if you need further support.**





Prologue





Prologue

Sistren Legal Collective is a community of lawyers working at the intersection of law, grassroots organising and movement-building. We use our knowledge of the law as a tool to support the work of leaders, activists, changemakers and organisations centring social and racial justice.

A few years ago, we began noticing a pattern in the conversations we were having with colleagues, collaborators and people in our wider networks. People were reaching out to ask whether we could help them navigate racism at work – not only what they could do about it legally, but whether what they were experiencing was something the law recognised at all.

We don't have employment law expertise within the Sistren Legal Collective, so we're not able to advise on employment law matters. And yet, workplace injustice – particularly experiences of racial harm – was emerging as a consistent and urgent theme in the questions we were receiving. Part of our role, when we don't hold the expertise ourselves, is to listen carefully to what is being asked, identify where the gaps are, and resource legal work that responds to those needs. So, we began asking ourselves: who could bring not only strong employment law expertise, but also a deep understanding of the nuanced lived realities people were

describing? We found ourselves returning, unanimously, to one person: Melvyna Mumunie, an employment law expert.

Melvyna has built an impressive career across a range of leading law firms, specialising in discrimination and whistleblowing in the workplace. She is regularly instructed to advise on grievances, disciplinaries, work-related stress and personal injury, and strategic exits. She has acted in high-profile whistleblowing and discrimination claims before the Employment Tribunal, Employment Appeal Tribunal and Court of Appeal, and brings a deep commitment to advancing equality in the workplace. Alongside her legal practice, she is a founding member and co-chair of the Employment Lawyers Association's Race Equality Committee, a member of the Industrial Law Society's Executive Committee and regularly speaks on employment law issues. She brings not only technical expertise to this work, but clarity, care and a shared commitment to its purpose. We knew she 'got it'.

Around the same time – somewhat serendipitously, as these things often happen – Spark reached out to us. The 2024 racist riots had recently taken place, and Spark was responding to the concerns and experiences that people were carrying in their aftermath. As a community organisation that provides education, information and connection for racialised people in the UK, Spark was already closely attuned to the questions people were asking and suggested the idea of creating a toolkit grounded in lived

experience. Together, we began exploring what it might look like to develop a resource that could meet those needs.

The work that followed exemplifies care and collaboration. Spark led the development of a trauma-informed survey exploring people's experiences of workplace racism (the 'Spark x Sistren survey'). The Spark x Sistren survey revealed the many ways racism shows up at work – from the subtle to the overt – and provided a grounded, lived-experience foundation for this toolkit. Drawing on these insights, Sistren developed a concept note that translated people's experiences and questions into a structured set of legal issues to be addressed. Melvyna then produced the core legal content, bringing together relevant legislation and case law.

Members of Sistren contributed their own lived experiences of navigating race discrimination at work, helping to sense-check the content and shape the practical guidance, particularly the checklist in Part III of this toolkit. We then worked to restructure and 'translate' the legal material into a format that is accessible and usable for people who may not be familiar with legalese.



One member of the Spark collective went on to develop [a world without \(aww...\)](#), which then worked as a partner across all three groups. They brought a depth of expertise in accessibility, anti-racism and anti-oppression, helping to shape the content and design of the toolkit, and leading on communications. Spark developed this into a digital toolkit in collaboration with [aww...](#), transforming what could have been a static document into a living, navigable resource for people.

This toolkit is the result of more than 18 months of shared work. Over that time, we navigated not only the demands of the project, but also significant life moments alongside the everyday complexities of our personal and professional lives. Throughout, we held each other with care and remained grounded in the purpose of the work.

At every stage, we've centred the experiences that people shared with us through the Spark × Sistren survey – experiences offered with honesty, vulnerability and trust. This toolkit exists because of them.

Static biographies rarely capture the full picture of people, and the range of skills, perspectives and lived experiences that have shaped how they have created this resource. We hope this prologue offers a fuller sense of the collective effort behind this toolkit, and the care with which it has been created.

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Why we developed this toolkit

“How long have you got”

Anonymised Spark × Sistren
survey response

In 2025, we worked in partnership with Spark, who invited racialised people working across sectors to share their experiences of bias, discrimination and racism at work through responses to a survey. Together, we were working to understand people’s lived experiences of workplace-based racial harm among people and the support they need or may want. The Spark × Sistren survey helped to reveal the different ways in which racism shows up in the workplace:

‘Racism in the workplace doesn’t always come in obvious forms. It’s not always as clear-cut as slurs or overt exclusion, though those still happen. More often, it shows up in quieter, harder-to-name ways: a colleague who keeps their distance or rolls their eyes when you raise an issue, the promotion that never comes, or the meeting where your idea is ignored until someone else repeats it. These moments are often overlooked, but their impact runs deep. They can erode confidence, take a toll on mental health, and shape entire career paths. This harm is compounded by the roles that racialised people are expected to play at work, the exclusion they experience, the stereotypes they encounter, and racial inequity at a broader, systemic level.³

This harm is compounded by the roles that racialised people are expected to play at work, the exclusion they experience, the stereotypes they encounter, and racial inequity at a broader, systemic level.’

How does the law respond to lived experiences like these? Does the law recognise some of the themes that emerged from the Spark × Sistren survey, for example, that:

- ▶ racism can be structural – that the legacy of workplace practices, policies, attitudes and norms can continue to shape outcomes even when no individual necessarily intends harm.
- ▶ racism shows up intersectionally – that the experience of racism converges, compounds and collides with other aspects of people’s identities.
- ▶ the wider political context matters – that the experiences of harm within workplaces can be contextually shaped by what’s happening outside of workplaces.

“I have had to leave a job due to experiencing racism, sexism and maternity discrimination. I was signed off for 6 months and am still recovering from the mental health impact 2 years later.”

Anonymised Spark × Sistren survey response

In addition to the Spark × Sistren survey, there are a number of studies that provide empirical evidence about the persistence and pervasiveness of race inequalities in the workplace.⁴ Despite the abundance of data demonstrating that people experience disadvantage and harm at work on the basis of their race, we didn’t find many legal resources in support of people experiencing this harm.⁵ We developed this toolkit to try and address that gap, and in response to the experiences generously shared by participants in the Spark × Sistren survey, to help translate complex legal frameworks into something people can use to understand their experiences, their rights, and the possible pathways available to them when navigating race discrimination at work.

But there is also a deepening context to this work. The 2024 racist riots in the UK intensified the concerns that people were feeling. As misinformation and deep-rooted racism spilled over in the form of an estimated 30 anti-immigrant demonstrations and racially motivated riots across 27 towns and cities across the UK,⁶ it was clear that many were experiencing additional fear, worry and trauma going into workplaces.

“Last year during the far-right riots a white colleague was making insensitive remarks relating to concerns about personal safety. Specifically, how they wished that with all the tension the [*sic*] wished that something bigger happened, describing it as anti-climactic. As a Black person I found this deeply offensive as I was genuinely concerned for my personal safety.”

Anonymised Spark × Sistren
survey response

Workplaces reflect and reproduce the inequalities that exist beyond their walls. In a political moment marked by the rise of far-right rhetoric, these dynamics feel sharper. As exclusionary ideologies gain traction, they influence workplace cultures, too. In that environment, legal protections matter.

We all bring our identities into work. As Gary Younge writes, we all happen to be a number of things (short or long-limbed, etc.) but belonging to a racialised background is consequential in ways those other traits are not.⁷ And while race is a part of one’s identity, it can disproportionately eclipse the lived and work experience of an individual, through the actions and behaviours of others, institutions and society.

The Equality Act 2010, and its framework of ‘protected characteristics’ represents a legal commitment to equal treatment. Protected characteristics are not arbitrary categories; they recognise aspects of identity that have historically structured access to opportunity, safety and power.

By naming race as a protected characteristic, the law acknowledges that discrimination is not simply interpersonal, but embedded in broader patterns of disadvantage. In moments where far-right narratives question ideas of belonging or equality, these provisions are particularly significant. They provide a baseline of protection against discrimination and a shared language through which harm can be articulated.

At the same time, we know that the law has not always advanced racial justice.⁹ Legal systems have often legitimised and reinforced racial inequality. Legal frameworks are shaped by power, and they are not immune to the political climate.

This toolkit does not present the legal system as perfect. The cases we draw on are illustrative examples where individuals secured some measure of redress. They are not comprehensive, nor do they capture the many instances where justice was denied. They are not 'proof' that the system works seamlessly. Rather, they show how the law can be used strategically, while acknowledging its limitations.



Who this toolkit is for

This toolkit is for anyone who has experienced race discrimination in the workplace. It is written for **people** – employees, workers and individuals in work trying to make sense of their experiences and how the law might apply.

People who experience racism at work are often left to interpret complex legal frameworks alone, trying to translate lived experience into statutory language, often while still working within the very environments causing harm. They are left to 'DIY' complaints, draft grievances without legal support, and decide whether to escalate matters to tribunal without clear guidance.

There are already many resources and recommendations for organisations and employers about how to create more inclusive workspaces, navigate equality risks, conduct investigations or avoid liability. There is an asymmetric power imbalance inherent in the workplace and employers often have HR departments, legal teams or the financial means to obtain specialist resources. People usually do not. This toolkit is written for those people.

How to read this toolkit

We have structured this toolkit into three main parts, so that understanding, application and action are connected:

Part I: Mapping the Employment Law Landscape

This section includes a brief history of the evolution of employment laws and rights in England and Wales. We begin with history and legal context, because employment law does not emerge from nowhere. By situating equality and employment law within that longer history, we hope to make visible how power operates in workplace relationships and why protections matter.

Part II: People's Stories: Applying the Law to Navigate Race Discrimination at Work

This section tells people's stories through a selection of legal cases, the circumstances people have navigated, and how legal frameworks have responded. The cases have been selected to reflect the particular lived experiences of people responding to the Spark x Sistren survey. Seeing how courts and tribunals have interpreted and applied the law helps make abstract legal principles feel less distant and clarifies where the law has drawn boundaries.

Part III:

Taking Action: A Practical Checklist

This section offers a practical checklist, rooted in the lived experience of people who have navigated complaints procedures at work. It aims to provide actionable steps, while recognising the structural dynamics at play for racialised staff (staff whose race or ethnicity shapes their experience at work), if they decide to take action in response to an experience of race discrimination in the workplace.

Terminology and language

There is no single agreed set of terms to describe racial identity, and we recognise that people have different preferences when it comes to how they describe themselves and their communities. Throughout this toolkit we use a range of terms, including **'people of colour'** and **'racialised'**. Within social justice and social sector movements in the UK more broadly, we often use the term **'global majority'**.

By **'racialised'**, we refer to the process through which people are treated differently or disadvantaged because of how race is socially constructed and interpreted.

'People of colour' is used as a broad term for individuals who are not considered white in societies structured by racial hierarchies. **'Global Majority'** refers to the majority of the world's population – people from Africa, Asia, Latin America, and indigenous communities – who are often positioned as 'minorities' particularly in western or predominantly white countries.

We recognise that many people may not identify with these terms, may prefer to use different terminology, or may not feel the need to identify with labels of any kind. We invite you to self-identify in whatever way makes you most comfortable and acknowledge that terms we use ourselves may well change over time.

Throughout this toolkit, we have drawn a distinction between **'racism'** as understood in everyday usage and **'race discrimination'**, which is a specific legal term that is explained later in this toolkit. It should also be noted than when referring to the term **'race'** under the Equality Act 2010, the meaning of race includes: (a) colour; (b) nationality; (c) ethnic or national origins.

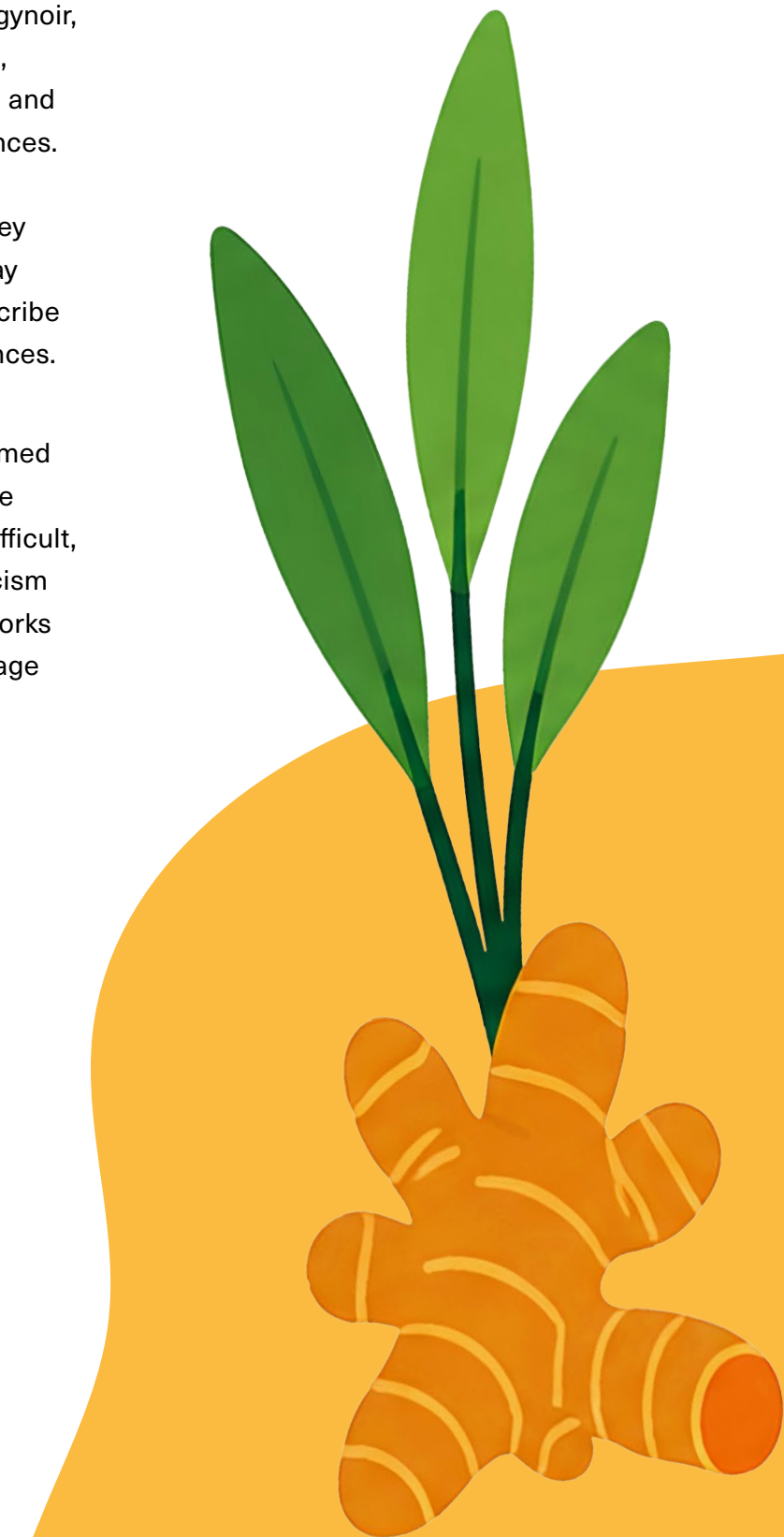
Legal language can sometimes be formal, technical or difficult to follow. Where possible, we've tried to explain it in plain terms, though some legal terminology will appear, particularly when we're discussing court or tribunal decisions.

Trigger warning

This toolkit includes discussion of race discrimination, racial harassment, misogynoir, microaggressions, racial violence, harm, exclusion, retaliation, and the emotional and mental health impacts of these experiences. It includes racist comments shared by respondents to the Spark × Sistren survey to illustrate their experiences of everyday racism, and personal accounts that describe painful and, at times, traumatic experiences.

The purpose of this toolkit is to support understanding, accountability and informed action – not to cause further harm. Some readers may find parts of this content difficult, particularly if they have experienced racism themselves. Please read in a way that works for you – take breaks if needed and engage with the material at your own pace.

Updated: April 2026





Part I: Mapping the Employment Law Landscape





Part I: Mapping the Employment Law Landscape

The UK's legal framework (known as 'common law') is based on a combination of laws passed by Parliament ('legislation') and decisions made by judges in courts and tribunals in legal cases (also known as 'case law'). Depending on where in the UK you live, you are likely to experience laws differently. This is because the UK has three separate legal systems: one for England and Wales, one for Scotland and one for Northern Ireland.

This toolkit has been developed by lawyers based in England and Wales and focuses on employment laws in those countries.

In this section, we will share a brief history of the evolution of employment laws and rights in England and Wales. We also provide an overview of key employee protections and rights that would help an individual navigate race discrimination and racism in the workplace. Woven throughout will be an exploration of some of the limits of the current employment rights, laws and protections in affording workplace equity. We will also touch on what lies ahead by way of legal reform.

A brief history of employment law in England and Wales

The roots influence the whole. The current employment law system is shaped by its past, and the workers' rights movements that significantly changed the employment legal landscape over the last 250 years.

The 'master-servant' model dominated the legal relationship between employers and workers in the 18th and 19th centuries, with employers exercising significant control and discipline over workers. It was reinforced by written laws such as the Master and Servant Acts, which were deeply biased and favourable to employers.

To us today, it would be a dystopian reality. Workers had very few rights, and any lapse in fulfilling work requirements or challenge to working conditions by the workers led to strict punishments, including imprisonment for the workers.⁹ Speaking up against harsh work practices wasn't made to be a viable option.

The early 20th century saw the gradual introduction of protective legislation for workers in response to growing social concern for workers' welfare, and of workers organising for better pay and working conditions. The focus shifted from the employer's interest in disciplining workers to protecting employee welfare, particularly in response to unfair treatment of those workers who suffered industrial accidents and workplace injuries without compensation. Some key legislation from this time includes:

- ▶ **Workmen's Compensation Acts** (from 1897): Provided compensation for workplace injuries, regardless of fault. This marked a significant shift in attitudes on employer responsibility towards their workers, and on the role of the government in intervening in workplace matters.
- ▶ **National Insurance Act 1911:** Introduced social insurance cover for loss of income due to ill health or unemployment.
- ▶ **Trade Boards Act 1909:** Set minimum wages within certain trades that historically offered low wages to workers.

It was not until the 1970s that there was legal recognition of the idea that all employees are entitled to certain basic rights as part of their employment relationship (a 'rights-based' approach), including freedom from discrimination on the grounds of sex or race. And therefore, employers have obligations or duties to safeguard employee rights in the workplace. Some key legislation from this time includes:

- ▶ **Industrial Relations Act 1971:** Introduced laws on unfair industrial practices and established the National Industrial Relations Court to cover a range of labour relations and trade union matters.
- ▶ **Equal Pay Act 1970:** Mandated equal pay for men and women.
- ▶ **Sex Discrimination Act 1975 and Race Relations Act 1976:** Prohibited discrimination on grounds of sex and race.

From the 1990s onwards, employment law expanded to cover a wider range of rights, influenced significantly by European Union (EU) law. These changes reflected a broader societal shift towards equality and fairness at work. Some key developments were:

- ▶ The introduction of legal rights to parental leave, flexible working, and protection for part-time and fixed-term workers.
- ▶ **Disability Discrimination Act 1995**, which prohibited discrimination against disabled workers.
- ▶ EU-derived protections such as **The Working Time Regulations 1998** (implementing the EU Working Time Directive), introduced limits on working hours and rights to paid holiday.

The legal framework today

Employment law today is framed by a number of different laws, supported by case law, and supplemented with practical guidance from regulatory bodies such as the Equality and Human Rights Commission (EHRC) and the Advisory, Conciliation and Arbitration Service (ACAS).

This section introduces the key legislation that shapes the employment law and rights landscape in the context of race discrimination. Later parts of this toolkit explore how these rights have worked in practice, and how the law has been

interpreted and applied where individual rights have been infringed.

These key laws are:

- i. The Equality Act 2010
- ii. Protection from Harassment Act 1997
- iii. Health and Safety at Work Act 1974
- iv. Personal injury law
- v. International Law: European Convention on Human Rights (ECHR) and the Human Rights Act 1998
- vi. Employment Rights Act 1996 & the new Employment Rights Act 2025

Definitions	
Case law	Case law is law developed through decisions made by courts and tribunals. Judges establish, from evidence, the facts of the case, and interpret and apply legislation to specific cases. In England and Wales, case law often creates the legal principles that guide how similar cases are decided in the future.
Regulatory Body	A regulatory body, or a regulator, is an organisation or government body that makes, monitors and enforces rules and regulations, to ensure that the organisations regulated by it operate according to the law. For example, the Charity Commission regulates charities in England and Wales.
EHRC	The Equality and Human Rights Commission helps enforce equality law, challenges discrimination, and provides guidance to employers, public bodies, and individuals about their rights and responsibilities.
ACAS	Advisory, Conciliation and Arbitration Service provides free, impartial advice on employment rights and workplace disputes.

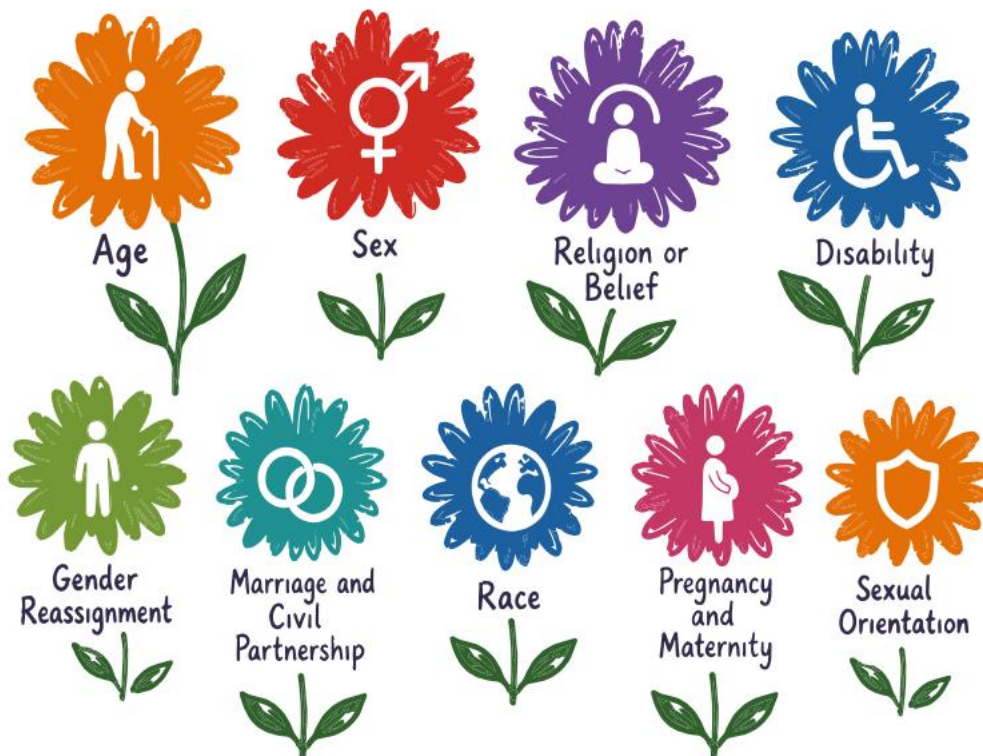
i. The Equality Act 2010

The Equality Act is the principal piece of equality legislation in the UK. The intention of the Equality Act was to harmonise and bring together the various existing anti-discrimination and equality laws to create a fairer and more equal society.

It outlaws discrimination based on specific characteristics, including (but not limited to) race, disability and age (called 'protected characteristics'). In this toolkit, we are focusing only on race as a protected characteristic.

Definitions	
Protected characteristics	These include race, age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, religion or belief, sex, and sexual orientation.
Race	Race is defined to include colour, nationality, and ethnic or national origins.

The 9 Protected Characteristics



The Equality Act applies to all aspects of working life, including recruitment, interviews, working conditions, promotions, transfers, dismissals, and training. The Equality Act specifies the types of discrimination that are prohibited under law, including **direct discrimination** (being treated less favourably because of a protected characteristic), **indirect discrimination** (a policy, practice, or procedure that disadvantages a group of people with a shared protected characteristic), **harassment** (unwanted conduct related to a protected characteristic that violates dignity or creates an intimidating environment), and victimisation (being treated unfairly for making or supporting a complaint of discrimination).

To enforce your legal rights in the workplace under the Equality Act, you'd usually bring a claim in the **Employment Tribunal** if you believe you have been subjected to discrimination (see later in the toolkit for information on bringing a claim, including ACAS Early Conciliation and time limits). Employment Tribunals can grant (or 'award') several remedies, including financial compensation to individuals (which the employers would typically be liable to pay), and give specific recommendations to employers to improve working conditions.

In addition to protecting rights at work, the Equality Act also provides protections in other areas of life, such as public services, education, housing, shops and service providers, and membership organisations and associations. In this toolkit, we specifically focus on how the Equality Act provides protections at work.

ii. Protection from Harassment Act 1997

Beyond the Equality Act, the law provides additional protection against harassment including harassment on the grounds of race and harassment in the workplace. The Protection from Harassment Act 1997 law covers serious and repeated behaviour that causes alarm, distress, or fear.

To enforce your rights under this law, you'd need to bring a claim in the County Court or High Court, and you could ask the Court for:

- ▶ an injunction (a legal order stopping the behaviour), and/or
- ▶ compensation for the harm you've suffered, including anxiety or financial loss (such as loss of earnings).

iii. Health and Safety at Work Act 1974 (HSWA)

Under this law, employers have a duty to ensure the health, safety, and welfare of their employees at work so far as is 'reasonably practicable'. This includes an employee's psychological safety. Employers must take reasonable steps to prevent and address risks to both physical and mental health, including those caused by race discrimination or harassment.

Health and Safety Executive (HSE): The HSE is a national regulator for workplace health and safety.¹⁰ While it is the central enforcing body for health and safety law (meaning, it is responsible for ensuring that risks to people's health and safety from work activities are properly controlled), it is not the only body responsible for enforcement. A local authority may also be responsible for health and

safety in the workplace, depending on the work activity and the type of workplace (for example, places of worship or nurseries).¹¹

The HSE and other enforcing bodies can investigate workplace accidents and bring a case for criminal wrongdoing under health and safety law in the courts of England and Wales. These bodies can also issue health and safety notices and formal warning letters to organisations, which can deter businesses from unsafe practices.

iv. Personal injury law

An individual may be able to seek compensation if they are injured or suffer harm because of someone else's negligence or wrongdoing.

In the workplace, employers have a **duty of care** to ensure the wellbeing of their staff. This includes providing a safe working environment that is free from discrimination and harassment. A personal injury claim may arise when race discrimination or harassment results in physical or psychological injury in the workplace. If an employer ignores or mishandles a discrimination matter, it can be interpreted as a failure or breach of their legal and contractual duties towards you and give rise to claims for breach of contract, including terms which are implied into an employment contract. Implied terms are unwritten contract terms that still have legal effect, for example, an employer must provide a safe working environment even if the employment contract doesn't say so.

These claims can be brought in the County Court or High Court, and sometimes alongside other claims in the Employment Tribunal. Compensation can include payment for pain and suffering caused, and financial losses suffered. You can only bring a personal injury claim about the same issue in one forum (the place where a legal case is decided such as a court). For example, if you bring a personal injury claim in the Employment Tribunal, you cannot bring the same or similar claim again in the High Court.

v. International Law: European Convention on Human Rights (ECHR) and Human Rights Act 1998

The ECHR (incorporated into UK law by the Human Rights Act 1998) provides further protection against discrimination in the enjoyment of the rights and freedoms set out in the ECHR. Courts and tribunals must act compatibly with these rights (subject to any reasonable restrictions), including the right to private and family life (Article 8) and the right to a fair trial (Article 6).

vi. Employment Rights Act (ERA) 1996 and the Employment Rights Act 2025

The ERA 1996 sets out a range of employment rights, including legal protection from unfair dismissal, the right to written terms of employment, the right not to be treated poorly or dismissed due to whistleblowing and rights relating to pay and working hours.

The Employment Rights Act 2025 was enacted in December 2025 and is expected to become fully effective by 2027 through a phased approach. It will significantly change the ERA 1996, and its current wording includes several expanded employee protections, such as:

- ▶ A new duty for employers to prevent harassment from third parties such as clients or customers.
- ▶ Employers needing to take 'all reasonable steps' to prevent sexual harassment (current law says 'reasonable steps').

- ▶ A change to the law around non-disclosure agreements (**NDA**s), making legally invalid any clauses that would prevent workers from disclosing work-related harassment or discrimination.
- ▶ Protection from unfair dismissal will become a right available after six months of employment (currently two years of service is required before being eligible to make an unfair dismissal claim).¹²

Definitions

Non-Disclosure Agreement (NDA)

A Non-Disclosure Agreement is a legal agreement that limits what someone can share about certain (often confidential) information. In some cases, where an employment contract has been terminated following an employer-employee dispute, an employer may ask the departing employee to sign an NDA restricting what can be said about the dispute. NDAs cannot lawfully prevent someone from bringing a legal claim, from reporting discrimination to the police or regulators, whistleblowing, or cooperating with the police or regulators. However, if you are considering making a protected disclosure (reporting on workplace wrongdoing which you are protected for, such as reporting an illegal workplace activity) after having signed an NDA, you are strongly recommended to seek legal advice as there are strict parameters so that any such disclosure remains protected.

“I challenged my employer and took an NDA with provisions I regret. I still don’t fully know if they were legal.”

Anonymised Spark × Sistren survey response

“I took an NDA I didn’t fully understand – just so I could leave quietly.”

Anonymised Spark × Sistren survey response

Where the law falls short

The current UK employment legal frameworks do not fully capture the complexity of identity, the many ways in which racism can subtly or overtly come up in workplaces, or the evolving language used to describe identity. Drafting and interpretation of laws is a human exercise, and recognising how law has developed can help to understand and work within its limitations.

Before we do a deep dive into the Equality Act, we wanted to briefly touch on how the law does not always reflect the ways in which racial harm is understood or experienced by people subjected to it.

The language we use

The language we may use to describe the experience of racism is not reflected in the legal language used in race discrimination matters. Terms that we understand and use to capture particular types of racist experiences, including terms such as anti-Blackness, microaggressions, intersectionality or misogynoir, are not used in legislation and are typically not used in the language used to construct a claim of race discrimination.

In practice, this means you might need to:

- i. rethink strategies for bringing a race discrimination claim in the workplace,
- ii. be mindful of the common pitfalls, and
- iii. understand that a legal win may still not feel like a complete vindication of your lived experience.

‘Racism’ or ‘race discrimination’?

The law differentiates between ‘*racial discrimination claims on grounds of race*’ and a ‘*racism*’ claim. This difference in legal meaning is not as intuitive as you would expect.

The legal test: Under the Equality Act, '**discrimination**' is defined as less favourable treatment because of a protected characteristic compared to another person in the workplace in a similar role who does not share the same protected characteristic.

Under the Equality Act 2010, there isn't a single, standalone sentence that defines 'race discrimination' in isolation. Instead, the act:

1. defines 'race' as a protected characteristic, and
2. sets out different forms of prohibited conduct that amount to less favourable treatment because of a protected characteristic.

In most cases, race discrimination can encompass less favourable treatment due to caste. Sometimes someone's ethnicity and religious belief are closely related. Where this happens, there can be less favourable treatment due to both race and religious belief.

Limited exceptions can be made, where there is an 'occupational requirement' for someone belonging to a particular protected characteristic and where this exception can be objectively justified. For example, casting a Black actor to play Nelson Mandela in a stage production would not be unlawful discrimination.

The way to show that race discrimination has occurred is an objective legal test: an individual must show that *race was a significant factor* in the differential treatment. The legal test does not require proof of racist intent.

This can feel like an artificial split between what someone did and why they did it. It may seem contradictory, especially in cases of overtly racist behaviour, where it's hard to see the conduct as coming from anything other than an intention to harm someone because of their race.

Racist behaviour or 'a racist'?

The focus of the legal test is on whether the individual was treated less favourably because of race, not whether the perpetrator is 'a racist'.

Proving that someone is 'a racist' is harder within the framework of the law, even if a strong correlation may exist between a person who commits racial discrimination (as understood in law) and them being 'a racist'.

Higher evidential hurdle for 'racism' claims

Framing discriminatory behaviour as 'racism' can create an unnecessarily higher legal hurdle. This is because the tribunals may (wrongly) expect evidence of explicit racist behaviour or intent, rather than focusing on the actual legal test: whether *race was a significant factor* in the treatment or relevant work decisions.

A possible reason for this distinction is because the law is attempting to address both conscious and unconscious bias, as well as the impact of apparently neutral policies that disadvantage certain racial groups. This can be seen to be giving less weight to a person's motives or state of mind even if that is the source or origin of racial harm.

When you're the person making a claim, the separation of someone's intent or motive from the conduct you've experienced can feel unjust and an artificial separation in the legal framework. Despite this, individuals have to navigate what might feel like an imperfect legal framework to seek justice.

Dual discrimination and intersectionality

People cannot presently bring a combined claim for discrimination based on two protected characteristics (for example, race and sex, known as 'dual discrimination'), or bring an overlapping claim based on the combined effect of discrimination-based experiences and compounded by multiple protected characteristics. A claim must be brought for each protected characteristic separately.

This can make it difficult for the legal process to address the full complexity of an individual's experience. The introduction of the right to bring a dual discrimination claim (a right which was originally included in the Equality Act but does not yet have legal effect) is one that is hotly debated and is currently under government consultation.

Definitions

Intersectionality

Intersectionality is a way of understanding that different aspects of identity (such as race, class, gender, sexuality, or disability) do not exist separately, and intersect and interact to shape an individual's lived experiences and social positions, often resulting in overlapping forms of social, economic, or cultural disadvantage. Kimberlé Crenshaw, a critical race theory academic, coined the term 'intersectionality' in a paper in 1989 as a way to help explain the oppression of African-American women.¹³ There is an acknowledgement that current legal frameworks do not provide adequate protection against intersectional discrimination involving race.¹⁴

Treatment of multiple discrimination claims

To mitigate against the risk of individuals bringing every possible form of discrimination claim (the 'kitchen-sink', claim-overloading approach), a legal adviser might suggest that individuals only bring the strongest and the most relevant claim. However, not bringing multiple claims because it will undermine the prospect of success can understandably feel unfair or inauthentic, and a dilution of a person's lived experience.

Tribunal judgments (formal written decisions of a court in a case explaining the case outcome) sometimes criticise a 'kitchen sink' approach, where too many claims are included. In practice, this can distract from some of the stronger claims an individual might bring. Where an individual is found to be weak on a peripheral claim, this could affect the tribunal's perception of credibility of the other stronger claims.

Subtle or systemic discrimination

The Spark x Sistren blog,¹⁵ highlights how racism in the workplace can often occur in ways that may not be obvious – in quieter, harder-to-name ways. Many forms of discrimination are subtle, unconscious, or systemic, and may not be accompanied by overtly racist language or behaviour. It is a constant presence, and not just something that ends when you leave work for the day.

“Earlier in my career, discrimination was usually informal – and almost certainly intersected with class/socioeconomic background. I didn't have similar experiences to the majority population, and so often found myself excluded, or my work judged through a racialised lens (i.e. works hard, but doesn't have leadership potential).”

Anonymised Spark x Sistren
survey response

“In the training slides, the word Race had been removed from the list of biases entirely. I was stunned. When I raised the absence of race, I was shut down and not allowed to speak further.”

Anonymised Spark x Sistren survey response

“Often there is an unspoken assumption that being an East Asian woman, I am deemed as more compliant and assigned more administrative tasks.”

Anonymised Spark x Sistren survey response

Understanding the Equality Act in the context of race discrimination at work

In this section, we take a deeper look at the protection framework within the Equality Act, applicable to cases of race discrimination at work. To do so, we'll cover the following questions:

- ▶ Who is protected?
- ▶ Who can discriminate?
- ▶ What defence is available to the employer?
- ▶ When can discrimination happen?
- ▶ What types of race discrimination claims are covered under the Equality Act?

Who is protected?



In England and Wales there are three main categories of working relationships:

- ▶ employees
- ▶ workers
- ▶ self-employed individuals




Understanding the distinction between these categories is important to determine what legal rights and protections a person has at work. This is a complex area of law, but the following table provides a high-level, indicative overview of the Equality Act protections available to different people in the workplace. If you are unclear about the category you may fall under, we would recommend seeking legal advice.



Equality Act Workplace Protections Overview

Working relationship	Definition	Equality Act-protected?
Employees	<p>Employees are people who hold a contract of employment. They are entitled to the full range of Equality Act protections from recruitment to the end of their employment.</p> <p>For example, from day one of employment, an employee cannot be dismissed on the basis of race. This means that an employer cannot lawfully dismiss someone because of their race, even if the person has only just started the job (so, without needing any minimum period of service). An employee can also be protected from discrimination after their employment has come to an end (see final category).</p>	
Workers	<p>This is a broader category that includes employees and also those who may not have formal employment contracts but offer work or services personally. Workers who are not employees will typically have greater flexibility in when and how they work. For example, in the 2021 landmark legal case brought by Uber drivers against Uber, the UK Supreme Court ruled that Uber drivers would be classed as workers (not as self-employed).</p> <p>Workers are protected under the Equality Act, however they do not have the protection of the full suite of employment rights, including protection from unfair dismissal or the right to statutory maternity leave and pay.</p>	

Self-employed individuals	<p>Self-employed people are those who run their own business or business activities. They have some legal protections, including Equality Act protection when providing services to clients or customers. However, they do not benefit from employment rights protections.</p>	
Job applicants	<p>Job applicants are protected from discrimination based on their protected characteristics under the Equality Act during the recruitment process, including in job descriptions, candidate shortlisting, interviews or job offers.</p>	
Agency workers	<p>People working via an employment agency are protected under the Equality Act. Both the agency and the organisation where the individual works have duties to ensure that the worker is not discriminated against.</p>	
Vocational training and work experience	<p>Individuals undertaking vocational training, apprenticeships, or work experience placements are protected from discrimination under the Equality Act in the arrangements for, and the terms of, their training or placement.</p>	
Trade Union members	<p>Both current and prospective members are entitled to equal treatment for membership, benefits and union activities under the Equality Act.</p>	

<p>Interns</p>	<p>The term ‘intern’ is not legally defined, so their rights depend on what they actually do. For example, if an intern is paid and required to work set hours, they may be classed as a worker or an employee and would then have the associated protections. If an intern is simply observing and not generating any work outputs, they may be treated as a volunteer and not have employment rights.</p>	<p> It depends</p>
<p>Volunteers</p>	<p>Volunteers are individuals who give their time and effort to an organisation, usually a charity or non-profit, without receiving pay or contractual benefits. Their legal status is different from that of employees, workers, and the self-employed.</p> <p>Volunteers are generally not protected under the Equality Act in the same way as employees or workers. However, if a volunteer arrangement is similar to a formal employment relationship (for example, regular payments, fixed working schedule, etc.), they may have employment rights and the law may even regard them as employees.</p> <p>Note that some organisations may have their own internal staff policies to prevent discrimination against volunteers.</p>	<p> Exceptions apply</p>
<p>Former employees and workers</p>	<p>Also protected if the discrimination or harassment is closely connected to their previous employment. For example, if a former employer has provided a discriminatory reference, the individual may still be protected.</p>	<p></p>

Who can discriminate?

Both people and organisations can discriminate. Under the Equality Act, claims can be brought against both the individual and the employer.

An employer is primarily liable for discrimination, harassment or victimisation committed by its employees or agents in the 'course of employment' even if the employer did not know about or approve of the discriminatory conduct (in law, this is known as 'vicarious liability'). The employer may also be directly liable for its own policies, practices, acts or decisions that are discriminatory. One of the ways in which employers may defend themselves against a discrimination claim is if they can show that they took 'all reasonable steps' to prevent the discrimination. For example, an employer may argue that providing mandatory Diversity, Equity and Inclusion (DEI) staff training and having a DEI policy are some examples of reasonable steps they've taken to prevent race discrimination in the workplace.

Any individual in the workplace may also have 'personal liability' (meaning, be legally responsible for) discrimination. This could include, for example, managers, colleagues, colleagues you manage, board members, trustees and even third parties such as customers or clients.

Crucially, a person can discriminate against someone who shares the same protected characteristic. Under the Equality Act, belonging to a racialised identity or having another protected characteristic does not excuse race discrimination against another.

“I was bullied by a manager from the Caribbean. He made jokes about my body and would occasionally touch it and felt he was allowed to do so as he was also Black (I’m Black African) and he was also gay so he felt it could not be considered assault.”

Anonymised Spark × Sistren survey response

When can discrimination occur?

Discrimination can occur at any stage of the employment relationship, such as during recruitment, training, performance appraisals and redundancies. An employer's legal responsibility extends to preventing discrimination at work, and even conduct outside the workplace is there is a close or sufficient connection to work for example, during work-related social events, or business trips.

“From day one, I had a target on my back.”

Anonymised Spark × Sistren survey response

What types of race discrimination claims are covered under the Equality Act?

Here is a brief overview of the different types of race discrimination claims under the Equality Act.

Types of race discrimination claims

Direct discrimination

Direct discrimination occurs when an individual is treated less favourably than another person *because* of their race, colour, nationality, or ethnic or national origin. Unless there is a statutory (legal) exception, direct discrimination cannot be excused or defended.

Under direct discrimination the treatment complained of must be compared with that of an actual or a hypothetical person – the comparator – who does not share the same protected characteristic (race). An individual is required to show that they were treated less favourably than their colleague (or a hypothetical colleague) of another race would have been treated in materially the same circumstances.

There are three types of direct discrimination. These are when it happens to a person who:

- ▶ has a protected characteristic and is treated less favourably. This is sometimes called ‘ordinary’ direct discrimination. For example, someone is overlooked for promotion because they are of Vietnamese heritage.
- ▶ is treated unfairly because either someone they know or someone they are associated with has a protected characteristic. This is called ‘discrimination by association’.¹⁶ For example, an employee is overlooked for promotion because their spouse is a Black person.
- ▶ is treated unfairly because it is believed that they have a certain protected characteristic, whether or not it is true. This is called ‘discrimination by perception’. For example, incorrectly assuming someone is Asian when they have no Asian heritage and making inappropriate remarks to them in the workplace on that basis

Indirect discrimination

Indirect discrimination happens when a '**policy, procedure or practice**' (PCP) that might appear to be neutral has the effect, in practice, of disadvantaging a particular group with a shared protected characteristic, and which cannot be 'objectively justified'. 'Objectively justified' means the employer's actions are based on fair reasons and are balanced so that they do not disadvantage particular groups more than is absolutely necessary to achieve a legitimate aim.

Indirect discrimination is intertwined with equality of outcomes. For example, a company policy banning dreadlocks, while on the face of it might be a neutral policy as it applies to all employees equally, is likely to disproportionately affect Black people and therefore could amount to indirect discrimination against Black workers.

Indirect discrimination can also occur when a policy would put a person at a disadvantage if it were applied. For example, if you were deterred from applying for a job or taking up an offer of service, because a policy which would be applied would result in your disadvantage (such as a hair policy).

Indirect discrimination (continued)

The legal phrase PCP includes the following:

- ▶ Decisions around workplace facilities – for example, toilets and common areas
- ▶ Policies on ways of working – for example, flexible working or working from home
- ▶ Policies on workwear and appearance – such as style of clothing or hairstyle
- ▶ Selection criteria used in recruitment
- ▶ The way employees are selected for redundancy
- ▶ Working hours

Recent developments under the Equality Act mean that a person can bring a complaint/claim even if they do not personally have the protected characteristic (such as race), as long as they suffer 'substantively the same disadvantage' as those who do – called 'same disadvantage' indirect discrimination.

For example, a business owner does not wish to work with South Asians and so avoids recruiting individuals from the Wembley postcode (on the basis that many South Asians live in Wembley). While this recruitment practice discriminates against South Asians, it could also indirectly discriminate against non-South Asians living in Wembley; they would likely suffer from the same disadvantage because of the discriminatory recruitment practice.

Harassment

Harassment is when unwanted behaviour violates someone's dignity or creates an environment that is 'intimidating, hostile, degrading, humiliating or offensive'. It can still be harassment even if the person did not mean to cause harm, or if they intended to, but their attempts had no effect. When deciding if behaviour is harassment, the law looks at what happened, the wider circumstances, and how the person experiencing it was affected (a 'reasonable' person's view). A 'reasonable person' means an ordinary, fair-minded person looking at the situation in a balanced way.

Microaggressions, when repeatedly inflicted, can amount to harassment under the Equality Act. Microaggressions are subtle, often unintentional, comments or behaviours that convey negative or stereotypical messages about a person's race or ethnicity.

While not a standalone legal category, the Employment Tribunal has increasingly recognised the impact of repeat microaggressions on an individual. The law will look at the impact on the individual in their workplace rather than the intention of the aggressor.

Examples include:

- ▶ repeatedly mispronouncing someone's name or refusing to learn it;
- ▶ asking 'Where are you really from?';
- ▶ making assumptions about someone's abilities or interests based on their race; or
- ▶ jokes or 'banter' that rely on racial stereotypes.

Third-party harassment

Since October 2024, employers have had a duty to take 'all reasonable steps' to prevent sexual harassment in the workplace. While this duty does not, on its own, create a standalone legal claim for third-party harassment across all protected characteristics, it has arguably strengthened expectations that employers take proactive steps to prevent sexual harassment and carry out proper risk assessments. This is relevant for this toolkit, especially in cases involving misogynoir.

The Employment Rights Act 2025 creates a more explicit tool with which to hold employers responsible for harassment of employees by third parties (such as customers or service users) during work, and this will apply to harassment related to all protected characteristics, not just sexual harassment. Expected to come into force in October 2026, the law means an employer may be liable if it has not taken all reasonable steps to prevent the harassment, shifting the focus to whether the employer properly assessed risks and put preventative measures in place, particularly in public-facing or higher-risk workplaces.

Depending on the workplace, 'all reasonable steps' to prevent third-party harassment might include clear policies and signage, training (including for managers), risk assessments for public-facing roles, contractual controls with suppliers, banning or excluding abusive customers, altering staffing or security arrangements, prompt investigations, and effective follow-up.

Victimisation

Victimisation occurs when an individual is subjected to a **detriment** or disadvantage because they have made or supported a complaint of race discrimination or done anything else in connection with the Equality Act. Making a complaint of this kind is known as a **protected act**.

For example, a racialised employee raises concerns about having been subjected to racism in the workplace because offensive and hostile comments were made about their nationality. Subsequently, they are bullied, excluded from meetings, and undermined by leadership. This treatment is an example of victimisation, as it is a direct response to the employee's protected act of raising a complaint about discrimination.

Public Sector Equality Duty (PSED)

The PSED is a positive legal duty on listed public authorities that requires them to have 'due regard' to the need to eliminate discrimination, advance equality of opportunity, and foster good relations between people who share and do not share a particular protected characteristic. For example, a public sector employer fails to take any action after repeated reports of racial harassment, demonstrating a lack of due regard to the PSED. This may form the basis for a judicial review or be relevant in a discrimination claim against a public body or a body that receives public funding, such as a university or the NHS.

Judicial review is a legal process where the courts examine whether a public body has acted lawfully, fairly, and within its powers when making a decision. Possible outcomes of a judicial review include the court overturning a public body's decision, ordering a public body to reconsider or take action, stopping unlawful action, or confirming that the decision was lawful.

Discriminatory dismissal

A dismissal is discriminatory if an employee is dismissed for reason related to a protected characteristic. Dismissal happens when the employer terminates the employment relationship, or where the employee terminates the employment relationship citing 'constructive dismissal' (due to a breach of contract or being forced to exit an organisation due to a breakdown in trust and confidence) as the reason.

For example, an employee who has repeatedly raised concerns about race discrimination is dismissed on 'performance' grounds when the real reason is their act of raising a race discrimination complaint (a 'protected act'). Not only could the act of dismissing the employee amount to victimisation, it could also be categorised as an unlawful discriminatory dismissal.

Ordinary unfair dismissal occurs when an employee is dismissed by their employer without a lawful reason (performance, conduct, redundancy, illegality or some other substantive reason) or if the employer fails to follow a fair process.

Before bringing an ordinary unfair dismissal claim, an employee must be eligible to bring such a claim. Currently, an employee must have at least two years' continuous service before they can bring an ordinary unfair dismissal claim. Under the new Employment Rights Act 2025, the government has proposed that a minimum of six months' continuous service will be required.

However, you are protected from day one of your employment from being dismissed unfairly for discrimination based on grounds of race or any other protected characteristic.

Black women, misogynoir and employment rights

This section of the toolkit has been authored by the Trade Union Congress, with special thanks to Michelle Codrington-Rogers, Policy Lead – Anti Racism at the Trades Union Congress ('TUC').

Black women often face double-discrimination at the intersection of racism and sexism/misogyny. This has been defined by Moya Bailey as 'misogynoir'.¹⁷

Black women reported to the TUC in 2024 that 73% of respondents had been bullied or harassed in the workplace.¹⁸ This figure had increased since the conduction of previous research, showing that the situation had only worsened in the workplace for Black women. Whether it is microaggressions (i.e. comments about appearance, hair or traditional dress) or intended 'exclusion' from social or workspaces, there is a long-term impact on Black women as they navigate workspaces.

In 2017, as reported to the TUC, it was found that over half (57%) of Black women who had experienced bullying or harassment at work reported that discrimination in work had led to a negative impact on their mental health.¹⁹ Additionally, in the same research, Black women also reported that the denial of training or promotion also impacted their mental health.

These are just some of the ways discrimination in the workplace shows up for Black women. From pressures of 'digital presenteeism' when working remotely, to

experiences of verbal or visual racism, such as remarks or comments made in their presence, Black women navigate a nuanced level of discrimination in the workplace. It is due to this layering of discrimination that Black women often don't report incidents of misogynoir due to a fear of being disbelieved, or subjected to no formal action by the employer.

Unfortunately, this also applies to Black women when they experience sexual harassment at work. From our 2024 study, 65% of Black women respondents reported experiencing sexual harassment at work. This often takes the form of racialised sexual harassment driven by stereotypes that view Black women as 'hyper-sexual' or 'sexually available'.

“I’ve experienced endless racism and discrimination in all workplaces besides my current ones. This ranges from overt racism – slurs, comments on my hair, overt exploitation – to more subtle forms of discrimination.”

Anonymised Spark × Sistren survey response

With new guidance under the Worker Protection (Amendment of Equality Act 2010) Act 2023, there is a preventative duty placed on employers to take ‘reasonable’ steps to protect employees from sexual harassment in any space considered as a ‘workplace’ and it also applies to third-party providers.²⁰ This includes training, meetings, work trips and social gatherings.

Things you can do if you experience misogynoir in the workplace:

- 1** Keep a diary of all incidents that make you feel ‘uncomfortable’ – write down the date, who was involved, who witnessed it, and if you raised it or discussed it with anyone else.
- 2** Consider arranging a meeting with your line manager; if you’re a member of the union, you can ask for the trade union rep to come with you, or also a ‘friend’. They can be your note keeper, your emotional support, or in the case of the union rep, your advocate.
- 3** Join a trade union – there is a union for every job.²¹

Mental health and race discrimination

The Spark × Sistren survey made it clear that workplace racism takes a serious toll on respondents’ mental health. Many respondents described experiencing anxiety, depression, burnout, and long-term mental health struggles because of their workplace experiences: 44.1% said racism significantly affected their mental health and wellbeing, and 30.5% reported a moderate impact.

If your mental health is affected by workplace discrimination, consider speaking to someone at work whom you trust, such as your line manager, or where available in the workplace, a Mental Health First Aider. Where an employer is aware of poor mental health or a potential disability, they are under a legal duty to consider and make reasonable adjustments. However, we know that in practice this doesn’t always work well.

Experiencing race discrimination at work is distressing and isolating. There are several steps and sources of support available, which are signposted to near the end of this toolkit. Speaking to trusted colleagues, friends, or family members can provide emotional support and practical advice. You are not alone, and you don’t have to go through it alone.

“I ended up needing counselling after a racist incident. The 12 sessions I was given weren’t enough – I still have to see the person who harmed me at work.”

Anonymised Spark × Sistren survey response

Part II: People's Stories: Applying the Law to Navigate Race Discrimination at Work







Part II: People's Stories: Applying the Law to Navigate Race Discrimination at Work

This section shows you how the Employment Tribunals, Employment Appeal Tribunal, Court of Appeal and Supreme Court have applied the law to specific scenarios that individuals have faced when navigating race discrimination at work.

We've organised this section to follow various stages in a typical employment journey (e.g., recruitment, promotion, and navigating situations at work) and to mirror some of the scenarios that respondents to the Spark x Sistren survey reported as particular challenges.

Legal terms used

Below are the meanings of some of the legal terms we use throughout this section.

Definitions

Claimant

A person or group who brings a civil case in a court or tribunal against their employer, the organisation they are providing services to or another person or group, claiming that they have suffered some harm or loss due to the other person or group's actions or inactions. This includes discriminatory or harassing treatment. The claimant asks for a remedy, such as financial compensation or an order from the court requiring the other person or group to do or stop doing something.²²

Respondent

A person or group (including an employer or organisation paying for a service) against whom a civil case or appeal is filed by a claimant and who responds to the claims or arguments made against them. The respondent may file a defence, make their own claim (a counterclaim) against the other person or group, or concede the case. The respondent may also ask for a remedy from the court, such as financial compensation or ask the court to refuse to continue with or reject the case or appeal.²³

Definitions

Court	A place where legal disputes are heard and decided by a judge including a magistrate, a jury, or a tribunal.. ²⁴
Employment Tribunal	A tribunal (or specialist court) in England and Wales that makes decisions in legal disputes around employment law and for hearing claims from people who think someone such as an employer or potential employer has treated them unlawfully. For example, the Employment Tribunal may make decisions in claims about discrimination, harassment, unfair deductions from pay, etc.. ²⁵
Case	Another word for a legal dispute or a legal matter that can be resolved by a court, a tribunal, or an alternative dispute resolution method, such as mediation or arbitration.. ²⁶
Litigation	The process of bringing a case to a court of law to reach a binding judgment.
Judgment	A judgment is a court's decision in a case. It typically includes a summary of what the issue is, how the courts have considered the evidence and which laws and rules have been applied to the case to reach the final decision.
Protected Act	An act an individual is allowed to do under equality laws without being subject to any retaliation after. For example, making or supporting another colleague's discrimination complaint.

Definitions

Whistleblowing

Whistleblowing is a complex area of law. However, below is a summary explanation of this area for completeness.

When a worker reports, in the public interest, wrongdoing at work, this amounts to a qualifying protected disclosure; the worker is said to have 'blown the whistle' and is protected by law from being treated poorly or unfairly or dismissed because they did so.

A qualifying protected disclosure is the disclosure of information which shows one or more of the following has occurred:

- ▶ a criminal offence;
- ▶ the breach of a legal obligation;
- ▶ a miscarriage of justice;
- ▶ someone's health and safety being in danger;
- ▶ sexual harassment;
- ▶ damage to the environment; and/or
- ▶ a cover-up of information about any of the above issues.

Detriment

Detriment is treatment by an employer of an employee that's demeaning or detrimental. A detriment is often the harm you must show to bring a discrimination claim based on a protected act (see definition of 'victimisation' earlier in the toolkit). Detriment is an element of many discrimination claims, not a separate type of claim itself. So:

- ▶ Discrimination is the unlawful treatment; and
- ▶ Detriment is the negative impact or disadvantage caused by that unlawful treatment.

Examples of detriment can include an employer denying training opportunities, giving an employee harder or more mundane work, making demeaning or humiliating comments, highlighting insignificant issues about employee conduct, not taking grievances and disciplinary issues seriously or withholding a reference, if these immediately follow an individual undertaking a protected act such as making a complaint about racist banter in the workplace.

Caution!

It's important to remember that the examples we discuss below are illustrative only and are not a prediction of outcomes in any future cases. These cases should not be taken to be representative of the entirety of discrimination case law based on race. The examples discussed below are a very small selection of cases. They have been chosen to match, as closely as possible some of the experiences that people shared in the Spark × Sistren survey responses.

There have been hundreds of workplace discrimination cases brought in Employment Tribunal. The Employment Tribunal makes decisions by listening to witnesses, reviewing documents, and weighing whose account is more likely than not to be true (the 'balance of probabilities'). It considers consistency, plausibility, and notes/records taken during or immediately after the event ('contemporaneous records'). The tribunal then applies the law to specific, proven facts. The decisions that courts and tribunals make are therefore based on the specific facts and evidence in an individual case.

So, as you read on, please remember that:

Each case turns on its own facts. A finding of fact in one judgment is not necessarily binding in another case, even if the issues look similar. Previous court decisions of the more senior courts in England and Wales (Employment Appeal Tribunal, Court of Appeal and Supreme Court) can sometimes help show how the Employment Tribunal may approach similar disputes, but they are not proof of what happened in your situation.

Different witnesses, documents, and contexts can lead to different outcomes. Any case will be decided on its own facts and evidence.

Legal outcomes are uncertain.

Outcomes are uncertain because evidence can develop differently (e.g., new documents, inconsistent witness recollections), credibility can be assessed differently by a different judge, and legal tests may be applied to a different factual matrix. This means there is always a risk that a tribunal may not make the same findings next time even if your case appears similar.

Be aware of time limits!

Time limits are strict deadlines for bringing a legal claim. If you miss the deadline, your claim will usually not be heard, even if it is strong.

- ▶ You usually have **three months less one day** from the date the discriminatory act at work happened to bring a claim in the Employment Tribunal. Time limits are set to increase from October 2026 to **six months**.
- ▶ Before making a claim, you normally need to **notify ACAS and go through Early Conciliation** (a free process where ACAS helps employers and employees resolve workplace issues without having to go to the Employment Tribunal). When you notify ACAS, your time limit will be paused until ACAS Early Conciliation ends. This only applies if you notify ACAS within your Employment Tribunal time limit.
- ▶ In some cases, the tribunal can allow a late claim, but this is discretionary and should not be relied upon.

Scenario ①

Experiences during interviews for recruitment or promotion

Legal case:

Ms Saine and Ms James v London Quadrant Housing Trust
(Employment Tribunal case, 2022)

Read more about the case: [🔗 The full case](#) [🔗 A useful short summary](#)

The basics

An employment tribunal found that two Black employees were discriminated against when they were overlooked for promotion in favour of white colleagues, after hiring managers relied on subjective views about who would 'fit in' rather than objectively assessing the candidates' qualifications and suitability.

What happened in this case?

The claimants were employees of the London and Quadrant Housing Trust (L&Q) with mixed white-Black Caribbean ethnicity. They alleged race discrimination and victimisation after being denied promotion to one of the three open roles at L&Q.

The three roles were advertised internally first. Six candidates applied, including the claimants. Two candidates with white British ethnicity were appointed to two of the three roles. The third role was not filled internally.

The selection process was not based solely on an objective basis (such as the job description, application forms, or interview performance). Instead, the decision was

influenced by subjective judgments of the first hiring manager (Hiring Manager 1). Hiring Manager 1 decided based on who they thought would 'fit in' and who they were '100% sure of'.

The scoring process was not conducted independently by the interviewers. The second hiring manager (Hiring Manager 2) deferred to Hiring Manager 1's scores during a meeting, and later inserted scores into the claimants' sheets, misleading them into believing that Hiring Manager 2 had given scores to them independently.

At the interview stage, the claimants had performed similarly to one of the successful candidates. One of the claimants scored only one point less than the successful candidate, and both claimants had more management experience than the successful candidate. Despite this, the claimants were not appointed, and the third role was left vacant.

Hiring Manager 1 described the claimants' interviews as 'really good' and stated they were 'not not appointable', yet did not appoint them. Hiring Manager 1 took a risk

with the successful candidate, who had less management experience and did not fully meet all the criteria for the role, but did not extend the same consideration to the claimants. The claimants raised internal grievances alleging race discrimination, which were investigated but dismissed by L&Q.

What did the tribunal decide?

The Employment Tribunal decided that both claimants were discriminated against by their employer when they were overlooked for promotion. The tribunal concluded that the claimants' race had an unconscious influence on the hiring decision.

What factors did the tribunal take into account?

► Subjective and irrelevant criteria:

The Employment Tribunal criticised the employer for relying on subjective 'fit' and confidence rather than using objectively weighted criteria. Questions asked about family background were not related to the job and risked introducing subjective impressions, which is inconsistent with the EHRC Code of Practice. This supported the argument that the interview was not conducted using objective, job-related criteria.

“I’ve had to work twice as hard to be seen as competent – and even then, promotions go to white colleagues.”

Anonymised Spark × Sistren survey response

► Comparing the treatment of other candidates:

The tribunal found that the claimants were treated less favourably than hypothetical white comparators who were in similar circumstances. As mentioned earlier in this toolkit, a comparator is an individual (actual or hypothetical) used as a benchmark to determine if another worker has suffered less favourable treatment, discrimination, or unequal pay due to a protected characteristic. The comparator must be in the same or similar employment (sharing the same employer, and similar skills, experience, or contract type) but lack the protected characteristic (e.g., sex, race) of the person alleging discrimination. If an applicant can show they were questioned differently from white candidates (e.g., white candidates were tested on competencies while the applicant faced intrusive personal questions), that may lead to an inference of less favourable treatment on the race grounds.

“I was excluded from strategic meetings despite being the most experienced person the room.”

Anonymised Spark × Sistren survey response

What are some key takeaways from this case?

► **Context matters:** This case draws on the importance of the assessment of the entire recruitment context for a race discrimination matter, as racism and race discrimination can often be subversive. For example, assessing how the process was run, whether objective criteria were used, what was said and recorded, how similar candidates were treated, relevant past events, and who made the decision.

In this case, there was no explicit bias. However, the Employment Tribunal found that race discrimination had occurred by drawing inferences from a subjective, non-transparent recruitment process (where decision makers spoke of who would ‘fit in’ and of being ‘100% sure’), inconsistent scoring evidence, and a less-experienced white comparator being preferred without a clear, objective reason.

This case provides a clear example of how discrimination can be proven by credible inferences when the paperwork and process do not provide a sufficient or clear picture of what actually occurred.

Recruitment process and outcome:

Inconsistency in scoring, missing scoring or after-the-event rationalisation of interview scoring, or brevity/absence of interview notes could justify an inference that the reason for non-selection was tainted by race, unless the employer proves otherwise. Especially where an equally or better-qualified candidate who is a person of colour is passed over while a white comparator is preferred without a clear, objective explanation.

Asking different candidates different questions according to the different protected characteristics they possess may be a relevant factor in determining whether there has been discrimination in the recruitment process.

Practical tip: The EHRC [Code of Practice](#) provides guidance on how the Equality Act should be applied, in the workplace, and by courts when considering discrimination claims.

If you have a race-related grievance, you can expressly cite [EHRC Code of Practice](#). Ask your employer to confirm compliance with the EHRC Code of Practice, disclose any records (like interviewer notes, assessment scores, or email summaries) and show that the recruitment or promotion process was fair and any decisions were made using clear, consistent criteria focused on skills, experience, and performance, rather than personal opinions or bias (objective assessment).

Scenario ②

Experiences when being considered for a promotion

Legal case:

Anya v University of Oxford (Court of Appeal case, 2001)

Read more about the case: [🔗 The full case](#) [🔗 A useful short summary](#)

The basics

This is an important case in race discrimination. It is helpful because it explains how tribunals should approach cases where discrimination is rarely overt or deliberate. In this case, the Court of Appeal emphasised that tribunals should look at the overall pattern of evidence when assessing race discrimination, and can draw inferences of discrimination where an employer's explanations are inadequate, inconsistent or not credible – even if there is no direct evidence of racist or discriminatory intent.

What happened in this case?

The claimant, Dr Anya, was a Black person of Nigerian nationality permanently resident in the UK, who applied for a research post at the University of Oxford. The claimant qualified for the research post and was shortlisted. Eventually, a white candidate got the job.

The interview was conducted by a panel of three, including the claimant's supervisor (who the claimant also brought his claim against, alongside a claim against the university). The claimant's supervisor had already formed a view that Dr Anya was not suitable for the post and notified the

two other panel members of this before Dr Anya's interview. Dr Anya claimed that his supervisor had already decided against him and that the interviewer had been hostile and had sidelined the claimant in the past. The claimant also detailed criticisms that the recruitment and equal opportunities processes were not properly followed during his recruitment process.

What decision did the courts make in this case?

The tribunal at first dismissed the claim.

The claimant then successfully challenged the tribunal's decision in the Court of Appeal after his appeal was dismissed by the Employment Appeal Tribunal. The Court of Appeal found that the tribunal, when hearing the background facts provided by the claimant's supervisor, should not have stopped there. The reason being that even if a person is being honest or truthful and presents their version of events credibly, they can still be mistaken if they are not fully aware of their own assumptions or biases.

Discrimination is often not overt. Background information (i.e. information on events prior to the recruitment process) should be properly

examined by the courts to make appropriate findings and conclusions. The court held that an inference of racial bias could be drawn if nothing else could explain the reason for making the decision. The case was sent back to the Employment Tribunal for a new hearing.

What are some key takeaways from this case?

Tribunals need to look for indicators from before and after the decision or the act that an employee complains of. Those indicators can show whether or not a decision that looks fair on the surface was affected by racial bias.

Race discrimination is not always obvious. It often looks like a normal management decision, for example, a recruitment decision, a promotion outcome, a performance rating, or a disciplinary warning. An employer will usually say that a decision or an act was based on legitimate and lawful reasons. When cases reach a tribunal, the tribunal often has to decide what the real reason was by looking at the wider picture, not just the final decision.

What are some other examples of conduct related to promotion which could point to race discrimination?

Other examples of less favourable treatment on possible grounds of race discrimination could include:

- ▶ **No notification or notice of a promotion process:** If the employer fails to notify an employee of a promotion process that may be relevant to their role, this can point to less favourable treatment on grounds of race unless the employer can prove otherwise.
- ▶ **Practical tip:** If the facts around the decision are messy, inconsistent, or show a pattern over time, those points matter. They should not be brushed aside just because the decision-maker presents well.
- ▶ **Breaching a duty of trust and confidence:** An employer may fail to perform (or 'breach') their duty of trust and confidence if, without a good reason, they act in a way that is likely to seriously damage the trust and confidence between them and the employee. Covert promotion process, denying a fair opportunity to compete or misattribution of work are potential examples of such conduct.

If your employer fails to uphold the terms of your employment (for example, by undermining trust and confidence) and it causes you to resign, then it may be considered as 'constructive dismissal'. However, the breach must be serious, and you must resign because of that breach, not later or for another reason. Because this is hard to prove and resigning is usually irreversible, it's important to think carefully, keep clear records of what happened, and document how you responded at the time. You should seek legal advice before resigning on grounds of a breach of contract.

Indicators that might support an allegation of race discrimination in the workplace

History with the decision-maker:

- ▶ Prior hostility or lack of support
- ▶ Being sidelined, excluded, or undermined over time
- ▶ Patterns of criticism or 'moving goalposts'

Differences in treatment:

- ▶ How you were treated compared with colleagues in similar circumstances
- ▶ Whether standards were applied more harshly to you than to others

Process and policy:

- ▶ Whether the employer followed its own recruitment, disciplinary, performance, grievance, and equality processes
- ▶ Any unexplained departures from policy, missing notes, or odd scoring outcomes

Consistency of the employer's explanation:

- ▶ Whether the reasons given stay the same over time
- ▶ Whether the documents back up the explanation, or whether the explanation changes when challenged

All of the above should be considered together, not in isolation.

Scenario ③

Experiences of microaggressions, stereotyping and isolation in the workplace

Legal case:

Mr V Taneja v Phoenix Whirlpools Ltd (Employment Tribunal case, 2022)

Read more about the case: [🔗 The full case](#) [🔗 A useful short summary](#)

The basics

This case provides a useful example of how race discrimination claims can succeed even where there is no overt racist language or an intention to offend, but instead there is a series of microaggressions which culminate in harassment.

What happened in this case?

Mr Viveak Taneja (VT), the claimant, was employed as an Area Sales / Business Development Manager selling bathroom products. He was regarded as a strong performer during his first nine months. The company owner brought in his friend and trusted associate Mr Dana Davies (D) to (amongst other things) conduct two-day field assessments of sales staff.

D telephoned VT to arrange the in-person assessment. On that initial call D correctly pronounced VT's first name. D and VT's relationship was strained from the outset, with miscommunication and multiple appointment rescheduling. During the outbound car journey, D addressed VT

as 'Vikesh' on two separate occasions.

VT corrected D. It had no effect. D neither apologised nor sought any clarification.

D took a critical and directive approach towards VT's work throughout the day.

In a later meeting, while reprimanding him, D again referred to VT as 'Vikesh', despite multiple earlier corrections. In the heat of the moment, VT called D an 'idiot' and a 'racist' and left the meeting. The tribunal accepted that Mr Taneja's reaction was a result of the cumulative effect of being repeatedly misnamed after correction, particularly given the cultural importance to him of the correct use of his name.

D followed VT to the car park. D threatened VT to not drive away and said VT would be 'finished' if he did. VT left and immediately reported the matter. Senior management accepted D's account (which did not refer to the details of repeated misnaming), carried out no meaningful investigation, and treated VT's employment as ending that day.

What decision did the courts arrive at in this case?

The tribunal found that VT had been subjected to race-related harassment. The tribunal treated persistent misnaming of a non-Anglicised name as conduct related to race. It recognised that, in context, repeated failure to use the correct name can reflect racial insensitivity and stereotyping, even absent overt racial language or intent. The tribunal ordered the payment of a financial sum (known as an 'award') for 'injury to feelings' considering the confrontation, car-park threat, management's acceptance of D's account and the immediate adverse employment outcome (termination of VT's employment).

Which factors influenced the tribunal decision?

- ▶ **Power imbalance:** D and VT were in a quasi-managerial/coaching relationship, with D having influence over how VT's performance would be perceived by senior management.
- ▶ **Repetition and setting:** Misonaming occurred multiple times within a single assessment day and as part of criticism about work practices.
- ▶ **Lack of contrition:** The absence of an apology or effort to check pronunciation, despite corrections, was specifically noted and weighed against D. There was limited evidence of any meaningful apology or remedial steps once the issue was raised.

- ▶ **Purpose or effect:** The tribunal found the conduct had the effect of violating VT's dignity and creating a humiliating and hostile environment. It was reasonable for VT to feel that way in light of the repetition and the cultural significance of names.
- ▶ **Cumulative assessment:** The repeated nature of the behaviour, the power imbalance, and the absence of meaningful remedial action converted what might otherwise be characterised as minor slights into harassment.

Which factors did the court decide would not excuse harassment?

- ▶ **D's dyslexia:** The employer argued that D was dyslexic and that any misnaming was unintentional. However, the tribunal held that this did not excuse the conduct, particularly given the repetition, the failure to check or apologise, and that D had pronounced VT's name correctly in the initial call.

What are the key takeaways from this case?

- ▶ **Persistent misnaming or culturally disrespectful conduct can be classed as harassment** (such as a lack of apology or threatening language) linked to race when it harms an individual's dignity or creates a 'hostile, degrading, humiliating, or offensive' working environment (Equality Act s.26).

- ▶ **Lack of malice (harmful intention) or an underlying condition does not excuse harassment** if the effect is to harm or violate another's dignity. Repeated 'mistakes' in pronouncing an ethnic name after being corrected can still be unlawful.

“On my first day, someone sprayed air freshener in my office. Later, my manager said a complaint had been made about my body odour.”

Anonymised Spark × Sistren survey response

“My manager kept calling me by the name of another Asian woman in the office.”

Anonymised Spark × Sistren survey response

Practical tip: This case highlights the significance of raising any microaggressions, harassment or bullying issues promptly and clearly. You should notify your employer or, in the case of a consulting relationship, the client; and if necessary, escalate to account management, HR, and/or compliance as applicable. When notifying, set out the conduct, the impact it had on you during and after, and if you tried to remedy the situation, such as through requesting the correct usage of your name or an apology.



Scenario ④

Experiences of racially insensitive ‘jokes’ or ‘banter’

Legal case:

Carozzi v University of Hertfordshire (Employment Appeal Tribunal case, 2024)

Read more about the case: [🔗 The full case](#) [🔗 A useful short summary](#)

The basics

In this case, the Employment Appeal Tribunal held that comments about an employee’s accent can amount to race-related harassment, even if they were not intended to be discriminatory, because conduct only needs to be ‘related to’ race and not motivated by it to be unlawful.

What happened in this case?

The claimant, Elaine Carozzi (EC), was employed by the University of Hertfordshire in a managerial position. EC’s position was subject to a six-month probation period, which had been extended twice. At the time of her resignation, it had not been completed.

EC was subject to comments on her ‘very strong’ Brazilian accent, including comments that it can be difficult to understand. EC started legal proceedings (‘issued a claim’) against her employer for race discrimination, harassment and victimisation. Initially, the tribunal dismissed all claims. EC appealed the tribunal’s decision.

What decision did the courts arrive at in this case?

On appeal to the Employment Appeal Tribunal (EAT), EC’s claims of harassment and victimisation were successful. The EAT observed that harassment provisions are designed to be pragmatic, balancing the interests of employees against those of their employer and colleagues who may be accused of harassment. That balance cannot be achieved by applying a limited meaning to the words ‘conduct related to a protected characteristic’. This case broadened the interpretation of harassment under the Equality Act and helped establish that comments on an individual’s accent can constitute harassment if the accent is part of their ethnic identity.

What factors did the courts take into account?

Repetition of the unwanted conduct, whether the conduct happens in a shared space, and what happens after the employee objects. Where colleagues mock an employee for raising concerns ('can't take a joke'), it can aggravate the hostile environment and support the point that the conduct is unwanted.

What are the key takeaways from this case?

This case illustrates that comments about a person's accent can be related to race, and criticism or mockery of an accent can amount to harassment depending on context and whether such conduct is unwanted.

Legal safeguards are not motive-based, and intent is not decisive, i.e. a conduct can still be 'related to' race even when the speaker is not consciously motivated by race and may not intend to offend/discriminate against a colleague.

Practical tip: It helps to raise the issue clearly and early, and to create a simple record: examples of comments, dates, who was present, how you responded, and what outcome you are seeking (comments to stop, agreement on office conduct, manager intervention, training).

“I’m Muslim, and the Islamophobia wasn’t just about my hijab – it was about assumptions of who I am.”

Anonymised Spark × Sistren survey response

Scenario ⑤

Experiences of being undermined, excluded or isolated

Legal case:

Cox v NHS Commissioning Board (Employment Tribunal case, 2023)

Read more about the case: [🔗 The full case](#) [🔗 A useful short summary](#)

The basics

In this case, the Employment Tribunal upheld claims of race discrimination, harassment and whistleblowing detriment, emphasising that discrimination can be established through patterns of behaviour, flawed internal processes and credible evidence of differential treatment, even where organisations deny wrongdoing.

What happened in this case?

AC, the claimant, was a Black nurse employed by NHS England as a Continuing Healthcare Manager (Band 8B). She was the deputy to her line manager, GP. AC also had a regional role supporting and advising on issues affecting racialised staff.

AC claimed that GP repeatedly excluded and undermined her. Examples included refusing to let AC attend or participate in an important team away day while she was recovering from surgery, arranging a 'treat' team event on the same day as the National Nursing BME conference (the result being AC could not attend), keeping AC out of the loop about the promotion of a junior white team member

within AC's team, holding an inappropriate conversation with a junior staff member about AC's health and encouraging the junior to report concerns, and excluding AC from the early stages of recruiting roles that would sit in AC's own team.

AC raised concerns and brought a grievance. AC state in her formal grievance letter that she was a senior Black nurse with an organisational role in supporting understanding of issues affecting racialised staff, and she expressly linked her treatment to the very issues she was expected to address publicly (including recruitment and experience of racialised staff). The grievance outcome and appeal outcome criticised aspects of management behaviour as 'poor' or 'unsound', but did not properly address discrimination or ask why the behaviour happened, and did not effectively follow through on corrective action.

The tribunal found AC's evidence to be credible, and found GP's evidence to be evasive and unreliable. It concluded that the treatment was because of race, amounted to harassment, and that AC was also victimised for doing protected acts (complaining about discrimination). The tribunal also upheld a whistleblowing detriment claim.

What decision did the courts arrive at in this case?

The tribunal found that AC's race discrimination complaints succeeded, including victimisation, and that her whistleblowing detriment complaint also succeeded.

What factors did the courts take into account?

- ▶ **Pattern over time:** repeated exclusion and undermining, not isolated one-off incidents.
- ▶ **Timing:** detriments occurred shortly after protected acts, supporting an inference of retaliation.
- ▶ **No credible explanation:** the employer did not provide convincing non-discriminatory reasons for what happened.

▶ **Credibility:** GP's evidence was described as evasive and inconsistent with documents.

▶ **Failure to address discrimination properly:** grievance outcomes were criticised for setting a 'deliberate discrimination' bar and not examining subconscious bias or the cumulative picture.

▶ **Minimising discrimination:** the tribunal criticised a process that effectively required proof of deliberate intent.

▶ **Failure to ask 'why' and to draw inferences:** acknowledging 'poor behaviour' but not examining the cause.

▶ **Failure to follow through:** outcomes not effectively actioned, including failure to ensure findings were communicated and lessons learned.

▶ **Overall context:** the tribunal looked at the cumulative effect and the wider environment.

▶ **Continuing act:** the tribunal treated the conduct as extending over a period, including the grievance and appeal handling, meaning the earlier acts were not time-barred.

Definitions

Time-barred

'Time-barred' means a legal claim cannot be brought because the deadline for making it has passed. A claim is not 'time-barred' if the tribunal sees the behaviour as part of an ongoing pattern, so earlier events can still be considered even if they happened some time ago and would ordinarily be out of scope for evidence in a tribunal claim.

What were the protected acts in this case?

The protected acts included raising concerns that practices were unfair and contrary to non-discrimination principles, taking part in an informal facilitated discussion, lodging a formal grievance, appealing the grievance outcome, and presenting a tribunal claim.

What were the detriments in this case?

These included:

- ▶ being excluded from key events and processes,
- ▶ being undermined in the team,
- ▶ an inappropriate discussion about her health with junior staff,
- ▶ being excluded from recruitment for roles in her team, and
- ▶ grievance outcomes that failed to properly address discrimination and failed to take meaningful follow-up action.

If isolation, exclusion, undermining, and ‘performance’ narratives appear after raising racism concerns, then these fit the victimisation pattern. Courts can treat these as detriments, especially when they form a connected course of conduct.

“Last year I experienced exclusion, bullying and harassment (by white female colleagues) which I flagged to my line manager who advised I “need to be the bigger person and try to make the situation work.”

Anonymised Spark × Sistren survey response

What are the key takeaways from this case?

The key takeaways from this case are:

- ▶ **Protected act:** If an employee raises concerns about racism, race discrimination and/or harmful race-related conduct in the workplace, in doing so, it is likely they will have done a protected act as defined under the Equality Act.
- ▶ **Retaliation can be framed as ‘management action’** rather than overt hostility. The tribunal will look at whether the employer’s actions were detriments and whether they were done because of the protected act.

► **‘Detriment’ is broadly understood:**

A detriment is broad and can include exclusion, undermining, unjustified performance criticism, removal of work, blocking opportunities, hostile tone, and treating an employee as a problem for speaking up. Subjecting an employee to a detriment on grounds of race would amount to discrimination.

- **Continuing course of conduct:** If the behaviour is sustained, tribunals may treat it as a series of connected ‘detriments’. The case is a good example of a tribunal treating multiple events as a continuing course of conduct, including the way the grievance and appeal were handled.

Practical tips: Keep a simple, dated timeline of what you reported, who you told, what changed afterwards, and the impact on you. Where retaliation happens through a series of connected acts, it is important to record each incident and link it back to the protected act(s), because the ‘last act’ in the chain can be important for time limits and for showing the pattern.

Hypothetical scenario

Consider a similar scenario: having been subjected to race-related bullying and offensive comments from colleagues, you raised these issues with your manager and HR. In response, you were advised to be the ‘bigger person’.

Reporting race-related bullying and offensive comments to your manager or HR is a protected act. If you then suffer a detriment because you complained, that can be victimisation.

Responses that minimise racism (‘be the bigger person’) or that label the complainant as the problem can be relevant evidence of retaliation, particularly if they are followed by exclusion, criticism, or performance action. In this scenario, being told to ‘be the bigger person’ could be framed as a detriment because they:

- discourage you from pursuing a discrimination complaint,
- shift blame onto you rather than the behaviour complained of, and
- can damage your reputation and set up a narrative used later to justify exclusion or performance management.

Scenario ⑥

Experiences of feeling unsafe at, and in accessing, work

Hypothetical scenario

Consider the following hypothetical scenario (which is based loosely on experiences shared in the Spark x Sistren survey).

There are far-right demonstrations taking place outside your workplace. You are a young South Asian female and working from the office. You do not feel comfortable taking public transport back home from the office that day. Your line manager asks you to 'keep safe' and offers no further support. On your way back home there is racist chanting at the train station and on the train. You have a panic attack on the train.

As there isn't a closely similar case law on this, we've set out below some of the key legal points that are relevant to this issue.

1. Health and safety duties (workplace-focused, but context matters)

Employers have statutory and common law duties to take reasonable steps to protect employees' health, safety and welfare while

at work ('in the course of employment'). Where there is known unrest or a planned demonstration near the workplace, an employer should be alert to this and take appropriate steps to evaluate the relevant risks to an employee's health, safety and welfare (for example, as part of the employer's risk assessment).

Employers are not usually responsible for the ordinary risks associated with commuting. However, where an employer knows there is a specific risk connected to the workplace location (for example, demonstrations directly outside, expected disorder, or credible risk of racist abuse), the employer may be expected to take reasonable steps in response, particularly where an employee is likely to be targeted.

2. Serious and imminent danger

Employees are protected from detriment if they leave or refuse to return to a workplace where they reasonably believe there is 'serious and imminent' danger. Where there is danger outside (or very near) the workplace, this legal provision (ERA 1996, Section 44) could be relevant, because the danger could be argued to be connected to the workplace and its immediate vicinity.

3. Duty of trust and confidence

If a manager dismisses safety concerns in the face of a known risk and provides no meaningful support or alternatives, that can become relevant in any later dispute about whether the racialised employee was treated reasonably.

4. Indirect race discrimination

If the employer operates a policy or a practice that staff must attend the office and travel at usual times during a period of riots or demonstrations, that requirement may place staff (or other targeted groups) at a particular disadvantage due to increased risk of racist abuse and harm. It would be more difficult for an employer to justify the policy or practice if the unrest is short-term and alternatives to travelling to and from the workplace exist.

What can your employer do to support you?

Practical steps: Even if commuting risk is not usually the employer's responsibility, there are reasonable steps employers can take when there is known unrest:

- ▶ Permission to leave early to avoid peak travel and flashpoints
- ▶ Temporary work from home, or relocation to another site
- ▶ Temporary adjustment of hours for a short period
- ▶ Paid taxi home
- ▶ A 'buddy system' or arranging accompaniment to the station

- ▶ Clear instructions that employees will not be penalised for prioritising safety
- ▶ Temporary reassignment of duties which may be required to be undertaken 'on-site'

Risk assessment and communication:

Alongside practical steps, employers should maintain an up-to-date risk assessments for the office location, including clearly communicating any contingency plans (closing early, remote working, avoiding certain entrances, security presence) and providing a named point of contact for real-time support on the affected day (HR, facilities, duty manager).

Wellbeing support: Employers should also offer wellbeing support such as check-ins, signposting internal mental health support services, and agreeing to temporary work adjustments. It is important to let the employee know that there isn't pressure to commute to work under unsafe circumstances.

What can you do if your employer has not taken any practical steps to support you?

1. Raise the issue clearly and in writing (the same day if possible)

Send a short email or message to the line manager and HR along these lines:

- ▶ demonstrations were outside the workplace,
- ▶ you did not feel safe travelling,
- ▶ you asked for support but none was offered beyond 'keep safe',
- ▶ racist chanting occurred on public transport,

- ▶ you suffered a panic attack, and
- ▶ you are asking for immediate temporary adjustments.

Keep it factual. Include dates, times, and what was seen and heard.

2. Ask for specific measures (not just 'support')

This could include, for example:

- ▶ Permission to work from home for *[insert number of]* days
- ▶ Employer-paid taxi if office attendance is required
- ▶ Agreement that absence or leaving early will not be treated as misconduct
- ▶ Temporary reassignment of work if operationally feasible and there is work that can be done remotely
- ▶ A risk assessment and written plan for upcoming demonstration dates

“I had a panic attack on the train home. I was signed off for six months, and I’m still recovering.”

Anonymised Spark × Sistren survey response

3. Record impact and seek medical evidence if needed

Keep a contemporaneous record of any adverse health effects, physical or mental. If there was a physical reaction such as a panic attack, note the symptoms, note any GP contact, keep a record of how it affects the ability to commute in the short term. This is relevant to safety, and to the reasonableness of requested adjustments in the workplace.

4. Escalate if necessary

- ▶ If the line manager does not engage, escalate to HR, a more senior manager, or a health and safety lead, using the employer’s dignity at work / grievance policy where appropriate.
- ▶ If the employer insists on office attendance and normal commuting during unrest, and refuses reasonable temporary alternatives, the employee may argue the requirement disadvantages racialised employees as a group and them personally such that it amounts to indirect discrimination and/or potentially harassment by creating a hostile work environment.

The employer would need a strong objective justification, supported by evidence, and would need to show that it considered less discriminatory alternatives to achieve its aim.

Part III: Taking Action: A Practical Checklist







Part III: Taking Action: A Practical Checklist

Whether to take action

We recognise that taking action in response to race discrimination at work is not always straightforward – and for many people, it may not feel possible or safe at all.

Racialised employees often navigate complex realities that shape whether and how they choose to act. These can include imbalanced power dynamics in the workplace, reliance on employment for visa or immigration status, cultural expectations around what it means to be a ‘good’ worker, or backgrounds where raising complaints is discouraged. Many people face a heightened risk of retaliation, carry multiple intersecting identities that compound harm, or have limited trust in internal reporting systems based on past experiences.

Discrimination is rarely explicit, and may instead emerge through patterns of behaviour, inconsistencies in how organisational processes are applied to employees, or shifting explanations rather than clear statements. Retaliation, where it occurs, is often subtle rather than overt, showing up through exclusion, increased scrutiny, or stalled progression. The stress, anxiety and health impacts of navigating workplace racism are real and significant.

Choosing not to take formal action can be a rational and protective decision for many people. This section is therefore not intended to tell you whether you should take action or how far to pursue a grievance – that is your decision. Instead, it is intended to offer a practical set of steps and considerations for those who decide that raising concerns is right for them.

The following steps are written with employment law in England and Wales in mind, including the Equality Act and guidance from the Advisory, Conciliation and Arbitration Service (ACAS). The aim is to help individuals raise concerns at work in a way that:

- ▶ creates a clear and reliable record,
- ▶ exhausts internal remedies,
- ▶ gives the employer a fair opportunity to rectify matters, and
- ▶ protects wellbeing and preserves legal options if external action becomes necessary.

How to take action

Step 1

Record incidents promptly and seek support

Make a detailed note as soon as possible after each incident or meeting, including:

- ▶ date, time and location,
- ▶ what was said or done (quote words where you can),
- ▶ who was present (and any potential witnesses),
- ▶ how it affected you (including emotional or health impact).

Keep a running log of the date, content and outcome of all related meetings or discussions. Retain relevant documents (where it's lawful to do so, being mindful of relevant confidentiality clause and data use policies in your organisations), including emails, messages, meeting invites, notes,

policies, and any changes to duties or expectations. It's understandable that you may want to keep copies of everything especially where you feel unsafe, but keep in mind that it can lead to difficulties if a legal case is brought and raises issues of breach of the employment contract (where an employer might argue for instance that you've breached a duty of trust and confidence to an employer or confidentiality or data privacy requirements).

It's important to be aware that covert audio or video recording at work is usually unacceptable and may itself amount to misconduct or lead to dismissal, unless the employer has expressly consented.

Practical tip: In confidence, discuss the situation with a trusted person (e.g. mentor, friend, employment lawyer/adviser, union representative, or Employee Assistance Programme, where available). Use this to soundboard next steps, reality-check risk, and protect your wellbeing.

Definitions

Employee Assistance Programme (EAP)

An Employee Assistance Programme (EAP) is a confidential, employer-funded benefit that provides employees with free, 24/7 support for personal or work-related issues. Smaller organisations may not have an EAP. If you work with a larger organisation, your HR should be able to provide more information on whether you have access to EAP in the workplace.

Step 2

Raise an informal grievance – seek clarification and a preferred resolution promptly

Consult your employer or organisation's grievance policy and equality and/or dignity at work policy, if it has one. These policies often direct you to raise concerns informally in the first instance. They will usually include a procedure under which any grievance or complaint should be dealt with.

If no such policy exists, you could refer to the ACAS Code of Practice on disciplinary and grievance procedures.²⁷ It sets out the minimum procedure an employer should comply with when handling grievances and disciplinaries. The Employment Tribunal can increase a compensation award by up to 25% in light of an employer's failure to comply with the ACAS Code of Practice, and reduce a claimant's award by up to 25% for their failure to comply with this code.

Where it is appropriate and feels safe to do so, raise the issue informally with the individual(s) concerned, either by a short factual email or a meeting.

Identify:

- ▶ the conduct (e.g. persistent misnaming, stereotyping, threatening or dismissive language),
- ▶ why it was inappropriate,
- ▶ the impact on you, the outcome you are seeking (e.g. apology, commitment to respectful conduct, no repetition or moving to different line management or area of the organisation).

Practical tips: Be realistic about the power dynamics at play. If the individual is senior to you, controls your workload or progression, or has previously reacted defensively, it may not be safe or effective to address matters directly.

If you proceed informally, keep a written record of what was raised/said and any response that you were given.

Step 3

Escalate to HR or your line manager

If informal steps are unsuitable or unsuccessful, identify the most impartial HR contact or senior manager not involved in the incident. Request an urgent meeting and state in broad terms what the issue relates to (e.g. dignity, equality, or safety at work).

Where necessary, ask for interim safeguarding measures, for example:

- ▶ not reporting to or meeting alone with the individual you have raised a grievance against,
- ▶ a temporary change in duties or reporting lines,
- ▶ clear limits on contact pending review/the outcome of your grievance.

You should not feel pressured to agree to an outcome on the spot, but you should consider what outcome or resolution you'd like.

At the initial meeting:

- ▶ If you don't already have these, ask for copies of the organisation's grievance policy and any conflict-resolution options,
- ▶ don't agree to outcomes or characterisations of events on the spot,
- ▶ take time afterwards to reflect, get advice, and assess your options.

Practical tip: You're usually entitled to ask for a trusted colleague or union representative to accompany you. It's ok to prioritise your wellbeing and support, particularly where there is an imbalance of power or a risk of being disbelieved.

Step 4

Raise a formal grievance if informal steps don't resolve matters

If the informal grievance doesn't result in the desired outcome, raise a formal grievance under your organisation's grievance policy. Even if your workplace doesn't have a grievance policy, you can raise a formal grievance by sending an email (or letter) to your manager, HR (if there is one), or a senior person in the organisation. If you might struggle to put your concerns down in writing, you could ask for a meeting to discuss them and for a note to be taken of the discussion.

In your grievance, you should specify that you're raising a formal grievance and cite the Equality Act 2010, setting out:

- ▶ the specific incidents (dates, words used, witnesses),
- ▶ why the conduct amounts to harassment or discrimination (e.g. related to race, and created an intimidating, hostile, degrading, humiliating, or offensive environment), the impact on your dignity, psychological safety, health and working environment,
- ▶ the remedies sought (e.g. apology, training, reassignment of reporting lines, disciplinary action, and monitoring).

Practical tips:

- ▶ Ask for the grievance to be investigated by someone independent of the events and for a written outcome and right of appeal.
- ▶ Preserve evidence and communications.
 - Keep communications professional and in writing where possible.
 - Confirm key points and matters discussed in relevant meetings in follow-up emails.
 - Retain copies of your own notes and documents as well as your grievance.
 - Ensure that any transfer of data or documents to a personal account or device is in compliance with your workplace's confidentiality and company property policies and your contractual obligations. For example, be aware that downloading, removing or sending confidential company information or company property including documents could amount to a breach of your employment contract.
 - Where relevant, include documentary evidence with your grievance (you may include them as attachments if you are submitting a grievance over email) or describe and list each relevant document you are referring to if you do not have access to them.

- ▶ Consider protected disclosures and health and safety.
 - If there are wider systemic issues or risks (e.g. patterns affecting multiple racialised colleagues), consider whether any disclosure could qualify as a protected disclosure (whistleblowing) and make it through the prescribed channels as provided within your company's policies (whistleblowing policy, health and safety policy etc.).
 - If you feel unsafe, state this and prioritise your safety.

Step 5

Use internal appeal routes

If you're dissatisfied with the outcome of the grievance, lodge a timely appeal (a deadline for submitting this is usually set out in the relevant policy) setting out errors of fact, gaps in investigation (e.g., failure to speak to you or witnesses, procedural failings), highlight any minimisation of impact or failure to address power imbalance and restate the remedies you're still seeking.

If matters escalate to litigation, the Employment Tribunal will expect a claimant to evidence that, where possible, they exhausted all internal processes available (for example by submitting a grievance and appealing a grievance decision) before bringing a claim. Failure to comply with the ACAS Code of Practice can result in either party being penalised.

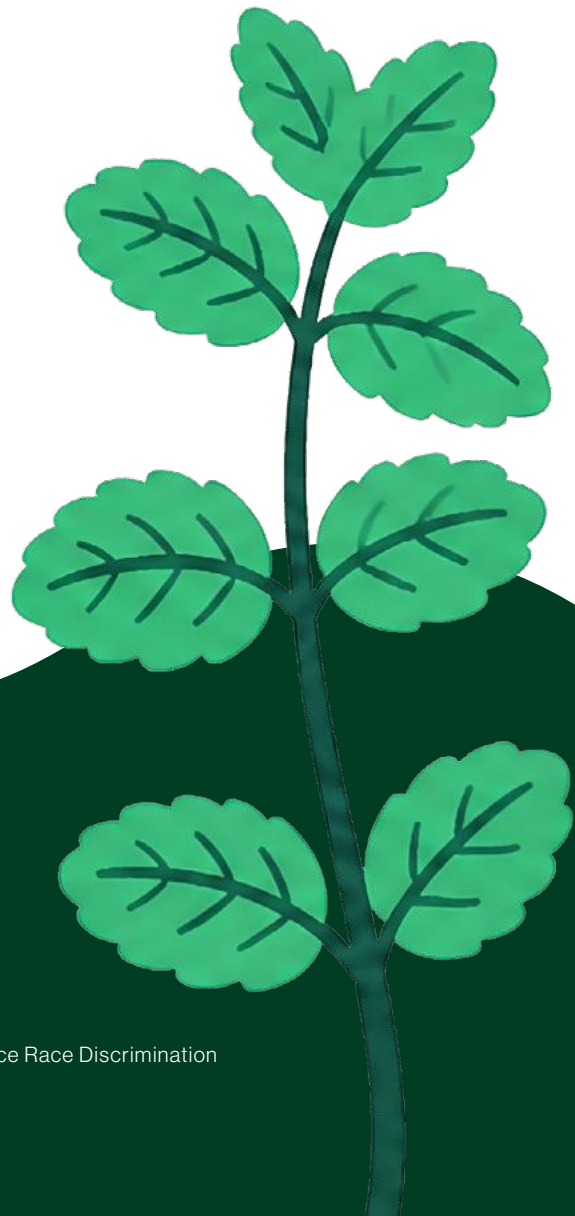
An employee is expected to appeal a grievance decision without delay. If you are concerned about missing the deadline to appeal a decision or grievance outcome, you should communicate your intention to appeal to your employer/organisation and request an extension of time to submit the appeal without delay. An employer is not obliged to grant a request for an extension and so it is advisable that an appeal is submitted quickly.

Taking into account time limits to bring a claim to the Employment Tribunal, a claimant may need to bring a claim before those internal processes have been completed to protect their claim.

Step 6

Explore mediation or a facilitated resolution

Where appropriate, you may want to propose mediation with a neutral facilitator, while making clear that this is not a substitute for the employer's duty to investigate and address harassment.



Practicalities to be aware of

Request reasonable adjustments

If you are distressed or unwell, ask for adjustments to the investigation process or working arrangements (e.g., a support person in meetings, remote attendance, temporary redeployment). Where relevant, these requests can be framed as health-related or equality-related and should be considered seriously by the employer.

While an employer only has a legal duty to make reasonable adjustments if you have a disability, employers are increasingly inclined to make adjustments to processes when asked for health reasons. You might also be able to seek a referral to Occupational Health, a health service used by employers to assist them in making decisions about managing a worker's health in the workplace. Occupational Health can make recommendations for reasonable adjustments in the workplace. Where an employer refuses to implement reasonable adjustments recommended by Occupational Health, it may evidence unfair or discriminatory treatment.

Maintain continuity and mitigate losses

It may not be advisable to resign in the heat of the moment if you want to preserve your employment or strengthen your position. Continue to attend work if it's safe for you to

do so, and you are well enough to do so, or seek medical advice and provide fit notes if not. This demonstrates reasonableness and mitigates loss. If you are considering resigning, please seek legal advice

Time limits are critical

Keep in mind the usual time limit for bringing most discrimination claims under the Equality Act in the Employment Tribunal is currently **three months less one day** (subject to ACAS Early Conciliation). So, for example, if you were dismissed on 1 January, your deadline is usually 31 March. The clock starts from:

- ▶ the **date of dismissal** (for unfair dismissal)
- ▶ the **date of the discriminatory act** (for discrimination)
- ▶ the **last in a series of acts** (for ongoing issues like harassment)

This is important because if you miss the deadline, you may be 'time-barred' from bringing a claim.

From October 2026, the time limit for bringing a claim is set to increase to **six months** as part of the reforms under the new Employment Rights Act 2025.

Starting the ACAS Early Conciliation pauses the time limit for bringing a claim till the conciliation process ends. The rules are technical – don't assume you have extra time unless you've checked this by getting legal advice.

ACAS Early Conciliation

If internal steps fail, initiate ACAS Early Conciliation promptly, while continuing to engage with internal processes. Make clear in correspondence that conciliation has started to manage timelines. Early Conciliation can last for up to 12 weeks (and can be ended by either the employer or the employee before then).

Getting legal advice and deciding when to go to the Employment Tribunal

It is often helpful to get legal advice early, even while internal processes are ongoing, so you understand your options and don't miss strict time limits. In most cases, employees are expected to try internal procedures first, and tribunals will usually look more favourably on claims where reasonable internal steps were taken.

However, going straight to an Employment Tribunal may be appropriate where internal processes are clearly unsafe, biased, unreasonably delayed, or where the issue is serious and urgent (for example, ongoing harassment or dismissal).

Before any tribunal claim, ACAS Early Conciliation is mandatory, and starting it in time is crucial to protect your position. Legal advice can help you decide whether continuing internally is worthwhile or whether external action is the safer and more effective route.

Time limits are not extended on the basis that there is an internal process ongoing

Document request and data rights

You have the right to ask your employer for copies of personal information they hold about you under the Data Protection Act 2018 and General Data Protection Regulation 2018 (GDPR). This can include emails, meeting notes, HR records, or scoring documents that mention you. This is often called a data subject access request (DSAR). In plain terms, this means:

- ▶ you can ask to see what data your employer has processed about you, and
- ▶ you may be able to uncover emails, notes, or records you have not been shown.

An employer should respond to a DSAR within one month of receiving it. If the employer requires more time to respond to the DSAR (up to a further two months) the employer should write within the month to confirm this. This can help you understand how decisions were made and whether the process was fair. It may also provide helpful evidence related to your concerns.

A DSAR is most helpful where decisions affecting you feel unclear or inconsistent. It can be a sensible step if you think relevant emails or notes exist that you have not seen, if explanations for decisions keep changing, or if you want a clearer picture before deciding whether to appeal, escalate the issue, or take legal advice.

Used strategically, a DSAR is about understanding, not confrontation. You may wish to submit a DSAR after a key decision has been made, such as a grievance outcome, performance assessment, or promotion decision. While it may indirectly support later discussions or negotiations by clarifying what evidence exists, it shouldn't be presented as a threat or leverage. A DSAR is not a bargaining chip in and of itself; its value is in the clarity it provides, which can then inform measured, well evidenced next steps.

Practical tip: Keep your DSAR request focused (for example, a specific time period or decision). Avoid asking for everything, as very broad requests can cause delay. In the same way as you can request a DSAR, so can any other individual in the organisation, so be careful of what names you record and what you say on any organisational communication platforms.

Interim safeguarding measures

Request specific interim controls, for example:

- ▶ no further one-to-one contact with the alleged harasser,
- ▶ all meetings to have a third person present, and
- ▶ a clear point of contact in HR.

Ask for the outcome to be confirmed in writing.

Training and organisational remedies

Request remedial actions to reduce the risk of recurrence. This might include things like Diversity Equity and Inclusion training and clear standards for respectful conduct.

Process literacy is protection

Knowing the employer's processes and procedures, documenting any deviations from those processes, and keeping timelines strengthens your position.



Epilogue

Disclaimer

Lawyers love disclaimers. So, here's ours. Sistren Legal Collective conceptualised, commissioned and resourced the development of this toolkit as an educational resource, consistent with our ethos of redistributing legal knowledge. It's written for informational and educational purposes and has relied on the employment law expertise of an external employment law expert.

Sistren Legal Collective, Spark and a world without cannot provide any legal advice on employment-related matters and is unfortunately not able to provide legal advice or support on the topics included within this toolkit. Please refer to the checklist of resources [available here](#) for signposting and support.

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Laws and regulations change. In particular, employment law in the UK has undergone several changes recently and is continuing

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We've simplified content where possible and prioritised clarity and usefulness over technical precision, and we ask that you read this toolkit as an informative and educational resource in that spirit.

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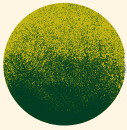
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Endnotes







Endnotes

The following endnotes correspond to references made throughout *Racism at Work: A Practical Guide to Your Rights and Options*.

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Illustrations

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