

## Complaints about racist treatment in prison

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### **CHALLENGING RACISM**

There are three avenues open to prisoners to challenge racially discriminatory treatment by the Prison Service. First is the internal complaints system (PSI 32/2011 and PSO 2510). Second is a claim for damages pursued in the county courts under the Equality Act 2010. Finally, the criminal law is available to deal with racially motivated offences. This information sheet deals with the first two methods of challenging racial discrimination.

#### ***Has the legislation changed recently?***

Before 1 October 2010, civil claims for race discrimination were brought under the Race Relations Act 1976 (as amended) (RRAA). The Equality Act 2010 (EA) unified the existing anti-discrimination legislation covering eight 'protected characteristics': age, disability, gender reassignment, marriage/civil partnership, race, religion/belief, sex and sexual orientation. Whilst the Act has changed the provisions regarding race discrimination are largely the same.

In 2011, PSI 32/2011 replaced PSO 2800 (Race Equality) in order to harmonise anti-discrimination policies within the Prison Service in line with the EA. There are some significant changes from PSO 2800.

### **PSI 32/2011: ENSURING EQUALITY**

The main purpose of this instruction is to promote equality within prisons. It sets out a uniform framework for anti-discrimination policies relating to the eight protected characteristics in the EA.

Unlawful discrimination by prison staff on the basis of colour, race, nationality or religion is prohibited, as is any racially abusive or insulting language or behaviour. Prisons are under a positive duty to take steps to actively eliminate discrimination.

#### ***Management***

PSI 32/2011 requires every prison to identify one person with lead responsibility for co-ordinating work on equalities issues; however, *all* managers within prisons are required to take personal responsibility for equalities issues in their areas. Prisons are required to publish an annual equality action plan and to collect and

monitor equalities data on areas of possible discrimination. Local policies must be subject to equality impact assessments. Prisoners and representatives from minority groups must be consulted on equalities issues.

Beyond these general provisions much is left to the discretion of individual prisons. The requirement under PSO 2800 for a dedicated Race Equality Action Team and Officer has been dropped (though prisons can choose to continue these roles if they wish). Prisoner equality representatives are again not mandatory though strongly encouraged.

#### ***What kind of racism can I complain about?***

A prisoner can complain about discrimination, harassment or victimisation. A prisoner can also complain about failure to take positive steps to promote equality.

- 1) 'Discrimination' means treating someone less favourably than another because of their perceived race/religion, or applying a general rule which places certain groups at a disadvantage because of their race/religion.
- 2) 'Harassment' means unwanted conduct related to someone's race/religion which has the purpose or effect of violating their dignity or creating an intimidating or offensive environment for them.
- 3) 'Victimisation' is where someone is subject to a detriment because it is believed that they have, or will, bring a complaint about discrimination (including giving evidence in someone else's complaint). It does not matter if the original complaint is not upheld, though complaints made in bad faith are not protected.

#### ***Most common complaints***

- 1) Direct racial abuse with or without physical violence, by staff or other prisoners.
- 2) Ill treatment by staff because you have submitted, or are a witness to someone else's racist complaint.
- 3) Discriminatory provision of facilities and services between different racial groups.
- 4) Differential unfavourable treatment by staff.
- 5) Insufficient action by staff to address complaints of racism.

### ***How do I complain?***

If the complaint is minor and you are confident about race relations between staff and prisoners, make a verbal complaint to staff. They should try to deal with your complaint informally, but no less thoroughly than if you had made a written complaint.

If that fails or the complaint is more serious, submit a written complaint on a Discrimination Incident Report Form (DIRF) which should be readily available on all wings along with envelopes to ensure privacy. A standard COMP1 form can also be used. If you are concerned about confidentiality use the pink confidential access COMP2 form. This might be especially appropriate for complaints of an especially sensitive nature or against senior staff that should be investigated by a governor grade staff.

It is important that specific incidents are described in relevant detail, and not in general terms. Witnesses can be crucial and should be listed. It is not essential for you to classify an incident you perceive as racist as discrimination, harassment or victimisation if you are unsure.

### ***How should the complaint be dealt with?***

The investigation should be conducted in a manner that ensures that all parties involved are safeguarded, including the victim and reporter of the incident. Serious incidents and/or allegations of misconduct by staff should be referred for investigation in accordance with PSO 1300 (Investigations). Other issues should be handled by a manager. A written response explaining the action taken should be given in all cases.

### ***How long will the investigation take?***

The general principle is that DIRFs should be handled in accordance with the timescales for prisoner complaints. A response should be given within 3 weekdays (or 10 weekdays if the complaint is against a member of staff). Some matters will take more time to resolve, when this is the case you must be told and kept informed of developments.

### ***What if I don't agree with the prison's finding?***

If you are unsatisfied about the outcome of a DIRF then you should submit a stage 2 complaint. In the same way as with all other complaints you can appeal the final decision to the Ombudsman. Whilst the Ombudsman cannot award damages, they can recommend compensation for financial loss.

### **EQUALITY ACT 2010**

You do not have to exhaust the internal complaints system to pursue a claim through the county courts under the EA. The EA sets out different types of discrimination and you should seek specialist legal advice to help you with a claim. There is a very strict deadline of 6 months within which a claim must be issued in the county courts. Time starts to run from the date of the last incident complained of.

For further general information on your rights under the EA you can write to the Equality and Human Rights Commission (which replaced the Commission for Racial Equality) under Rule 39 at:

Equality & Human Rights Commission  
3 More London  
Riverside Tooley Street  
London SE1 2RG  
Helpline: 0845 604 6610

### ***The 'questionnaire procedure'***

If you believe you have been discriminated against you can ask the Prison Service to provide you with information about your complaint using the 'questionnaire procedure' under EA (s.138). You can ask questions to obtain information about the facts of your complaint and to enquire into the reasons behind the actions taken by the Prison Service.

The purpose of the questionnaire procedure is to help people to bring a claim under the EA, but you do not have to be bringing a claim in order to use it. You should seek specialist legal advice if you wish to submit a questionnaire.

### ***Public Sector Equality Duty***

The EA (s.149) requires public bodies such as the Prison Service to take positive steps promote equality. This includes measures: (i) to eliminate discrimination, harassment and victimisation on grounds of race/religion; (ii) to advance equality of opportunity between different races/religions and (ii) to foster good relations between persons of different races/religions. This applies most readily to local and national policy decisions affecting prisoners. There is no right to bring a civil claim for breach of this duty, but it may be used as part of a challenge by judicial review.

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