

Complaints about racist treatment in prison

CHALLENGING RACISM

There are three avenues open to prisoners to challenge racially discriminatory treatment by the Prison Service. First is the internal complaints system (set out in the Advancing Equality for Offenders and Children in Custody Policy Framework and the Prisoner Complaints Policy Framework). Second is a claim for damages pursued in the county courts under the Equality Act 2010 (EA). Finally, criminal law is available to deal with racially motivated offences. This information sheet deals with the first two methods.

What legislation covers claims for racial discrimination?

The Equality Act 2010 unified the existing anti-discrimination legislation, including the Race Relations Act 1976 (as amended) and covers the 'protected characteristics': age, disability, gender reassignment, marriage/civil partnership, pregnancy/maternity, race, religion or belief, sex, sexual orientation.

THE "ADVANCING EQUALITY..." POLICY FRAMEWORK

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

Unlawful discrimination by prison staff on the basis of colour, race, nationality or religion is prohibited, as is racially abusive or insulting language or behaviour. Prisons are under a positive duty to take steps to actively eliminate discrimination. Staff also have a duty to report any incident of discrimination they witness in relation, whether the perpetrator is a prisoner or a staff member.

Management

The "Advancing Equality..." Policy Framework requires that every prison has appropriate staff who oversee Diversity and Inclusion activity. However, all staff are personally responsible for their conduct. Prisons are also required to publish a local Diversity and Inclusion Action Plan, which

must be regularly updated. Prisons must also collect equalities data and monitor this to identify potential areas of discrimination or disadvantage. An Equality Analysis must also be conducted whenever a new policy, protocol, procedure, or project is developed. 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 previous policy for a dedicated Race Equality Action Team and Officer no longer exists though prisons can choose to continue these roles if they wish. Prisoner equality representatives are not mandatory though strongly encouraged.

What kind of racism can I complain about?

Prisoners can complain about discrimination, harassment or victimisation, and 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 when someone is subject to detriment because it is believed that they have brought, or will bring a discrimination complaint (including giving evidence in someone else's complaint). It does not matter if the original complaint is upheld, though complaints 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.
- 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 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 (with the 'discrimination, harassment or victimisation' box ticked). 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 governor grade staff. Complaints of discrimination submitted on COMP1/ COMP2 forms will be referred to the DIRF process.

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 Prison Service Order 1300 (Investigations). Other issues should be handled by a manager. A written response explaining the action taken should be given in all cases. Responses to DIRFs must be authorised by a senior manager.

How long will the investigation take?

All DIRFs should be acknowledged within two days of receipt (including those submitted using COMP1 or COMP2 forms). A response should be given within 14 days of receipt. This can be extended to 28 days under certain

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circumstances (e.g. absence of staff involved), with the approval of the Governor. When this is the case you must be told and kept informed of developments.

What if I disagree 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 **Prisons and Probation Ombudsman, Third Floor, 10 South Colonnade, London E14 4PU**. 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 contact the Equality and Human Rights Commission under Rule 39. You can write to them at:

Equality & Human Rights Commission
Freepost Equality Advisory Support Service
FREEPOST EASS HELPLINE FPN6521

You can also call the helpline: 0808 800 0082, 9am,-5pm Mon-Fri; 10am-2pm Sat.

Public Sector Equality Duty

The EA (s.149) requires public bodies such as the Prison Service to take positive steps to 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.

<p>PRISONERS' ADVICE SERVICE PO BOX 46199, LONDON EC1M 4XA Advice line: TEL: 020 7253 3323 Mon, Weds, Fri 10am-12.30 and 2-4pm</p>
